



COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0045 (COD)

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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

#### 1.1. Context

Transparency about publicly traded companies is essential for the functioning of capital markets, enhancing their overall efficiency and liquidity. This proposal for a directive should markedly improve the information made available to all investors about publicly traded companies on regulated securities markets within the European Union. It will therefore help integrate further Europe's securities markets by reducing or eliminating information asymmetries, which may hamper comparability and market liquidity; by enhancing investor confidence in the financial position of issuers; and by reducing the cost of accessing capital.

The current initiative is one of the priority actions in the Financial Services Action Plan (FSAP), endorsed by Heads of State and Government at the Lisbon European Council in March 2000. The aim is for Member States to have successfully implemented the agreed directive by 2005 at the latest - a commitment affirmed by Heads of State and Government at Stockholm in March 2001 and at Barcelona in March 2002.

Therefore, the proposal is part of a strategy for overhauling securities markets legislation, in particular for achieving a greater level of transparency and information in respect of issuers whose securities are traded on regulated markets. The proposal belongs to a "disclosure and transparency agenda" on which the European Institutions are currently moving forward:

- the Regulation on the application of International Accounting Standards (IAS)<sup>1</sup>, which will make mandatory the application of IAS to the drawing up of annual accounts, for all companies whose securities are admitted to trading on a regulated market and who prepare consolidated accounts, as from 1 January 2005 (with limited exceptions given until 2007). The present proposal is in line with this policy adopted by the EU. However, this does not alter the procedure introduced by the IAS Regulation which subjects each individual standard – including IAS 39 – to a formal decision by the EU, in accordance with the procedure in the Regulation, before the standard becomes legally binding in the EU. This Directive does not pre-empt or prejudice in any way such decisions;
- the Directive on Market Abuse<sup>2</sup>, which will, *inter alia*, require issuers to publish inside information. The existing ad-hoc disclosure requirements of price sensitive information are to be replaced thereby strengthening disclosure requirements;
- the future Directive on Prospectus<sup>3</sup>, which will deal with initial disclosure requirements at the point of public offer of securities/its admission to trading on a regulated market. The Directive should provide for an European passport for a prospectus. The current proposal

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<sup>1</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ No L 243 of 11.9.2002, page 1.

<sup>2</sup> Directive No 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), adopted on 3.12.2002 not yet published in the OJ.

<sup>3</sup> Amended Commission proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC – COM (2002) 460 final of 9.8.2002.

already takes into account the Council political agreement of 5 November 2002 towards a common position, which the Commission fully supports.

Successful adoption and implementation of all these initiatives, including the present one, represent an indispensable contribution to the overall regulatory framework for securities markets. The proposed Investment Services Directive (ISD)<sup>4</sup> will only work effectively and be a success if this new set of regulatory transparency requirements are in place at the same time.

## 1.2. Objectives of the current initiative

The proposed directive envisages to impose a level of transparency and information commensurate with the aims of sound investor protection and market efficiency. In order to achieve these aims, the current initiative should be consistent with all the legislative initiatives mentioned above: its scope should be extended from official to regulated markets, thus bringing second tier markets within its scope (see Section 3.1.), it should ensure greater openness to the world of international finance in terms of use of languages; and also in the use of modern information technologies (see Section 3.2). Finally, the proposal should constitute an appropriate response to developments in the US, including the Sarbanes-Oxley Act, for promoting European capital markets (see Section 3.3.).

The initiative reforms requirements in the form of standardised information at a certain point (periodic information) or information on an ongoing basis. Its objectives are:

- To improve **annual financial reporting** by security issuers through disclosure of an annual financial report within three months (see Section 4.2);
- To improve periodic disclosure of **share issuers** over a financial year, by introducing a pragmatic policy mix of more detailed **half-yearly financial report** and less demanding **quarterly financial information** for the first and third quarter of a financial year . This solution is in the middle of two extreme positions: one extreme position would be to require three fully-fledged quarterly financial reports based on highest international standards, similar to the requirements in the US. The other extreme would be to stay at a level of corporate transparency where the European Union has been for twenty years (prior to the Internal Market). Such an extreme position would ignore that capital markets now act and react much faster, that the allocation of capital amongst publicly traded companies is subject to more competition. Finally, investors investing in several Member States should benefit from more reliable and standardised financial information cycles instead of solely relying on ad-hoc disclosure issued by companies. This does not mean that the new rules on interim financial information should replace continuous disclosure obligations (see Section 4.3);
- To introduce **half-yearly financial reporting** to **issuers of only debt securities** who are currently not subject to any interim reporting requirement at all. Again, the Commission pursues a very pragmatic approach (see Section 4.4.);

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<sup>4</sup> Commission Proposal for a Directive on Investment Services and Regulated Markets, and amending Council Directives 85/611/EEC, 93/6/EEC and European Parliament and Council Directive 2000/12/EC of 19 November 2002, COM (2002) 625 final.

- To base on-going disclosure of **changes to important shareholdings** in issuers on proper capital market directed thinking. This should lead to more frequent information within stricter disclosure deadlines (see Section 4.5);
- To update existing Community law on the information provided to security holders (holders of shares or debt securities) in **general meetings** through proxies and electronic means. This aspect is particularly important for investors resident abroad (see Section 4.6.).

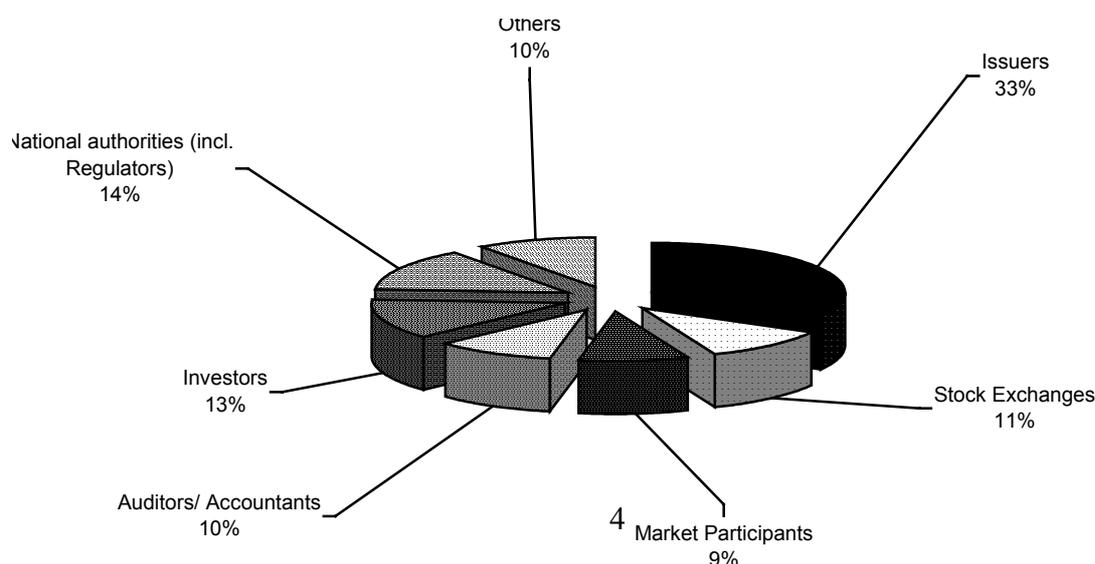
The current initiative will ensure sound investor protection and the properly functioning of financial markets. As a consequence, it should lead to the effective removal of national barriers for issuers seeking access to regulated markets not only in their home Member State, but also in other Member States. Member States would not carry any justifiable risks of undermining their national investor protection because Community law would already ensure robust requirements. However, the issuer's home Member State should be allowed to impose more stringent disclosure requirements (see Section 4.1).

## 2. A NEW WAY OF REGULATING SECURITIES AT COMMUNITY LEVEL

### 2.1. Two rounds of open and public consultation

The European Council invited the European Commission, in its Resolution of 23 March 2001 on more effective securities markets regulation, "to make use of early, broad and systematic consultation with the institutions and all interest parties in the securities area, in particular strengthening its dialogue with consumers and market practitioners". This should facilitate adoption of legislative measures and allow their timely implementation by 2005.

The Commission has met its part of the bargain. Its Internal Market Directorate General carried out two written consultations before bringing forward this proposal. On 11 July 2001, it invited reactions from interested parties to a consultation document in which it presented its preliminary views. There were 91 responses from all the Member States, but also from third countries. In December 2001, it published a summary of the replies received. The Internal Market Directorate launched a final consultation on 8 May 2002. In this round, it revised particular aspects, such as interim financial reporting, and presented a detailed outline of its ongoing work on a possible proposal. Again, it received 93 replies from all Member States and from third countries. The arguments presented are reviewed below. The **184 responses** received in the two consultation rounds cover a **broad spectrum of interests**:



## **2.2. A directive containing essential principles, not technical details**

A serious reform should be brought about on the basis of a new way of regulating securities markets at Community level. Adoption of this Directive should indeed be easier by virtue of the fact that the proposal is built on the recommendations in the Final Report of the Committee of Wise Men, chaired by Alexandre Lamfalussy, of February 2001. Its recommendations centred on a new four level approach for regulating securities markets, so as to be able to complete the FSAP by 2005.

The report recommends that Community legislation, adopted using the co-decision procedure, should focus on essential principles and policy options, but no longer on all technical details (“Level 1”). Technical implementing rules at Community level are adopted by the Commission (relying on the technical advice and expertise of national securities supervisors) according to the existing comitology procedures, whereby the Commission is assisted by a “Regulatory Committee” (the European Securities Committee (ESC)<sup>5</sup> “Level 2”). Co-operation amongst national securities supervisors in the Member States on the day-to-day implementation of Community law should be reinforced, notably through the Committee of European Securities Regulators<sup>6</sup> (“Level 3”). Enforcement of Community law by the European Commission should also be strengthened (“Level 4”).

The four-level approach was expressly endorsed by the European Council in its Resolution of 23 March 2001 on more effective securities market regulation in the European Union. Equally, the European Parliament supported such a regulatory reform in its Resolution on the implementation of financial services legislation of 5 February 2002 in the light of the declaration made by the President of the European Commission at that day. The current initiative is based on this new approach and accordingly aims at allowing a split between level 1 and level 2 legislation. Section 5 explains how the Commission believes that technical details should be left to “level 2 legislation”.

## **3. CONSISTENCY WITH OTHER SECURITIES MARKETS INITIATIVES UNDER THE FSAP**

### **3.1. Community legislation covering regulated markets**

The IAS-Regulation, the recently adopted Directive on Market Abuse, the future Directive on Prospectus, and the proposal for a revision of the Investment Services Directive - all concern issuers whose securities are admitted not only to official listing, but to regulated markets, thus covering second tier markets<sup>7</sup>. Along the same lines, periodic financial reporting, information through general meetings of security issuers for security holders, information about major changes to shareholdings as well as other ongoing information should be regulated with regard to not only official, but also regulated markets at Community level.

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<sup>5</sup> This Committee has already been established by Commission Decision No 2001/528/EC of 6.6.2001, OJ No L 191 of 13.7.2001, p. 45. It only acts in an advisory capacity. In this respect, it has also been consulted on the present initiative.

<sup>6</sup> Established by Commission Decision No 2001/527/EC of 6.6.2001, OJ No L 191 of 13.7.2001, p. 43.

<sup>7</sup> such as the Second Marché and the Nouveau Marché in Paris, the Alternative Investment Market in London, the Geregelter Markt and the Neuer Markt in Frankfurt, the Mercato Ristretto in Milan, the Nuevo Mercado in Spain or the Nouveau Marché in Belgium.

During the two consultations, some parties asked for clarification on situations where an **issuer has never requested or approved admission** of its securities to trading on regulated markets in any Member State. This issue will primarily be addressed in the framework of the proposed new Directive on investment services and regulated markets – the initiative harmonising the requirements for regulated markets to admit securities to trading on regulated markets<sup>8</sup>. The Commission proposes to link expressly mutual recognition of regulated markets under that Directive with the need for issuers to comply with all securities legislation at Community level. The current proposal only covers a specific aspect which cannot be left to operators of regulated markets: Issuers who have never requested or approved admission of its securities to trading on a regulated market may not be required to provide translation of periodic financial reports under a specific language regime. In such a case, these obligations will be incumbent on any third party who has asked for such admission (see the proposed Article 16 (4)).

### **3.2. More openness to the world of international finance**

#### *3.2.1. Use of a language customary in the sphere of international finance*

At present, each Member State may insist that information be disclosed to the public in its official language(s). Reactions to two consultations demonstrated that this is costly and burdensome for issuers whose securities are admitted to trading in several Member States.

Further integration of financial markets in the EU will make the language issue more important. It is necessary to provide for a system which would counter these problems. An unsatisfactory solution would also undermine the value added by the future Directive on prospectuses. For the same reasons, the proposed language regime under this Directive would also apply to information that is to be disclosed on an ad-hoc basis under Article 6 of the Market Abuse Directive. Finally, the proposal deals with information to be supplied by investors to the issuers. In order to enhance not only cross-border acquisition of shares within the EU but also in order to attract more third country investors as well, the proposal provides that investors should be able to notify changes to their shareholdings to the issuer in a language customary in the sphere of international finance.

The Commission proposes that issuers whose securities are admitted to regulated markets in more than one Member State may also opt for a **language customary in the international sphere of finance. For wholesale markets, issuers may always choose such a language.**

The present proposal contains a marked difference compared to the future Prospectus Directive: it would not allow Member States to require issuers to make available periodic financial reports or ongoing information in its official language. It is recalled that the future Prospectus Directive still allows Member States, if they wish so, to require the translation of a summary of a prospectus into their own languages.

That said, the current proposal would not lead to a system where host Member States could request a translation. Indeed, the proposal does not affect the right of a host Member State to impose appropriate publication of a certified translation of accounts by publicly traded

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<sup>8</sup> Commission Proposal for a Directive on Investment Services and Regulated Markets, and amending Council Directives 85/611/EEC and 93/6/EEC and European Parliament and Council Directive 2000/12/EC of 19 November 2002, COM (...) 2002, see Article 37 (5) thereof. According to this provision, the issuer's consent is no longer necessary in the case where securities should be admitted to trading on a further regulated market.

companies, provided such companies open a branch on its territory. This right is already laid down in the Eleventh Company Law Directive. Moreover, the current proposal should not prejudice language requirements in judicial procedures before courts. Finally, it differs from the solutions established for a prospectus in cases where an issuer's securities are only admitted to trading on a regulated market in a single host Member State, but not in its home Member State to avoid a kind of "forum shopping" or even "language shopping".

For further details, please see the explanations to the proposed Article 16 in Section 5.

### 3.2.2. *Reaping the benefits of modern information and communication technology*

#### *– Single source of information about an issuer throughout the European Union*

At present, Member States are free to require which dissemination means an issuer should make use of. This led to an enormous diversity of information channels because each Member State may pursue its own policy. Three different models are basically used: dissemination is organised by the national supervisory authority itself, by operators of regulated markets, or by other competing financial information providers<sup>9</sup>. In addition, Article 102 of Directive 2001/34/EC allows issuers to publish their information on their own initiative via the press.

This has led to complexity in the ways information is disseminated throughout the European Union. In many Member States, information about the same issuer cannot be found from the same source. The three models vary according to the type of information to be provided. As an important first step, it is important to establish under Community Law that Member States should no longer impose the use of operators established on their territory or the use of different media for different types of information about the same issuer. The overall goal should be that an investor should find all periodic and ongoing financial information (including those published on an ad-hoc basis) in relation to a particular issuer from a single source.

#### *– The issuer's Internet site accompanied by an efficient electronic alert system*

Dissemination of information through the **Internet sites of the issuers** is currently not be considered as a sufficient appropriate method on its own. This should change with respect to issuers whose securities are admitted to trading on more than one Member State. Such a use would however not be sufficient on its own, but must be accompanied by an efficient e-mail alert mechanism which a company is to set up to inform all interested parties on a real-time basis of any change to information presented on its Internet sites. The technical details of such a system should be laid down in implementing rules to be adopted in accordance with the comitology procedure.

If the use of the issuer's Internet sites were not addressed under this initiative, Member States might be tempted to stick to their existing national systems. The means which Member States may impose for effectively disseminating information are not only technicalities falling under the principle of subsidiarity. National differences in the dissemination requirements for issuers must be seen as a further obstacle in the whole chain of barriers preventing issuers from seeking access to the regulated markets in several Member States. These national differences also impede investors' decision-taking across Member States.

For further explanations see comments to Article 17 in Section 5, but also section 4.5.

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<sup>9</sup> Model chosen by UK concerning the so-called primary service providers (PIPs).

- *Electronic networks across Member States to further simplify the investor’s access to information*

The situation in Europe stands in marked contrast to the situation in the US where the EDGAR system<sup>10</sup> allows simple access for information about issuers. One Member State (UK) recently started a system ensuring that all regulatory information on a particular issuer is channelled through regulatory news services. Other Member States seek improvements through publication on the web site of their national securities regulators.

The proposed Directive would make sure that each Member State operates a system for disseminating information on a particular issuer at a single source. Such a source may also be the issuer’s Internet sites, accompanied by an efficient electronic alert system. However, this does not offer a solution on how to connect national systems throughout the European Union or across a maximum of Member States. It should be up to the national securities regulators to establish an inventory of financial information, for which Community-wide solutions should be sought through guidelines. The guidelines could usefully be drawn up as Level 3 type measures under the Lamfalussy process and should aim at establishing electronic networks to which investors throughout Europe could have real-time access. Any system leading to **one stop shop solutions** across all or lots of Member States or a system of **mutual recognition** of the means which each Member State has recognised as appropriate at national level should be left to national regulators at this stage. This soft law approach should lead to practical solutions designed for the benefit of investors. By 31 December 2006, the Commission will review how these measures are working in practice and, if necessary, propose Level 2 legislation.

For further details, see the explanations given on the proposed Article 18.

### **3.3. Developments in the US**

US legislation on transparency sets the scene for the most important capital markets in the world. US stock markets cover about 60% of the world stock market capitalisation whereas European markets only half of it (30%). The collapse of US companies like Enron and Worldcom have added fuel to the debate in Europe. The Sarbanes-Oxley-Act adopted in July 2002 led to the most profound reform of US securities markets legislation for the last decades.

It is also accompanied by measures<sup>11</sup> taken by the US Securities Exchange Commission (SEC) which further strengthen investor protection: Directors (and their financial officers) have to certify that every future quarterly and annual financial report does not contain any untrue statement, but fairly represent the financial conditions of the issuer, including the maintenance and certification of an internal control system. This is the legislative response to widespread criticism that financial statements were subject of manipulation, even fraud. The certification requirement will also apply to foreign securities issuers. Moreover, US companies whose equity public float is \$75 million or more and who are subject to the SEC for at least 12 month will face an acceleration of its filing requirements of quarterly and annual reports<sup>12</sup> and will be required to publish their reports on the Internet.

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<sup>10</sup> EDGAR is the abbreviation for Electronic Data Gathering, Analysis, and Retrieval System and was introduced in 1993.

<sup>11</sup> SEC Decision of 27 August 2002.

<sup>12</sup> At present, all US domestic security issuers are required to publish the annual financial report (form 10-K) by 90 days after a fiscal year end. The companies concerned should accelerate this during a period of two years (75 days after the fiscal year ending in 2003 and thereafter 60 days after the subsequent fiscal

These measures do not only impact on European companies having a dual listing on US securities markets. They set a pace against which Community legislation must find a proper response for promoting European capital markets at international level. The Commission proposal indeed addresses these issues: First it overhauls the requirements for annual and interim financial reporting (see sections 4.2. to 4.4. below). In addition and along the same lines as in the future directive on prospectus, the Commission proposes that Member States have in place adequate rules on identification of the responsible persons and bodies in a company and their liability for false information (see for further explanations given to Article 7 in Section 5).

#### **4. KEY ELEMENTS OF A REFORM OF DISCLOSURE REQUIREMENTS**

##### **4.1. Community-wide investor protection and removal of national barriers**

###### *4.1.1. Striking a balance between issuers and investors*

The envisaged transparency requirements are placed in the context of integrated European capital market. This should not only protect investors and improve market efficiency. Upgraded requirements throughout the European Union should lead to fewer national barriers for issuers seeking access to regulated markets in Member States other than their home Member State. Forging a link between effective removal of national barriers to market access with appropriate investor protection at Community level is the way in which there has often been successful integration of financial markets – and it should also be the way forward.

This implies high level – rather than full – harmonisation, whereby the issuer’s home Member State may continue to impose more stringent periodic or ongoing disclosure requirements. However, other Member States where issuers also wish to raise capital through securities admitted to trading on a regulated market should not be allowed the same. Otherwise, companies wanting to be quoted in several Member States would certainly be discouraged through diverging national disclosure requirements.

This balance between investor protection and removal of national barriers for issuers responds to concerns and wishes expressed in the two consultations. On the one hand, investors from some Member States and from third countries asserted that the appropriate way would be full harmonisation throughout the European Union. On the other hand, security issuers and market participants advocated that the Member States should retain some discretion.

For further details, see the explanations to Article 3 in Section 5.

###### *4.1.2. Filing system in the home Member State*

To build investor confidence, the home Member State would be responsible for enforcing Community disclosure requirements through a system requiring companies to file their information with the national securities regulator. During the two consultations, investors, national securities regulators, and stock exchanges supported this idea, provided delegation to the operators of regulated markets remains possible. Market participants and issuers, however, asked for further clarification of the exact objective of such a filing system.

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years for ). The quarterly financial report (form 10-Q) should be published in 45 days. The companies concerned by the new rules should speed publication up to 40 days as from 2005 and 35 days as from 2006.

The **repository function** that a national securities regulator (or the operator of a regulated market to which this could be delegated) should therefore fulfil would work as follows: filing at the date of the effective disclosure should for instance ensure that mandatory disclosure deadlines are respected. The proposed filing system would not necessarily imply a scrutiny of the information with respect to its completeness, accuracy, and comprehensibility. On the other hand, the supervisory authority in the home Member State should possess, as a minimum, the right to react to any violations of disclosure requirements.

The repository function of a competent authority would not mean that it also takes over the role of disclosing the filed information to the public on a real-time basis. It would be up to each competent authority to decide if they wish to offer such a service. If so, such a **disclosure function** should embrace disclosure of all periodic and ongoing information which a particular issuer must disclose under this Directive and under the Market Abuse Directive. Thus, a national regulator would also be required to offer a single source of information about a particular issuer.

For further details, see the explanations given on the proposed Articles 15, 17 and 20 under Section 5.

#### *4.1.3. Determination of the home Member State*

According to existing Community Law, the issuer's home Member State is the Member State the law of which governs it<sup>13</sup>. During the two consultations, some market participants expressed a preference for a free choice of the home Member State by the issuers, at least in certain cases. The solution that the Commission proposes follows, to the extent possible, the solution agreed by the Council on 5 November 2002 in the context of the proposed Prospectus Directive.

##### *– The need for consistency with the future Prospectus Directive*

Disclosure requirements for secondary markets and efficient supervision of issuers in this respect should – **as a first rule** – not, as a matter of principle, be left to Member States different from those responsible for approving a prospectus. Otherwise, the positive effects of a European passport for issuing a prospectus could be put into question, in particular with respect to the use of languages. The publication of an annual financial report under this proposal and of an annual information to the prospectus is a further prominent example underlying **the need for consistency**. If for instance the home Member State was the State where the issuer's securities are mainly traded on a regulated market, the advantages for issuers under the future Prospectus Directive would be defeated through the back door of this proposal.

##### *– The need for consistency beyond the Prospectus Directive*

However, the solution used in the forthcoming Prospectus Directive cannot simply be copied. The example of an issuer whose shares are admitted to trading on a regulated market in Member State A whilst it issues debt securities only in the Member State B illustrates the problem. Copying the solution under the Prospectus Directive would lead to two home Member States for the same issuer: one for shares and one for debt securities. Having several home Member States would however prevent an efficient supervision across Europe, but also

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<sup>13</sup> Articles 105 and 11 of Directive 2001/34/EC.

confront issuers with several sets of national requirements going beyond the Community requirements under this proposal.

As a conclusion, there is a **need for consistency** and co-ordination **beyond the forthcoming Prospectus Directive**. The only way forward to ensure such consistency is – **as a second rule** - not to fix a home Member State according to the type of security admitted to trading on a regulated market, but according to the issuer. Thus, the company which issues shares and debt securities would not have two home Member States, but a single one. The same applies to issuers of different types of securities; if an issuer issues debt securities with a denomination per unit both beyond EUR 50.000 and below EUR 50.000, there can only be a single home Member State. **In brief, the home Member State would not be determined according to the particular type of security, but according to the particular issuer.**

– *Criteria for establishing a link between the issuer and a home Member State*

The home Member State should be the country where according to the type of security the highest level of investor protection must be enforced. The current proposal indeed provides for higher transparency requirements for share issuers compared to debt security issuers (such as quarterly financial information, but also disclosure of the capital structure in the case of changes to major shareholdings etc). If the future prospectus directive and the current proposal are taken together, share issuers and issuers of debt security not reserved for wholesale markets face higher disclosure obligations aiming at a higher investor protection. The principles for determining the home Member State with regard to such securities should therefore apply to the issuer of such securities even if such issuer also issued debt securities for wholesale markets.

– *How to deal with issuers of only debt securities, who may choose its home Member State?*

A specific case concerns issuers of only high value debt securities (under the forthcoming Council common position securities with a denomination per unit equal or more than € 5000) who will benefit under the future Prospectus Directive from a choice amongst several Member States. The possibility to choose the home Member State should in principle not be taken away. However, the emphasis on investor protection and market efficiency under this proposal lies on ongoing and periodic requirements; i.e. supervision of compliance of transparency requirements over a certain time. As a consequence, such debt securities issuers should have the choice, but may alter their choice only after a certain period. The proposed three years period would be consistent with the current and the future requirements for issuers to have a three-years trade record in form of annual accounts preceding any request for admission to trading on a regulated market<sup>14</sup>.

– *Extending the approach to also establish a home Member State with respect to the disclosure of ad-hoc information under the Market Abuse Directive*

There is no doubt that the Market Abuse Directive allows each Member State to intervene on grounds of insider dealings on its regulated markets. However, the Market Abuse Directive does not address in which Member State an issuer must disclose its information and in which language. The solution cannot be that the issuer should simply do so in all languages where its securities are traded on a regulated market and according to dissemination means prescribed in each of these Member States. A determination of the home Member State under this

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<sup>14</sup> See at present Article 44 of Directive 2001/34/EC which will not be changed by the future Prospectus Directive.

Directive will be pivotal to address these two questions. Since the current initiative also deals with ongoing information, the home Member State should be the same.

For further details, see the explanations under Articles 2 (1) (i) under Section 5.

## **4.2. Periodic reporting: the annual financial report**

### *4.2.1. An annual financial report*

During the two consultations, all parties concerned agreed in principle with the objectives of introducing a single document providing all information for a particular financial year under the title “annual financial report”, and the principle of a deadline by which the annual financial report should have been published. Issuers sought clarification of the status of such a document. On the one hand, the annual financial report should not be the final version approved by shareholders in the annual general meeting. On the other hand, it should not offer limited information on the basis of abridged balance sheets for SMEs as under article 47 (2) of the Fourth Company Law Directive nor should it offer a preliminary information for financial markets which has not already been audited.

The annual financial report should constitute a complete source of financial information, comprising the financial statements and a management report. It should represent reliable information approved by the issuer’s responsible persons or bodies (board of directors – or in countries with a dualistic structure – also seen by the supervisory board). It should also be subject to an audit report.

### *4.2.2. Three months to publish the annual financial report*

Existing Community Law requires publicly traded companies to make available to the public, as soon as possible, its most recent annual accounts and its last annual reports, in accordance with standards laid down under the Company Law Directives. However, the timing for publishing annual financial information differs from Member State to Member State. In some Member States, issuers already have a deadline for the publication of the financial year end-results<sup>15</sup>, whereas others ensure timely information for securities markets either by publication of preliminary or abridged annual results<sup>16</sup> or by a further interim report at the end of a financial year<sup>17</sup>. In effect, Community legislation does not recognise annual reporting as a capital market directed tool. The introduction of a maximum publication period would enable investors to oversee company performance across Member States.

The final deadline for disclosing an annual financial report to the public should be **three months**. In the light of the views expressed in response to the consultation, the Commission believes that this is the best solution. Initially, the Commission services explored with the public the deadline of two months. In the second consultation it considered a deadline of three months, provided that an interim report for the last quarter of the financial year had previously

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<sup>15</sup> such as in German law, requiring directors to produce a report in three months (national corporate governance code even requires a publication in three months), or France, requiring a publication within 4 months except for publicly quoted companies which envisage to publish a prospectus and which are required to publish financial statements within three months.

<sup>16</sup> in the shape of preliminary accounts, such as in BE (3 months), DK (3 months), SW (2 months), FIN (3 months) or UK (4 months - although the Department for Trade and Industry suggested making mandatory publication of the annual financial statements and reports within a period of four months in a White Paper of July 2002).

<sup>17</sup> either a fourth quarterly report (IT) or a second half yearly report (ES).

been produced. However, that idea of a fourth quarterly report was dropped to avoid creating disproportionate burdens in relation to the overall objective of bridging the gap between the last interim report (e.g. quarterly information to be published at the latest in November) and the annual financial report (e.g. at the latest at the end of March). Longer reporting periods would expose the public to a long period of uncertainty and would considerably increase the risk of selective disclosure between certain issuers and analysts. A period of four months would bear the risks that publicly traded companies may wish to “manage earnings” since the annual financial report should only be published in a period during which the proposed quarterly financial information related to the subsequent financial year should already be drawn up and published.

For further details (including transitional arrangements), please see the explanations given to Articles 5 and 26 under Section 5.

### **4.3. Quarterly financial information/half-yearly financial reports for share issuers**

The Commission believes that a mix of less demanding quarterly financial information and more demanding half-yearly financial reports is the right way forward at this stage. There is no evidence that such a mixed policy approach will increase volatility on stock markets. This mix focuses on disclosure of historical facts and trends, and will not, per se, give rise to short-termism. Short-termism can, inter alia, be provoked by companies who post forecasts with analysts, or promise growth in earnings per share (“earnings guidance”) at certain intervals and then modify them later. This is not the intent or the substance of the Commission proposal. Critical voices in the US<sup>18</sup> where this practice is widely used have already invited market participants to stop it.

#### *4.3.1. Half-yearly financial report after the first six months*

The half-yearly report which is at present required under Community law would therefore be upgraded to an interim report composed of a condensed set of financial statements to be established following IAS 34 and a management report on the company activities. The management report should only contain an update of the data contained in annual report, as required under the Fourth and Seventh Company Law Directives. In line with IAS 34, the half-yearly financial report should then be published after two months (rather than four months as today).

During the consultations, some issuers perceived an interim management report as a requirement only replicating for a reference period of six months what they should already produce on an annual basis at national level. This assumption is not correct. The Commission is proposing is merely an update, not a recasting of the last annual management report. The details of such update should be laid down in implementing rules in accordance with comitology rules.

A major concern which issuers expressed in the consultation relates to the phasing in of reporting according to IAS in the first relevant year - 2005. In order to facilitate this, the Commission proposes allowing Member States to exempt their security issuers from the application of IAS in the half-yearly financial report due in 2005. As a consequence, the first document that an issuer should prepare in accordance with international accounting standards would be the annual financial report following the financial year starting in 2005. In addition,

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<sup>18</sup> See the report of the Conference Board, Commission on Public Trust and Private Enterprise, Findings and Recommendations of 9 January 2003

exemptions for some issuers to start applying IAS at a later stage (in 2007) would be taken into account.

For further details, see also the explanations given for Articles 5 and 26.

#### 4.3.2. *Quarterly financial information*

At present, Community law only requires half-yearly reports to be published on a company's profits and losses during the first six months of each financial year. However, ten Member States already have stricter requirements. This demonstrates that the Community's disclosure requirements lag behind, no longer reflect best practice and are clearly outdated.

##### – *Why move to quarterly frequency in interim reporting?*

Eight Member States (AUT, BE, ES, FR, FIN, GR, IT, PO) have made mandatory a quarterly frequency in interim reporting or interim information on all or certain regulated markets. Two Member States require quarterly reporting for young companies with a track record of less than three years (LUX, UK) and for investment companies holding strategic minority stakes in other companies (UK). In two other Member States (DE and SW<sup>19</sup>), stock exchange rules have introduced de facto quarterly reporting, in a further Member State (NL), stock exchange rules will do so<sup>20</sup>. Once introduced, nobody ever returned to a system of only half-yearly reporting.

About 1100 out of 6000 publicly traded European companies<sup>21</sup> provide interim reports on a quarterly basis following high international standards for each quarterly report (national GAAP, IAS or US-GAAP), many more publicly traded companies provide at least information in a quarterly frequency. Although being a minority amongst all publicly traded European stocks, European companies producing quarterly financial reports dominate stock indices in important Member States (DAX, MIB, IBEX, CAC, and also the techMark segment on the LSE).

In addition, it is undeniable that European securities markets very much depend on US securities markets, where quarterly financial reporting has been required since 1946. US stock markets cover about 60% of world stock markets' capitalisation whereas European securities markets account for only 30%. Trends on European markets highly depend on developments in US markets. Many European publicly-traded companies having doubts about quarterly reporting should be aware that trends on US markets, strongly influence developments in European securities markets, more so than the performance of European companies. Introducing quarterly financial information should be part of our efforts to persuade international investors to diversify further their investments across world stock markets.

The provision of quarterly financial information to the public offers issuers the opportunity to enhance their own stock performance. Were this the only argument in favour, however, it would point towards leaving companies to do so on a voluntary basis. But beyond this reason, mandatory quarterly financial information should provide better investor protection, since investors are likely to monitor publicly traded companies' debt more closely. In the Member

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<sup>19</sup> under the rules of the Deutsche Börse for all DAX, M-DAX companies (as from 2003, this should be the rule for all companies quoted in the new prime segment) and those traded on the Neuer Markt and under the rules of the Stockholm Stock Exchange.

<sup>20</sup> under Euronext rules for the segments Next Economy and Next Prime as from 1 January 2004.

<sup>21</sup> According to Bloomberg data in 2002.

States, company indebtedness as a proportion of GDP has risen considerably in recent years<sup>22</sup>. Moreover, the availability of more structured and reliable information over a financial year would increase market efficiency and competition, as capital would be allocated to the best-performing companies. Companies could in addition be judged on the basis of readily comparable publicly available information, rather than the investor being left to rely on financial analysts' forecasts. There is no empirical evidence pointing toward a link associating mandatory quarterly financial information with increased stock-market volatility.

– *Outcome of the consultation*

During the two consecutive consultations, the quarterly frequency in interim reporting was the issue dividing issuers and investors in particular. It should be noted that a minority of companies who are not yet subject to mandatory quarterly reporting agree with the principle while a minority of investors have cast doubt on the use of quarterly reporting:

Some issuers who do not already report on a quarterly basis fear that such frequency would undermine their long term investment strategy – a view which was not supported by those companies already reporting on a quarterly basis. The Commission also believes that this fear is not justified. Instead, publicly-traded companies which do not report on a quarterly basis will essentially be driven by other market forces, although improved business performance might be the reward as a result of generated investor confidence. Many companies suggested leaving quarterly reporting to the discretion of each company concerned. However, the Commission is of the opinion that given the growing importance of corporate governance, transparency rules should no longer be shaped in a way allowing companies free choice over whether they wish to stick to the principle of transparency or not.

Some parties asserted that disclosure of price sensitive information on an ad hoc basis (ad hoc disclosure) would be far better adapted to the information needs of investors. However, periodic reporting and ad hoc disclosure of inside information (under the future Market Abuse Directive) are different ways of informing the public and not substitutes. Disclosure of inside information to the public on an ad-hoc basis is left to the discretion of the issuer, e.g. it is considered as legitimate (and represents widespread practice) not to divulge the consolidated figures or even internal reporting results usually established within companies. In contrast, periodic reporting requirements provided for under legislation or under stock exchange rules entitle investors to receive standardised and hence comparable information (such as profit and loss before and after tax) from issuers.

Advantages for investors must in particular be measured depending on their location in Europe or in a third country. Investors who are situated in the same country where the issuer's securities are admitted to trading on a regulated market need less standardised information published at a pre-fixed date. Investors situated abroad would have a simpler access to information about issuers the more standardised the reporting periods are. Quarterly reporting offers therefore clear benefits to investors situated abroad.

Some stock exchanges (but not the majority) also suggested leaving this issue to the operators of a regulated market. However, quarterly reporting is a quality property at a world wide level, real differences between stock markets only exist on the modalities, such as the format and time limits for a quarterly financial report. More importantly, ten Member States already

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<sup>22</sup> See in particular the recent report of the Conseil des Marchés Financiers of December 2002 "L'augmentation de la volatilité du marché des actions"

have taken legislative action. It is difficult to conceive a scenario that Member States would admit issuers' securities to its regulated markets, or that investors in those countries would be interested in such issuers, without reliable quarterly financial information. Fragmentation, and not integration, of regulated markets would be the result if the Community failed to address this issue.

In its second consultation document, the Commission services also launched the idea of a different regime for smaller security issuers based on their annual turnover. Some argued that an SME regime could be better based on market capitalisation. Certain stock exchanges even favoured a total exemption for SMEs, the scope of which might be defined by investors, auditors and accountants. However, institutional and retail investors, auditors, and accountants opposed that idea. The reward/risk profile of smaller companies, in particular start-up companies, would not justify this.

It must be borne in mind that publicly quoted companies are not micro-enterprises, either with respect to their size, their activities, or their market capitalisation. Moreover, they are built on capital which they have received from the public, i.e. from institutional or retail investors. A reliable internal accounting system is pivotal for the credibility and the competitiveness of SMEs.

In general, capital markets consider investments in SMEs as risky. This is a clear message from the consultation carried out by the Commission. Providing reliable information on a quarterly basis has therefore clear benefits for SMEs: this will help to create more market and investor confidence. This may be particularly so with regard to cross-border investors. For example, in France, statistics show that a non resident investor holds shares on average only for five months (compared to eleven months for resident investors<sup>23</sup>).

– *The proposed solution: quarterly financial information*

The Commission follows an idea that many respondents put forward: quarterly financial information composed of those key data currently required under existing Community law for half yearly reporting (net turnover, profit and loss before or after deduction of tax), plus a trend information on the future company development. Such information should enable investors not only to judge on the basis of achieved results, but also to take due account of any long-term strategy, which an issuer currently pursues. It cannot be ignored that a demand for information on the future company performance exists. However, there is no public interest in promoting a kind of “earnings guidance” leading to short termism and undue pressure by analysts and fund managers. Instead, the trend information which is optional for companies would allow them to update their views on the company strategy and the development of its activities. The maximum publication deadline for such a quarterly financial information should at this stage not go beyond two months. If investors wish more detailed information or the same information more swiftly, issuers and operators of regulated markets would still retain the possibility to find a response to this.

The proposed solution would not involve extensive costs for companies, in particular since it does not require the establishment of cash flow statements on a quarterly basis or the involvement of an auditor to audit or review the accounts. In addition, issuers have the choice between an information about the profit and loss before or after tax so that an issuer is not

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<sup>23</sup> *Banque de France, Bulletin de la Banque de France, No 106 – October 2002 concerning the duration of holdership of shares between June 2001 and June 2002*

required to make tax estimates over a financial year. The turnover and profit and loss figures are maintained and updated on a regular basis (at least monthly) for operating purposes, therefore, this information should be readily available.

A quarterly frequency of information about profit and loss offers a tool for measuring any fraudulent practices in all periodic reports. However, it will not, of itself, combat fraudulent accounting practices within companies. Further measures have been suggested in the Final Report of the High Level Group of Company Law Experts<sup>24</sup>. The Commission intends to follow-up on these suggestions in the coming months in an Action Plan on Corporate Governance and a Communication on Statutory Audit.

Information on profit and loss before or after tax in addition to turn-over, is a key element for investors. Such information provides a reliable insight into the financial situation and health of a publicly traded company. Information on the net turnover, as such, does not suffice because it does not allow an assessment of the debt situation of a company.

The proposed solution does not follow the highest existing national standards on quarterly reporting. At present, in EL, UK, LUX, PO the mandatory quarterly report comprises not only net turnover and profit and loss before or after tax, but a financial statement which includes a cash flow statement, as well as a management report. Stock exchange rules in AUT (Vienna Stock Exchange), DE (Deutsche Börse), FIN (Helsinki Stock Exchange), SW (Stockholm Stock Exchange) also require such financial statements on a quarterly basis; as from Jan 2004, Euronext will introduce the same high level requirements with an impact on the companies quoted in FR, BE, NL. France already requires quarterly information on turn-over, but not on profit and loss. The Commission proposal does not seek to adapt the current acquis to the highest international standards, but merely bridges what is currently a significant gap between 1100 companies in Europe which comply with the highest international standards with shorter publication deadlines and the remaining 4900 companies.

For further explanations, see the comments to the proposed article 6 under section 5.

#### **4.4. Only half-yearly financial reporting for issuers of securities other than shares**

Issuers of only debt securities are not subject to any interim reporting under existing Community Law. This should be changed. A half-yearly financial report should be required, the contents of which should correspond to those required from share issuers. Indeed, it should not be underestimated that insolvency has adverse effects both for an investor in shares and for one in debt securities. Therefore, some action is needed to protect those investing in such issuers' debt securities and to maintain a level playing field between share issuers and debt securities issuers. As widely supported in the two consultation rounds, it is proposed to impose fewer requirements compared to those for share issuers. A half-yearly financial report should not be imposed on companies, which only issue debt securities with a high denomination per unit, in particular issuers of Eurobonds. There is not the same need for investor protection along the same lines and for the same reasons as in the amended Commission proposal for a prospectus directive.

During the two consultations, some argued that the current system of disclosure of price sensitive information would be sufficient to protect investors. The Commission does not share this view, in the same way that it does not in the case of quarterly financial information for

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<sup>24</sup> *Report of 4 November 2002*

share issuers. Half-yearly financial reports represent important information for capital markets beyond ratings offered by rating agencies. In the United States, debt security issuers are even subject to quarterly financial reporting requirements. The Commission also feels unjustified requests for exempting subsidiaries from half-yearly reporting. It should be borne in mind that such subsidiaries act as proper issuer of debt securities on regulated markets and that the consolidated accounts of the parent undertaking only provide information on the performance of the entire parent undertaking, but not on the performance of such a subsidiary acting as a genuine debt securities issuer on its own.

For further details, see the explanations to the proposed articles 5 and 8 under section 5.

#### **4.5. Disclosure of changes to major shareholdings in security issuers**

##### *4.5.1. More disclosure thresholds to further integrate European securities markets*

The existing Community law provides that a person acquiring or disposing of shares so that its holding with a publicly traded company reaches, exceeds or falls below certain thresholds informs the company, which is in its turn responsible for disclosing this information to the public. Those thresholds are currently 10%, 20% and 1/3 (or, at the Member State's choice, 25% instead of those two last thresholds), 50%, and 2/3 (or, again at a Member States' discretion, 75% instead of 2/3). These thresholds are shaped in a way reflecting differences in national company law on issues such as the thresholds necessary to represent blocking minorities on annual shareholder meetings, to achieve changes to the company's statutes or exercising special rights, such as nomination of special auditors, etc.

Twelve Member States have meanwhile introduced further thresholds. Indeed, only three Member States (LUX, PO and SW) abide by requiring a transparency level, which persists still at Community thresholds, established 15 years ago. The Committee of European Securities Regulators (CESR) also launched a discussion for overhauling Community thresholds<sup>25</sup>, which the Commission carried forward in its proper consultations. During the consultations, interested parties requested an update, even an overhaul of these requirements.

The Commission now proposes introducing a transparency system on the basis of steps starting at a first threshold of 5%<sup>26</sup>, continuing at intervals of 5% until 30% of the voting rights or the capital or both. This system would reflect not only the actual influence an investor on securities markets may take in a publicly traded company, but more generally its major interest in the company performance, business strategy and earnings. Already seven Member States apply such a more securities market directed transparency regime at national level. Six of them (AUT<sup>27</sup>, DK, ES<sup>28</sup>, FIN, GR<sup>29</sup>, IT<sup>30</sup>, and UK<sup>31</sup>) introduced this by law or

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<sup>25</sup> CESR paper on "Measures to promote market integrity – a follow-up to CESR paper on market abuse of 31 January 2002 (FESCO/01-052h of 31 January 2002).

<sup>26</sup> This threshold must already be respected in 12 Member States (AUT, BE, DK, DE, ES, FIN, FR, GR, IRL, IT, NL, and UK).

<sup>27</sup> Transparency requirements start at 5%, continues in steps of 5% until an investor reaches 50% of the voting rights.

<sup>28</sup> Transparency is required in the case of a shareholding starting at 5% and continues to apply whenever a holding reaches, exceeds or falls below a subsequent 5% threshold.

<sup>29</sup> During the first 12 months of trading shares admitted to a regulated market, changes in shareholdings at intervals of 1.5% should be reported.

<sup>30</sup> Transparency requirements start at 2% and continue for shareholdings subsequently increasing or decreasing of more than 5%, 7.5%, 10%, and any further 5% step.

regulations, the seventh apply this through recommendations by the stock exchange (SW). A further – eighth - Member State (NL<sup>32</sup>) is about to follow the same route. The Commission proposal would align the situation amongst Member States whilst allowing those which wish to do so to require disclosure of ownership already at an earlier stage (2% in IT or 3% in UK) or at closer intervals. Other Member States may also maintain further thresholds at national level, such as 1/3 of the voting rights.

For further information, please see the comments on the proposed Articles 9 and 10 under Section 5.

#### *4.5.2. Shortening time limits for shareholders and issuers to act*

Shortening notification and disclosure deadlines is also in line with wishes expressed in the consultation. At present, the shareholder is required to inform the issuer and the competent authority in seven calendar days, and subsequently the issuer should inform the public in nine calendar days, or in specific circumstances in 21 calendar days. In contrast to the five calendar days initially envisaged, the Commission now proposes a time limit of **five business days for investors** and a time limit of **three business days for issuers** which effectively dispose of information on important changes on shareholders share acquisitions or disposals to disclose these modifications (see also the explanations to the proposed Article 11 under section 5).

#### *4.5.3. Transparency also about holdings in securities giving access to shares*

Influence may be directly exercised on companies through shares, but also indirectly through financial instruments conferring the right to acquire or sell shares, such as warrants or convertible bonds if the holding of such financial instruments reaches important thresholds. In the responses to the consultations, there was support for the idea of including such a situation in the general transparency system. However, there were particular concerns on the inclusion of call and put options. Moreover, a minority of investment companies requested higher thresholds compared to other investors. To meet these concerns, the Commission proposes to take the following line:

The overall goal of moving towards more capital market-oriented thinking should not be undermined by exceptions for investment companies. Companies have a strong interest to know which investment companies invest in them and what their position is, for instance in shareholder meetings. The notification requirement would therefore make it easier for companies to identify the ownership or the persons acting on behalf of owners. That said, in general, the Commission considers it acceptable to allow each Member State to decide whether it sets 10% as the first threshold where investment companies (but also other investors) only acquire covered warrants or convertible bonds. The same proportionality rule would apply to life interests linked to shares. In addition, the notification and disclosure regime would be limited to derivative securities, but not all kind of derivatives, such as options.

For more explanations please see the comments on Articles 2 (1) (e) and 9 under Section 5.

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<sup>31</sup> Transparency requirements start at 3% and continue for shareholdings subsequently decreasing or increasing through a whole percentage figure.

<sup>32</sup> The Dutch Ministry of Finance plans to propose amending the “Wet melding zeggenschap in ter beurze genoteerde vennootschappen” of 1996, including a new threshold structure (5%, 10%, 15%, 20%, 25% and in case of a holding of more than 25% the obligation to notify each transaction).

## **4.6. Information of security holders on general meetings**

### *4.6.1. Why is the issue covered under this initiative?*

This issues is already covered by Community legislation on securities markets, rather than by Company Law Directives<sup>33</sup>, and need modernising in three ways:

Firstly, the use of proxies should be facilitated. Allowing shareholders to act via proxies would enhance shareholder involvement in general meetings. It would in particular help investors situated abroad, and which are not in the same position as domestic investors to travel, to exercise their rights. The responses to the consultation were clearly in favour of allowing proxy voting through a Community measure across all the Member States. However, the present proposal only deals with the transparency aspects.

Secondly, the use of electronic means should be facilitated. Allowing the provision of information by electronic means is strongly linked to the capacity of all the Member States to take account of the advantages of modern information and communications technology. The Commission suggests that each publicly traded company should receive the necessary regulatory support to submit this important question to its shareholders, who should decide on the modalities for online information in a general meeting.

For further explanations, see the comments to Articles 13 and 14 under section 5.

## **5. COMMENTS ON SPECIFIC ARTICLES**

The current information requirements are laid down in Directive 2001/34/EC<sup>34</sup> transparency, which codified amongst others Community rules which have been in force for more than 20 years (on annual financial reporting and on shareholder meetings<sup>35</sup>), nearly 20 years (on interim financial reporting<sup>36</sup>), or at least nearly 15 years (on disclosure on the acquisition or disposal of major holdings<sup>37</sup>). However, this codification did not require any amendments in the laws and regulations in the Member States compared to the past.

### **5.1. Recitals**

Recitals 19 to 24 recall the new way for regulating securities markets (cf. section 2.2 above).

### **5.2. Chapter I: General provisions**

#### *5.2.1. Article 1 – Subject-matter and scope*

The current exemption for undertakings for collective investment in transferable securities (UCITS) is maintained in Article 1 (2), in particular since specific

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<sup>33</sup> see Articles 65, 78 and 83 of Directive 2001/34/EC for issuers of shares, corporate and sovereign debts.  
<sup>34</sup> 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, OJ No L 184 of 6.7.2001.

<sup>35</sup> Articles 64 to 69 and 78 to 84 respectively replaced the former Schedules C and D of the Directive 79/279/EEC.

<sup>36</sup> Articles 70 to 77 and 102 to 107 respectively replaced the former Directive 82/121/EEC.

<sup>37</sup> Thus, Articles 85 to 97 replaced Directive 88/627/EEC.

requirements are laid down elsewhere<sup>38</sup>. Articles 2 (2), 3 (2), and 85 (3) of Directive 2001/34/EC already provide for such exemption under the existing acquis.

## 5.2.2. *Article 2 – Definitions*

### 5.2.2.1. Article 2 (1)

On (a): The definition of securities builds on the solution that the Council agreed on 5 November towards the common position on the future prospectus directive. It therefore excludes money market instruments which may remain subject to national legislation.

On (b): A definition is necessary to ensure that issuers of convertible or exchangeable bonds are not required to hold general meetings under the proposed Article 14. In contrast, the Commission does not see any need for the definition of “equity securities” or even “shares”. It is certainly necessary to differentiate between equity and non-equity securities under the future Prospectus Directive with regard to derivative securities (e.g. convertible bonds would fall under equity securities whereas exchangeable bonds would be treated as non-equity securities in the future Prospectus Directive). That said, such a need does not exist for the present proposal. Indeed, a publicly traded company which issues only derivative securities on regulated markets, but not the securities (shares and debt securities) from which such derivative securities flow from is not possible.

On c): see already Section 3.1

On (d): the definition includes the entire range of security issuers, including issuers of sovereign debts and issuers of certain bonds (including Eurobonds) for which, however, important exemptions from periodic disclosure requirements are provided for in Article 8. In addition, it clarifies the treatment of depository receipts thereby incorporating Article 6 (3) of Directive 2001/34/EC.

On (e): The definition of “security holder” has been introduced to clarify who is responsible for notifying changes to major shareholdings with security issuers, but also to clarify rights of equal treatment in the context of general meetings. The second sub-paragraph builds on Article 92 (a) of Directive 2001/34/EC and covers the case of custodian banks and investment funds holding securities in their own name, but on behalf of their clients. The third sub-paragraph clarifies the situation with respect to depository receipts and thus integrates Article 85 (2) of Directive 2001/34/EC. The fourth sub-paragraph extends the definition to holders of derivative securities, such as convertible or exchangeable bonds (but not options – see also section 4.5.3 above); this extension is of important for disclosure of changes to major shareholdings.

On (f) and Article 2 (2): This definition should be seen in the context of disclosure of changes to major shareholdings with issuers. The overall objective must be to ensure that the parent undertaking is required to inform about its own holdings, as well as

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<sup>38</sup> Council Directive 85/611/EEC of 20.12.1985 on the co-ordination of laws, regulations and administrative provisions relating to the undertaking for collective investment in transferable securities (UCITS), as last amended by Directives 2001/107/EC and 2001/108/EEC of the European Parliament and of the Council of 21 January 2002 (OJ No L 41, 13.2.2002, p. 20 and 34 respectively).

the holdings of its controlled undertakings. The current definition of “controlled undertaking” in Article 87 of Directive 2001/34/EC should be extended to take into account views expressed in the second consultation.

On (i), see already Section 4.1.3. above.

On (k), the definition of “regulated information” is of particular relevance for Articles 15 to 17.

On (l), the definition of “electronic means” builds on the definition already established under Directive 98/34/EC, as amended by Directive 98/48/EC<sup>39</sup>. It does not include off-line communication, such as distribution of CD-ROM’s, or communication not provided by electronic processing, such as telephony services, telefax or telex. Delegation should be given to the Commission to clarify the definition along these lines.

### 5.2.3. *Article 3 - Integration of securities markets*

Acceptance of these provisions should be the proof where the present initiative leads to more integrated securities markets (cf. Section 4.1.1. above).

At present, Article 8 (2) of Directive 2001/34/EC allows any Member State to introduce more stringent disclosure requirements, unless this leads to discriminations of foreign issuers. In contrast, the 20 years-old *acquis* still recognises that compliance with Community transparency requirements does not necessarily provide guarantees enabling Member States to lift further national restrictions.

In future, only the home Member State should be able to continue to block admission of securities to trading on a regulated market in internal situations where any cross-border dimension on the issuer’s side is missing. On the other hand, investors should continue to be protected – as under the existing Community law (see Article 8 (3) of Directive 2001/34/EC - in that no Member State may in general exempt issuers or security holders from Community requirements or introduce less stringent requirements.

Following wishes and concerns expressed in the consultation, the proposed wording in Article 3 (2) also clarifies the value added of the harmonisation of disclosure of price sensitive information under the future Market Abuse Directive: if an issuer complies with these provisions, there is no overriding reason for preventing it from access to regulated markets in other Member States.

Integration of securities markets should be promoted along the same line for disclosure of major shareholdings (see Article 88 of Directive 2001/34/EC). However, the security issuer’s home Member State may continue to provide for additional thresholds, closer notification and disclosure deadlines, or other stricter rules than those required under the proposed Directive.

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<sup>39</sup> Directive 98/34/EC (OJ No L 204, 21.7.1998, page 37), as amended by Directive 98/48/EC (OJ No L 217, 5.8.1998, page 18)

### **5.3. Chapter II: Periodic information**

#### *5.3.1. Article 4 – Annual financial reports*

The objectives of this provision are explained in section 4.2. The proposed wording would replace Articles 67 and 75 of Directive 2001/34/EC with regard to the following technical aspects:

- It intends to clarify terminology in line with international accounting standards. The so-called annual financial report should have two components: financial statements (the so-called annual accounts under the Fourth and Seven Company Law Directives) and the management report (which carries the denomination as annual report under the same Company Law Directives).
- The financial statements should be subject to an auditor’s report. The position of the auditor should be reproduced. The proposed wording is in line with the Fourth and Seventh Company Law Directives.
- The annual financial report should allow appropriate identification of the persons responsible. Investors should be put into the position to know who effectively bears the final responsibility for the information given. This forges a strong link with Article 4 (see also Section 3.4.)

#### *5.3.2. Article 5 – Half-yearly financial reports*

See Sections 4.3.2 for share issuers and 4.4. for debt securities issuers

This provision applies to issuers of all kind of securities. It does not include an obligation for issuers to let such reports review by auditors. At this stage, the Commission follows a majority of the responses, which do not see an immediate need to make it mandatory at Community level. The issuer’s home Member State may impose it according to the proposed Article 3 (2).

That said, the Commission should be allowed to take action if necessary under the comitology procedure. The fast track procedure recommended by the Committee of Wise Men, chaired by A. Lamfalussy, should be used to enable the European Institutions to rapidly restore investor confidence in critical phases once the proposed corporate interim reporting does not ensure reliability on its own.

#### *5.3.3. Article 6 – Quarterly financial information*

See the general explanations given under Section 4.3.1.

The quarterly financial information does not need to comply with IAS 34. Therefore, the text no longer refers to a quarterly financial report or financial statements – a term reserved for interim reports based on IAS. The comitology procedure should again enable the European Commission, in co-operation with the European Securities Committee and upon the advice of the Committee of European Securities Regulators, to clarify for issuers, market participants and investors the contents of a quarterly financial information, to set deadlines for keeping published information available for the public and to clarify what type of review carried out by auditors upon the issuer’s request requires public disclosure.

#### 5.3.4. *Article 7 - Responsibility and liability*

Similar provisions are provided for in the Commission's amended proposal for a directive on prospectus. See also section 3.4. Liability for misleading or inaccurate information to be disclosed on an ad-hoc basis under the future Market Abuse Directive remains within the realm of national law.

#### 5.3.5. *Article 8 – Exemptions*

Sovereign debts issuers should be subject to a lighter transparency regime because periodic reporting requirements would not apply (see already Article 2 (2) (b), Article 3 (2) (b) and Article 4 (3) of Directive 2001/34/EC). However, they should both benefit and be subject to overall general disclosure provisions, such as prohibition of the imposition of further requirements on them by Member States other than the home Member State (Article 3) or the need for guaranteeing effective and simultaneous disclosure of any information to be disclosed according to Article 17. They also remain required to ensure equal treatment of holders of debt securities ranking *pari passu* as proposed in Article 14 (see also Article 83 of Directive 2001/34/EC).

Along the same line, limited investor protection is foreseen for companies, which solely issue securities more particularly intended for professional investors (as determined by the par value of at least EUR 50.000). Thus, the Commission is following the political agreement reached by the Council on 5 November towards a common position on the future Directive on prospectuses.

### 5.4. **Chapter III: Ongoing information**

#### 5.4.1. *Article 9 – Notification of the acquisition or disposal of major holdings*

The objective for providing a more stringent notification regime based on a higher number of thresholds was already explained in Section 4.5.1. In the light of the reactions received, the Commission decided not to propose ten thresholds as in its consultation document, but eight. Member States remain free to provide for further thresholds, in particular lower ones (such as in the UK (3%) or in IT (2%)). Article 89 (1) of Directive 2001/34/EC allows Member States to decide whether a company must also be informed in respect of the proportion of capital held by an investor where a Member State does not apply the principle of “one share, one vote”.

On (a): Some responses cast doubt where derivatives allowing to acquire or to sell shares should be included in the notification regime. The Commission therefore limits the notification requirements to derivative securities. As a result, warrants or convertible bonds are included whereas options remain outside (see also Section 4.5.3. and Article 2 e)). In addition, it proposes to Member States to decide whether they want to set notification requirements already at a threshold of 5%. In the light of individual reactions received from national authorities, this possibility should also apply to life interests related to shares (see also Article 10).

Points b and c allow Member States to adapt two thresholds to their national rules allowing blocking minorities or qualified majorities in general meetings, but limit much more the discretion of Member States compared to Article 89 (1) (a) and (b) of Directive 2001/34/EC).

#### 5.4.2. *Article 10 – Determination of the voting rights*

- Article 10 only specifies persons who may – legally or actually - exercise voting rights on behalf of securities holders. Whereas the holdings of an individual security holder might not necessarily meet the thresholds provided for, the situation may considerably differ with regard to custodian banks, investment funds, proxies and others who may exercise voting rights on behalf of numerous security holders.
- This provision is important for two reasons: first, publicly traded companies are informed not only about security holders, but also about those who may effectively exercise lots of influence; second, the provision aims at facilitating information between companies and security holders in the context of general meetings (see Articles 13 (3) and 14 (3)).
- This provision is essentially the same as Article 92 of Directive 2001/34/EC, subject to the following amendments in the light of the comments received in the consultation rounds.
- Limiting the definitions to those persons entitled to vote on behalf of shareholders requires deleting the current Article 92 (a), which is now incorporated into the definition of security holders under Article 2 (e) second indent. Article 10 a) corresponds to Article 92 c) of Directive 2001/34/EC. Equally, Article 10 b) reflects the current Article 92 d), Article 10 c) Article 92 e) - whereby the emphasis is placed on those to whom collateral<sup>40</sup> is given – and Article 10 d) Article 92 (f).
- Following numerous requests, the determination of situations in which voting rights which may be exercised on behalf of controlled undertakings is much wider in Article 10 (e) compared to the current Article 92 (b). This is possible due to a wider definition laid down in the proposed Article 2 (f).
- The wording of Article 10 (f) corresponds to Article 92 (h). Article 10 (g) remains unchanged compared to Article 92 (g).
- The only new provision relates to proxies (Article 10(h)). Since proxy participation across Member States is generally allowed in general meetings , a company should be duly informed about major shareholdings for which a proxy received common instructions by a number of shareholders.

#### 5.4.3. *Article 11 – Procedures on the notification and disclosure of major holdings*

Article 11 (1) clarifies the minimum contents of a notification to be made to a company. There is no corresponding provision in Directive 2001/34/EC. The Commission’s initial suggestions to inform an issuer about the entire agreement between shareholders are no longer upheld in the light of reactions received in the two consultation rounds. However, issuers and the public have legitimate interests to be informed at least about the consideration given in return for those arrangements about voting rights.

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<sup>40</sup> The term “collateral” instead of “security” is preferable in the light of the terminology used in Directive 2002/47/EC of 6.6.2002 on financial collateral arrangements, OJ No L 168 of 27.6.2002, p.43.

Article 11 (2) reduces the notification period from seven calendar days to five business days. Referring to business days instead of calendar days is more adapted to the market reality and follows the view put forward by many interested parties. Longer notification periods which in particular banks with which securities are deposited may have under national law (in accordance with Article 92 last paragraph of Directive 2001/34/EC) should be abandoned. See also Article 26 on the transitional arrangements.

Article 11 (3) corresponds to Article 93 of Directive 2001/34/EC. Further exemptions which are currently provided for in Articles 94 (professional dealers) and 95 (disclosure contrary to the public interest or detrimental to the company) are outdated – a line with which a majority in the two consultations agreed. Several respondents took the view that the specific situations of major shareholdings during clearing and settlement processes would however deserve a specific treatment. The Commission has taken this view into account in the framework of the definition of security holdings under Article 2 e) second sub-paragraph.

Article 11 (4) corresponds to Article 91 of Directive 2001/34/EC, subject to a reduced disclosure period of three business days. This new disclosure deadline should be phased in under arrangements provided for in Article 28.

#### *5.4.4. Article 12 – Additional information*

Article 12 (a) corresponds to Article 66 (2) of Directive 2001/34/EC, Article 12 (b) and (c) to Article 81 (2) and (3) whilst extending these disclosure requirements to sovereign debt issuers.

#### *5.4.5. Article 13 – Information for shareholders*

Article 13 (1) corresponds to Article 65 (1) of Directive 2001/34/EC. In the light of several questions raised during the consultations, it is worth while noting that this wording never included a principle of “one share, one vote”.

Article 13 (2) follows in essence Article 65 (2) of Directive 2001/34/EC. The only new element is included in letter b where a shareholder may choose a proxy in accordance with the law of the issuer’s home Member State (see also section 4.6.2). However, there should be no need for selecting a proxy in each Member State. In letter d), the word “renunciation” should be replaced by “cancellation” following several responses asking for clarification of the existing wording (referring to “renunciation”).

Article 13 (3) sets out minimum conditions under which electronic information of shareholders should become possible. The general objectives are set out in section 4.6.3 above.

#### *5.4.6. Article 14 – Information for debt securities holders*

Article 14 essentially contains the same provisions as for shareholders. However, rights attached to debt securities differ compared to those related to shares. Therefore, it is inevitable to have a specific provision for debt securities, as defined in the proposed Article 2 (b). In the light of numerous reactions in the two consultations, the Commission does no longer see a need for derogation from the principle of equal treatment on the grounds of social priorities, as currently provided

in Articles 78 (1) 2<sup>nd</sup> subpara. and 83 (1) 2<sup>nd</sup> subpara. of Directive 2001/34/EC. Taking into account the particularities of Eurobond markets, Article 14 (3) allows issuers to choose the Member State in which they wish to hold a meeting with debt securities holders.

## **5.5. Chapter IV: General obligations**

### *5.5.1. Article 15 - Home Member State control*

The general policy which justifies a filing system in the home Member State was already explained in Section 4.1.2.. At present, Member States are only invited in broad terms “to ensure” that information is published (see e.g. Article 70 of Directive 2001/34/EC on half-yearly reports), save for the notification of changes to major shareholdings which should be communicated not only to the issuers, but also to the competent authorities (see Article 89 (1) of Directive 2001/34/EC).

The Commission should be authorised to adopt further technical implementing rules as follows:

- In particular, filing by electronic means must be ensured in future. Otherwise, filing conditions with national securities regulators would clearly lag behind electronic filing with company registers as proposed by the Commission for reforming the First Company Law Directive<sup>41</sup>;
- In the case of shares, a home Member State retains the competence for controlling the issuer even if the issuer’s shares are admitted to trading only in another Member State. Implementing rules should shape in detail how to organise the control between the Member States concerned.

### *5.5.2. Article 16 - Language regime for issuers and security holders*

The objectives for the proposed language regime are already set out in Section 3.2.1. The proposed wording endeavours to follow the line agreed in the Council on 5 November towards the adoption of a common position on the future directive on prospectuses. In addition, it imposes on issuers a requirement to disclose inside information – as provided for in Article 6 of the Market Abuse Directive (Directive 2003/6/EC) – under a specific language regime. Otherwise, issuers would be required to translate all the information to be published into the official languages of all Member States where its securities might possibly be traded.

However, there is an important difference to the future Prospectus Directive. The latter still allows host Member States to require a summary of a prospectus to be translated into its own official language. Such a summary is not a way forward under the present proposal. Instead, the present proposal deviates from the approach agreed for the future prospectus directive in two ways:

- Article 16 (3) does not leave issuers whose securities are admitted to trading in a regulated market solely in one host Member State, but nowhere else in the

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<sup>41</sup> Article 3 (2) of the Commission proposal for a Directive amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies, COM (2002) 279 final of 3.6.2002.

European Union a choice between certain languages; the host Member State may in principle impose the use of its own language. This rule should avoid “forum shopping” (or indeed “language shopping”);

- Article 16 (6) ensures that national rules for the use of languages in judiciary proceedings are not affected.

As set out in Section 3.2.1. above, the proposed rules on the use of languages would not affect existing requirements under Article 4 of Council Directive 89/117/EEC (Eleventh Company Law Directive).

#### 5.5.3. *Article 17 – Timely and equivalent access to information*

- Article 17 (1) and (2) would replace Article 102 of Directive 2001/34/EC to the extent that information to be disclosed to the public under this Directive is concerned. It will also determine in which Member State and by which means disclosure of price sensitive information should be achieved. See Section 3.2.2.
- Article 17 (4) empowers the Commission to further specify the conditions for disclosing information to the public on the issuer’s internet sites, as well as keeping this information is available. This includes questions, such as whether the issuer should ensure that internet sites operate in a server located in a specific Member State or whether the use of specific dissemination means may also be imposed on issuers who did not request or approve admission of its securities to trading on that regulated market.

#### 5.5.4. *Article 18 – Guidelines*

The underlying concept of this provision was already explained under section 3.2.2. Article 18 (1) (a) covers a specific aspect: The proposed filing system should not lead to unnecessary duplications for issuers who also remain subject to a filing under the First Company Law Directive<sup>42</sup>. In practice, this concerns in essence financial statements (accounts) and a management report (annual report). These types of information should be filed with national securities regulators according to the proposed Article 15, but at a later stage with the national company registers in accordance with Article 47 of the Fourth Company Law Directive/Article 38 of the Seventh Company Law Directive, in conjunction with Article 3 of the First Company Law Directive.

#### 5.5.5. *Article 19 – Third countries*

Article 19 (1) deals with issuers incorporated in third countries. Article 76 (4) of Directive 2001/34/EC already requires them to ensure equivalent interim reporting (based on half-yearly reports); the same applies to the disclosure of changes to major shareholdings by third country issuers under Article 68 (3) 2<sup>nd</sup> sub-paragraph of Directive 2001/34/EC. More favourable solutions for third country issuers to the detriment of European issuers should be avoided in future. This also includes requirements to provide quarterly financial information given that US-stock markets

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<sup>42</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies – COM (2002) 279 final of 3.6.2002.

representing 60% of the market capitalisation in the world are already subject to even stricter disclosure requirements. In addition, this provision would pave the way for equivalence mechanism ensuring better protection for European holders of shares of third country issuers at the level provided for in Articles 13 and 14. However, the proposed equivalence rules only cover disclosure requirements laid down under this Directive, but not those incumbent on the issuer under the Market Abuse Directive.

Article 19 (2) builds on Articles 69 (2), 82 (2) and 84 (2) of Directive 2001/34/EC; it concerns both European and third country issuers. Article 19 (3) is a provision similar to that in the future directive on prospectus.

## **5.6. Chapter V: Co-operation amongst competent authorities**

### *5.6.1. Article 20 – Competent Authorities*

At present, Directive 2001/34/EC requires Member States to notify which the competent authorities are. The designation of a competent authority in each Member State answers the need for efficiency and clarity, and for enhanced co-operation between competent authorities. The administrative nature of these single competent authorities is necessary to avoid conflicts of interest in the use of financial disclosure data coming from quarterly financial information and annual financial reports. It will lead to greater consistency and clarity in the application of the provisions of the Directive.

Some national securities regulators and stock exchanges argued during the consultation that the tasks of the competent authority under this Directive (in particular the repository function) might be delegated to the operator of a regulated market in a Member State in accordance with the proposed Article 20 (2).

However, a permanent delegation would lead to a system whereby annual information under Article 10 of the future Prospectus Directive would be filed with the competent authority which may no longer delegate this function after the end of five years following the entry into force of the Prospectus Directive whilst the filing of all corporate information to be disclosed to the public on a periodic or ongoing basis would remain subject to a permanent delegation. If this option were pursued, security issuers would face a patchwork of national bodies (authorities and other bodies to which tasks are delegated). In the medium term, information should be filed with a single entity in each Member State, and not 30 to 40 bodies in fifteen Member States.

Pursuing this option would not create inconsistencies with the solution adopted under the Market Abuse Directive. Certainly, that Directive, in particular Article 12 (1) (c) allows delegation even in the long run. The present proposal addresses issues related to ad-hoc disclosure only in two respects: languages and dissemination of information. Decisions on the use of languages should be left to public authorities; control of efficient dissemination of information must clearly be separated from dissemination of information as such, which represents a profit-making activity in which operators of regulated markets also have own commercial stakes.

### 5.6.2. *Articles 21 and 22*

The obligation of professional secrecy for staff in national securities regulators should also allay concerns expressed by auditors in the consultations by auditors who are reluctant to provide information about clients.

## 5.7. **Chapter VI: Implementing measures**

### 5.7.1. *Article 23 - European Securities Committee*

The European Securities Committee should assist the Commission in accordance with the regulatory procedure laid down in Article 5 of the Council Decision on comitology (1999/468/EC). In addition, such decisions may only be taken within a period of four years, as agreed between the European Institutions in the context of the implementation of the recommendations of the Final Report of the Committee of Wise Men (see section 2.2. above).

## 5.8. **Chapter VII: Transitional and final provisions**

### 5.8.1. *Article 26 – Transitional provisions*

Article 26 (1) gives Member States the possibility for phasing in the new financial reporting requirements in two ways (see also Section 4.3.): It carries forward the exemption already provided for some companies issuing debt securities or reporting under US GAAP, as already foreseen in the Regulation on international accounting standards. In addition, Member States would be allowed not to impose on publicly traded companies to apply IAS already in the half-yearly financial report for the first six months in 2005.

Article 26 (2) provides for a smooth transition for investors and issuers who move from a system on disclosing changes to major shareholdings (see section 5.3.) which is less stringent than that under the proposed Directive. In practice, it would extend the disclosure deadlines for security holders and for issuers.

Article 26 (3) provides for a limited “grand-father” clause for issuers of debt securities who have benefited from the possibility offered by Article 27 of Directive 2001/34/EC. These issuers will be exempted from the obligation to publish half-yearly financial reports for a period of three years after the entry into force of the Directive, provided that the admission to trading of their debt securities was made before the entry into force of the Prospectus Directive which will repeal Article 27 of Directive 2001/34/EC.

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**

**(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 Commission<sup>43</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>44</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>45</sup>,

Whereas:

- (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 throughout the Community.
- (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.
- (3) The Commission Communication of 11 May 1999, entitled "Implementing the framework for financial markets: Action Plan"<sup>46</sup>, identifies a series of actions that are needed in order to complete the single market for financial services. The Lisbon European Council of March 2000 called for the implementation of that Action Plan by

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<sup>43</sup> OJ C ...

<sup>44</sup> OJ C ...

<sup>45</sup> Opinion of the European Parliament of .../..., published in OJ --- and Council decision of .../... published in OJ ---

<sup>46</sup> COM/99/232 final.

2005. The Action Plan stresses the need to draw up a Directive upgrading transparency requirements. That need was confirmed by the Barcelona European Council of March 2002.

- (4) Greater harmonisation of provisions of national law on periodic and ongoing information requirements for security issuers should lead to a high level of investor protection throughout the Community. However, this Directive does not affect existing Community legislation on units issued by collective investment undertakings other than the closed-end type, or on units acquired or disposed of through such undertakings.
- (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<sup>47</sup>. Along the same lines, some flexibility should be introduced allowing companies issuing only high unit value debt securities a choice of home Member State.
- (6) A high level of investor protection throughout the Community would enable the removal of barriers to the admission of securities to regulated markets situated or operating in the territory of a Member State. Member States other than the home Member State should no longer be allowed to restrict admission of securities to their regulated markets by imposing more stringent requirements on periodic and ongoing information about issuers whose securities are admitted to trading on a regulated market.
- (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<sup>48</sup> 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.
- (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.
- (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

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<sup>47</sup> OJ L [...],[ ...], p. [...]  
<sup>48</sup> OJ L 243, 11.9.2002, p. 1

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 should also include a trend information allowing investors to judge on any long term strategy which the share issuer pursues.

- (10) Investor confidence should be reinforced by ensuring that, under national law, a company and its administrative, management, or supervisory bodies bear responsibility and civil liability as far as annual and interim financial reporting is concerned. This is the most effective way to enforce the requirement that issuers provide the public with accurate and reliable information. Each Member State should ensure such responsibility and liability under its national law or regulations.
- (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 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.
- (12) Ongoing information of security 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.
- (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 reason, each competent authority in a home Member State should introduce a filing system.
- (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.

- (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.
- (16) In order to further simplify investor access to corporate information across Member States, it should be left to the national supervisory authorities to formulate guidelines for setting up electronic networks, in close consultation with the other parties concerned, in particular security issuers, investors, market participants, operators of regulated markets and financial information providers.
- (17) So as to ensure the effective protection of investors and the proper operation of regulated markets within the Community, the rules relating to information to be published by issuers whose securities are admitted to trading on a regulated market within the Community should also apply to issuers which do not have a registered office in a Member State and which do not fall within the scope of Article 48 of the Treaty. It should equally be ensured that any additional relevant information about Community issuers or third country issuers, disclosure of which is required in a third country but not in a Member State, is made available to the public in the Community.
- (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.
- (19) Increasing cross-border activities require improved co-operation between national competent authorities, including a comprehensive set of provisions for the exchange of information and for precautionary measures. The organisation of the regulatory and supervisory tasks in each Member State should not hinder efficient co-operation between the competent national authorities.
- (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 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.
- (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.
- (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.

- (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.
- (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<sup>49</sup>.
- (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.
- (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<sup>50</sup>.
- (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.
- (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<sup>51</sup>. In order to gather transparency requirements in a single act it is necessary to amend it accordingly.
- (29) Since the objectives of the action to be taken, namely to ensure investor confidence through equivalent transparency throughout the Community and thereby to complete the internal market, cannot be sufficiently achieved by the Member States on the basis of the existing Community legislation and can, by reason of the scale and effects of the measures, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article,

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<sup>49</sup> OJ L 184, 17.7.1999, p. 23

<sup>50</sup> OJ L 191, 13.7.2001, p. 45.

<sup>51</sup> OJ L 184, 6.7.2001, p. 1.

this Directive does not go beyond what is necessary in order to achieve these objectives.

- (30) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **General provisions**

#### *Article 1*

##### *Subject-matter and scope*

This Directive establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State.

This Directive shall apply neither to units issued by collective investment undertakings other than the closed-end type, nor to units acquired or disposed of through such collective investment undertakings.

#### *Article 2*

##### *Definitions*

1. For the purposes of this Directive the following definitions shall apply:
  - (a) ‘securities’ means transferable securities as defined in Article 1(4) of Directive 93/22/EEC/Article ... of the Directive .../EC on Investment Services and Regulated Markets<sup>52</sup> with the exception of money-market instruments, as defined in Article 1(5) of Directive 93/22/EEC/Article ... of the Directive.../EC on Investment Services and Regulated Markets having a maturity of less than 12 months, for which national legislation may be applicable;
  - (b) “debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;

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<sup>52</sup> OJ L ..., ..., p. ....

- (c) “regulated market” means a market as defined in Article 1(13) of Directive 93/22/EEC/ Article ... of the Directive .../EC on Investment Services and Regulated Markets;
- (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 depository receipts representing securities, the issuer of the securities represented;
- (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:
  - (i) securities of the issuer in its own name and on its own account;
  - (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;
  - (iii) depository receipts, in which case the security holder shall be the bearer;
  - (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;
- (f) “controlled undertaking” means any undertaking
  - (i) in which a security holder has a majority of the voting rights;
  - (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;
  - (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;
  - (iv) over which the security holder actually exercises, directly or indirectly, a dominant influence;
- (g) “collective investment undertaking other than the closed-end type” means unit trusts and investment companies:
  - (i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and
  - (ii) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings;
- (h) “units of a collective investment undertaking” means securities issued by a collective investment undertaking and representing rights of the participants in such an undertaking over its assets;

- (i) “home Member State” means
  - (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:
    - 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];
  - (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;
- (j) “host Member State” means a Member State in which securities are admitted to trading on a regulated market, if different from the home 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 <sup>53</sup>, or under the laws, regulations or administrative provisions of a Member State;
- (l) “electronic means” are means of electronic equipment for the processing (including the digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

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.
3. In order to take account of technical 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

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<sup>53</sup> OJ L ..., ..., p. ....

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<sup>54</sup>.

### *Article 3*

#### *Integration of securities markets*

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.

2. A host Member State may not:
  - (a) as regards the admission of securities to a regulated market in its territory, impose disclosure requirements more stringent than those provided for in this Directive or in Article 6 of Directive 2003/6/EC;
  - (b) as regards the notification of information, impose on security holders requirements more stringent than those laid down in this Directive.

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<sup>54</sup> OJ L204, 21.7.1998, p. 37, as amended by Directive 98/48/EC, OJ L 217, 5.8.1998, p. 18.

## Chapter II

### Periodic information

#### *Article 4*

##### *Annual financial reports*

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.
2. The annual financial report shall comprise:
  - (a) the audited financial statements;
  - (b) the management report;
  - (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.
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.
4. The financial statements shall be audited in accordance with Article 37 of Council Directive 83/349/EEC<sup>55</sup> or, where the issuer has no subsidiary, in accordance with Articles 51 and 51a of Council Directive 78/660/EEC<sup>56</sup>.

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.
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.
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.

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<sup>55</sup> OJ L 193, 18.7.1983, p. 1.

<sup>56</sup> OJ L 222, 14.8.1978, p.11.

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.

## *Article 5*

### *Half-yearly financial reports*

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.
2. The half-yearly financial report shall comprise:
  - (a) the condensed set of financial statements;
  - (b) an update of the last management report as provided for in Article 4 (5) ;
  - (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 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.
3. The condensed set of financial statements 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.
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.
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.

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.

## *Article 6*

### *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.

#### *Article 7*

##### Responsibility and liability

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.
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.

#### *Article 8*

##### *Exemptions*

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.

### **Chapter III**

#### **Ongoing information**

##### **SECTION I**

##### **INFORMATION ABOUT MAJOR HOLDINGS**

#### *Article 9*

##### *Notification of the acquisition or disposal of major holdings*

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

#### *Article 10*

##### *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:

- (a) voting rights held by a third party with whom that person or entity has concluded an effective agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
- (b) voting rights held by a third party under an effective agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- (c) voting rights attaching to shares which are lodged as collateral with that person or entity, provided the latter controls the voting rights and declares its intention of exercising them;
- (d) voting rights attaching to shares in which that person or entity has the life interest;
- (e) voting rights which are held, or which may be exercised within the meaning of points (a) to (d), by an undertaking controlled by that person or entity;
- (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;

- (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;
- (h) voting rights which that person or entity may exercise as a proxy according to common instructions from securities holders.

## *Article 11*

### *Procedures on the notification and disclosure of major holdings*

1. The notification required under Article 9 shall include the following information:
  - (a) the resulting situation, in terms of voting 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.
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.
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.
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.
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:
  - (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.

## *Article 12*

### *Additional information*

The issuer shall inform the public without delay of

- (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.

## **SECTION II**

### **INFORMATION FOR SECURITY HOLDERS**

## *Article 13*

### *Information for shareholders*

- 6. The issuer shall ensure equal treatment for all holders of shares who are in the same position.
- 7. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the home Member State. In particular, the issuer shall:
  - (a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;
  - (b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders meeting, together with the notice concerning the meeting;
  - (c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and
  - (d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

3. For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:
  - (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (g), of the natural persons or legal entities;
  - (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;
  - (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;
  - (d) any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.
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).

#### *Article 14*

##### *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.
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:
  - (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;
  - (b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting; and

- (c) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.
- 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.
- 4. For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:
  - (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
  - (b) identification arrangements shall be put in place in order to ensure that debt securities holders and proxies representing those holders are effectively informed;
  - (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;
  - (d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.
- 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).

## **Chapter IV**

### **General obligations**

#### *Article 15*

##### *Home Member State control*

- 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.

2. The home Member State may exempt an issuer from the requirement under paragraph 1 in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 11(4) of this Directive.
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.
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.

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.

## *Article 16*

### *Languages*

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.
2. Where securities are admitted to trading on a regulated market both in the home Member State and in one or more host Member States, regulated information shall be disclosed:
  - (a) in a language accepted by the competent authority in the home Member State; and
  - (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.

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.

4. Where securities are admitted to trading on a regulated market without the issuer's consent, the obligations under paragraphs 1, 2 and 3 shall be incumbent, not upon the issuer, but upon the person who, without the issuer's consent, has requested such admission.
5. Member States shall allow security holders to notify information to an issuer under this Directive only in a language customary in the sphere of international finance.
6. If an action concerning the content of regulated information is brought before a court or tribunal in a Member State, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be decided in accordance with the law of that Member State.

#### *Article 17*

##### *Timely access to 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. Nor may it prevent the issuer from using a single medium for disseminating all regulated information.
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 Member State may require issuers:
  - (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.

3. Where securities are admitted to trading on a regulated market in only one host Member State, and not in the home Member State, the host Member State shall ensure disclosure of regulated information in accordance with the requirements referred to in paragraph 1.
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.

#### *Article 18*

#### *Guidelines*

1. The competent authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive [.../.../EC] [Prospectus], and this Directive.

The aim of those guidelines shall be the creation of:

- (a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets, and national company registers covered by Council Directive 68/151/EEC<sup>57</sup>; and
  - (b) a single electronic network, or a platform of electronic networks, across Member States.
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.

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<sup>57</sup> OJ L 65, 14.3.1968, p. 8.

## *Article 19*

### *Third countries*

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.

However, the information covered by the requirements laid down in the third country shall be filed in accordance with Article 15 and disclosed in accordance with Articles 16 and 17.

2. The competent authority of the home Member State shall ensure that information disclosed in a third country which may be of importance for the public in the Community is disclosed in accordance with Articles 16 and 17, even if such information is not regulated information within the meaning of Article 2(1)(k) of 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 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.

## **Chapter V**

### **Competent authorities**

## *Article 20*

### *Competent authorities and their rights*

1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive [.../.../EC] [prospectus] as central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission accordingly.
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.

Those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted pursuant thereto shall lie with the competent authority designated in accordance with paragraph 1.

3. Member States shall inform the Commission and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.
4. Each competent authority shall have all the rights necessary for the performance of its functions. It shall at least be empowered to:
  - (a) require issuers, security holders, and the persons that control them or are controlled by them, to provide information and documents;
  - (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 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;
  - (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;
  - (d) suspend, or request the relevant regulated market to suspend, the trading of securities for a maximum of ten days at one time if it has reasonable grounds for suspecting that the provisions of this Directive, or of national law adopted in accordance with this Directive, have been infringed by the issuer;
  - (e) prohibit trading on a regulated market if it finds that the provisions of this Directive, or of national law adopted in accordance with this Directive, have been infringed, or if it has reasonable grounds for suspecting that they would be infringed;
  - (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;
  - (g) make public the fact that an issuer, or a security holder, is failing to comply with its obligations; and
  - (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.
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).

6. Paragraphs 1 to 5 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

#### *Article 21*

##### *Professional secrecy and co-operation between Member States*

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority and for entities to which competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative provisions of a Member State.
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.
3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

#### *Article 22*

##### *Precautionary measures*

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.
2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

## Chapter VI

### Implementing measures

#### *Article 23*

##### *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.

#### *Article 24*

##### *Sanctions*

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.
2. Member States shall provide that the competent authority may disclose to the public every measure taken or sanction imposed for infringement of the provisions adopted pursuant to this Directive, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

## *Article 25*

### *Judicial review*

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.

## **Chapter VII**

### **Transitional and final provisions**

## *Article 26*

### *Transitional provisions*

1. Notwithstanding Article 5(3) of this Directive, the home Member State may exempt from disclosing financial statements in accordance with Regulation (EC) No.1606/2002:
  - (a) all issuers for the financial year starting on or after 1 January 2005;
  - (b) issuers referred to in Article 9 of Regulation (EC) No.1606/2002 for the financial years starting on or after 1 January 2005 and 1 January 2006.
2. Notwithstanding Article 11(2), a shareholder shall notify the issuer at the latest on 15 January 2005 of the proportion of voting rights and capital it holds, in accordance with Articles 9 and 10, with issuers at that date, unless it has already made a notification containing equivalent information before that date.

Notwithstanding Article 11(4), an issuer shall in turn disclose the information received in those notifications no later than 31 January 2005.
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.

## *Article 27*

### *Transposition*

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.
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.

## *Article 28*

### *Amendments*

With effect from the date specified in Article 27(1), Directive 2001/34/EC is amended as follows:

- (1) In Article 1, points (g) and (h) are deleted;
- (2) Article 4 is deleted;
- (3) In Article 6, paragraph 2 is deleted;
- (4) In Article 8, paragraph 2 is replaced by the following:
  - “2. Member States may make the issuers of securities admitted to official listing subject to additional obligations, provided that those additional obligations apply generally for all issuers or for individual classes of issuers”;
- (5) Articles 64 to 97 are deleted;
- (6) Articles 102 and 103 are deleted;
- (7) In Article 107(3), the second subparagraph is deleted;
- (8) Article 108 is amended as follows:
  - a) in paragraph 2(a), the words “periodic information to be published by the companies of which shares are admitted” are deleted;
  - b) in paragraph 2, point (b) is deleted,
  - c) in paragraph 2, point (c) (iii) is deleted,
  - d) in paragraph 2, point (d) is deleted

References to the deleted provisions shall be construed as references to the provisions of this Directive.

*Article 29*

*Review*

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.

*Article 30*

*Entry into force*

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

*Article 31*

*Addresses*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

## **IMPACT ASSESSMENT FORM**

### **THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES( SMEs)**

#### **TITLE OF PROPOSAL**

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

#### **DOCUMENT REFERENCE NUMBER**

COM (XXX)

#### **THE PROPOSAL**

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

A single financial market should promote the competitiveness of the European economy, lowering the cost of capital whilst enhancing the level of disclosure of information about security issuers with the aims of sound investor protection and the properly functioning of financial markets.

An integrated financial market should be founded on a harmonised set of principles and rules. The objective of these rules will be to ensure a high level of investor protection at Community level enabling Member States to effectively reduce national barriers for issuers seeking access to regulated markets in other Member States. Given the diversity of issues covered under this directive, the issuer's home Member State should be allowed imposing more stringent or additional disclosure requirements.

This action responds to the Lisbon, Stockholm and Barcelona European Council's request to achieve an integrated financial market and in particular to give priority to securities markets legislation provided for in the Financial Services Action Plan and in the report by the Committee of Wise Men on the Regulation of European Securities Markets.

#### **THE IMPACT ON BUSINESS**

2. Who will be affected by the proposal?
  - which sectors of business: Publicly traded companies whose securities are admitted to trading on regulated markets in Member States. This will cover all sectors of business. Investment funds holding securities on behalf of their clients. Auditors/accountants being in charge of auditing/establishing the companies financial statements (accounts).

- which sizes of business (what is the concentration of small and medium-sized firms): All publicly traded companies, including small and medium sized firms. However, it should be taken into account that small firms are normally not quoted on regulated markets. Proportionality has been taken into account in that SMEs are not subject to too stringent reporting requirements. In practice, large companies (“blue chip companies”) already provide for more detailed information to securities markets.
- are there particular geographical areas of the Community where these businesses are found? No. But trading of specific securities (shares, bonds, derivatives) can concentrate in specific geographical areas.

3. What will business have to do to comply with the proposal?

Security issuers will have to meet the requirements on annual financial reporting within a given deadline of three months, on interim financial reporting (half-yearly financial report and quarterly financial information) within a deadline of two months. In addition, they will be required to make public all amendments to statutes/instruments of incorporation, as well as other internal rules on the acquisition of own shares and on remunerating managers by securities, including on stock options. In the context of security holders meetings, publicly traded companies will be required to allow proxy participation, but will also be provided with the opportunity to invite its shareholders to decide on the introduction of electronic means.

Companies who hold securities will be required to more frequently and swifter notify to issuers the acquisition or disposal of major holdings in securities. As a necessary complement, the security issuer concerned will be required to make such notifications public.

4. What economic effects is the proposal likely to have?

- on employment

Positive effects on job creation can be expected. By facilitating and lowering the cost for raising capital directly on the European securities markets improving the amount of new financial resources available to business. In addition, improved information standards protecting investors can be expected to create more loyalty and confidence of investors to capital markets.

- on investment and the creation of new businesses

Efficient European securities markets should improve the overall macroeconomic performance of the economy and the confidence of investors into the economy, producing higher economic growth with positive impact on business innovation and productivity (including encouraging venture capital growth).

- on the competitiveness of businesses

Positive impact can be expected due to the lower cost of raising capital throughout the European Union and new robust Community disclosure requirements to which host Member States may not add further disclosure requirements. This does not

prejudice other requirements for admission of securities to trading on a regulated market.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The proposal provides for further technical rules to be adopted under the comitology decision. Where the Commission, through the consultation process in co-operation with the Committee of European Securities Regulators, has identified potential negative effects of its proposals for detailed technical implementing measures, it will have reassessed its measures in order to take due account of those concerns.

The impact of periodic reporting requirements (annual financial report, interim financial reports) on SME's has in particular been assessed in two open and public consultations with the business community, market participants, and investors. The conclusion has been that the reward/risk profile of SME's quoted on regulated markets, in particular of young companies, do not justify specific exemptions. In fact, investors encountered particular problems with SME's whose securities are admitted to trading on a regulated market (e.g. Neuer Markt in Germany), and it is worth while noting that Member States introduced even higher reporting requirements for young SME's (UK and LUX). This line is particularly supported by the Committee of European Securities Regulators in which the national supervisory authorities for securities markets are members.

This being said, the contents of the periodic reports will be defined in different contexts where tailor-made solutions for SMEs are provided for (in the company law directives with respect to the management report) or will be provided for (in the IAS Regulation with respect to financial statements for which specific international accounting standards are under preparation).

## CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views (see also section 2.1. of the explanatory memorandum).

The recommendations of the Lamfalussy Committee of Wise Men on Regulations on European Securities Markets called for early, broad and systematic consultation. The Stockholm European Council endorsed this in March 2001, the European Parliament in February 2002.

On 11 July 2001, the Commission published a first consultation document in which it presented its preliminary views for reforming disclosure requirements at Community level. It received 91 replies from all the Member States, but also from third countries. In December 2001, it published a summary of the replies received.

In the light of the reactions received, the Commission published a second and final consultation on 8 May 2002 and set a deadline of two months for replies. In this document, it revised its preliminary views, draw the attention of the public to the relationship of this initiative to other initiatives under the "disclosure and transparency agenda" (such as the IAS-Regulation, the forthcoming Directives on Market Abuse and Prospectus) and presented in particular a detailed outline on its ongoing work towards a final Commission proposal.

On its second consultation, the Commission received again 93 responses from all the Member States, from third countries and also from the following European/International Organisations: European Savings Banks Group (ESBG), International Primary Market Association (IPMA), Federation of European Securities Exchanges (FESE), the European Federation for Retirement Provision (EFRP), the European Newspaper Publisher's Association (ENPA), European Federation of Accountants (FEE), Union of Industrial and Employer's Confederations of Europe (UNICE), Euroshareholders.

In addition, the Committee of European Securities Regulators (CESR) replied in October 2002 to the second consultation document. In its reply, it stressed that supervision of corporate governance issues should be addressed whilst admitting that transparency rules is only an indirect tool and does not concern rules governing the functioning of a company. It also asked for consistent solutions between requirements related to annual financial reporting and the registration document under the forthcoming Prospectus Directive. It fully supports the introduction of quarterly financial reporting (except for one member), but has reservations to specific solutions for SMEs. It feels that half-yearly financial reporting for debt security issuers would adequately reflect the risk profile of such securities. It welcomed the enhanced disclosure requirements on voting and capital structures, but stressed the need for detailed implementing rules ensuring an efficient system. On the ways of how financial information should be disseminated, CESR is not convinced whether web postings on the issuer's internet sites represents an appropriate publication.