

**DIRECTIVE 2008/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 11 March 2008****amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as regards the implementing powers conferred on the Commission**

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,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the European Central Bank <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Directive 2004/109/EC <sup>(4)</sup> of the European Parliament and of the Council provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia*, by deleting some of those elements or by supplementing the instrument with new non-essential elements.
- (3) In accordance with the statement by the European Parliament, the Council and the Commission <sup>(6)</sup>

concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

- (4) The Commission should be empowered to adopt the measures necessary for the implementation of Directive 2004/109/EC in order to clarify the technical aspects of some of the definitions provided under that Directive, notably the maximum length of the usual short settlement cycle, the calendar of trading days, the circumstances under which a person should have learnt of the acquisition or disposal of voting rights, the conditions of independence to be respected by market makers and management companies; take account of technical developments in financial markets; clarify the nature of the auditor's review, to define the minimum content of the condensed set of solo financial statements; elaborate further the procedures for the notification and disclosure of major holdings as well as the procedures for filing regulated information with the competent authority of the issuer's home Member State; and define minimum standards for the dissemination of regulated information and for the setting up of storage mechanisms. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/109/EC, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (5) Directive 2004/109/EC provides for a time restriction concerning the implementing powers conferred on the Commission. In their statement concerning Decision 2006/512/EC, the European Parliament, the Council and the Commission stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time limit. The European Parliament and the Council also declared that they would ensure that the proposals aimed at repealing the provisions in the instruments that provide for a time limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2004/109/EC should be deleted.

<sup>(1)</sup> OJ C 161, 13.7.2007, p. 45.

<sup>(2)</sup> OJ C 39, 23.2.2007, p. 1.

<sup>(3)</sup> Opinion of the European Parliament of 14 November 2007 (not yet published in the Official Journal) and Council Decision of 3 March 2008.

<sup>(4)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

<sup>(6)</sup> OJ C 255, 21.10.2006, p. 1.

- (6) The Commission should, at regular intervals, evaluate the functioning of the provisions concerning the implementing powers conferred on it in order to allow the European Parliament and the Council to determine whether the extent of those powers and the procedural requirements imposed on the Commission are appropriate and ensure both efficiency and democratic accountability.
- (7) Directive 2004/109/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directive 2004/109/EC by this Directive are technical in nature and concern committee procedure only, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (\*) in accordance with the regulatory procedure referred to in Article 27(2).

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

(\*) OJ L 204, 21.7.1998, p. 37. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).;

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Amendments

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

1. Article 2(3) shall be replaced by the following:

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

The Commission shall, in particular:

- (a) establish, for the purposes of paragraph 1(i)(ii), the procedural arrangements in accordance with which an issuer may make the choice of the home Member State;
- (b) adjust, where appropriate for the purposes of the choice of the home Member State referred to in paragraph 1(i)(ii), the three-year period in relation to the issuer's track record in the light of any new requirement under Community law concerning admission to trading on a regulated market; and
- (c) establish, for the purposes of paragraph 1(l), an indicative list of means which are not to be considered as electronic means, thereby taking into account Annex V to Directive 98/34/EC of the European Parliament

2. Article 5(6) shall be amended as follows:

(a) in the first subparagraph, the words ‘, in accordance with the procedure referred to in Article 27(2),’ shall be deleted;

(b) the third subparagraph shall be replaced by the following:

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

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1. That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

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

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

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

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

4. Article 12(8) shall be amended as follows:

(a) the words 'in accordance with the procedure referred to in Article 27(2),' shall be deleted;

(b) the following subparagraph shall be added:

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

5. Article 13(2) shall be amended as follows:

(a) the words 'in accordance with the procedure referred to in Article 27(2),' shall be deleted;

(b) the following subparagraph shall be added:

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

6. Articles 14(2), 17(4) and 18(5) shall each be amended as follows:

(a) the words 'in accordance with the procedure referred to in Article 27(2),' shall be deleted;

(b) the following sentence shall be added:

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

7. Article 19(4) shall be amended as follows:

(a) in the first subparagraph, the words 'in accordance with the procedure referred to in Article 27(2),' shall be deleted;

(b) the following subparagraph shall be added:

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

8. Article 21(4) shall be amended as follows:

(a) in the first subparagraph, the words 'in accordance with the procedure referred to in Article 27(2)' shall be deleted;

(b) the following subparagraph shall be added:

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

9. Article 23 shall be amended as follows:

(a) paragraph 4 shall be amended as follows:

(i) the following subparagraph shall be inserted after the first subparagraph:

'In the context of point (ii) of the first subparagraph, the Commission shall also adopt implementing measures concerning the assessment of standards relevant to the issuers of more than one country. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

(ii) the following subparagraph shall be added:

'In the context of the previous subparagraph, the Commission shall also adopt implementing measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).;

(b) paragraph 5 shall be amended as follows:

(i) the words ‘, in accordance with the procedure referred to in Article 27(2),’ shall be deleted;

(ii) the following sentence shall be added:

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

(c) in paragraph 7, the following subparagraph shall be added:

‘The Commission shall also adopt implementing measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).’;

10. Article 27 shall be amended as follows:

(a) the following paragraph shall be inserted:

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

(b) paragraphs 3 and 4 shall be replaced by the following:

‘3. By 31 December 2010, and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission’.

#### Article 2

#### Entry into force

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

#### Article 3

#### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ