

Securities: issuers trading on a regulated market, transparency requirements

2011/0307(COD) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 655 votes to 18, with 11 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated with the Council. They amend the Commission's proposal as follows:

Notification of choice of home Member State: to avoid that competent authorities of the host Member State(s) and of the Member State where the issuer has its registered office are not informed about the choice of home Member State by the issuer, all issuers should be required to communicate the choice of their home Member State to the competent authority of its home Member State, the competent authorities of all host Member States and to the competent authority of the Member State where they have their registered office, where it is different from their home Member State. The rules concerning notification of the choice of home Member State should therefore be amended accordingly.

Publication of financial information: a host Member State may subject an issuer to stricter requirements than those laid down in the Directive but **it should not be allowed to impose the requirement to publish periodic financial information on a more frequent basis than annual financial reports and half-yearly financial reports** in their national legislation. However, Member States may nevertheless require issuers to publish additional periodic financial information if such requirement does not constitute a significant financial burden and if the additional information required is proportionate to what contributes to investment decisions.

Member States may require the publication of additional periodic financial information by financial institutions.

Frequency of publication of information: the amended text provides that the issuer shall make public its **annual financial report** at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least 10 years.

With effect from 1 January 2020 all annual financial reports shall be prepared in a **single electronic reporting format** provided that a cost benefit analysis has been undertaken by ESMA.

The issuer of shares or debt securities shall make public a **half-yearly financial report** covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest three months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least 10 years.

Report on payments to governments: to improve transparency and investor protection, Member States shall require issuers active in the extractive or logging of primary forest industries, in accordance with the **Accounting Directive**, a report on payments made to governments on an annual basis. In accordance with the Accounting Directive, the following principles shall apply: (i) any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below EUR

100 000 within a financial year; (ii) reporting on payments to governments should be done on a government and project-by-project basis; (iii) no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements, and (iv) all relevant payments to governments should be reported.

Notification of major holdings of voting rights: to improve legal certainty, enhance transparency and reduce administrative burdens for cross-border investors, the Directive provides for a harmonised regime for the notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments.

According to the amended text, Member States shall not be allowed to adopt more stringent rules than those in Directive 2004/109/EC regarding the calculation of notification thresholds, aggregation of holdings of voting rights attaching to shares with holdings of voting rights relating to financial instruments and exemptions from the notification requirements. However, taking into account the differences in company laws in the Union leading to the total number of shares differing from the total number of voting rights for some issuers, Member States should continue to be allowed to set **both lower and additional thresholds for notification of holdings of voting rights**, and to require equivalent notifications in relation to thresholds based on capital holdings.

Access to regulated information on listed companies in the Union: an internet portal serving as a European electronic access point will be created by 1 January 2018. ESMA should develop and operate the access point.

Sanctions: Member States shall lay down rules on **administrative measures and sanctions** applicable to breaches of the national provisions adopted in the implementation of this Directive and shall take all measures necessary to ensure that they are implemented.

Competent authorities shall impose as a minimum the following administrative measures and sanctions: (a) a public statement which indicates the natural person or the legal entity responsible and the nature of the breach; (b) an order requiring the natural person or the legal entity responsible to cease the conduct and to desist from a repetition of that conduct; and (c) **administrative pecuniary sanctions** (for example, up to EUR 10 million or up to 5% of the total annual turnover, in the case of a legal entity, and up to EUR 2 million in the case of a natural person).

Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Directive.

Competent authorities shall **publish every decision on sanctions** and measures imposed for a breach of this Directive **without undue delay**.