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(Acts whose publication is obligatory)

DECISION No 2239/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 November 2004
amending Council Decision 1999/784/EC concerning Community participation in the European
Audiovisual Observatory

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157(3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

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

Whereas:

(1) In Decision 1999/784/EC ⁽⁴⁾ the Council decided that the Community should become a member of the European Audiovisual Observatory (hereinafter 'the Observatory') in order to support the latter's activity. The Observatory contributes to strengthening the competitiveness of the Community's audiovisual industry by improving the transfer of information to the industry, in particular to small and medium-sized enterprises, and promoting a clearer view of the market.

(2) Multimedia and the new technologies will play an ever greater role in the audiovisual sector. The Observatory could continue to play its important role if its capacity to follow these new developments were strengthened in due course.

(3) Although free movement of persons, goods and services is enshrined in the Treaty, the lack of information on the many differences in national regulations in the fields of fiscal and labour law acts as an obstacle to the free movement of audiovisual goods and services. The Observatory could offer a positive contribution by collecting and providing expertise and systematic information in the fields of fiscal and labour law, copyright and consumer protection law.

(4) Further to the European Parliament's resolution of 4 September 2003 on Television without Frontiers, which called for an annual benchmarking report on making digital TV accessible for people with disabilities, the Observatory should be invited to collect data on an annual basis on the levels of television services provided in all Member States of the European Union or of the Council of Europe to assist disabled people, such as subtitling, audio description and sign language.

(5) Community participation in the Observatory has proved effective in supporting the latter's activity.

(6) It is appropriate to continue such participation during the period necessary for the Observatory to adopt guidelines for its future activity, from 2006 onwards.

(7) Decision 1999/784/EC should therefore be amended accordingly,

⁽¹⁾ OJ C 98, 23.4.2004, p. 34.

⁽²⁾ OJ C 241, 28.9.2004, p. 15.

⁽³⁾ Opinion of the European Parliament of 21 April 2004 (not yet published in the Official Journal) and Council Decision of 25 October 2004.

⁽⁴⁾ OJ L 307, 2.12.1999, p. 61.

HAVE DECIDED AS FOLLOWS:

Sole Article

Article 5 of Decision 1999/784/EC shall be replaced by the following:

'Article 5

This Decision shall apply until the last day of the last month of the seventh year following the year of its adoption.'

Done at Strasbourg, 17 November 2004.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

A. NICOLAI

**REGULATION (EC) No 2240/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 December 2004**

amending Council Regulation (EC) No 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

(1) Community action to promote human rights and democratic principles as set out in the Communication of 8 May 2001 from the Commission to the Council and the European Parliament on 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' is to continue beyond 2004. Regulation (EC) No 975/1999 ⁽²⁾ has proved to be an adequate legal instrument for the implementation of the Community's technical and financial support for human rights and democratisation activities in developing and other third countries in pursuit of the overall objectives in this field. The period of validity of that Regulation, however, expires on 31 December 2004. It is, therefore, necessary to extend that period.

(2) On the basis of the ratio of the financial framework included in Regulation (EC) No 975/1999 and the indicative human rights and democratisation appropriations until 2006, this Regulation lays down, for the extended duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽³⁾, for the budgetary authority during the annual budgetary procedure.

(3) The provisions of Regulation (EC) No 975/1999 on procedures for the implementation of aid should be aligned with the legal requirements of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁴⁾ in the implementation of EU Election Observation Missions.

(4) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of Regulation (EC) No 975/1999. In particular, agreements and contracts concluded pursuant to that Regulation should authorise the Commission to carry out the measures provided for in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁵⁾.

(5) The measures necessary for the implementation of Regulation (EC) No 975/1999 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 ⁽⁶⁾.

(6) Regulation (EC) No 975/1999 should, therefore, be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 975/1999 is hereby amended as follows:

1) the following point shall be added to Article 2(2):

'(h) supporting efforts to foster the establishment of groupings of democratic countries within United Nations bodies, specialised agencies and regional organisations.;

⁽¹⁾ Opinion of the European Parliament of 22 April 2004 (not yet published in the Official Journal) and Council Decision of 2 December 2004.

⁽²⁾ OJ L 120, 8.5.1999, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽⁴⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

- 2) the following sentence shall be added at the end of Article 4(1):

'In the case of EU Election Observation Missions and "amicus curiae" proceedings, natural persons shall be eligible for financing under this Regulation.';

- 3) the first sentence of Article 5 shall be replaced by the following:

'To be eligible for Community aid, the partners referred to in the first sentence of Article 4(1) must have their main headquarters in a third country eligible for Community aid under this Regulation or in a Member State of the Community.';

- 4) Article 7(3) shall be replaced by the following:

'3. Community financing under this Regulation shall take the form of grants or contracts. Within the framework of operations under Article 2, members of EU Election Observation Missions paid from the human rights and democratisation appropriations shall be recruited in accordance with the procedures laid down by the Commission.';

- 5) the first subparagraph of Article 10 shall be replaced by the following:

'The financial framework for the implementation of this Regulation for the period from 1 January 2005 to 31 December 2006 is hereby set at EUR 134 million.';

- 6) Articles 11 and 12 shall be replaced by the following:

Article 11

1. The Commission shall adopt the framework for the programming and identification of Community activities.

The framework shall consist, in particular, of

(a) multiannual indicative programmes and annual updates of these programmes;

(b) annual work programmes.

In particular situations, specific measures not covered by an annual work programme may be approved.

2. The Commission shall produce an annual report setting out programming for the coming year by region and by sector, and shall report back on the implementation to the European Parliament.

The Commission shall be responsible for managing and adapting, in conformity with this Regulation and according

to the requirements of flexibility, the annual work programmes that were defined in the overall framework of the multiannual setting. The decisions made shall reflect the priorities and main concerns of the European Union for the consolidation of democracy, the rule of law and respect for human rights, and shall be determined by the unique nature of the programmes. The Commission shall keep the European Parliament fully informed of the proceedings.

3. The Commission shall implement Community operations under this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (*).

Article 12

1. The instruments referred to in Article 11(1) shall be adopted in accordance with the procedure referred to in Article 13(2).

In cases where amendments to annual work programmes referred to in Article 11(1)(b) do not exceed 20 % of the global amount allocated to them or do not substantially change the nature of the projects or programmes contained therein, such amendments shall be adopted by the Commission. It shall inform the committee referred to in Article 13(1).

2. Without prejudice to Article 14, financing decisions on projects and programmes not covered by annual work programmes and exceeding EUR 1 million shall be adopted in accordance with the procedure referred to in Article 13(2).

(*) OJ L 248, 16.9.2002, p. 1.';

- 7) Article 13(2) shall be replaced by the following:

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

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 30 days.';

- 8) the second sentence of Article 15 shall be deleted;

9) Article 17 shall be replaced by the following:

'Article 17

Any agreement or contract concluded pursuant to this Regulation shall expressly provide for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds. Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to

protect the European Communities' financial interests against fraud and other irregularities (*) shall apply.

(*) OJ L 292, 15.11.1996, p. 2.;

10) In the second subparagraph of Article 20, the date '31 December 2004' shall be replaced by the date '31 December 2006'.

Article 2

This Regulation shall enter into force on 1 January 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 15 December 2004.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

A. NICOLAI

DECISION No 2241/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 December 2004****on a single Community framework for the transparency of qualifications and competences (Euro-pass)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 149 and 150 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the Opinion of the Committee of the Regions ⁽²⁾,

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

Whereas:

- (1) Improved transparency of qualifications and competences will facilitate mobility throughout Europe for life-long learning purposes, therefore contributing to the development of quality education and training, and will facilitate mobility for occupational purposes, between countries as well as across sectors.
- (2) The Action Plan on mobility ⁽⁴⁾ endorsed by the European Council held in Nice on 7 to 9 December 2000 and Recommendation 2001/613/EC of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers ⁽⁵⁾, recommended the generalisation of the use of documents for the transparency of qualifications and competences, with a view to creating a European area of qualifications. The Commission's Action Plan for skills and mobility called for instruments supporting the transparency and transferability of qualifications to be developed and strengthened to facilitate mobility within and between sectors. Further action to introduce instruments improving the transparency of diplomas and qualifications was also demanded by the European Council held in Barcelona on 15 and 16 March 2002. The Council's Resolutions of 3 June 2002 on skills and mobility ⁽⁶⁾ and of 27 June 2002 on lifelong learning ⁽⁷⁾ call for increased cooperation, with a view inter alia to creating a framework for transparency and recognition based on the existing instruments.

- (3) The Council Resolution of 19 December 2002 on the promotion of enhanced European cooperation in vocational education and training ⁽⁸⁾ called for action to increase transparency in vocational education and training, through the implementation and rationalisation of information tools and networks, including the integration of existing instruments into one single framework. This framework should consist in a portfolio of documents with a common brand name and a common logo, supported by adequate information systems and promoted through sustained promotional action at European and national level.

- (4) A number of instruments have been developed in recent years, both at Community and at international level, to help European citizens to communicate better their qualifications and competences when looking for a job or for admission to a learning scheme. These include the common European format for curricula vitae (CVs) proposed by Commission Recommendation 2002/236/EC of 11 March 2002 ⁽⁹⁾, the Diploma Supplement recommended by the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, adopted at Lisbon on 11 April 1997, the Europass Training established by Council Decision 1999/51/EC of 21 December 1998 on the promotion of European pathways in work-linked training, including apprenticeship ⁽¹⁰⁾, the Certificate Supplement and the European Language Portfolio developed by the Council of Europe. The single framework should include these instruments.

- (5) The single framework should be open to the future inclusion of other documents consistent with its purpose, once the implementation structure and procedures have been established and are operational. In particular, the single framework could be widened subsequently to include an instrument aimed at recording its holders' competences in the field of information technology.

- (6) Provision of good quality information and guidance is an important factor in achieving improved transparency of qualifications and competences. The existing services and networks already play a valuable role that could be enhanced through closer cooperation in order to reinforce the added value of Community action.

⁽¹⁾ OJ C 117, 30.4.2004, p. 12.

⁽²⁾ OJ C 121, 30.4.2004, p. 10.

⁽³⁾ Opinion of the European Parliament of 22 April 2004 (not yet published in the Official Journal), Council Common Position of 21 October 2004 (not yet published in the Official Journal) and Position of the European Parliament of 14 December 2004 (not yet published in the Official Journal).

⁽⁴⁾ OJ C 371, 23.12.2000, p. 4.

⁽⁵⁾ OJ L 215, 9.8.2001, p. 30.

⁽⁶⁾ OJ C 162, 6.7.2002, p. 1.

⁽⁷⁾ OJ C 163, 9.7.2002, p. 1.

⁽⁸⁾ OJ C 13, 18.1.2003, p. 2.

⁽⁹⁾ OJ L 79, 22.3.2002, p. 66.

⁽¹⁰⁾ OJ L 17, 22.1.1999, p. 45.

(7) It is therefore necessary to ensure coherence and complementarity between the actions implemented in pursuance of this Decision and other relevant policies, instruments and actions. The last-mentioned include, at Community level, the European Centre for the Development of Vocational Training (Cedefop) established by Council Regulation (EEC) No 337/75 ⁽¹⁾, the European Training Foundation established by Council Regulation (EEC) No 1360/90 ⁽²⁾ and the European Employment Services network (EURES) established by Commission Decision 2003/8/EC of 23 December 2002 implementing Council Regulation (EEC) No 1612/68 as regards the clearance of vacancies and applications for employment ⁽³⁾. Likewise, at the international level, there is the European Network of National Information Centres on Academic Recognition (ENIC), established by the Council of Europe and Unesco.

(8) The Europass training document, established by Decision 1999/51/EC, should therefore be replaced by a similar document with a wider scope, serving to record all periods of transnational mobility for learning purposes, at whatever level and for whatever target, achieved throughout Europe, which satisfy appropriate quality criteria.

(9) Europass should be implemented through national bodies in compliance with Article 54(2)(c) and (3) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁴⁾.

(10) Participation should be open to acceding States, to non-Community countries of the European Economic Area and to the candidate countries for accession to the European Union, in accordance with the relevant provisions in the instruments governing relations between the Community and those countries. Third country nationals resident in the European Union should also be able to benefit from the system.

(11) Social partners play an important role in relation to this Decision, and should be involved in its implementation. The Advisory Committee for Vocational Training set up by Council Decision 63/266/EEC of 2 April 1963 laying down general principles for implementing a common vocational training policy ⁽⁵⁾, composed of representatives of the social partners and of the national authorities of Member States, should be regularly informed on the implementation of this Decision. The social partners at European level and other relevant stakeholders, including education and training bodies, will have a particular role

in terms of transparency initiatives that could be incorporated into Europass in due course.

(12) Since the objective of this Decision, namely the establishment of a single Community framework for the transparency of qualifications and competences cannot be sufficiently achieved by the Member States and can 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, this Decision does not go beyond what is necessary in order to achieve that objective.

(13) The measures necessary for the implementation of this Decision 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 ⁽⁶⁾.

(14) Decision 1999/51/EC should be repealed,

HAVE ADOPTED THIS DECISION:

Article 1

Subject-matter and scope

This Decision establishes a single Community framework for achieving the transparency of qualifications and competences by means of the creation of a personal, coordinated portfolio of documents, to be known as 'Europass', which citizens can use on a voluntary basis to better communicate and present their qualifications and competences throughout Europe. The use of Europass or of any of the Europass documents shall not impose any obligations or confer any rights other than those defined in this Decision.

Article 2

Europass documents

The Europass documents shall be:

- (a) the Europass-curriculum vitae (hereafter 'the Europass-CV') referred to in Article 5;
- (b) the documents referred to in Articles 6 to 9;
- (c) any other documents approved as Europass documents by the Commission, in accordance with the criteria laid out in Annex I, and the procedure referred to in Article 4(2).

⁽¹⁾ OJ L 39, 13.2.1975, p. 1. Regulation as last amended by Regulation (EC) No 1655/2003 (OJ L 245, 29.9.2003, p. 41).

⁽²⁾ OJ L 131, 23.5.1990, p. 1. Regulation as last amended by Regulation (EC) No 1648/2003 (OJ L 245, 29.9.2003, p. 22).

⁽³⁾ OJ L 5, 10.1.2003, p. 16.

⁽⁴⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁵⁾ OJ 63, 20.4.1963, p. 1 338.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

*Article 3***Social partners**

Without prejudice to the procedure referred to in Article 4(2), the Commission shall consult the social partners and other relevant stakeholders at European level, including education and training bodies.

*Article 4***Committee procedure**

1. For the purposes of Article 2(c), the Commission shall be assisted, depending on the nature of the document concerned, by the Socrates Committee and/or by the Leonardo Committee, established by Decision No 253/2000/EC of the European Parliament and of the Council of 24 January 2000 establishing the second phase of the Community action programme in the field of education 'Socrates' ⁽¹⁾ and by Council Decision 1999/382/EC of 26 April 1999 establishing the second phase of the Community vocational training action programme 'Leonardo da Vinci' ⁽²⁾ respectively.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 5***Europass-CV**

The Europass-CV shall provide citizens with the opportunity to present in a clear and comprehensive way information on all their qualifications and competences. The Europass-CV shall be as set out in Annex II.

*Article 6***Europass-Mobility**

The Europass-Mobility shall record periods of learning attended by its holders in countries other than their own. The Europass-Mobility shall be as set out in Annex III.

*Article 7***Europass-Diploma Supplement**

The Europass-Diploma Supplement shall provide information on its holder's educational achievements at higher education level. The Europass-Diploma Supplement shall be as set out in Annex IV.

*Article 8***Europass-Language Portfolio**

The Europass-Language Portfolio shall provide citizens with the opportunity to present their language skills. The Europass-Language Portfolio shall be as set out in Annex V.

*Article 9***Europass-Certificate Supplement**

The Europass-Certificate Supplement shall describe the competences and qualifications corresponding to a vocational training certificate. The Europass-Certificate Supplement shall be as set out in Annex VI.

*Article 10***Europass in the Internet**

In order to implement this Decision, the Commission and the relevant national authorities shall cooperate in setting up and managing a Europass Internet-based information system, which shall include elements managed at Community level and elements managed at national level. The information system supporting the Europass framework shall be as set out in Annex VII.

*Article 11***National Europass Centres**

1. Each Member State shall be responsible for the implementation of this Decision at national level. For this purpose, each Member State shall designate a National Europass Centre (NEC), which shall be responsible for the coordination at national level of all activities referred to in this Decision and which shall replace or develop, where appropriate, existing bodies currently carrying out similar activities.

A European network of NECs is hereby established. Its activities shall be coordinated by the Commission.

2. The NEC shall:

- (a) coordinate, in cooperation with the relevant national bodies, the activities related to making available or issuing the Europass documents or, where appropriate, carry out these activities;
- (b) set up and manage the national information system, in accordance with Article 10;
- (c) promote the use of Europass, including through Internet based services;
- (d) ensure, in cooperation with the relevant national bodies, that adequate information and guidance on the Europass and its documents is made available to individual citizens;
- (e) facilitate the provision of information and guidance on learning opportunities throughout Europe, on the structure of education and training systems, and on other issues related to mobility for learning purposes, in particular through close coordination with relevant Community and national services, and, where appropriate, make available to citizens an introductory guide to mobility;

⁽¹⁾ OJ L 28, 3.2.2000, p. 1. Decision as last amended by Council Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

⁽²⁾ OJ L 146, 11.6.1999, p. 33. Decision as last amended by Regulation (EC) No 885/2004.

- (f) manage at national level the Community financial support for all activities related to this Decision;
 - (g) participate in the European network of NECs.
3. The NEC shall act as an implementation body at national level in accordance with Article 54(2)(c) and (3) of Regulation (EC, Euratom) No 1605/2002.

Article 12

Commission's and Member States' joint tasks

The Commission and the Member States shall:

- (a) ensure that adequate promotion and information activities are carried out at Community and national level, covering inter alia citizens, education and training providers and social partners and enterprises including SMEs, supporting and integrating as necessary the action of the NECs;
- (b) ensure adequate cooperation, at the appropriate level, with relevant services, in particular the EURES service and other Community services;
- (c) take steps to facilitate equal opportunities, in particular by raising awareness among all relevant actors;
- (d) ensure that all relevant stakeholders, including education and training bodies and social partners, are involved in the implementation of this Decision;
- (e) ensure that in all activities related to the implementation of this Decision the relevant Community and national provisions concerning the processing of personal data and the protection of privacy are fully respected.

Article 13

Commission tasks

1. The Commission shall, in cooperation with the Member States, ensure the overall consistency of the actions implemented in pursuance of this Decision with other relevant Community policies, instruments and actions, in particular in the fields of education, vocational training, youth, employment, social inclusion, research and technological development.
2. The Commission shall secure the expertise of the European Centre for the Development of Vocational Training (Cedefop) in implementing this Decision, in accordance with Regulation (EEC) No 337/75. Subject to the same conditions and in the relevant areas, coordination shall be established under the auspices of the Commission with the European Training Foundation as set out by Regulation (EEC) No 1360/90.
3. The Commission shall regularly inform the European Parliament and the Council, as well as other relevant bodies, and in particular the Advisory Committee on Vocational Training, on the implementation of this Decision.

Article 14

Participating countries

1. Participation in the activities referred to in this Decision shall be open to acceding States and to non-Community countries of the European Economic Area in accordance with the conditions laid down in the EEA Agreement.
2. Participation shall also be open to the candidate countries for accession to the European Union in accordance with their respective Europe Agreements.

Article 15

Evaluation

By 1 January 2008 and then every four years, the Commission shall submit to the European Parliament and the Council an evaluation report on the implementation of this Decision, based on an evaluation carried out by an independent body.

Article 16

Financial provisions

The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective. The expenditure resulting from this Decision shall be managed as set out in Annex VIII.

Article 17

Repeal

Decision 1999/51/EC is hereby repealed.

Article 18

Entry into force

This Decision shall enter into force on 1 January 2005.

Article 19

Addressees

This Decision is addressed to the Member States.

Done at Strasbourg, 15 December 2004

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
A. NICOLAI

ANNEX I

Criteria for the introduction of new Europass documents as referred to in Article 2(c)

All new Europass documents should respect the following minimum criteria:

1. Relevance: Europass documents should specifically aim at improving the transparency of qualifications and competences;
2. European dimension: without prejudice to their voluntary nature, Europass documents should potentially be applicable in all Member States;
3. Linguistic coverage: the models of Europass documents should be available at least in all the official languages of the European Union;
4. Feasibility: Europass documents should be fit for effective dissemination, where appropriate through awarding bodies, in both paper and electronic form.

ANNEX II

THE EUROPASS-CURRICULUM VITAE (EUROPASS-CV)**1. Description**

1.1. The Europass-CV builds upon the common European format for curricula vitae (CVs) proposed by Recommendation 2002/236/EC.

It provides individual citizens with a model for the systematic, chronological and flexible presentation of their qualifications and competences. Specific directions on the different fields are provided and a set of guidelines and examples has also been produced to help citizens to complete the Europass-CV.

1.2. The Europass-CV includes categories for the presentation of:

- information on personal matters, language proficiency, work experience and educational and training attainments,
- additional competences held by the individual, emphasising technical, organisational, artistic and social skills,
- additional information which might be added to the Europass-CV in the form of one or more annexes.

1.3. The Europass-CV is a personal document, which contains self declarations written by individual citizens.

1.4. The template is quite detailed, but it will be up to the individual citizens to choose which fields to fill. Citizens who complete the electronic form – either downloaded or on line – should be allowed to remove any field which they choose not to complete. For instance, a person who does not indicate his or her sex or who has no specific technical skill to report, should be allowed to remove these fields, so that no blank field appears on the screen or in the printed version.

1.5. The Europass-CV is the backbone of the Europass: a Europass portfolio for a given citizen will include the Europass-CV completed by the citizen himself or herself, and one or more other Europass documents, according to the specific learning and working history of that citizen. The electronic form of the Europass-CV should make it possible to establish links from its sections to the relevant Europass documents, for instance from the education and training section to a Diploma Supplement or a Certificate Supplement.

1.6. In accordance with Article 12(e) of this Decision, in managing the Europass-CV, particularly in its electronic form, appropriate measures should be taken by the competent authorities to ensure that the relevant Community and national provisions concerning the processing of personal data and the protection of privacy are fully respected.

2. Common structure of the Europass-CV

In the box below, the model for the structure and text of the Europass-CV is indicated. The layout of both the paper and the electronic form, as well as modifications of the structure and text, will be agreed between the Commission and the competent national authorities.

Text in italics is meant as an aid to completing the document.

(Europass logo)

EUROPASS-CURRICULUM VITAE

PERSONAL DATA

Individual citizens can choose which field to complete

Name SURNAME, other name(s)

Address House number, street name, postcode, city, country

Telephone

Fax

E-mail

Nationality

Date of birth Day, month, year

Sex

OCCUPATIONAL PROFILE

WORK EXPERIENCE

- Dates (from – to) *Add separate entries for each relevant post occupied, starting with the most recent.*
- Name and address of employer
- Type of business or sector
- Occupation or position held
- Main activities and responsibilities

EDUCATION AND TRAINING

- Dates (from – to) *Add separate entries for each relevant course you have completed, starting with the most recent.*
- Name and type of organisation providing education and training
- Principal subjects/occupational skills covered
- Title of qualification awarded
- Level in national classification (if appropriate)

PERSONAL SKILLS AND COMPETENCES

Acquired in the course of life and career but not necessarily covered by formal certificates and diplomas.

Mother tongue:

Other languages:

- Understanding

Reading: *Indicate level: see instructions.*

Listening: *Indicate level: see instructions.*

- Speaking

Conversation: *Indicate level: see instructions.*

Presentation: *Indicate level: see instructions.*

- Writing: *Indicate level: see instructions.*

Social skills and competences

Living and working with other people, in positions where communication is important and situations where teamwork is essential (for example culture and sports), in multicultural environments, etc.

Describe these competences and indicate where they were acquired.

Organisational skills and competences

Coordination and administration of people, projects and budgets; at work, in voluntary work (for example culture and sports) and at home, etc.

Describe these competences and indicate where they were acquired.

Computer skills and competences

Word processing and other applications, database searching, acquaintance with Internet, advanced skills (programming etc.).

Describe these competences and indicate where they were acquired.

Technical skills and competences

With specific kinds of equipment, machinery, etc. other than computers.

Describe these competences and indicate where they were acquired.

Artistic skills and competences

Music, writing, design, etc.

Describe these competences and indicate where they were acquired.

Other skills and competences

Competences not mentioned above.

Describe these competences and indicate where they were acquired.

Driving licence(s)

State here whether you hold a driving licence and if so for which category of vehicle.

Additional information

Include here any other information that may be relevant, for example contact persons, references, etc.

Annexes

List any attached annexes.

ANNEX III

THE EUROPASS-MOBILITY

1. Description

1.1. The Europass-Mobility is meant to record, using a common European format, a European learning pathway as defined in section 1.2.

It is a personal document, recording the specific European learning pathway achieved by its holder and it will help the holder better to communicate what he/she gained through this experience, particularly in terms of competences.

1.2. A European learning pathway is a period that a person – of whatever age, educational level and occupational status – spends in another country for learning purposes and that:

- (a) either takes place within the framework of a Community programme in the field of education and training,
- (b) or satisfies all the following quality criteria:
 - the period spent in another country takes place within the framework of a learning initiative based in the country of provenance of the person that follows it,
 - the organisation responsible for the learning initiative in the country of provenance (sending organisation) stipulates with the host organisation and submits to the National Europass Centre, or a body delegated to manage the Europass-Mobility in the country of provenance, a written agreement on the content, objectives and duration of the European learning pathway, ensuring that appropriate linguistic preparation is provided to the person concerned, and identifying a mentor in the host country, charged with assisting, informing, guiding and monitoring the person concerned,
 - each of the countries involved should be a Member State of the European Union or an EFTA/EEA country,
 - where appropriate, the sending organisation and the host organisation cooperate in providing the person concerned with appropriate information about workplace health and safety, labour law, equality measures and other work-related provisions applying in the host country.

1.3. The Europass-Mobility is completed by the sending and host organisation involved in the mobility project, in a language agreed between them and the person concerned.

Citizens who are awarded a Europass-Mobility are entitled to ask for a translation in a second language, chosen by them from amongst the languages of the sending and host organisations or a third European language. In the case of a third language, the responsibility for translation rests with the sending organisation.

1.4. The Europass-Mobility includes personal data (see paragraph 2 below). The name of the person who is awarded the Europass-Mobility is the only compulsory piece of personal data. The organisations completing the Europass-Mobility may only complete the other fields concerning personal data if the person concerned agrees to it.

The field 'Qualification' is also not compulsory, in recognition of the fact that not all education or training initiatives lead to a formal qualification.

Any arrangement for completing the Europass-Mobility in electronic form – either downloaded or on line – should allow any field, which has not been completed to be removed, so that no blank field appears on the screen or in the printed version.

1.5. The National Europass Centre is responsible for ensuring that:

- Europass-Mobility documents are only released to record European learning pathways,
- all Europass-Mobility documents are completed in electronic form,
- all Europass-Mobility documents are also awarded to their holders in paper form, using a folder specifically produced in cooperation with the Commission.

1.6. In accordance with Article 12(e) of this Decision, in managing the Europass-Mobility, particularly in its electronic form, appropriate measures should be taken by the competent authorities to ensure that the relevant Community and national provisions concerning the processing of personal data and the protection of privacy are fully respected.

2. Common format of the Europass-Mobility

In the box below, the structure and the text of the Europass-Mobility are indicated. The layout of both the paper and the electronic forms, as well as modifications of the structure and text, will be agreed between the Commission and the competent national authorities.

Each item of text is numbered, to facilitate its retrieval in a multilingual glossary. Text in italics is meant as an aid to completing the document. Fields marked with a star (*) are not compulsory.

(Europass logo)

EUROPASS-MOBILITY

- (1) This Europass-Mobility is awarded to
- (2) *first name and surname of the holder*
- (3) by
- (4) *organisation responsible for organising the learning initiative in the country of provenance*
- (5) on date *dd/mm/yyyy*
- (6) Signature/stamp (signature and stamp of the organisation awarding the document)

(7) PERSONAL DATA ON THE HOLDER

- (8) Surname
- (9) First name / Other names
- (10) Signature
- (11) * Address House number, street name, postcode, city, country
- (12) * Contact e.g. e-mail, telephone
- (13) * Date of birth *dd/mm/yyyy*
- (14) * Nationality
- (15) * *Space for photograph*

(16) EUROPEAN LEARNING PATHWAY

- (17) Education or training initiative followed in the course of which the European pathway was completed
- (18) * *Qualification diploma, title or other certificate to which the learning initiative leads, if any*
- (19) Duration of the European pathway
- (20) From *dd/mm/yyyy* to *dd/mm/yyyy*
- (21) Details of the host partner
- (22) Name and function of the mentor
- (23) Content of the European pathway.
- (24) *This section should provide relevant details, as appropriate, of the education or training followed or the work experience acquired during the European pathway and, where appropriate, the skills and competences acquired and the method of assessment.*

(25) *The description should highlight how the European pathway improved:*

- *the acquaintance of the holder with the technical skills and competences specifically related to the particular subject field of his/her education or training initiative;*
- *the holder's language skills;*
- *the holder's social skills and competences, including in particular those relating to intercultural experiences;*
- *the holder's organisational skills and competences;*
- *any other skills and competences of the holder.*

- (26) Signatures of the host partner and the holder.

ANNEX IV

THE EUROPASS-DIPLOMA SUPPLEMENT**1. Description**

1.1. The Europass-Diploma Supplement (DS) is a document attached to a higher education diploma, in order to make it easier for third persons – particularly persons in another country – to understand what the diploma means in terms of knowledge and competences acquired by its holder.

To this end, the DS describes the nature, level, context, content and status of the studies that were pursued and successfully completed by the individual who holds the original diploma to which the DS is attached. It is therefore a personal document, referring to its specific holder.

1.2. The DS does not replace the original diploma and does not give any entitlement to formal recognition of the original diploma by academic authorities of other countries. On the other hand, it facilitates a sound appreciation of the original diploma, so that it can be helpful to obtain recognition by the competent authorities or by admission staff of higher education institutions.

1.3. The DS is produced by the competent national authorities in accordance with a template that has been developed by a joint European Commission – Council of Europe – UNESCO working party that tested and refined it. The DS template is available in the official languages of the European Union. It is a flexible, non-prescriptive tool, which is conceived for practical purposes, can be adapted to local needs and is subject to regular revisions.

1.4. The DS includes eight sections, that identify the holder of the qualification (1) and the qualification itself (2), give information on the level of the qualification (3), the contents and results gained (4), and the function of the qualification (5), allow for further information (6), certify the Supplement (7) and, finally, give information on the national higher education system (8). Information in all eight sections should be provided. Where information is not provided, an explanation should be given. Institutions have to apply to the DS the same authentication procedures as for the qualification itself.

1.5. In accordance with Article 12(e) of this Decision, in managing the DS, particularly in its electronic copy, appropriate measures should be taken by the competent authorities to ensure that the relevant Community and national provisions concerning the processing of personal data and the protection of privacy are fully respected.

2. Common structure of the DS

In the box below, the common, non-binding model of structure and text of the DS is indicated. The layout of both the paper and electronic copies will be agreed with the competent national authorities.

(Europass logo)

DIPLOMA SUPPLEMENT

- | | |
|---------|---|
| 1. | Information identifying the holder of the qualification |
| 1.1/1.2 | Family Name / First Name: |
| 1.3 | Date, Place, Country of Birth: |
| 1.4 | Student Number or Code: |
| 2. | Information identifying the qualification |
| 2.1 | Name of Qualification (Full, Abbreviated):
Name of Title (Full, Abbreviated): |
| 2.2 | Main Field(s) of Study for the Qualification: |
| 2.3 | Name of Institution Awarding Qualification: |
| 2.4 | Name of Institution Administering Studies: |
| 2.5 | Language(s) of Instruction/Examination: |
| 3. | Information on the level of the qualification |
| 3.1 | Level of Qualification: |
| 3.2 | Official Length of Programme: |
| 3.3 | Access Requirement(s): |
| 4. | Information on the contents and results gained |
| 4.1 | Mode of Study: |
| 4.2 | Programme Requirements: |
| 4.3 | Programme Details: |
| 4.4 | Grading Scheme, grade distribution guidance |
| 4.5 | Overall Classification: |
| 5. | Information on the function of the qualification |
| 5.1 | Access to Further Study: |
| 5.2 | Professional Status: |
| 6. | Additional information |
| 6.1 | Additional Information: |
| 6.2 | Additional Information Sources: |
| 7. | Certification of the supplement
This Diploma Supplement refers to the following original Documents:
Official stamp or seal: |
| 8. | Information on the national higher education system: |
| 8.1 | Types of Institutions and Institutional Control: |
| 8.2 | Types of programmes and degrees awarded: |
| 8.3 | Approval/Accreditation of Programmes and Degrees: |
| 8.4 | Organisation Studies: |
| 8.4.1 | Integrated "Long" (one-Tier-) Programmes: (Diploma degrees, Magister Artium, Staatsprüfung): |
| 8.4.2 | First/Second Degree Programmes (Two-tier): (Bakkalaureus/Bachelor - Magister /Master degrees): |
| 8.5 | Specialised Graduate Studies: |
| 8.6 | Doctorate: |
| 8.7 | Grading Scheme: |
| 8.8 | Access to Higher Education: |
| 8.9 | National Sources of Information: |

ANNEX V

THE EUROPASS-LANGUAGE PORTFOLIO

1. Description

1.1. The Europass-Language Portfolio (LP), developed by the Council of Europe, is a document in which language learners can record their language learning and cultural experiences and competences.

1.2. The LP has two functions: pedagogic and reporting.

As regards the former, it is designed to enhance the motivation of language learners to improve their ability to communicate in different languages and to pursue new learning and intercultural experiences. It seeks to help learners to reflect on their learning objectives, plan their learning and learn autonomously.

As regards its reporting function, the LP aims to document its holder's language proficiency in a comprehensive, informative, transparent and reliable way. It helps learners take stock of the levels of competence they have reached in one or several foreign languages and enables them to inform others in a detailed and internationally comparable manner. All competence is valued, regardless of whether it is gained inside or outside the ambit of formal education.

1.3. The LP contains:

- a language passport which its owner regularly updates. The owner describes his/her language skills, in accordance with common criteria accepted throughout Europe,
- a detailed language biography describes the owner's experiences in each language,
- a dossier enables examples of personal work to be kept to illustrate language skills.

The Europass-Language Portfolio is the property of the learner.

1.4. A set of common principles and guidelines has been agreed for all Portfolios. Different models are being developed in Council of Europe member States depending on the age of learners and national contexts. All models should conform to agreed principles and be approved by the European Validation Committee in order to use the Council of Europe logo. A model is given below for the language passport, which is the section of the Portfolio which has to be completed in accordance with a defined structure.

1.5. In accordance with Article 12(e) of this Decision, in managing the LP, particularly in its electronic form, appropriate measures should be taken by the competent authorities to ensure that the relevant Community and national provisions concerning the processing of personal data and the protection of privacy are fully respected.

2. Common structure of the Language Passport section of the LP

In the box below, the common, non-binding model of structure and text of the Language Passport section of the LP is indicated. The layout of the paper and electronic copies will be agreed with the competent national authorities.

(Europass logo)

LANGUAGE PASSPORT

Profile of Language Skills

Mother tongue(s): *[indicate]*

Language:	Writing	Spoken interaction	Spoken production	Reading	Listening
Self-assessment					

(To be repeated as many times as necessary.)

Summary of language learning and intercultural experiences

Language learning and use in country/region where the language is not spoken

Language:	Up to 1 year	Up to 3 years	Up to 5 years	Over 5 years
Primary/ secondary/ vocational education				
Higher education				
Adult education				
Other courses				
Regular use in the workplace				
Regular contact with speakers of the language				
Other				

Further information on language and intercultural experiences:

(To be repeated as many times as necessary.)

Stays in a region where the language is spoken

Language:	Up to 1 month	Up to 3 months	Up to 5 months	Over 5 months
Using the language for study or training				
Using the language at work				
Other				

Further information on language and intercultural experiences:

Certificates and diplomas

Language: Level:

Title:

Awarded by:

Year:

(To be repeated as many times as necessary.)

ANNEX VI

THE EUROPASS-CERTIFICATE SUPPLEMENT

1. Description

1.1. The Europass-Certificate Supplement (CS) is a document attached to a vocational certificate, in order to make it easier for third persons – particularly persons in another country – to understand what the certificate means in terms of competences acquired by its holder.

To this end, the CS provides information on:

- the skills and competences acquired,
- the range of occupations accessible,
- the awarding and accreditation bodies,
- the level of the certificate,
- the different ways of acquiring the certificate,
- the entry requirements and access opportunities to next level education.

1.2. The CS does not replace the original certificate and does not give any entitlement to formal recognition of the original certificate by authorities of other countries. On the other hand, it facilitates a sound appreciation of the original certificate, so that it can be helpful to obtain recognition by the competent authorities.

1.3. CS's are produced by the competent authorities at national level and issued to citizens who hold the corresponding certificate in accordance with procedures agreed at national level.

2. Common structure of the CS

In the box below, the common model of structure and text of the CS is indicated. The layout of both the paper and the electronic form will be agreed, as well as any modifications of the structure and text, between the Commission and the competent national authorities.

(Europass logo)

CERTIFICATE SUPPLEMENT

1. Title of the certificate (in the original language):
 2. Translated title of the certificate (this translation has no legal status):
 3. Profile of skills and competences:
 4. Range of occupations accessible to the holder of the certificate (if applicable):
-
5. Official basis of the certificate
 - Name and status of the body awarding the certificate:
 - Name and status of the national/regional/sectoral authority providing accreditation/recognition of the certificate:
 - Level of the certificate (national or international):
 - Grading scale / Pass requirements:
 - Access to next level of education/training:
 - International agreements:
 - Legal basis of the certificate:
 6. Officially recognised ways of acquiring the certificate:
 - (A) Description of vocational education and training received:
 - School-/training centre-based:
 - Workplace-based:
 - Accredited prior learning:
 - (B) Percentage of total programme (%):
 - (C) Duration (hours/weeks/months/years):
 - Total duration of the education/ training leading to the certificate:
-
- Entry / access requirements:
 - Additional information:
 - Further information (including a description of the national qualifications system) available at: www.

ANNEX VII

INFORMATION SYSTEM

The Commission and the Member States will cooperate to ensure that the individual citizens are allowed to complete, through the Internet, their Europass-CV and any other Europass document which does not need to be issued by authorised bodies.

All Europass documents issued by authorised bodies are completed in electronic form and made available to their holders. While choices concerning the appropriate technological instrument should be made in cooperation by the Commission and the relevant national authorities taking into account the state of the art and the existing national systems, the features listed below should be ensured.

1. Design principles

Open system. The Europass information system should be developed taking into account the opportunity for future developments, with particular reference to the inclusion of further documents in the Europass framework and to integration with information services on job and learning opportunities.

Interoperability. The parts of the Europass information system managed at national level in the different countries should be fully interoperable with each other and with the parts managed at Community level.

2. Document management and access

2.1. All Europass documents issued by authorised bodies should be completed in electronic form, in accordance with the procedures agreed between the issuing bodies and the National Europass Centre and in conformity with the procedures agreed at European level.

2.2. The Europass-CV and any other Europass document which does not need to be issued by authorised bodies should also be available in electronic form.

2.3. Citizens will be entitled:

- to complete through the Internet their Europass-CV and any other Europass document which does not need to be issued by authorised bodies,
- to establish, update and remove links between their Europass-CV and their other Europass documents,
- to attach any other supporting documents to their Europass documents,
- to print totally or partially their Europass and its annexes, if any.

2.4. Access to documents, including personal data, will be allowed only for the person concerned, in conformity with the relevant Community and national provisions concerning the processing of personal data and the protection of privacy.

ANNEX VIII

FINANCIAL ANNEX

1. The expenditure is intended to co-finance implementation at national level and to cover certain costs incurred at Community level in relation to coordination, promotion and production of documents.

2. Community financial support for national implementation activities will be provided through yearly operating grants to the National Europass Centre.

National Europass Centres will be established as legal persons and will not receive any other operating grant from the Community budget.

2.1. The grants will be awarded after approval of a work programme related to the activities listed in Article 11 of this Decision and based on specific terms of reference.

2.2. The co-financing rate will not exceed 50 % of the total costs of the relevant activities.

2.3. In implementing this Decision, the Commission may have recourse to experts and to technical assistance organisations, the financing of which may be provided for within the overall financial framework for this Decision. The Commission may organise seminars, colloquia or such other meetings of experts as are likely to facilitate the implementation of this Decision, and may undertake appropriate information, publication and dissemination actions.

COUNCIL REGULATION (EC) No 2242/2004

of 22 December 2004

amending Regulation (EC) No 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181a(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) Community action to promote human rights and democratic principles as set out in the Communication of 8 May 2001 from the Commission to the European Parliament and the Council on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries shall continue beyond 2004. Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms ⁽²⁾ and Regulation (EC) No 976/1999 ⁽³⁾ proved to be adequate legal instruments for the implementation of the Community's technical and financial support for human rights and democratisation activities in developing and other third countries in pursuit of the overall objectives in this field. The period of validity of those Regulations, however, expires on 31 December 2004. It is, therefore, necessary to extend that period.

(2) On the basis of the ratio of the financial reference amount included in Regulation (EC) No 976/1999 and the indicative human rights and democratisation appropriations until 2006, an extended financial reference

amount, within the meaning of point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁴⁾, is inserted in this Regulation for the extended duration of the programme, without the powers of the budgetary authority as defined by the Treaty being affected thereby.

(3) The provisions of Regulation (EC) No 976/1999 on procedures for the implementation of aid should be aligned with the legal requirements of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁵⁾ in the implementation of EU Election Observation Missions.

(4) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of Regulation (EC) No 976/1999. In particular, agreements and contracts concluded pursuant to that Regulation should authorise the Commission to carry out the measures provided for in Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁶⁾.

(5) The measures necessary for the implementation of Regulation (EC) No 976/1999 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 ⁽⁷⁾.

(6) Regulation (EC) No 976/1999 should be amended accordingly,

⁽¹⁾ Opinion of 16 december 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 120, 8.5.1999, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 120, 8.5.1999, p. 8. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

⁽⁴⁾ OJ C 172, 18.6.1999, p. 1. Interinstitutional Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽⁵⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁶⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁷⁾ OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

In particular situations, specific measures not covered by an annual work programme may be approved.

Article 1

Regulation (EC) No 976/1999 is hereby amended as follows:

1) in Article 3(2), the following point shall be added:

‘(h) supporting efforts to foster the establishment of groupings of democratic countries within United Nations bodies, specialised agencies and regional organisations.’;

2) in Article 5(1), the following sentence shall be added:

‘In the case of EU Election Observation Missions and “amicus curiae” proceedings, natural persons shall be eligible for financing under this Regulation.’;

3) in Article 6, the first sentence shall be replaced by the following:

‘To be eligible for Community aid, the partners referred to in Article 5(1), first sentence, must have their main headquarters in a third country eligible for Community aid under this Regulation or in a Member State of the Community.’;

4) Article 8(3) shall be replaced by the following:

‘3. Community financing under this Regulation shall take the form of grants or contracts. Within the framework of operations under Article 2 members of EU Election Observation Missions paid from the human rights and democratisation appropriations shall be recruited in accordance with the procedures laid down by the Commission.’;

5) in Article 11, the first paragraph shall be replaced by the following:

‘The financial reference amount for the implementation of this Regulation during the period 2005 to 2006 shall be EUR 78 million.’;

6) Articles 12 and 13 shall be replaced by the following:

‘Article 12

1. The Commission shall adopt a framework for the programming and identification of Community activities.

The framework shall consist, in particular, of:

- (a) multiannual indicative programmes and annual updates of these programmes,
- (b) annual work programmes.

2. The Commission shall produce an annual report setting out programming for the coming year by region and by sector, and shall report back on implementation to the European Parliament.

The Commission shall be responsible for managing and adapting, in conformity with this Regulation and according to the requirements of flexibility, the annual work programmes that were defined in the overall framework of the multiannual setting. The decisions made shall reflect the priorities and main concerns of the European Union for the consolidation of democracy, the rule of law and respect for human rights, and shall be determined by the unique nature of the programmes. The Commission shall keep the European Parliament fully informed of the proceedings.

3. The Commission shall implement Community operations under this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down in Regulation (EC, Euratom) No 1605/2002.

Article 13

1. The instruments referred to in Article 12(1) shall be adopted in accordance with the procedure referred to in Article 14(2).

In cases where the amendments to the annual work programmes referred to in Article 12(1)(b) do not exceed 20 % of the global amount allocated to them or do not substantially change the nature of the projects or programmes contained therein, those amendments shall be adopted by the Commission. It shall inform the committee referred to in Article 14(1).

2. Without prejudice to Article 15, financing decisions on projects and programmes not covered by annual work programmes and exceeding EUR 1 million shall be adopted in accordance with the procedure referred to in Article 14(2).’;

7) Article 14(2) shall be replaced by the following:

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

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 30 days.

(*) OJ L 184, 17.7.1999, p. 23.;

8) in Article 16, the second sentence shall be deleted;

9) Article 18 shall be replaced by the following:

'Article 18

Any agreement or contract concluded pursuant to this Regulation shall expressly provide for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors

and subcontractors who have received Community funds. Regulation (Euratom, EC) No 2185/96 (*) shall apply.

(*) OJ L 292, 15.11.1996, p. 2.;

10) in Article 21, in the second paragraph, the date '31 December 2004' shall be replaced by the date '31 December 2006'.

Article 2

This Regulation shall enter into force on 1 January 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 December 2004.

For the Council

The President

C. VEERMAN

DIRECTIVE 2004/108/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 December 2004
on the approximation of the laws of the Member States relating to electromagnetic compatibility
and repealing Directive 89/336/EEC
(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 Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Council Directive 89/336/EEC of 3 May 1989 on the approximation of laws of the Member States relating to electromagnetic compatibility ⁽³⁾ has been the subject of a review under the initiative known as Simpler Legislation for the Internal Market (SLIM). Both the SLIM process and a subsequent in-depth consultation have revealed the need to complete, reinforce and clarify the framework established by Directive 89/336/EEC.

(2) Member States are responsible for ensuring that radio-communications, including radio broadcast reception and the amateur radio service operating in accordance with International Telecommunication Union (ITU) radio regulations, electrical supply networks and telecommunications networks, as well as equipment connected thereto, are protected against electromagnetic disturbance.

(3) Provisions of national law ensuring protection against electromagnetic disturbance should be harmonised in order to guarantee the free movement of electrical and electronic apparatus without lowering justified levels of protection in the Member States.

(4) Protection against electromagnetic disturbance requires obligations to be imposed on the various economic operators. Those obligations should be applied in a fair and effective way in order to achieve such protection.

(5) The electromagnetic compatibility of equipment should be regulated with a view to ensuring the functioning of the internal market, that is to say, of an area without internal frontiers in which the free movement of goods, persons, services and capital is assured.

(6) The equipment covered by this Directive should include both apparatus and fixed installations. However, separate provision should be made for each. This is so because, whereas apparatus as such may move freely within the Community, fixed installations on the other hand are installed for permanent use at a predefined location, as assemblies of various types of apparatus and, where appropriate, other devices. The composition and function of such installations correspond in most cases to the particular needs of their operators.

(7) Radio equipment and telecommunications terminal equipment should not be covered by this Directive since they are already regulated by Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ⁽⁴⁾. The electromagnetic compatibility requirements in both Directives achieve the same level of protection.

(8) Aircraft or equipment intended to be fitted into aircraft should not be covered by this Directive, since they are already subject to special Community or international rules governing electromagnetic compatibility.

(9) This Directive need not regulate equipment which is inherently benign in terms of electromagnetic compatibility.

(10) This Directive should not deal with the safety of equipment, since that is dealt with by separate Community or national legislation.

(11) Where this Directive regulates apparatus, it should refer to finished apparatus commercially available for the first time on the Community market. Certain components or sub-assemblies should, under certain conditions, be considered to be apparatus if they are made available to the end-user.

⁽¹⁾ OJ C 220, 16.9.2003, p. 13.

⁽²⁾ Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 29 November 2004.

⁽³⁾ OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

⁽⁴⁾ OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (12) The principles on which this Directive is based are those set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards⁽¹⁾. In accordance with that approach, the design and manufacture of equipment is subject to essential requirements in relation to electromagnetic compatibility. Those requirements are given technical expression by harmonised European standards, to be adopted by the various European standardisation bodies, European Committee for Standardisation (CEN), European Committee for Electro-technical Standardisation (CENELEC) and European Telecommunications Standards Institute (ETSI). CEN, CENELEC and ETSI are recognised as the competent institutions in the field of this Directive for the adoption of harmonised standards, which they draw up in accordance with the general guidelines for cooperation between themselves and the Commission, and with the procedure laid down in Directive 98/34/EC of the European Parliament 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⁽²⁾.
- (13) Harmonised standards reflect the generally acknowledged state of the art as regards electromagnetic compatibility matters in the European Union. It is thus in the interest of the functioning of the internal market to have standards for the electromagnetic compatibility of equipment which have been harmonised at Community level. Once the reference to such a standard has been published in the *Official Journal of the European Union*, compliance with it should raise a presumption of conformity with the relevant essential requirements, although other means of demonstrating such conformity should be permitted. Compliance with a harmonised standard means conformity with its provisions and demonstration thereof by the methods the harmonised standard describes or refers to.
- (14) Manufacturers of equipment intended to be connected to networks should construct such equipment in a way that prevents networks from suffering unacceptable degradation of service when used under normal operating conditions. Network operators should construct their networks in such a way that manufacturers of equipment liable to be connected to networks do not suffer a disproportionate burden in order to prevent networks from suffering an unacceptable degradation of service. The European standardisation organisations should take due account of that objective (including the cumulative effects of the relevant types of electromagnetic phenomena) when developing harmonised standards.
- (15) It should be possible to place apparatus on the market or put it into service only if the manufacturers concerned have established that such apparatus has been designed and manufactured in conformity with the requirements of this Directive. Apparatus placed on the market should bear the 'CE' marking attesting to compliance with this Directive. Although conformity assessment should be the responsibility of the manufacturer, without any need to involve an independent conformity assessment body, manufacturers should be free to use the services of such a body.
- (16) The conformity assessment obligation should require the manufacturer to perform an electromagnetic compatibility assessment of apparatus, based on relevant phenomena, in order to determine whether or not it meets the protection requirements under this Directive.
- (17) Where apparatus is capable of taking different configurations, the electromagnetic compatibility assessment should confirm whether the apparatus meets the protection requirements in the configurations foreseeable by the manufacturer as representative of normal use in the intended applications; in such cases it should be sufficient to perform an assessment on the basis of the configuration most likely to cause maximum disturbance and the configuration most susceptible to disturbance.
- (18) Fixed installations, including large machines and networks, may generate electromagnetic disturbance, or be affected by it. There may be an interface between fixed installations and apparatus, and the electromagnetic disturbances produced by fixed installations may affect apparatus, and vice versa. In terms of electromagnetic compatibility, it is irrelevant whether the electromagnetic disturbance is produced by apparatus or by a fixed installation. Accordingly, fixed installations and apparatus should be subject to a coherent and comprehensive regime of essential requirements. It should be possible to use harmonised standards for fixed installations in order to demonstrate conformity with the essential requirements covered by such standards.
- (19) Due to their specific characteristics, fixed installations need not be subject to the affixation of the 'CE' marking or to the declaration of conformity.
- (20) It is not pertinent to carry out the conformity assessment of apparatus placed on the market for incorporation into a given fixed installation, and otherwise not commercially available, in isolation from the fixed installation into which it is to be incorporated. Such apparatus should therefore be exempted from the conformity assessment procedures normally applicable to apparatus. However, such apparatus should not be permitted to compromise the conformity of the fixed installation into which it is incorporated. Should apparatus be incorporated into more than one identical fixed installation, identifying the electromagnetic compatibility characteristics of these installations should be sufficient to ensure exemption from the conformity assessment procedure.

⁽¹⁾ OJ C 136, 4.6.1985, p. 1.

⁽²⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

- (21) A transitional period is necessary in order to ensure that manufacturers and other concerned parties are able to adapt to the new regulatory regime.
- (22) Since the objective of this Directive, namely to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, 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, this Directive does not go beyond what is necessary in order to achieve that objective.
- (23) Directive 89/336/EEC should therefore be repealed,
- (c) radio equipment used by radio amateurs within the meaning of the Radio Regulations adopted in the framework of the Constitution and Convention of the ITU ⁽²⁾, unless the equipment is available commercially. Kits of components to be assembled by radio amateurs and commercial equipment modified by and for the use of radio amateurs are not regarded as commercially available equipment.
3. This Directive shall not apply to equipment the inherent nature of the physical characteristics of which is such that:
- (a) it is incapable of generating or contributing to electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and
- (b) it will operate without unacceptable degradation in the presence of the electromagnetic disturbance normally consequent upon its intended use.
4. Where, for the equipment referred to in paragraph 1, the essential requirements referred to in Annex I are wholly or partly laid down more specifically by other Community directives, this Directive shall not apply, or shall cease to apply, to that equipment in respect of such requirements from the date of implementation of those directives.
5. This Directive shall not affect the application of Community or national legislation regulating the safety of equipment.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive regulates the electromagnetic compatibility of equipment. It aims to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility. This Directive applies to equipment as defined in Article 2.
2. This Directive shall not apply to:
- (a) equipment covered by Directive 1999/5/EC;
- (b) aeronautical products, parts and appliances as referred to in Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾;

⁽¹⁾ OJ L 240, 7.9.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:
- (a) 'equipment' means any apparatus or fixed installation;
- (b) 'apparatus' means any finished appliance or combination thereof made commercially available as a single functional unit, intended for the end user and liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;
- (c) 'fixed installation' means a particular combination of several types of apparatus and, where applicable, other devices, which are assembled, installed and intended to be used permanently at a predefined location;
- (d) 'electromagnetic compatibility' means the ability of equipment to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances to other equipment in that environment;
- (e) 'electromagnetic disturbance' means any electromagnetic phenomenon which may degrade the performance of equipment. An electromagnetic disturbance may be electromagnetic noise, an unwanted signal or a change in the propagation medium itself;

⁽²⁾ Constitution and Convention of the International Telecommunication Union adopted by the Additional Plenipotentiary Conference (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994).

- (f) 'immunity' means the ability of equipment to perform as intended without degradation in the presence of an electromagnetic disturbance;
- (g) 'safety purposes' means the purposes of safeguarding human life or property;
- (h) 'electromagnetic environment' means all electromagnetic phenomena observable in a given location.

2. For the purposes of this Directive the following shall be deemed to be an apparatus within the meaning of paragraph 1(b):

- (a) 'components' or 'sub-assemblies' intended for incorporation into an apparatus by the end user, which are liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;
- (b) 'mobile installations' defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations.

Article 3

Placing on the market and/or putting into service

Member States shall take all appropriate measures to ensure that equipment is placed on the market and/or put into service only if it complies with the requirements of this Directive when properly installed, maintained and used for its intended purpose.

Article 4

Free movement of equipment

1. Member States shall not impede, for reasons relating to electromagnetic compatibility, the placing on the market and/or the putting into service in their territory of equipment which complies with this Directive.
2. The requirements of this Directive shall not prevent the application in any Member State of the following special measures concerning the putting into service or use of equipment:
 - (a) measures to overcome an existing or predicted electromagnetic compatibility problem at a specific site;
 - (b) measures taken for safety reasons to protect public telecommunications networks or receiving or transmitting stations when used for safety purposes in well-defined spectrum situations.

Without prejudice to Directive 98/34/EC, Member States shall notify those special measures to the Commission and to the other Member States.

The special measures which have been accepted shall be published by the Commission in the *Official Journal of the European Union*.

3. Member States shall not create any obstacles to the display and/or demonstration at trade fairs, exhibitions or similar events of equipment which does not comply with this Directive, provided that a visible sign clearly indicates that such equipment may not be placed on the market and/or put into service until it has been brought into conformity with this Directive. Demonstration may only take place provided that adequate measures are taken to avoid electromagnetic disturbances.

Article 5

Essential requirements

The equipment referred to in Article 1 shall meet the essential requirements set out in Annex I.

Article 6

Harmonised standards

1. 'Harmonised standard' means a technical specification adopted by a recognised European standardisation body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC for the purpose of establishing a European requirement. Compliance with a 'harmonised standard' is not compulsory.

2. The compliance of equipment with the relevant harmonised standards whose references have been published in the *Official Journal of the European Union* shall raise a presumption, on the part of the Member States, of conformity with the essential requirements referred to in Annex I to which such standards relate. This presumption of conformity is limited to the scope of the harmonised standard(s) applied and the relevant essential requirements covered by such harmonised standard(s).

3. Where a Member State or the Commission considers that a harmonised standard does not entirely satisfy the essential requirements referred to in Annex I, it shall bring the matter before the Standing Committee set up by Directive 98/34/EC (hereinafter 'the Committee'), stating its reasons. The Committee shall deliver an opinion without delay.

4. Upon receipt of the Committee's opinion, the Commission shall take one of the following decisions with regard to the references to the harmonised standard concerned:

- (a) not to publish;
- (b) to publish with restrictions;
- (c) to maintain the reference in the *Official Journal of the European Union*;
- (d) to withdraw the reference from the *Official Journal of the European Union*.

The Commission shall inform the Member States of its decision without delay.

CHAPTER II

APPARATUS

Article 7

Conformity assessment procedure for apparatus

Compliance of apparatus with the essential requirements referred to in Annex I shall be demonstrated by means of the procedure described in Annex II (internal production control). However, at the discretion of the manufacturer or of his authorised representative in the Community, the procedure described in Annex III may also be followed.

Article 8

'CE' marking

1. Apparatus whose compliance with this Directive has been established by means of the procedure laid down in Article 7 shall bear the 'CE' marking which attests to that fact. The affixing of the 'CE' marking shall be the responsibility of the manufacturer or his authorised representative in the Community. The 'CE' marking shall be affixed in accordance with Annex V.

2. Member States shall take the necessary measures to prohibit the affixing to the apparatus, or to its packaging, or to the instructions for its use, of marks which are likely to mislead third parties in relation to the meaning and/or graphic form of the 'CE' marking.

3. Any other mark may be affixed to the apparatus, its packaging, or the instructions for its use, provided that neither the visibility nor the legibility of the 'CE' marking is thereby impaired.

4. Without prejudice to Article 10, if a competent authority establishes that the 'CE' marking has been unduly affixed, the manufacturer or his authorised representative in the Community shall bring the apparatus into conformity with the provisions concerning the 'CE' marking under conditions imposed by the Member State concerned.

Article 9

Other marks and information

1. Each apparatus shall be identified in terms of type, batch, serial number or any other information allowing for the identification of the apparatus.

2. Each apparatus shall be accompanied by the name and address of the manufacturer and, if he is not established within the Community, the name and address of his authorised representative or of the person in the Community responsible for placing the apparatus on the Community market.

3. The manufacturer shall provide information on any specific precautions that must be taken when the apparatus is assembled, installed, maintained or used, in order to ensure that, when put into service, the apparatus is in conformity with the protection requirements set out in Annex I, point 1.

4. Apparatus for which compliance with the protection requirements is not ensured in residential areas shall be accompanied by a clear indication of this restriction of use, where appropriate also on the packaging.

5. The information required to enable apparatus to be used in accordance with the intended purpose of the apparatus shall be contained in the instructions accompanying the apparatus.

Article 10

Safeguards

1. Where a Member State ascertains that apparatus bearing the 'CE' marking does not comply with the requirements of this Directive, it shall take all appropriate measures to withdraw the apparatus from the market, to prohibit its placing on the market or its putting into service, or to restrict the free movement thereof.

2. The Member State concerned shall immediately inform the Commission and the other Member States of any such measure, indicating the reasons and specifying, in particular, whether non-compliance is due to:

- (a) failure to satisfy the essential requirements referred to in Annex I, where the apparatus does not comply with the harmonised standards referred to in Article 6;
- (b) incorrect application of the harmonised standards referred to in Article 6;
- (c) shortcomings in the harmonised standards referred to in Article 6.

3. The Commission shall consult the parties concerned as soon as possible, following which it shall inform the Member States whether or not it finds the measure to be justified.

4. Where the measure referred to in paragraph 1 is attributed to a shortcoming in harmonised standards, the Commission, after consulting the parties, shall, if the Member State concerned intends to uphold the measure, bring the matter before the Committee and initiate the procedure laid down in Article 6(3) and (4).

5. Where the non-compliant apparatus has been subject to the conformity assessment procedure referred to in Annex III, the Member State concerned shall take appropriate action in respect of the author of the statement referred to in Annex III, point 3, and shall inform the Commission and the other Member States accordingly.

Article 11

Decisions to withdraw, prohibit or restrict the free movement of apparatus

1. Any decision taken pursuant to this Directive to withdraw apparatus from the market, prohibit or restrict its placing on the market or its putting into service, or restrict the free movement thereof, shall state the exact grounds on which it is based. Such decisions shall be notified without delay to the party concerned, who shall at the same time be informed of the remedies available to him under the national law in force in the Member State in question and of the time limits to which such remedies are subject.

2. In the event of a decision as referred to in paragraph 1, the manufacturer, his authorised representative, or any other interested party shall have the opportunity to put forward his point of view in advance, unless such consultation is not possible because of the urgency of the measure to be taken as justified in particular with respect to public interest requirements.

Article 12

Notified bodies

1. Member States shall notify the Commission of the bodies which they have designated to carry out the tasks referred to in Annex III. When determining the bodies to be designated, Member States shall apply the criteria laid down in Annex VI.

Such notification shall state whether the bodies are designated to carry out the tasks referred to in Annex III for all apparatus covered by this Directive, and/or the essential requirements referred to in Annex I or whether the scope of designation is limited to certain specific aspects and/or categories of apparatus.

2. Bodies which comply with the assessment criteria established by the relevant harmonised standards shall be presumed to comply with the criteria set out in Annex VI covered by such harmonised standards. The Commission shall publish in the *Official Journal of the European Union* the references of those standards.

3. The Commission shall publish in the *Official Journal of the European Union* a list of notified bodies. The Commission shall ensure that the list is kept up to date.

4. If a Member State finds that a notified body no longer meets the criteria listed in Annex VI, it shall inform the Commission and the other Member States accordingly. The Commission shall withdraw the reference to that body from the list referred to in paragraph 3.

CHAPTER III

FIXED INSTALLATIONS

Article 13

Fixed installations

1. Apparatus which has been placed on the market and which may be incorporated into a fixed installation is subject to all relevant provisions for apparatus set out in this Directive.

However, the provisions of Articles 5, 7, 8 and 9 shall not be compulsory in the case of apparatus which is intended for incorporation into a given fixed installation and is otherwise not commercially available. In such cases, the accompanying documentation shall identify the fixed installation and its electromagnetic compatibility characteristics and shall indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of that installation. It shall furthermore include the information referred to in Article 9(1) and (2).

2. Where there are indications of non-compliance of the fixed installation, in particular, where there are complaints about disturbances being generated by the installation, the competent authorities of the Member State concerned may request evidence of compliance of the fixed installation, and, when appropriate, initiate an assessment.

Where non-compliance is established, the competent authorities may impose appropriate measures to bring the fixed installation into compliance with the protection requirements set out in Annex I, point 1.

3. Member States shall set out the necessary provisions for identifying the person or persons responsible for the establishment of compliance of a fixed installation with the relevant essential requirements.

CHAPTER IV

FINAL PROVISIONS

Article 14

Repeal

Directive 89/336/EEC is hereby repealed as from 20 July 2007.

References to Directive 89/336/EEC shall be construed as references to this Directive and should be read in accordance with the correlation table set out in Annex VII.

*Article 15***Transitional provisions**

Member States shall not impede the placing on the market and/or the putting into service of equipment which is in compliance with the provisions of Directive 89/336/EEC and which was placed on the market before 20 July 2009.

*Article 16***Transposition**

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 20 January 2007. They shall forthwith inform the Commission thereof. They shall apply those provisions as from 20 July 2007. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

*Article 17***Entry into force**

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

*Article 18***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 15 December 2004.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

A. NICOLAI

ANNEX I

ESSENTIAL REQUIREMENTS REFERRED TO IN ARTICLE 5

1. Protection requirements

Equipment shall be so designed and manufactured, having regard to the state of the art, as to ensure that:

- (a) the electromagnetic disturbance generated does not exceed the level above which radio and telecommunications equipment or other equipment cannot operate as intended;
- (b) it has a level of immunity to the electromagnetic disturbance to be expected in its intended use which allows it to operate without unacceptable degradation of its intended use.

2. Specific requirements for fixed installations

Installation and intended use of components

A fixed installation shall be installed applying good engineering practices and respecting the information on the intended use of its components, with a view to meeting the protection requirements set out in Point 1. Those good engineering practices shall be documented and the documentation shall be held by the person(s) responsible at the disposal of the relevant national authorities for inspection purposes for as long as the fixed installation is in operation.

ANNEX II

CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE 7**(internal production control)**

1. The manufacturer shall perform an electromagnetic compatibility assessment of the apparatus, on the basis of the relevant phenomena, with a view to meeting the protection requirements set out in Annex I, point 1. The correct application of all the relevant harmonised standards whose references have been published in the *Official Journal of the European Union* shall be equivalent to the carrying out of the electromagnetic compatibility assessment.
 2. The electromagnetic compatibility assessment shall take into account all normal intended operating conditions. Where the apparatus is capable of taking different configurations, the electromagnetic compatibility assessment shall confirm whether the apparatus meets the protection requirements set out in Annex I, point 1, in all the possible configurations identified by the manufacturer as representative of its intended use.
 3. In accordance with the provisions set out in Annex IV, the manufacturer shall draw up technical documentation providing evidence of the conformity of the apparatus with the essential requirements of this Directive.
 4. The manufacturer or his authorised representative in the Community shall hold the technical documentation at the disposal of the competent authorities for at least ten years after the date on which such apparatus was last manufactured.
 5. The compliance of apparatus with all relevant essential requirements shall be attested by an EC declaration of conformity issued by the manufacturer or his authorised representative in the Community.
 6. The manufacturer or his authorised representative in the Community shall hold the EC declaration of conformity at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.
 7. If neither the manufacturer nor his authorised representative is established within the Community, the obligation to hold the EC declaration of conformity and the technical documentation at the disposal of the competent authorities shall lie with the person who places the apparatus on the Community market.
 8. The manufacturer must take all measures necessary to ensure that the products are manufactured in accordance with the technical documentation referred to in point 3 and with the provisions of this Directive that apply to them.
 9. The technical documentation and the EC declaration of conformity shall be drawn up in accordance with the provisions set out in Annex IV.
-

ANNEX III

CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE 7

1. This procedure consists of applying Annex II, completed as follows:
 2. The manufacturer or his authorised representative in the Community shall present the technical documentation to the notified body referred to in Article 12 and request the notified body for an assessment thereof. The manufacturer or his authorised representative in the Community shall specify to the notified body which aspects of the essential requirements must be assessed by the notified body.
 3. The notified body shall review the technical documentation and assess whether the technical documentation properly demonstrates that the requirements of the Directive that it is to assess have been met. If the compliance of the apparatus is confirmed, the notified body shall issue a statement to the manufacturer or his authorised representative in the Community confirming the compliance of the apparatus. That statement shall be limited to those aspects of the essential requirements which have been assessed by the notified body.
 4. The manufacturer shall add the statement of the notified body to the technical documentation.
-

ANNEX IV

TECHNICAL DOCUMENTATION AND EC DECLARATION OF CONFORMITY**1. Technical documentation**

The technical documentation must enable the conformity of the apparatus with the essential requirements to be assessed. It must cover the design and manufacture of the apparatus, in particular:

- a general description of the apparatus;
- evidence of compliance with the harmonised standards, if any, applied in full or in part;
- where the manufacturer has not applied harmonised standards, or has applied them only in part, a description and explanation of the steps taken to meet the essential requirements of the Directive, including a description of the electromagnetic compatibility assessment set out in Annex II, point 1, results of design calculations made, examinations carried out, test reports, etc.;
- a statement from the notified body, when the procedure referred to in Annex III has been followed.

2. EC declaration of conformity

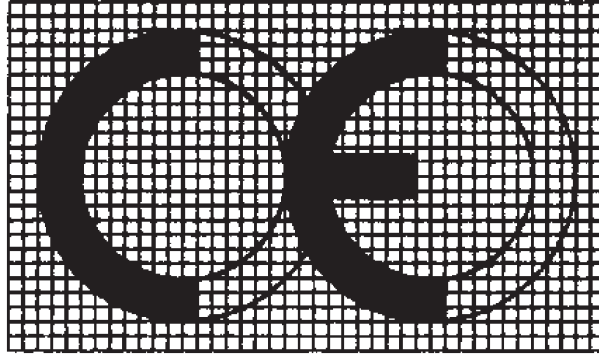
The EC declaration of conformity must contain, at least, the following:

- a reference to this Directive,
 - an identification of the apparatus to which it refers, as set out in Article 9(1),
 - the name and address of the manufacturer and, where applicable, the name and address of his authorised representative in the Community,
 - a dated reference to the specifications under which conformity is declared to ensure the conformity of the apparatus with the provisions of this Directive,
 - the date of that declaration,
 - the identity and signature of the person empowered to bind the manufacturer or his authorised representative.
-

ANNEX V

'CE' MARKING REFERRED TO IN ARTICLE 8

The 'CE' marking shall consist in the initials 'CE' taking the following form:



The 'CE' marking must have a height of at least 5 mm. If the 'CE' marking is reduced or enlarged the proportions given in the above graduated drawing must be respected.

The 'CE' marking must be affixed to the apparatus or to its data plate. Where this is not possible or not warranted on account of the nature of the apparatus, it must be affixed to the packaging, if any, and to the accompanying documents.

Where the apparatus is the subject of other Directives covering other aspects and which also provide for the 'CE' marking, the latter shall indicate that the apparatus also conforms with those other Directives.

However, where one or more of those Directives allow the manufacturer, during a transitional period, to choose which arrangements to apply, the 'CE' marking shall indicate conformity only with the Directives applied by the manufacturer. In that case, particulars of the Directives applied, as published in the *Official Journal of the European Union*, must be given in the documents, notices or instructions required by the Directives and accompanying such apparatus.

ANNEX VI

CRITERIA FOR THE ASSESSMENT OF THE BODIES TO BE NOTIFIED

1. The bodies notified by the Member States shall fulfil the following minimum conditions:
 - (a) availability of personnel and of the necessary means and equipment;
 - (b) technical competence and professional integrity of personnel;
 - (c) independence in preparing the reports and performing the verification function provided for in this Directive;
 - (d) independence of staff and technical personnel in relation to all interested parties, groups or persons directly or indirectly concerned with the equipment in question;
 - (e) maintenance of professional secrecy by personnel;
 - (f) possession of civil liability insurance unless such liability is covered by the Member State under national law.
 2. Fulfilment of the conditions laid down in point 1 shall be verified at intervals by the competent authorities of the Member State.
-

ANNEX VII

CORRELATION TABLE

Directive 89/336/EEC	This Directive
Article 1, point 1	Article 2(1)(a), (b) and (c)
Article 1, point 2	Article 2(1)(e)
Article 1, point 3	Article 2(1)(f)
Article 1, point 4	Article 2(1)(d)
Article 1, points 5 and 6	-
Article 2(1)	Article 1(1)
Article 2(2)	Article 1(4)
Article 2(3)	Article 1(2)
Article 3	Article 3
Article 4	Article 5 and Annex I
Article 5	Article 4(1)
Article 6	Article 4(2)
Article 7(1)(a)	Article 6(1) and (2)
Article 7(1)(b)	-
Article 7(2).	-
Article 7(3)	-
Article 8(1)	Article 6(3) and (4)
Article 8(2)	-
Article 9(1)	Article 10(1) and (2)
Article 9(2)	Article 10(3) and (4)
Article 9(3)	Article 10(5)
Article 9(4)	Article 10(3)
Article 10(1), first sub-paragraph	Article 7, Annexes II and III
Article 10(1), second sub-paragraph	Article 8
Article 10(2)	Article 7, Annexes II and III
Article 10(3)	-
Article 10(4)	-
Article 10(5)	Article 7, Annexes II and III
Article 10(6)	Article 12
Article 11	Article 14
Article 12	Article 16
Article 13	Article 18
Annex I, point 1	Annex IV, point 2
Annex I, point 2	Annex V
Annex II	Annex VI
Annex III, last paragraph	Article 9(5)

**DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 December 2004**

**on the harmonisation of transparency requirements in relation to information about issuers whose
securities are admitted to trading on a regulated market and amending Directive 2001/34/EC**

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 ⁽¹⁾,

Having regard to the opinion of the European Central Bank ⁽²⁾,

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

Whereas:

- (1) Efficient, transparent and integrated securities markets contribute to a genuine single market in the Community and foster growth and job creation by better allocation of capital and by reducing costs. The disclosure of accurate, comprehensive and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets. This enhances both investor protection and market efficiency.
- (2) To that end, security issuers should ensure appropriate transparency for investors through a regular flow of information. To the same end, shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights, should also inform issuers of the acquisition of or other changes in 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', 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 calls for the implementation of that Action Plan by 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) This Directive should be compatible with the tasks and duties conferred upon the European System of Central Banks (ESCB) and the Member States' central banks by

the Treaty and the Statute of the European System of Central Banks and of the European Central Bank; particular attention in this regard needs to be given to the Member States' central banks whose shares are currently admitted to trading on a regulated market, in order to guarantee the pursuit of primary Community law objectives.

- (5) 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 in such undertakings.
- (6) Supervision of an issuer of shares, or of debt securities the denomination per unit of which is less than EUR 1 000, for the purposes of this Directive, would be best effected by the Member State in which the issuer has its registered office. In that respect, it is vital to ensure consistency with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading. ⁽⁴⁾ Along the same lines, some flexibility should be introduced allowing third country issuers and Community companies issuing only securities other than those mentioned above a choice of home Member State.
- (7) A high level of investor protection throughout the Community would enable barriers to the admission of securities to regulated markets situated or operating within a Member State to be removed. 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.
- (8) The removal of barriers on the basis of the home Member State principle under this Directive should not affect areas not covered by this Directive, such as rights of shareholders to intervene in the management of an issuer. Nor should it affect the home Member State's right to request the issuer to publish, in addition, parts of or all regulated information through newspapers.

⁽¹⁾ OJ C 80, 30.3.2004, p. 128.

⁽²⁾ OJ C 242, 9.10.2003, p. 6.

⁽³⁾ Opinion of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Council Decision of 2 December 2004.

⁽⁴⁾ OJ L 345, 31.12.2003, p. 64.

- (9) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁽¹⁾ has already paved the way for a convergence of financial reporting standards throughout the Community for issuers whose securities are admitted to trading on a regulated market and who are required to prepare consolidated accounts. Thus, a specific regime for security issuers beyond the general system for all companies, as laid down in the Company Law Directives, is already established. This Directive builds on this approach with regard to annual and interim financial reporting, including the principle of providing a true and fair view of an issuer's assets, liabilities, financial position and profit or loss. A condensed set of financial statements, as part of a half-yearly financial report, also represents a sufficient basis for giving such a true and fair view of the first six months of an issuer's financial year.
- (10) An annual financial report should ensure information over the years once the issuer's securities have been admitted to a regulated market. Making it easier to compare annual financial reports is only of use to investors in securities markets if they can be sure that this information will be published within a certain time after the end of the financial year. As regards debt securities admitted to trading on a regulated market prior to 1 January 2005 and issued by issuers incorporated in a third country, the home Member State may under certain conditions allow issuers not to prepare annual financial reports in accordance with the standards required under this Directive.
- (11) This Directive introduces more comprehensive half-yearly financial reports for issuers of shares admitted to trading on a regulated market. This should allow investors to make a more informed assessment of the issuer's situation.
- (12) A home Member State may provide for exemptions from half-yearly reporting by issuers of debt securities in the case of:
- credit institutions acting as small-size issuers of debt securities, or
 - issuers already existing on the date of the entry into force of this Directive who exclusively issue debt securities unconditionally and irrevocably guaranteed by the home Member State or by one of its regional or local authorities, or
 - during a transitional period of ten years, only in respect of those debt securities admitted to trading on a regulated market prior to 1 January 2005
- which may be purchased by professional investors only. If such an exemption is given by the home Member State, it may not be extended in respect of any debt securities admitted to a regulated market thereafter.
- (13) The European Parliament and the Council welcome the Commission's commitment rapidly to consider enhancing the transparency of the remuneration policies, total remuneration paid, including any contingent or deferred compensation, and benefits in kind granted to each member of administrative, management or supervisory bodies under its Action Plan for 'Modernising Company Law and Enhancing Corporate Governance in the European Union' of 21 May 2003 and the Commission's intention to make a Recommendation on this topic in the near future.
- (14) The home Member State should encourage issuers whose shares are admitted to trading on a regulated market and whose principal activities lie in the extractive industry to disclose payments to governments in their annual financial report. The home Member State should also encourage an increase in the transparency of such payments within the framework established at various international financial fora.
- (15) This Directive will also make half-yearly reporting mandatory for issuers of only debt securities on regulated markets. Exemptions should only be provided for wholesale markets on the basis of a denomination per unit starting at EUR 50 000, as under Directive 2003/71/EC. Where debt securities are issued in another currency, exemptions should only be possible where the denomination per unit in such a currency is, at the date of the issue, at least equivalent to EUR 50 000.
- (16) More timely and more reliable information about the share issuer's performance over the financial year also requires a higher frequency of interim information. A requirement should therefore be introduced to publish an interim management statement during the first six months and a second interim management statement during the second six months of a financial year. Share issuers who already publish quarterly financial reports should not be required to publish interim management statements.
- (17) Appropriate liability rules, as laid down by each Member State under its national law or regulations, should be applicable to the issuer, its administrative, management or supervisory bodies, or persons responsible within the issuer. Member States should remain free to determine the extent of the liability.

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

- (18) The public should be informed of changes to major holdings in issuers whose shares are traded on a regulated market situated or operating within the Community. This information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure; it should also enhance effective control of share issuers and overall market transparency of important capital movements. Information about shares or financial instruments as determined by Article 13, lodged as collateral, should be provided in certain circumstances.
- (19) Articles 9 and 10(c) should not apply to shares provided to or by the members of the ESCB in carrying out their functions as monetary authorities provided that the voting rights attached to such shares are not exercised; the reference to a 'short period' in Article 11 should be understood with reference to credit operations carried out in accordance with the Treaty and the European Central Bank (ECB) legal acts, in particular the ECB Guidelines on monetary policy instruments and procedures and TARGET, and to credit operations for the purpose of performing equivalent functions in accordance with national provisions.
- (20) In order to avoid unnecessary burdens for certain market participants and to clarify who actually exercises influence over an issuer, there is no need to require notification of major holdings of shares, or other financial instruments as determined by Article 13 that result in an entitlement to acquire shares with regard to market makers or custodians, or of holdings of shares or such financial instruments acquired solely for clearing and settlement purposes, within limits and guarantees to be applied throughout the Community. The home Member State should be allowed to provide limited exemptions as regards holdings of shares in trading books of credit institutions and investment firms.
- (21) In order to clarify who is actually a major holder of shares or other financial instruments in the same issuer throughout the Community, parent undertakings should not be required to aggregate their own holdings with those managed by undertakings for collective investment in transferable securities (UCITS) or investment firms, provided that such undertakings or firms exercise voting rights independently from their parent undertakings and fulfil certain further conditions.
- (22) Ongoing information to holders of securities admitted to trading on a regulated market should continue to be based on the principle of equal treatment. Such equal treatment only relates to shareholders in the same position and does not therefore prejudice the issue of how many voting rights may be attached to a particular share. By the same token, holders of debt securities ranking *pari passu* should continue to benefit from equal treatment, even in the case of sovereign debt. Information to holders of shares and/or debt securities in general meetings should be facilitated. In particular, holders of shares and/or debt securities situated abroad should be more actively involved in that they should be able to mandate proxies to act on their behalf. For the same reasons, it should be decided in a general meeting of holders of shares and/or debt securities whether the use of modern information and communication technologies should become a reality. In that case, issuers should put in place arrangements in order effectively to inform holders of their shares and/or debt securities, insofar as it is possible for them to identify those holders.
- (23) Removal of barriers and effective enforcement of new Community information requirements also require adequate control by the competent authority of the home Member State. This Directive should at least provide for a minimum guarantee for the timely availability of such information. For this reason, at least one filing and storage system should exist in each Member State.
- (24) Any obligation for an issuer to translate all ongoing and periodic information into all the relevant languages in all the Member States where its securities are admitted to trading does not foster integration of securities markets, but has deterrent effects on cross-border admission of securities to trading on regulated markets. Therefore, the issuer should in certain cases be entitled to provide information drawn up in a language that is customary in the sphere of international finance. Since a particular effort is needed to attract investors from other Member States and third countries, Member States should no longer prevent shareholders, persons exercising voting rights, or holders of financial instruments, from making the required notifications to the issuer in a language that is customary in the sphere of international finance.
- (25) Access for investors to information about issuers should be more organised at a Community level in order to actively promote integration of European capital markets. Investors who are not situated in the issuer's home Member State should be put on an equal footing with investors situated in the issuer's home Member State, when seeking access to such information. This could be achieved if the home Member State ensures compliance with minimum quality standards for disseminating information throughout the Community, in a fast manner on a non-discriminatory basis and depending on the type of regulated information in question. In addition, information which has been disseminated should be available in the home Member State in a centralised way allowing a European network to be built up, accessible at affordable prices for retail investors, while not leading to unnecessary duplication of filing requirements for issuers. Issuers should benefit from free competition when choosing the media or operators for disseminating information under this Directive.

- (26) 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.
- (27) So as to ensure the effective protection of investors and the proper operation of regulated markets, the rules relating to information to be published by issuers whose securities are admitted to trading on a regulated market 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 also 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.
- (28) 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 from economic players should be ensured in order to avoid conflicts of interest. Member States may however designate another competent authority for examining that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and taking appropriate measures in case of discovered infringements; such an authority need not be of an administrative nature.
- (29) Increasing cross-border activities require improved cooperation 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 cooperation between the competent national authorities.
- (30) 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, cooperation amongst national securities regulators, and enforcement of Community law. This 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 established by Commission Decision 2001/528/EC⁽¹⁾ should lay down the technical details.
- (31) 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.
- (32) According to that 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.
- (33) 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 2001 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.
- (34) 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.
- (35) 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.
- (36) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:
- the need to ensure confidence in financial markets among investors by promoting high standards of transparency in financial markets;
 - the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;
 - the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime;

⁽¹⁾ OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

- the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council;
- the need to encourage innovation in financial markets if they are to be dynamic and efficient;
- the need to ensure market integrity by close and reactive monitoring of financial innovation;
- the importance of reducing the cost of, and increasing access to, capital;
- the balance of costs and benefits to market participants on a long-term basis, including small and medium-sized businesses and small investors, in any implementing measures;
- the need to foster the international competitiveness of Community financial markets without prejudice to a much-needed extension of international cooperation;
- the need to achieve a level playing field for all market participants by establishing Community-wide regulations wherever appropriate;
- the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;
- the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

(37) In order to ensure that the requirements set out in this Directive or the measures implementing this Directive are fulfilled, any infringement of those requirements or measures should be promptly detected and, if necessary, subject to penalties. To that end, measures and penalties should be sufficiently dissuasive, proportionate and consistently enforced. Member States should ensure that decisions taken by the competent national authorities are subject to the right of appeal to the courts.

(38) This Directive aims to upgrade the current transparency requirements for security issuers and investors acquiring or disposing of major holdings in issuers whose shares are admitted to trading on a regulated market. This Directive replaces some of the requirements set out in Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities. ⁽¹⁾ In order to gather transparency requirements in a single act it is

necessary to amend it accordingly. Such an amendment however should not affect the ability of Member States to impose additional requirements under Articles 42 to 63 of Directive 2001/34/EC, which remain valid.

(39) This Directive is in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾.

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

(41) Since the objectives of this Directive, 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 therefore 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, this Directive does not go beyond what is necessary in order to achieve these objectives.

(42) 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 ⁽³⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. 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.

2. This Directive shall not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

⁽¹⁾ OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2003/71/EC.

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

3. Member States may decide not to apply the provisions mentioned in Article 16(3) and in paragraphs 2, 3 and 4 of Article 18 to securities which are admitted to trading on a regulated market issued by them or their regional or local authorities.

4. Member States may decide not to apply Article 17 to their national central banks in their capacity as issuers of shares admitted to trading on a regulated market if this admission took place before 20 January 2005.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

- (a) 'securities' means transferable securities as defined in Article 4(1), point 18, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽¹⁾ with the exception of money-market instruments, as defined in Article 4(1), point 19, of that Directive 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;
- (c) 'regulated market' means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC;
- (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) 'shareholder' means any natural person or legal entity governed by private or public law, who holds, directly or indirectly:
 - (i) shares of the issuer in its own name and on its own account;
 - (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity;
 - (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts;
- (f) 'controlled undertaking' means any undertaking
 - (i) in which a natural person or legal entity has a majority of the voting rights; or
 - (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of

the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or

- (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or
- (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;
- (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 per unit of which is less than EUR 1 000 or an issuer of shares:
 - where the issuer is incorporated in the Community, the Member State in which it has its registered office;
 - where the issuer is incorporated in a third country, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC.

The definition of 'home' Member State shall be applicable to debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;

 - (ii) for any issuer not covered by (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member States which have admitted its securities to trading on a regulated market on their territory. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Community;

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

- (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 of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽¹⁾, or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of this Directive;
- (l) 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;
- (m) 'management company' means a company as defined in Article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽²⁾;
- (n) 'market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;
- (o) 'credit institution' means an undertaking as defined in Article 1(1)(a) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions ⁽³⁾;
- (p) 'securities issued in a continuous or repeated manner' means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class.

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

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 procedure referred to in Article 27(2), adopt implementing measures concerning the definitions set out in paragraph 1.

⁽¹⁾ OJ L 96, 12.4.2003, p. 16.

⁽²⁾ OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2004/39/EC.

⁽³⁾ OJ L 126, 26.5.2000, p. 1. Directive as last amended by Commission Directive 2004/69/EC (OJ L 25, 28.4.2004, p. 44).

The Commission shall, in particular:

- (a) establish, for the purposes of paragraph 1(i)(ii), the procedural arrangements in accordance with which an issuer may make the choice of the home Member State;
- (b) adjust, where appropriate for the purposes of the choice of the home Member State referred to in paragraph 1(i)(ii), the three-year period in relation to the issuer's track record in the light of any new requirement under Community law concerning admission to trading on a regulated market;
- (c) establish, for the purposes of paragraph 1(l), an indicative list of means which are not to be considered as electronic means, thereby taking into account Annex V to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽⁴⁾.

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.

The home Member State may also make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive.

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 laid down in this Directive or in Article 6 of Directive 2003/6/EC;
- (b) as regards the notification of information, make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive.

CHAPTER II

PERIODIC INFORMATION

Article 4

Annual financial reports

1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.

⁽⁴⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

2. The annual financial report shall comprise:

- (a) the audited financial statements;
- (b) the management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

3. Where the issuer is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts⁽¹⁾, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated.

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

4. The financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies⁽²⁾ and, if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Directive 83/349/EEC.

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

5. The management report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.

6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. The Commission shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

⁽²⁾ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2003/51/EC.

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

Article 5

Half-yearly financial reports

1. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest two months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.

2. The half-yearly financial report shall comprise:

- (a) the condensed set of financial statements;
- (b) an interim management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 4.

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

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

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

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

6. The Commission shall, in accordance with the procedure referred to in Article 27(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 technical conditions under which a published half-yearly financial report, including the auditors' review, is to remain available to the public;
- (b) clarify the nature of the auditors' review;
- (c) specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with the international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.

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

Article 6

Interim management statements

1. Without prejudice to Article 6 of Directive 2003/6/EC, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year. Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. It shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement. Such a statement shall provide:

- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
- a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

2. Issuers which, under either national legislation or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules shall not be required to make public statements by the management provided for in paragraph 1.

3. The Commission shall provide a report to the European Parliament and the Council by 20 January 2010 on the transparency of quarterly financial reporting and statements by the management of issuers to examine whether the information provided meets the objective of allowing investors to make an informed assessment of the financial position of the issuer. Such a report shall include an impact assessment on areas where the Commission considers proposing amendments to this Article.

Article 7

Responsibility and liability

Member States shall ensure that responsibility for the information to be drawn up and made public in accordance with Articles 4, 5, 6 and 16 lies at least with the issuer or its administrative, management or supervisory bodies and shall ensure that their laws, regulations and administrative provisions on liability apply to the issuers, the bodies referred to in this Article or the persons responsible within the issuers.

Article 8

Exemptions

1. 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 ECB, and Member States' 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, the denomination per unit of which is at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000.

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

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

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

The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. Moreover this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached.

2. The home Member States shall ensure that the shareholders notify the issuer of the proportion of voting rights, where that proportion reaches, exceeds or falls below the thresholds provided for in paragraph 1, as a result of events changing the breakdown of voting rights, and on the basis of the information disclosed pursuant to Article 15. Where the issuer is incorporated in a third country, the notification shall be made for equivalent events.

3. The home Member State need not apply:

- (a) the 30 % threshold, where it applies a threshold of one-third;
- (b) the 75 % threshold, where it applies a threshold of two-thirds.

4. This Article shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, or to custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.

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

- (a) it is authorised by its home Member State under Directive 2004/39/EC; and

- (b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

6. Home Member States under Article 2(1)(i) may provide that voting rights held in the trading book, as defined in Article 2(6) of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions ⁽¹⁾, of a credit institution or investment firm shall not be counted for the purposes of this Article provided that:

- (a) the voting rights held in the trading book do not exceed 5 %, and
- (b) the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.

7. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5 of this Article.

The Commission shall in particular specify the maximum length of the 'short settlement cycle' referred to in paragraph 4, as well as the appropriate control mechanisms by the competent authority of the home Member State. In addition, the Commission may draw up a list of the events referred to in paragraph 2.

Article 10

Acquisition or disposal of major proportions of voting rights

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

- (a) voting rights held by a third party with whom that person or entity has concluded an 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 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 person or entity controls the voting rights and declares its intention of exercising them;

⁽¹⁾ OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 2004/39/EC.

- (d) voting rights attaching to shares in which that person or entity has the life interest;
- (e) voting rights which are held, or 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 person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in its own name on behalf of that person or entity;
- (h) voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

Article 11

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

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

Article 12

Procedures on the notification and disclosure of major holdings

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

- (a) the resulting situation in terms of voting rights;
- (b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;
- (c) the date on which the threshold was reached or crossed; and
- (d) the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in Article 10, and of the natural person or legal entity entitled to exercise voting rights on behalf of that shareholder.

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

- (a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the

date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

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

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

4. The parent undertaking of a management company shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings managed by the management company under the conditions laid down in Directive 85/611/EEC, provided such management company exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such management company and the management company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

5. The parent undertaking of an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of Directive 2004/39/EC, provided that:

- the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/39/EC;
- it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms; and
- the investment firm exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

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

7. A home Member State may exempt issuers from the requirement in paragraph 6 if the information contained in the notification is made public by its competent authority, under the conditions laid down in Article 21, upon receipt of the notification, but no later than three trading days thereafter.

8. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall, in accordance with the procedure referred to in Article 27(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 or when filing information under Article 19(3);
- (b) to determine a calendar of 'trading days' for all Member States;
- (c) to establish in which cases the shareholder, or the natural person or legal entity referred to in Article 10, or both, shall effect the necessary notification to the issuer;
- (d) to clarify the circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal;
- (e) to clarify the conditions of independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings to benefit from the exemptions in paragraphs 4 and 5.

Article 13

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

2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. It shall in particular determine:

- (a) the types of financial instruments referred to in paragraph 1 and their aggregation;
- (b) the nature of the formal agreement referred to in paragraph 1;
- (c) the contents of the notification to be made, establishing a standard form to be used throughout the Community for that purpose;

(d) the notification period;

(e) to whom the notification is to be made.

Article 14

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

2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1.

Article 15

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

Article 16

Additional information

1. The issuer of shares admitted to trading on a regulated market shall make public without delay 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.

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

3. The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Without prejudice to Directive 2003/6/EC, this paragraph shall not apply to a public international body of which at least one Member State is member.

SECTION II

Information for holders of securities admitted to trading on a regulated market

Article 17

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

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

2. 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 country in which the issuer is incorporated. 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 or, on request, after an announcement of 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 (h), of the natural persons or legal entities;
- (b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
- (c) shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to

acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and

- (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 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. 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 18

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

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

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

- (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 or, on request, after an announcement of 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 50 000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

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 so that debt securities holders are effectively informed;
- (c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and
- (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 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. 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).

tent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site.

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

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 12(6) of this Directive.

3. Information to be notified to the issuer in accordance with Articles 9, 10, 12 and 13 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, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures.

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, 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) coordinate 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 2003/71/EC.

CHAPTER IV

Article 20

GENERAL OBLIGATIONS

Languages

Article 19

Home Member State control

1. Whenever the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the compe-

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.

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 authorities of those host Member States or in a language customary in the sphere of international finance.

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

In addition, the home Member State may lay down in its law, regulations or administrative provisions that the regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by its competent authority 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 shareholders and the natural person or legal entity referred to in Articles 9, 10 and 13 to notify information to an issuer under this Directive only in a language customary in the sphere of international finance. If the issuer receives such a notification, Member States may not require the issuer to provide a translation into a language accepted by the competent authorities.

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

7. 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 21

Access to regulated information

1. The home Member State shall ensure that the issuer, or the person who has applied for admission to trading on a regu-

lated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in paragraph 2. The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information. The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The home Member State may not impose an obligation to use only media whose operators are established on its territory.

2. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 19(1).

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 in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall adopt implementing measures in accordance with the procedure referred to in Article 27(2).

The Commission shall in particular specify:

- (a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;
- (b) minimum standards for the central storage mechanism as referred to in paragraph 2.

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

Article 22

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 2003/71/EC 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 the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 ⁽¹⁾ of the Treaty, with a view to making such safeguards equivalent throughout the Community ⁽²⁾; 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 and may, in accordance with the procedure referred to in Article 27(2), adopt implementing measures to facilitate compliance with Articles 19 and 21.

Article 23

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 12(6), 14, 15 and 16 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

However, the information covered by the requirements laid down in the third country shall be filed in accordance with Article 19 and disclosed in accordance with Articles 20 and 21.

2. By way of derogation from paragraph 1, an issuer whose registered office is in a third country shall be exempted from preparing its financial statement in accordance with Article 4 or Article 5 prior to the financial year starting on or after 1 January 2007, provided such issuer prepares its financial statements in accordance with internationally accepted standards referred to in Article 9 of Regulation (EC) No 1606/2002.

3. 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 20 and 21, even if such information is not regulated information within the meaning of Article 2(1)(k).

⁽¹⁾ Editorial note: The title has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 58 of the Treaty.

⁽²⁾ OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 13).

4. In order to ensure the uniform application of paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial statements, required under the law, regulations or administrative provisions of a third country;
- (ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

5. In order to ensure uniform application of paragraph 2, the Commission may, in accordance with the procedure referred to in Article 27(2), adopt implementing measures defining the type of information disclosed in a third country that is of importance to the public in the Community.

6. Undertakings whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management under point 4 of section A of Annex I to Directive 2004/39/EC if it had its registered office or, only in the case of an investment firm, its head office within the Community, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in Article 12(4) and (5) provided that they comply with equivalent conditions of independence as management companies or investment firms.

7. In order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 6, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures stating that, by reason of its domestic law, regulations, or administrative provisions, a third country ensures the equivalence of the independence requirements provided for under this Directive and its implementing measures.

CHAPTER V

COMPETENT AUTHORITIES

Article 24

Competent authorities and their powers

1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC 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.

However, for the purpose of paragraph 4(h) Member States may designate a competent authority other than the central competent authority referred to in the first subparagraph.

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

- (a) require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in Articles 10 or 13, and the persons that control them or are controlled by them, to provide information and documents;
- (b) require the issuer to disclose the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It may publish such information on its own initiative in the event

that the issuer, or the persons that control it or are controlled by it, fail to do so and after having heard the issuer;

- (c) require managers of the issuers and of the holders of shares or other financial instruments, or of persons or entities referred to in Articles 10 or 13, 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, trading in securities for a maximum of ten days at a 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 the provisions of this Directive have been infringed;
 - (f) monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public in all Member States where the securities are traded and take appropriate action if that is not the case;
 - (g) make public the fact that an issuer, or a holder of shares or other financial instruments, or a person or entity referred to in Articles 10 or 13, is failing to comply with its obligations;
 - (h) examine that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; and
 - (i) carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in cooperation with other authorities.
5. Paragraphs 1 to 4 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.
6. The disclosure to competent authorities by the auditors of any fact or decision related to the requests made by the competent authority under paragraph (4)(a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision and shall not involve such auditors in liability of any kind.

*Article 25***Professional secrecy and cooperation 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 cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether set out in this Directive or in national law adopted pursuant to this Directive. Competent authorities shall render assistance to competent authorities of other Member States.

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.

4. Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any of the tasks assigned by this Directive to the competent authorities in accordance with Article 24. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

*Article 26***Precautionary measures**

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

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 27***Committee procedure**

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, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof, provided that the implementing measures adopted in accordance with that procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

4. Without prejudice to the implementing measures already adopted by 20 January 2009 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 28***Penalties**

1. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties 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 penalty imposed for infringement of the provisions adopted in accordance with this Directive, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

*Article 29***Right of appeal**

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

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS*Article 30***Transitional provisions**

1. By way of derogation from Article 5(3) of this Directive, the home Member State may exempt from disclosing financial statements in accordance with Regulation (EC) No 1606/2002 issuers referred to in Article 9 of that Regulation for the financial year starting on or after 1 January 2006.

2. Notwithstanding Article 12(2), a shareholder shall notify the issuer at the latest two months after the date in Article 31(1) of the proportion of voting rights and capital it holds, in accordance with Articles 9, 10 and 13, with issuers at that date, unless it has already made a notification containing equivalent information before that date.

Notwithstanding Article 12(6), an issuer shall in turn disclose the information received in those notifications no later than three months after the date in Article 31(1).

3. Where an issuer is incorporated in a third country, the home Member State may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from drawing up its financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as

- (a) the competent authority of the home Member State acknowledges that annual financial statements prepared by issuers from such a third country give a true and fair view of the issuer's assets and liabilities, financial position and results;
- (b) the third country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and
- (c) the Commission has not taken any decision in accordance with Article 23(4)(ii) as to whether there is an equivalence between the abovementioned accounting standards and

- the accounting standards laid down in the law, regulations or administrative provisions of the third country where the issuer is incorporated, or
- the accounting standards of a third country such an issuer has elected to comply with.

4. The home Member State may exempt issuers only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities.

*Article 31***Transposition**

1. Member States shall take the necessary measures to comply with this Directive by 20 January 2007. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Where Member States adopt measures pursuant to Articles 3(1), 8(2), 8(3), 9(6) or 30, they shall immediately communicate those measures to the Commission and to the other Member States.

*Article 32***Amendments**

With effect from the date specified in Article 31(1), Directive 2001/34/EC shall be amended as follows:

- (1) In Article 1, points (g) and (h) shall be deleted;
- (2) Article 4 shall be deleted;
- (3) In Article 6, paragraph 2 shall be deleted;
- (4) In Article 8, paragraph 2 shall be 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 65 to 97 shall be deleted;

- (6) Articles 102 and 103 shall be deleted;
- (7) In Article 107(3), the second subparagraph shall be deleted;
- (8) In Article 108, paragraph 2 shall be amended as follows:
- (a) in point (a), the words 'periodic information to be published by the companies of which shares are admitted' shall be deleted;
 - (b) point (b) shall be deleted;
 - (c) point (c)(iii) shall be deleted;
 - (d) point (d) shall be deleted.

References made to the repealed provisions shall be construed as being made to the provisions of this Directive.

Article 33

Review

The Commission shall by 30 June 2009 report on the operation of this Directive to the European Parliament and to the Council including the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) and its potential impact on the European financial markets.

Article 34

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 35

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 15 December 2004.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

A. NICOLAI
