

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

CHAPTER IV

GENERAL OBLIGATIONS

Article 23

Third countries

[^{F1} Where the registered office of an issuer is situated in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7, Article 12(6) and Articles 14 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

The competent authority shall then inform ESMA of the exemption granted.

[^{F2} The information covered by the requirements laid down in the third country shall be filed in accordance with Article 19 and disclosed in accordance with Articles 20 and 21.]]

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

3 The competent authority of the home Member State shall ensure that information disclosed in a third country which may be of importance for the public in the Community is disclosed in accordance with Articles 20 and 21, even if such information is not regulated information within the meaning of Article 2(1)(k).

[^{F14} In order to ensure the uniform conditions of application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 27(2), implementing measures:

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

In the context of point (ii) of the first subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to

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the conditions of Articles 27a and 27b, measures concerning the assessment of standards relevant to the issuers of more than one country.

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

In the context of the third subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country.]

[^{F15} In order to specify the requirements laid down in paragraph 2, the Commission may adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Union.]

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

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

[^{F1}The Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph.]

[^{F38} ESMA shall assist the Commission in carrying out its tasks under this Article in accordance with Article 33 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F2** Inserted by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council

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on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (Text with EEA relevance).

- F3** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).