



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 May 2014*

(Reference for a preliminary ruling — Consumer protection — Directive 2003/71/EC — Article 14(2)(b) — Regulation (EC) No 809/2004 — Articles 22(2) and 29(1) — Base prospectus — Supplements to the prospectus — Final terms — Time and method of publication of required information — Conditions for publication in electronic form)

In Case C-359/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Austria), made by decision of 12 July 2012, received at the Court on 30 July 2012, in the proceedings

Michael Timmel

v

Aviso Zeta AG,

intervener:

Lore Tinhofer,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça (Rapporteur), G. Arestis, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2013,

after considering the observations submitted on behalf of:

- Mr Timmel, by W. Haslinger and J. Motamedi de Silva, Rechtsanwälte,
- Aviso Zeta AG, by A. Jank, Rechtsanwalt,
- the Belgian Government, by T. Materne and J.-C. Halleux, acting as Agents,
- the Czech Government, by M. Smolek and S. Šindelková, acting as Agents,

* Language of the case: German.

— the Netherlands Government, by C. Wissels and M. de Ree, acting as Agents,
— the Portuguese Government, by L. Inez Fernandes, A. Cunha and S. Borba, acting as Agents,
— the European Commission, by G. Braun, I. Rogalski and R. Vasileva, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 26 November 2013,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 14(2)(b) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64; ‘the Prospectus Directive’) and of Articles 22(2) and 29(1) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71 as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ 2004 L 149, p. 1; ‘the Prospectus Regulation’).
- 2 The request has been made in proceedings between Mr Timmel and Aviso Zeta AG (‘Aviso Zeta’) concerning termination of a contract by which Mr Timmel subscribed for 40 000 units of the security ‘Dragon FG Garant’ offered for sale through Aviso Zeta.

Legal context

EU law

The Prospectus Directive

- 3 Recital 4 in the preamble to the Prospectus Directive explains that the directive ‘[facilitates] the widest possible access to investment capital on a Community-wide basis ... by granting a single passport to the issuer’.
- 4 According to recital 10 in the preamble, the aim of the Prospectus Directive and its implementing measures is to ensure investor protection and market efficiency, in accordance with high regulatory standards adopted in the relevant international fora.
- 5 Recital 31 in the preamble to the Prospectus Directive states:

‘To facilitate circulation of the various documents making up the prospectus, the use of electronic communication facilities such as the internet should be encouraged. The prospectus should always be delivered in paper form, free of charge to investors on request.’
- 6 Recital 34 states:

‘Any new matter liable to influence the assessment of the investment, arising after the publication of the prospectus but before the closing of the offer or the start of trading on a regulated market, should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement to the prospectus.’

7 Article 2(1)(r) of the Prospectus Directive defines the base prospectus as ‘a prospectus containing all relevant information as specified in Articles 5, 7 and 16 in case there is a supplement, concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering’.

8 Article 5(4) of the Prospectus Directive states:

‘For the following types of securities, the prospectus can, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:

(a) non-equity securities, including warrants in any form, issued under an offering programme;

(b) non-equity securities issued in a continuous or repeated manner by credit institutions,

...

The information given in the base prospectus shall be supplemented, if necessary, in accordance with Article 16, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market.

If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each public offer is made as soon as practicable and if possible in advance of the beginning of the offer. The provisions of Article 8(1)(a) shall be applicable in any such case.’

9 Article 8(1) of the Prospectus Directive is worded as follows:

‘Member States shall ensure that where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus:

(a) the criteria, and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, are disclosed in the prospectus; or

(b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and amount of securities which will be offered to the public have been filed.

The final offer price and amount of securities shall be filed with the competent authority of the home Member State and published in accordance with the arrangements provided for in Article 14(2).’

10 In accordance with Article 13(1) of the Prospectus Directive, ‘[n]o prospectus shall be published until it has been approved by the competent authority of the home Member State’.

11 Article 14(2), (5), (7) and (8) of the Prospectus Directive state:

‘2. The prospectus shall be deemed available to the public when published either:

...

- (b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
- (c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- (d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
- (e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service.

...

5. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public, in accordance with the arrangements established in paragraph 2. ...

...

7. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

8. In order to take account of technical developments on financial markets and to ensure uniform application of the Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2, 3 and 4. The first set of implementing measures shall be adopted by 1 July 2004.'

¹² Article 16(1) of the Prospectus Directive provides:

'Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.'

The Prospectus Regulation

¹³ Recital 21 in the preamble to the Prospectus Regulation states:

'A base prospectus and its final terms should contain the same information as a prospectus. All the general principles applicable to a prospectus are applicable also to the final terms. Nevertheless, where the final terms are not included in the base prospectus they do not have to be approved by the competent authority.'

14 According to recital 25 in the preamble to the Prospectus Regulation, the enhanced flexibility in the articulation of the base prospectus with its final terms compared to a single issue prospectus should not hamper the easy access to material information for investors.

15 Recital 26 in the preamble to the Prospectus Regulation states that, '[w]ith respect to base prospectuses, it should be set out in an easily identifiable manner which kind of information will have to be included as final terms. This requirement should be able to be satisfied in a number of different ways, for example, if the base prospectus contains blanks for any information to be inserted in the final terms or if the base prospectus contains a list of the missing information'.

16 Article 22(1), (2), (4), (5) and (7) of the Prospectus Regulation state:

1. A base prospectus shall be drawn up by using one or a combination of schedules and building blocks provided for in Articles 4 to 20 according to the combinations for various types of securities set out in Annex XVIII.

A base prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. A competent authority shall not request that a base prospectus contains information items which are not included in Annexes I to XVII.

In order to ensure conformity with the obligation referred to in Article 5(1) of [the Prospectus Directive], the competent authority of the home Member State, when approving a base prospectus in accordance with Article 13 of that Directive, may require that the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market be completed, for each of the information items, on a case by case basis.

2. The issuer, the offeror or the person asking for admission to trading on a regulated market may omit information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue.

...

4. The final terms attached to a base prospectus shall only contain the information items from the various securities note schedules according to which the base prospectus is drawn up.

5. In addition to the information items set out in the schedules and building blocks referred to in Articles 4 to 20 the following information shall be included in a base prospectus:

(1) indication on the information that will be included in the final terms;

(2) the method of publication of the final terms; if the issuer is not in a position to determine, at the time of the approval of the prospectus, the method of publication of the final terms, an indication of how the public will be informed about which method will be used for the publication of the final terms;

...

7. Where an event envisaged under Article 16(1) of [the Prospectus Directive] occurs between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities under the base prospectus or, as the case may be, the time that trading on a regulated market of those securities begins, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a supplement prior to the final closing of the offer or the admission of those securities to trading.'

17 As provided in Article 26(5) of the Prospectus Regulation, '[t]he final terms attached to a base prospectus shall be presented in the form of a separate document containing only the final terms or by inclusion of the final terms into the base prospectus'.

18 Article 29(1) of the Prospectus Regulation states:

'The publication of the prospectus or base prospectus in electronic form, either pursuant to points (c), (d) and (e) of Article 14(2) of [the Prospectus Directive], or as an additional means of availability, shall be subject to the following requirements:

(1) the prospectus or base prospectus shall be easily accessible when entering the website;

...

(4) the investors shall have the possibility of downloading and printing the prospectus or base prospectus.

...'

Austrian law

19 Paragraph 5(1) of the Law on Capital Markets (Kapitalmarktgesetz) of 6 December 1991 (BGBl. 625/1991) provides:

'If an offer of securities subject to the obligation to publish a prospectus is made without the prior publication of a prospectus or of the information provided for in Paragraph 6, investors who are consumers within the meaning of Paragraph 1(1), point 2, of the Law on the Protection of Consumers (Konsumentenschutzgesetz) are entitled to withdraw their offer or withdraw from the contract.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 On 30 October 2006, Mr Timmel, who is resident in Vienna (Austria), applied to Aviso Zeta, which is also resident in Vienna, for 40 000 units of the security 'Dragon FX Garant', whose denomination per unit was less than EUR 50 000 and whose issuer was Lehman Brothers Treasury Co. BV which has its seat in Amsterdam (Netherlands).

21 Mr Timmel subsequently declared that he wished to withdraw from that subscription pursuant to Paragraph 5 of the Law on Capital Markets of 6 December 1991, contending that the offer had been made without the information relating thereto having been lawfully published. He stated that there had been no publication of the International Securities Identification Number (ISIN), of the currency of the issue, of any information relating to the past and future performance of the underlying product, or of the method of calculating the yield.

22 According to Mr Timmel, a base prospectus and three supplements were published on 9 and 29 August and 6 and 26 September 2006 respectively; also, draft final terms were published on 19 September 2006 and the definitive version of the final terms was published on 4 December 2006.

23 In Mr Timmel's view, however, no lawful publication took place at the seat of the stock exchange of the listing or at the offices of the issuer or of the financial intermediary. The various documents comprising the prospectus were in fact available only in Vienna. Mr Timmel adds that the documents relating to the offer for sale of the securities were accessible for a certain time on the website of the

Luxembourg Stock Exchange, but consultation of them required a registration process as well as the payment of fees, in particular in order to consult the mandatory supplement to the prospectus relating to the final terms of the offer.

- 24 It was in that context that Mr Timmel brought proceedings before the Handelsgericht Wien (Commercial Court, Vienna). That court considers that the outcome of the dispute depends in particular on whether Aviso Zeta was obliged to publish, under Article 22(2) of the Prospectus Regulation, information which was, in principle, required and which, although not yet known at the time of approval of the base prospectus, nevertheless was known at the time of publication of a supplement.
- 25 The referring court also highlights a divergence between the various language versions of Article 14(2)(b) of the Prospectus Directive in relation to whether the obligation to make the prospectus available to the public must be performed at both the registered office of the issuer and the offices of the financial intermediaries or only at one of those two places.
- 26 In those circumstances, the Handelsgericht Wien decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is Article 22(2) of [the Prospectus Regulation] to be interpreted as meaning that information which is in principle required that was not yet known at the time of approval of the base prospectus but was already known at the time of publication of a supplement to the prospectus should be included in the supplement to the prospectus?
- (2) Is the derogation in Article 22(2) of [the Prospectus Regulation], according to which the inclusion of the information items within the meaning of the [second subparagraph] of Article 22(1) may be omitted, applicable even if that (required) information was known before the issue date but after publication of the base prospectus in which that information was not included?
- (3) Is it possible to speak of lawful publication if only a base prospectus without the required information under the [second subparagraph] of Article 22(1) of [the Prospectus Regulation] and in particular under Annex V (as regards securities with denomination per unit of less than EUR 50 000) was published and if the final terms were not subsequently published?
- (4) Is the requirement laid down in Article 29(1)(1) of the [Prospectus Regulation] that the prospectus or the base prospectus must be easily accessible on the website, where these are made available, fulfilled:
- (a) if accessing, downloading as well as printing, require registration on the website on which access may subsequently take place, whereby registration requires acceptance of a disclaimer and communication of an email address, or
- (b) if it is necessary to make a payment for that, or
- (c) if free of charge access to parts of a prospectus is restricted to two documents per month, but it is necessary to download at least three documents in order to obtain all the required information within the meaning of the [second subparagraph] of Article 22(1) of [the Prospectus Regulation]?
- (5) Is Article 14(2)(b) of [the Prospectus Directive] to be interpreted as meaning that the base prospectus must be made available at the registered office of the issuer and at the offices of the financial intermediaries?’

Consideration of the questions

Questions 1 and 2

- 27 By its first two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 22(2) of the Prospectus Regulation is to be interpreted as meaning that a supplement to the prospectus must include information required under Article 22(1) which, although not known at the time of publication of the base prospectus, nevertheless was known at the time of publication of a supplement to that prospectus, or whether, as the case may be, that information can be omitted.
- 28 It is to be noted first of all that Article 22 of the Prospectus Regulation concerns the information that must be included in the base prospectus and in the final terms.
- 29 In that regard, it is apparent from Article 26(5) of the Prospectus Regulation that the regulation is intended to grant issuers a degree of flexibility by permitting publication of the final terms either in the base prospectus or in a separate document.
- 30 A distinction is in fact drawn between, on the one hand, the details necessary to conclude a specific transaction (such as the final price of the securities in question) and, on the other hand, general information that enables investors to make an informed assessment of any risks before they decide to subscribe.
- 31 Nevertheless, Article 22(5)(1) of the Prospectus Regulation obliges the issuer to indicate in the base prospectus the information that will be included in the final terms. The view was thus taken that, whilst the information contained in the final terms did not have to be included in the base prospectus, its existence nevertheless had to be mentioned in the base prospectus.
- 32 In addition, Article 22(7) of the Prospectus Regulation provides that, where a significant new factor, material mistake or inaccuracy relating to the information included in the base prospectus which is capable of affecting the assessment of the securities, within the meaning of Article 16(1) of the Prospectus Directive, occurs, in particular, between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities, the issuer or offeror must publish a supplement to that prospectus prior to the final closing of the offer.
- 33 It is in the light of the foregoing that Article 22(2) of the Prospectus Regulation should be interpreted, a provision which permits the issuer or offeror not to provide certain information required under Article 22(1) if that information is not known when the base prospectus is approved and can only be determined at the time of the individual issue.
- 34 It follows by contrary inference from those provisions that, as the Advocate General observes in point 38 of her Opinion, where the issuer or offeror does know, or is able to determine at the time of approval of the base prospectus, the information referred to in Article 22(1) of the Prospectus Regulation, that information must be published in the base prospectus.
- 35 If the required information that is not known at the time of publication of the base prospectus and can only be determined at the time of the individual issue does not involve, as such, a significant new factor, material mistake or inaccuracy, within the meaning of Article 16(1) of the Prospectus Directive, it will, as the case may be, have to be published in the final terms.

- 36 It is indeed apparent from recitals 21 and 25 in the preamble to the Prospectus Regulation that a base prospectus supplemented by the final terms must contain information of a level equivalent to that of a single issue prospectus. It follows, in particular, that information required under Article 22(1) of that regulation that is not known at the time of publication of the base prospectus and can only be determined at the time of the individual issue must be provided in the final terms.
- 37 If, on the other hand, that information, first, constitutes a significant new factor or corrects a material mistake or inaccuracy and, second, is capable of affecting the assessment of the securities, it requires publication of a supplement, in accordance with Article 16(1) of the Prospectus Directive and Article 22(7) of the Prospectus Regulation.
- 38 In that regard, it is for the national court to determine whether, in the main proceedings, the information at issue affected the assessment of the securities, within the meaning of Article 16(1) of the Prospectus Directive.
- 39 As the Advocate General observes in point 43 of her Opinion, the answer to that question involves an assessment of the evidence concerning the nature of the information and its influence on an investor's decision to subscribe for securities.
- 40 Therefore, the answer to the first two questions is that Article 22(2) of the Prospectus Regulation is to be interpreted as meaning that information required under Article 22(1) which, although not known at the time of publication of the base prospectus, nevertheless was known at the time of publication of a supplement to that prospectus must be published in that supplement if the information involves a significant new factor, material mistake or inaccuracy capable of affecting the assessment of the securities, within the meaning of Article 16(1) of the Prospectus Directive, a matter which is for the referring court to determine.

Question 3

- 41 By its third question, the referring court asks, in essence, whether the requirements of Article 22 of the Prospectus Regulation are satisfied by the publication of a base prospectus not including the information required under the second subparagraph of Article 22(1), in particular the information referred to in Annex V to the regulation, where the final terms are not published.
- 42 It is apparent from the answer to the first two questions that, in order for a prospectus to satisfy the requirements laid down by Article 22 of the Prospectus Regulation, it is necessary, first, that, in accordance with Article 22(1), the base prospectus contains the required information that is known to the issuer at the time of publication of that prospectus.
- 43 In addition, it should be pointed out that, in accordance with Article 13(1) of the Prospectus Directive and the second subparagraph of Article 22(1) of the Prospectus Regulation, the base prospectus must have been published after being approved by the competent authorities.
- 44 Second, required information that has been brought to the issuer's knowledge after publication of the base prospectus but before the final closing of the offer must be included in a supplement if it involves a significant new factor, material mistake or inaccuracy, within the meaning of Article 16(1) of the Prospectus Directive.
- 45 Lawful publication of such a supplement also requires, in accordance with Article 16(1) of the Prospectus Directive, its prior approved by the competent authorities.

- 46 Where that information does not involve a significant new factor, material mistake or inaccuracy, within the meaning of Article 16(1) of the Prospectus Directive, it must be published in the final terms if the conditions laid down in Article 22(4) of the Prospectus Regulation are met and it does not alter or replace any information in the base prospectus.
- 47 Furthermore, by virtue of Article 22(5) of the Prospectus Regulation, the base prospectus must indicate the information that will be included in those final terms.
- 48 In this connection, it should be noted that, as recital 21 in the preamble to the Prospectus Regulation mentions, the final terms do not have to be approved by the competent authorities before they are published. It is in fact clear from the third subparagraph of Article 5(4) of the Prospectus Directive that if the final terms of the offer are not included in either the base prospectus or a supplement, they are to be provided to investors and filed with the competent authority as soon as practicable and if possible in advance of the beginning of the offer.
- 49 Therefore, the answer to the third question is that the requirements of Article 22 of the Prospectus Regulation are not satisfied by the publication of a base prospectus not including the information required under Article 22(1), in particular the information referred to in Annex V to the regulation, if that publication is not supplemented by publication of the final terms. In order that the information which must be contained in the base prospectus in accordance with Article 22(1) of the Prospectus Regulation may be inserted in the final terms, it is necessary for the base prospectus to indicate the information that will be included in those final terms and for that information to comply with the conditions laid down in Article 22(4) of the regulation.

Question 4

- 50 By its fourth question, the referring court asks, in essence, whether Article 29(1)(1) of the Prospectus Regulation is to be interpreted as meaning that the requirement that a prospectus must be easily accessible on the website on which it is made available to the public is fulfilled where there is an obligation to register on that website, entailing acceptance of a disclaimer and the obligation to provide an email address, where a charge is made for that electronic access or where consultation of parts of the prospectus free of charge is restricted to two documents per month.
- 51 As regards, first, the obligation to register entailing acceptance of a disclaimer and the obligation to provide an email address, it is clear that conditions of that kind restrict access to the prospectus published in electronic form and are, as such, incompatible with the requirement of easy access that is laid down in Article 29(1)(1) of the Prospectus Regulation.
- 52 Such conditions may, in particular, deter a certain number of potential investors. Furthermore, acceptance of a disclaimer constitutes a condition which gives rise to a position of inequality between the issuer or any intermediary and the potential investor and which thereby runs counter to the Prospectus Directive's objective, noted in recital 10 in its preamble, of ensuring investor protection.
- 53 So far as concerns, second, the fact that the prospectus in electronic form is made available in return for payment, Article 29(1)(1) of the Prospectus Regulation is to be interpreted in the light of Article 14(5) of the Prospectus Directive, which expressly provides that the prospectus, even if its various constituent parts are published separately, must be made available to the public free of charge.
- 54 Consequently, electronic publication of a prospectus on a website access to which is subject to a charge, or which provides for consultation free of charge of only some documents comprising that prospectus, must be regarded as not fulfilling the condition requiring easy access laid down in Article 29(1)(1) of the Prospectus Regulation.

- 55 It should, finally, be pointed out that Article 14(7) of the Prospectus Directive, which provides that, in the event of publication in electronic form, a paper copy must be delivered free of charge to the investor upon his request, cannot have any effect in this regard.
- 56 It is not apparent from any provision of the Prospectus Directive or the Prospectus Regulation or from their general scheme that the condition governing the accessibility of the documents comprising a prospectus can be assessed differently according to the method of communication chosen by the issuer.
- 57 On the contrary, the EU legislature took care to specify, in Article 29(1) of the Prospectus Regulation, that the conditions laid down therein governing publication in electronic form have to be met whether publication is effected pursuant to Article 14(2)(c) to (e) of the Prospectus Directive or publication in electronic form is only an additional means of availability.
- 58 Also, it is apparent from recital 31 in the preamble to the Prospectus Directive that the EU legislature sought to encourage the publication of prospectuses by electronic means since that method facilitates the circulation of those documents. To accept less investor protection in the case of publication by electronic means would run counter to such an objective.
- 59 Therefore, the answer to the fourth question is that Article 29(1)(1) of the Prospectus Regulation is to be interpreted as meaning that the requirement that a prospectus must be easily accessible on the website on which it is made available to the public is not fulfilled where there is an obligation to register on that website, entailing acceptance of a disclaimer and the obligation to provide an email address, where a charge is made for that electronic access or where consultation of parts of the prospectus free of charge is restricted to two documents per month.

Question 5

- 60 By its fifth question, the referring court asks, in essence, whether Article 14(2)(b) of the Prospectus Directive is to be interpreted as requiring the base prospectus to be made available to the public both at the registered office of the issuer and at the offices of the financial intermediary.
- 61 The referring court points out that according to the German version of that provision the base prospectus must be made available to the public at the registered office of the issuer or at the offices of the financial intermediary, whereas according to the versions of the provision in Spanish, English and French that prospectus must be available in both places.
- 62 In this regard, it is to be recalled that a text which, by reason of divergences between the various language versions, does not lend itself to a clear and uniform interpretation must be interpreted by reference to both its purpose and its general scheme (see, inter alia, Case 30/77 *Bouchereau* EU:C:1977:172, paragraph 14, and Case C-1/02 *Borgmann* EU:C:2004:202, paragraph 25).
- 63 The necessity for uniform application and, accordingly, for uniform interpretation of an EU measure makes it impossible to consider one version of the text in isolation, but requires that it be interpreted on the basis of both the real intention of its author and the aim the latter seeks to achieve, in the light, in particular, of the versions in all languages (see Case C-569/08 *Internetportal und Marketing* EU:C:2010:311, paragraph 35 and the case-law cited).
- 64 As regards the provision at issue in the main proceedings, it is clear from recitals 4 and 10 in the preamble to the Prospectus Directive that that directive is intended, in particular, to ensure investor protection and the widest possible access for undertakings to investment capital on an EU-wide basis by granting a single passport to the issuer.

- 65 As the Advocate General observes in point 81 of her Opinion, those objectives could be undermined in the situation where the issuer's office is in a different Member State from that of the financial intermediary, since a prospectus made available to the public only in paper form would then be available only at one of those two offices.
- 66 Furthermore, the general scheme of the Prospectus Directive leads to the conclusion that the prospectus must be made available to the public at the offices of both the issuer and the financial intermediary.
- 67 Since Article 14(7) of the Prospectus Directive requires that, where the prospectus is made available by publication in electronic form, a paper copy be delivered to the investor, upon his request, by the issuer or the financial intermediaries, it is necessary for the financial intermediaries to have a copy of the prospectus in order to be able to perform that obligation. This finding therefore implies, as the Commission points out, that the prospectus must be available both at the registered office of the issuer and at the offices of the financial intermediaries.
- 68 Therefore, the answer to the fifth question is that Article 14(2)(b) of the Prospectus Directive is to be interpreted as requiring the base prospectus to be made available to the public both at the registered office of the issuer and at the offices of the financial intermediaries.

Costs

- 69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. Article 22(2) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements is to be interpreted as meaning that information required under Article 22(1) which, although not known at the time of publication of the base prospectus, nevertheless was known at the time of publication of a supplement to that prospectus must be published in that supplement if the information involves a significant new factor, material mistake or inaccuracy capable of affecting the assessment of the securities, within the meaning of Article 16(1) of 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, a matter which is for the referring court to determine.**
- 2. The requirements of Article 22 of Regulation No 809/2004 are not satisfied by the publication of a base prospectus not including the information required under Article 22(1), in particular the information referred to in Annex V to the regulation, if that publication is not supplemented by publication of the final terms. In order that the information which must be contained in the base prospectus in accordance with Article 22(1) of Regulation No 809/2004 may be inserted in the final terms, it is necessary for the base prospectus to indicate the information that will be included in those final terms and for that information to comply with the conditions laid down in Article 22(4) of the regulation.**
- 3. Article 29(1)(1) of Regulation No 809/2004 is to be interpreted as meaning that the requirement that a prospectus must be easily accessible on the website on which it is made available to the public is not fulfilled where there is an obligation to register on that**

website, entailing acceptance of a disclaimer and the obligation to provide an email address, where a charge is made for that electronic access or where consultation of parts of the prospectus free of charge is restricted to two documents per month.

- 4. Article 14(2)(b) of Directive 2003/71 is to be interpreted as requiring the base prospectus to be made available to the public both at the registered office of the issuer and at the offices of the financial intermediaries.**

[Signatures]