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NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject :	Proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market - Outcome of the European Parliament's first reading (Strasbourg, 14 to 17 June 2010)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the co-decision procedure¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the rapporteur, Mr Wolf KLINZ (DE - ALDE), presented a report containing a single compromise amendment (amendment 88) to the Proposal for a Directive, on behalf of the ALDE, EPP, S&D and ECR political groups. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 17 June, the plenary adopted the single compromise amendment to the proposal. No other amendments were adopted. The amendment adopted corresponds to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the Legal/Linguistic Experts¹ have examined the text, the Council should be in a position to adopt the legislative act.

The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendment is presented in the form of a consolidated text where added wordings are highlighted in ***bold and italics***, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

¹ In order to prepare for the Legal/Linguistic Experts' meeting with national experts, delegations with legal-linguistic comments may send them to the coordination secretariat of the Directorate for the Quality of Legislation (secretariat.jl-codecision@consilium.europa.eu) by 08/07/2010.

Securities to be offered to the public and harmonisation of transparency requirements (amendment of Directives 2003/71/EC and 2004/109/EC) *I**

European Parliament legislative resolution of 17 June 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0491),
- having regard to Article 251(2) and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0170/2009),
- having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
- having regard to Article 294(3) and Articles 50 and 114 of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Central Bank¹,
- having regard to the opinion of the European Economic and Social Committee of 18 February 2010²,
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs (A7-0102/2010),

¹ OJ C 19, 26.1.2010, p. 1.

² Not yet published in the Official Journal.

1. Adopts the position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 17 June 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

- (1) The European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25% by the year 2012 in order to enhance the competitiveness of companies in the *European Union*.
- (2) 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 trading⁴ has been identified by the Commission as one piece of legislation that contains a number *of* obligations for companies, some of which seem burdensome.
- (3) Those obligations need to be reviewed in order to reduce the burdens weighing on companies within the *European Union* to the necessary minimum without compromising the protection of investors and the proper functioning of the securities markets in the *European Union*.

¹ Opinion of 18 February 2010 (not yet published in the Official Journal).

² OJ C 19, 26.1.2010, p. 1.

³ Position of the European Parliament of 17 June 2010.

⁴ OJ L 345, 31.12.2003, p. 64.

- (4) Directive 2003/71/EC requires the Commission to make an assessment of the application of that Directive five years after the date of entry into force and to present, where appropriate, proposals for its review. That assessment has revealed that certain elements of Directive 2003/71/EC should be modified in order to simplify and improve its application, increase its efficiency and enhance the international competitiveness of the *European Union*, contributing to the reduction of administrative burdens.
- (5) *Following the conclusions of the report of the High Level Group on Financial Supervision in the EU (the de Larosière group), the Commission put forward concrete legislative proposals on 23 September 2009 in order to establish a European System of Financial Supervisors (ESFS) comprising a network of national financial supervisors working in tandem with new European Supervisory Authorities. Moreover, the newly created European Securities and Markets Authority (ESMA) is to replace the Committee of European Securities Regulators (CESR).*
- (6) The way limits of maximum offering amounts are calculated in Directive 2003/71/EC should be clarified for reasons of certainty and efficiency. The total consideration for certain offers referred to in that Directive should be computed on a *European Union* wide basis.
- (7) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those natural or legal persons that are *described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹ and other natural or legal persons who are treated as professional clients*, or that are recognised eligible counterparties in accordance with Directive 2004/39/EC **■**. *Investment firms authorised to continue considering existing professional clients as such in accordance with Article 71(6) of Directive 2004/39/EC shall be authorised to treat those clients as qualified investors under this Directive.* An alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC in this sense would reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons to whom the placement is to be addressed relying on their own list of professional clients and eligible counterparties. *The issuer should be able to rely on the list of professional clients and eligible counterparties that has been drawn up in accordance with Annex II to Directive 2004/39/EC.* Therefore, the definition of qualified investors in Directive 2003/71/EC should be widened to include those persons *and a separate regime for registers should no longer be maintained.*
- (8) *Ensuring the correct and full application of European Union law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets. It is expected that the establishment of ESMA will contribute to that goal by issuing a single rulebook and by fostering a more convergent approach regarding the scrutiny and approval of prospectuses. The Commission should undertake a review of Article 2(1)(m)(ii) of Directive 2003/71/EC in relation to the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1 000. Following this review, it should consider whether this provision should be maintained or amended.*

¹ OJ L 145, 30.4.2004, p. 1.

- (9) *The threshold of EUR 50 000 in Article 3(2)(c) and (d) of Directive 2003/71/EC no longer reflects the distinction between retail investors and professional investors in terms of investor capacity, since it appears that even retail investors have recently made investments of more than EUR 50 000 in one single transaction. For this reason, it is appropriate to increase the said threshold and amend other provisions in which that threshold is mentioned accordingly. Corresponding adjustments should be made in 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 market¹. Following these adjustments and taking into consideration the outstanding period of debt securities, there should be a grandfathering provision in relation to Article 8(1)(b), Article 18(3) and Article 20(6) of Directive 2004/109/EC in case of debt securities with a denomination per unit of at least EUR 50 000, which have already been admitted to trading on a regulated market in the European Union prior to the entry into force of this Directive.*
- (10) A valid prospectus, drawn up by the issuer or *the person responsible for drawing up the prospectus* and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the *person responsible for drawing up the prospectus* as long as this is valid and duly supplemented in accordance with Article 9 and Article 16 of Directive 2003/71/EC and the issuer or the *person* responsible for drawing up such prospectus consents to its use. *The issuer or the person responsible for drawing up the prospectus should be able to attach conditions to his or her consent. The consent, including any conditions attached thereto, shall be given in a written agreement between the parties involved enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement. In the event that consent to use the prospectus has been given, the issuer or person responsible for drawing up the initial prospectus should be liable for the information stated therein and in case of a base prospectus, for providing and filing final terms and no other prospectus should be required.* However, in case the issuer or the *person* responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. *In that case, the financial intermediary should be liable for the information in the prospectus, including all information incorporated by reference and, in case of a base prospectus, final terms.*
- (11) *In order to allow for the efficient application of Directive 2003/71/EC, Directive 2004/109/EC (the Transparency Directive) and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)² (the Market Abuse Directive) and to clarify underlying problems of differentiation and overlaps, the Commission should put forward a definition of 'primary market', 'secondary market' and 'public offer'.*
- (12) *Liability regimes in the Member States are significantly different due to national competence in civil law. In order to identify and monitor the arrangements in the*

¹ OJ L 390, 31.12.2004, p. 38.

² OJ L 96, 12.4.2003, p. 16.

Member States, the European Commission should establish a comparative table of Member States' regimes.

- (13) *The first part of Article 4(1)(d) of Directive 2003/71/EC stipulates that the obligation to publish a prospectus shall not apply to shares offered, allotted or to be allotted free of charge to existing shareholders. Under Article 3(2)(e) of that Directive an offer with a total consideration of less than EUR 100 000 is entirely exempt from the requirement to publish a prospectus. This makes the exemption in Article 4(1)(d) superfluous, since an offer free of charge falls within the scope of Article 3(2)(e).*
- (14) *The current exemptions for securities offered, allotted or to be allotted to existing or former employees or directors are too restrictive to be useful to a significant number of employers operating share schemes for employees in the EU. Participation of employees in the European Union is especially important for small and medium-sized companies (SMEs), where individual employees could have a significant role in the success of the company. Therefore, there should be no requirement to produce a prospectus for offers made in the context of an employee share scheme by any European company. In case the securities are not admitted to trading, the issuer is not subject to appropriate ongoing disclosure requirements and rules on market abuse. Therefore, employers or their affiliated undertakings should update the document referred to in Article 4(1)(e) of Directive 2003/71/EC where necessary for an adequate assessment of the securities. The exemption should be extended also to public offers and admissions to trading of companies registered outside the European Union whose securities are admitted to trading either on a regulated market or on a third country market. In the latter case, the Commission has to have taken a positive decision on the equivalence of the legal and supervisory framework of the corresponding regulation of markets in the third country in order for the exemption to apply. This should enable European employees to have access to ongoing information about the company.*
- (15) *The summary of the prospectus **should be** a key source of information for retail investors. It should be short, simple, **clear** and easy for targeted investors to understand **and is a self-contained part of the prospectus**. It should focus on **■** key information that investors need in order to be able to **decide which offers and admissions of securities to consider further**. **Such key information should convey the essential characteristics of, and risks associated with, the issuer, any guarantor, and the securities offered or admitted to trading on a regulated market. It should also provide the general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror, and indicate the total estimated expenses, since these could be substantial. It should also inform the investor of any rights attaching to the securities and of the risks associated with an investment in the relevant security. The format of the summary should be determined in a way that allows comparison of the summaries of similar products by ensuring that equivalent information always appears in the same position in the summary.***
- (16) *Member States should ensure that no civil liability attaches to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. The summary should contain a clear warning in this respect.*
- (17) *It is appropriate to clarify that final terms to a base prospectus should only contain securities note information which is specific to the issue and which can only be determined at the time of the individual issue. Such information might for instance*

include the international securities identification number (ISIN), issue price, maturity, coupon, exercise date, exercise price and redemption price and other terms not known at the time of drawing up the prospectus. Other new information which is capable of affecting the assessment of the issuer and the securities should in general be included in a supplement to the prospectus. Furthermore, in order to fulfil the obligation to provide key information also under a base prospectus, issuers should combine the summary with relevant parts of final terms in a way that is easily accessible to investors. No separate approval should be required in these cases.

- (18) *In order to improve the efficiency of pre-emptive issues of equity securities and adequately to take account of the size of issuers, without prejudice to investor protection, a proportionate disclosure regime should be introduced for offers of shares to existing shareholders who can either subscribe those shares or sell the right to subscribe for the shares and offers by SMEs, and issuers with reduced market capitalisation, i.e. small companies whose shares are admitted to trading on a regulated market, and offers of non-equity securities referred to in Article 1(2)(j) of Directive 2003/71/EC, issued by credit institutions. If such credit institutions issue securities below the limit laid down in that Article, but choose to opt in under the regime of the Directive and, consequently, draw up a prospectus, they should be entitled to benefit from the proportionate disclosure regime. The proportionate disclosure regime for pre-emptive issues should apply where the shares offered are of the same class as the shares of the issuer admitted to trading either on a regulated market or on a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC as long as the facility is subject to appropriate ongoing disclosure requirements and rules on market abuse. ESMA should issue guidelines regarding these conditions in order to ensure a consistent approach by competent authorities.*
- (19) *Member States publish abundant information on their financial situation which is in general available in the public domain. Therefore, in case a Member State in the European Union guarantees an offer of securities, the issuer should not be obliged to provide in the prospectus information about that Member State acting as guarantor.*
- (20) *In order to improve legal certainty, the validity of a prospectus should commence at its approval, a point in time which is easily verified by the competent authority. Furthermore, in order to enhance flexibility for issuers, they should have the option to update the registration document also in accordance with the normal procedure to supplement prospectuses.*
- (21) *As a consequence of the entry into force of Directive 2004/109/EC, the obligation in Directive 2003/71/EC for the issuer to provide annually a document containing or referring to all information published in the twelve months preceding the issuance of the prospectus has become a dual obligation and should therefore be abolished. As a consequence, a registration document, instead of being updated in accordance with Article 10 of Directive 2003/71/EC, should be updated by means of a supplement or the securities note.*
- (22) *Internet ensures easy access to information. Therefore, in order to ensure better accessibility for investors, the prospectus should always be published in an electronic form. When a person other than the issuer is responsible for drawing up the prospectus, it should be sufficient to publish the prospectus on the website of that person.*

- (23) In order to ***improve legal certainty it should be clarified when the requirement to publish a supplement to the prospectus and the right of withdrawal end. It is prudent to look at these provisions separately.*** The obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs ***later. On the other hand, the right to withdraw an acceptance should only be applicable if the prospectus relates to an offer of securities to the public and the new factor, mistake or inaccuracy did arise before the final closing of the offer and the delivery of the securities. Hence, the right of withdrawal is linked to the timing of the new factor, mistake or inaccuracy that motivates a supplement, and presupposes that this triggering event has occurred while the offer is still open and before the delivery of the securities.***
- (24) When the prospectus is supplemented, harmonisation at ***European Union*** level of the time frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross border offers of securities. To provide flexibility to issuers from Member States with traditionally longer time frame in this regard, the issuer ***or the offeror*** ■ should be able to extend voluntarily the term for the exercise of that right. ***To improve legal certainty the supplement to the prospectus should specify when the right of withdrawal ends.***
- (25) The authority responsible for the approval of the prospectus should also notify the issuer or the person responsible for drawing up the prospectus of the certificate of approval of the prospectus that is addressed to the authorities of host Member States in accordance with Directive 2003/71/EC in order to provide the issuer or the person responsible for drawing up the prospectus with certainty as to whether and when a notification has actually been effected.
- (26) The measures necessary for the implementation of this Directive should be adopted ***by means of implementing acts*** in accordance with ***Article 291 of the Treaty on the Functioning of the European Union (TFEU).*** ***It is particularly important that the European Parliament receives draft measures and draft implementing acts as well as any other relevant information before the Commission decides on the equivalence of prospectuses drawn up in a specific third country.***
- (27) ■ In order to ***respect the principles set out in recital 41 of Directive 2003/71/EC and to take account of the technical developments in the financial markets and to specify the requirements laid down in Directive 2003/71/EC,*** the Commission should be empowered to adopt ***delegated acts in accordance with Article 290 TFEU. In particular, delegated acts may be necessary concerning the updating of the limits*** ■ ***and definitions and thresholds for reduced market capitalisation and SMEs established in this Directive and Directive 2003/71/EC, and specifying the detailed content and specific form of the summary, following the outcome of the debate launched by the Commission's Communication on Packaged Retail Investment Products of 30 April 2009 aligning to the maximum extent possible the content and form of the summary for securities with that outcome, preventing the duplication of documents and potential confusion for investors as well as minimising the costs incurred.***
- (28) ***In this instance, the European Parliament or the Council have a period of three months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, this period can be prolonged by three months in significant areas of concern. The European Parliament and the Council may inform the other***

institutions of their intention not to raise objections. This early approval of delegated acts is particularly indicated when deadlines need to be met, for example to meet timetables set in the basic act for the Commission to adopt delegated acts.

- (29) *In Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.*
- (30) Since the objective of this Directive, namely reducing administrative burdens relating to the publication of a prospectus in the case of offers of securities to the public and admission to trading in regulated markets within the **European Union**, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at **European Union** level, the **European Union** may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty *on European Union*. 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.
- (31) Directive 2003/71/EC and Directive 2004/109/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2003/71/EC

Directive 2003/71/EC is amended as follows:

- (1) Article 1 is amended as follows:
- (a) paragraph 2 is amended as follows:
- (i) point (h) is replaced by the following:
- "(h) securities included in an offer where the total consideration of the offer in the **European Union** is less than **EUR 5 000 000**, which limit shall be calculated over a period of 12 months;"
- (ii) point (j) is replaced by the following:
- "(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the **European Union** is less than **EUR 75 000 000**, which limit shall be calculated over a period of 12 months, provided that these securities:
- (i) are not subordinated, convertible or exchangeable;
- (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.";

- (b) the following paragraph is added:

"4. In order to take account of technical developments on financial markets, ***including inflation***, the Commission shall ***lay down, by means of delegated acts in accordance with Article 24a, and subject to the conditions of Articles 24b and 24c***, measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2).
█".

- (2) Article 2 is amended as follows:

- (a) in paragraph 1:

- (i) point (e) is ***replaced by the following***:

"(e) 'qualified investors' means persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC, and those who are treated on request as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognised as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification on request to the issuer without prejudice to the relevant legislation on data protection. Investment firms authorised to continue considering existing professional clients as such in accordance with Article 71(6) of Directive 2004/39/EC shall be authorised to treat those clients as qualified investors under this Directive;"

- (ii) ***the following points are added***:

"(s) 'key information' means essential and appropriately structured information which is to be provided to investors with a view to enable them to understand the nature and the risks of the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to Article 5(2)(b), to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:

- (i) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;***
- (ii) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;***
- (iii) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;***
- (iv) details of the admission to trading;***
- (v) reasons for the offer and use of proceeds;***

(t) *'company with reduced market capitalisation' means a company listed on a regulated market and having had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes during the last three calendar years.'*;

(b) *paragraphs 2 and 3 are deleted;*

(c) *paragraph 4 is replaced by the following:*

"4. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Article 24 and subject to the conditions of Articles 24a and 24b, the definitions referred to in paragraph 1, including adjustment of the figures used for the definition of SMEs, and the thresholds for reduced market capitalisation, taking into account the situation on different national markets, including the classification used by the operators of regulated markets, European legislation and recommendations as well as economic developments."

(3) Article 3 is amended as follows:

(a) in paragraph 2:

(i) in the first subparagraph, *points (b) to (e)* are replaced by the following:

"(b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or"

(c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; and/or

(d) an offer of securities whose denomination per unit amounts to at least EUR 100 000; and/or

*(e) an offer of securities with a total consideration in the **European Union** of less than EUR 100 000, which limit shall be calculated over a period of 12 months."*;

(ii) the following subparagraph is added:

*"Member States shall not require another prospectus in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such prospectus consents to its use **by means of a written agreement.**"*;

(b) *the following paragraph is added:*

"4. In order to take account of technical developments on financial markets, including inflation, the Commission shall adopt, by means of delegated acts in

accordance with Articles 24a, 24b and 24c, measures concerning the thresholds in Article 3(2)(c) to (e)."

(4) **Article 4 is amended as follows:**

(a) *in paragraph 1, points (c) to (e) are replaced by the following:*

"(c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation;

(d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

(e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the European Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

Point (e) shall apply also to a company established outside the European Union whose securities are admitted to trading either on a regulated market or on a third country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to above, is available at least in a language customary in the sphere of international finance and that the Commission has adopted an equivalence decision regarding the third country market concerned.

Upon submission by a competent authority of a Member State, the Commission shall adopt equivalence decisions in accordance with the procedure referred to in Article 24(2), stating that the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption under this point, equivalent to the requirements resulting from Title III of Directive 2004/39/EC, from Directive 2003/6/EC and Directive 2004/109/EC, and which are subject to effective supervision and enforcement in that third country. The competent authority of the Member State concerned shall indicate why it considers that the legal and supervisory framework of the third country concerned could be considered equivalent and provide relevant information to this end.

A third-country legal and supervisory framework may be considered equivalent if that framework fulfils at least the following conditions:

(i) markets in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(ii) markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

- (iii) *security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and*
- (iv) *it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.*

In order to take into account the developments of financial markets, the Commission may lay down by means of delegated acts in accordance with Article 24a, 24b and 24c measures to specify the above criteria or to add further ones to be applied in the assessment of the equivalence.";

- (b) *in paragraph 2, point (d) is replaced by the following:*

"(d) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation."

- (5) **█** *Article 5 is amended as follows:*

- (a) *in paragraph 2:*

- (i) *in the first subparagraph, the introductory part is replaced by the following:*

*"2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary **that, in a concise** manner and in non-technical language, **provides key information** in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, **in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities.***

The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall also contain a warning that:";

- (ii) *the second subparagraph is replaced by the following:*

"Where the prospectus relates to the admission to trading on a regulated market of non equity securities having a denomination of at least EUR 100 000, there shall be no requirement to provide a summary except when requested by a Member State as provided for in Article 19(4).";

- (b) *paragraph 3 is replaced by the following:*

"3. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration

document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.";

(c) *in paragraph 4, the third subparagraph is replaced by the following:*

"Where the final terms of the offer are neither included in the base prospectus, nor in a supplement, the final terms shall be made available to investors and filed with the competent authority of the home Member State, as well as communicated, by the issuer, to the competent authority of the host Member State(s) when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall only contain information that relates to the securities note and shall not be used to supplement the base prospectus. The provisions of Article 8(1)(a) shall apply in these cases.";

(d) *paragraph 5 is replaced by the following:*

"5. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, the following measures:

- (a) *the format of the prospectus or base prospectus, the summary, final terms and supplements; and*
- (b) *the detailed content and specific form of the key information to be included in the summary.*

Those delegated acts shall be adopted by*

** OJ please insert date: 18 months after entry into force of this Directive."*

(6) In Article 6, the second subparagraph of paragraph 2 is replaced by the following:

*"However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, **or** it does not provide, **when read together with the other parts of the prospectus**, key information **in order to aid investors when considering whether to invest in such securities**. **The summary shall contain a clear warning in this respect.**"*

(7) *Article 7 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

"1. Detailed delegated acts regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with Articles 24a, 24b and 24c.";

(b) in paragraph 2:

(i) *point (b) is replaced by the following:*

"(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 100 000;"

(ii) *point (e) is replaced by the following:*

"(e) the various activities and size of the issuer, in particular credit institutions issuing non-equity-securities referred to in Article 1(2)(j) , companies with reduced market capitalisation and SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;"

(iii) *the following point is added:*

"(g) a proportionate disclosure regime shall apply to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights."

(c) *paragraph 3 is replaced by the following:*

"3. The delegated acts referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive."

■

(8) *Article 8(4) is replaced by the following:*

"4. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Articles, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning paragraph 2."

(9) *Article 9 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

"1. A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.

■
";

(b) *paragraph 4 is replaced by the following:*

"4. A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to **12 months** . The registration document, **updated** in accordance with **Article 12(2) or Article 16**, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus."

(10) Article 10 is deleted.

(11) Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall allow information to be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the home Member State or filed with it in accordance with this Directive or Directive 2004/109/EC. This information shall be the latest available to the issuer. The summary shall not incorporate information by reference.";

(b) *paragraph 3 is replaced by the following:*

"3. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning the information to be incorporated by reference."

(12) In Article 12, paragraph 2 is replaced by the following:

"2. In this case, the **securities note shall provide information that would normally be provided in the** registration document, **if there has been a material change or recent development which could affect investors' assessments since the latest updated registration document, unless such information is provided in a supplement** in accordance with Article 16. The securities and summary notes shall be subject to a separate approval."

(13) *In Article 13, paragraph 7 is replaced by the following:*

"7. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning the conditions in accordance with which time limits may be adjusted."

(14) *Article 14 is amended as follows:*

(a) *in paragraph 2:*

(i) *point (c) in the first subparagraph is replaced by the following:*

"(c) in electronic form on the issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or";

(ii) *the second subparagraph is replaced by the following:*

"Member States shall require issuers or the persons responsible for drawing up a prospectus that publish their prospectus in accordance with point (a) or (b) to also publish their prospectus electronically in accordance with point (c).";

(b) *paragraph 8 is replaced by the following:*

"8. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning paragraphs 1, 2, 3 and 4."

(15) *In Article 15, paragraph 7 is replaced by the following:*

"7. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and concerning paragraph 4."

(16) Article 16 is replaced by the following:

Article 16
Supplements to the prospectus

1. 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, whichever occurs *later*, 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.

2. *If the prospectus relates to an offer of securities to the public*, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, ***provided that the new factor, mistake or inaccuracy referred to in paragraph 1 did arise before the final closing of the offer to the public and the delivery of the securities***. This period may be extended by the issuer *or* the offeror. ***The final date of the right of withdrawal shall be stated in the supplement.***

(17) In Article 18, paragraph 1 is replaced by the following:

"1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus notify the competent authority

of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of the said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus. The issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the competent authority of the host Member State."

(18) In Article 19, paragraph 4 is replaced by the following:

"4. Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 100 000 is sought in one or more Member States, the prospectus shall be drawn up 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, offeror or person asking for admission to trading, as the case may be. Member States may choose to require in their national legislation that a summary be drawn up in their official language(s)."

(19) In Article 20, the first subparagraph of paragraph 3 is replaced by the following:

"3. The Commission shall lay down, by means of delegated acts in accordance with Articles 24a, 24b and 24c, measures to establish general equivalence criteria, based on the requirements laid down in Articles 5 and 7."

(20) In Section I(C) and Sections III and IV of Annex I, Section II of Annex II, Sections II and III of Annex III, and the third bullet point of Annex IV, 'key information' is replaced by 'essential information'.

(21) The following articles are inserted:

**"Article 24a
Exercise of the delegation**

1. The powers to adopt delegated acts referred to in Article 1(4), Article 2(2), Article 3(4), Article 4(3), Article 5(5), Article 7(1) and (3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of the delegated powers at the latest six months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24b.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 24b and 24c.

**Article 24b
Revocation of the delegation**

1. The delegation of powers referred to in Article 1(4), Article 2(2), Article 3(4), Article 4(3), Article 5(5), Article 7(1) and (3), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and Article 20(3) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 24c

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by three months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

Article 2

Amendment of Directive 2004/109/EC

Directive 2004/109/EC is amended as follows:

(1) In Article 2(1)(i) **■**, point (i) is replaced by the following:

"(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 ***European Union***, the Member State in which it has its registered office;
- where the issuer is incorporated in a third country, the Member State referred to in point (iii) of Article 2(1)(m) 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;".

(2) *Article 8 is amended as follows:*

(a) *in paragraph 1, point (b) is replaced by the following:*

"(b) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100 000 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 100 000.";

(b) *the following paragraph is added:*

"4. By way of derogation from paragraph (1)(b), Articles 4, 5 and 6 shall not apply to issuers of exclusively debt securities 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, which have already been admitted to trading on a regulated market in the European Union before ...", for as long as such debt securities are outstanding.*

** OJ: please insert the date of entry into force of this Directive..".*

(3) *In Article 18, paragraph 3 is replaced by the following:*

"3. If only holders of debt securities whose denomination per unit amounts to at least EUR 100 000 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 100 000, 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.

The choice referred to in the previous subparagraph shall also apply with regard to 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, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, which have already been admitted to trading on a regulated market in the European Union before ...", for as long as such debt securities are outstanding, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in the Member State chosen by the issuer.*

** OJ: please insert the date of entry into force of this Directive..".*

(4) *In Article 20, paragraph 6 is replaced by the following:*

"6. By way of derogation from paragraphs 1 to 4, where securities whose denomination per unit amounts to at least EUR 100 000 or, in the case of debt securities denominated in a currency other than euro equivalent to at least EUR 100 000 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.

The derogation referred to in the previous subparagraph shall also apply to debt securities 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, which have already been admitted to trading on a regulated market in one or more Member States before ...*, for as long as such debt securities are outstanding.

**** OJ: please insert the date of entry into force of this Directive."***

Article 3 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [***eighteen*** months after the entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 4 Review

Five years after the entry into force of this Directive, the Commission shall assess the application of this Directive, in particular with regard to the application and the effects of the rules, including liability, regarding the summary with key information, the impact of exemption stipulated in Article 4(1)(e) on the protection of employees and the proportionate disclosure regime referred to in Article 7(2)(e) and (g), as well as the electronic publication of prospectuses according to Article 14 and it shall review Article 2(1)(m)(ii) in relation to the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1 000 in order to consider whether this provision should be maintained or removed. The Commission shall, furthermore, assess the need to revise the definition of the term 'public offer' and the need to define the terms 'primary market' and 'secondary market' and, in this respect, shall fully clarify the links between this Directive and Directives 2004/109/EC and 2003/6/EC. Following its assessment, the Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals to amend this Directive.

Article 5
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 6
Addressees

This Directive is addressed to the Member States.

Done at...

For the European Parliament
The President

For the Council
The President