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 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)

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 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)

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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

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

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Under Article 33 of Directive 2004/109/EC of the European Parliament and of the Council[(4)], the Commission had to report on the operation of that Directive to the European Parliament and to the Council, including on the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) of that Directive, and on the potential impact of the operation of that Directive on the European financial markets.

(2) On 27 May 2010 the Commission adopted a report on the operation of Directive 2004/109/EC which identified areas where the regime created by that Directive could be improved. In particular, the report demonstrates the need to provide for

the simplification of certain issuers' obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in the Union. Furthermore, the effectiveness of the existing transparency regime needs to be improved, in particular with respect to the disclosure of corporate ownership.

(3) In addition, in its communication of 13 April 2011 entitled 'Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth', the Commission identified the need to review Directive 2004/109/EC in order to make the obligations applicable to listed small and medium-sized enterprises more proportionate, whilst guaranteeing the same level of investor protection.

(4) According to the Commission report and the Commission communication, the administrative burden associated with obligations linked to admission to trading on a regulated market should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.

(5) Member States should not be allowed to impose in their national legislation the requirement to publish periodic financial information on a more frequent basis than annual financial reports and half-yearly financial reports. However, Member States should nevertheless be able to require issuers to publish additional periodic financial information if such a requirement does not constitute a significant financial burden, and if the additional information required is proportionate to the factors that contribute to investment decisions. This Directive is without prejudice to any additional information that is required by sectoral Union legislation, and in particular Member States can require the publication of additional periodic financial information by financial institutions. Moreover, a regulated market can require issuers which have their securities admitted to trading thereon to publish additional periodic financial information in all or some of the segments of that market.

(6) In order to provide additional flexibility and thereby reduce administrative burdens, the deadline for publishing half-yearly financial reports should be extended to three months after the end of the reporting period. As the period in which issuers can publish their half-yearly financial reports is extended, small and medium-sized issuers' reports are expected to receive more attention from the market participants, and thereby those issuers become more visible.

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market and who have activities in the extractive or logging of primary forest industries should disclose in a separate report, on an annual basis, payments made to governments in the countries in

which they operate. The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI). The disclosure of payments to governments should provide civil society and investors with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the Forest Law Enforcement, Governance and Trade Action Plan of the European Union (EU FLEGT) and the provisions of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market[(5)], which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the Union market. Member States should ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is prepared in accordance with the requirements of this Directive. The detailed requirements are defined in Chapter 10 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings[(6)].

(8) For the purposes of transparency and investor protection, Member States should require the following principles to apply to reporting on payments to governments in accordance with Chapter 10 of Directive 2013/34/EU: materiality (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); government and project-by-project reporting (reporting on payments to governments should be done on a government and project-by-project basis); universality (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); comprehensiveness (all relevant payments to governments should be reported, in line with Chapter 10 of Directive 2013/34/EU and supporting recitals).

(9) Financial innovation has led to the creation of new types of financial instruments that give investors economic exposure to companies, the disclosure of which has not been provided for in Directive 2004/109/EC. Those instruments could be used to secretly acquire stocks in companies, which could result in market abuse and give a false and misleading picture of economic ownership of publicly listed companies. In order to ensure that issuers and investors have full knowledge of the structure of corporate ownership, the definition of financial instruments in that Directive should cover all instruments with similar economic effect to holding shares and entitlements to acquire shares.

(10) Financial instruments with similar economic effect to holding shares and entitlements to acquire shares which provide for cash settlement should be calculated on a 'delta-adjusted' basis, by multiplying the notional amount of underlying shares by the delta of the instrument. Delta indicates how much a financial instrument's theoretical value would move in the event of variation in the underlying instrument's price and provides an accurate picture of the exposure of the holder to the underlying instrument. This

approach is taken in order to ensure that the information about the total voting rights accessible by the investor is as accurate as possible.

(11) In addition, in order to ensure adequate transparency of major holdings, where a holder of financial instruments exercises its entitlement to acquire shares and the total holdings of voting rights attaching to underlying shares exceed the notification threshold without affecting the overall percentage of the previously notified holdings, a new notification should be required to disclose the change in the nature of the holdings.

(12) A harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce the administrative burden for cross-border investors. Member States should therefore not be allowed to adopt more stringent rules than those provided for 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 existing differences in ownership concentration in the Union, and 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. Moreover, Member States should continue to be allowed to set stricter obligations than those provided for in Directive 2004/109/EC with regard to the content (such as disclosure of shareholders' intentions), the process and the timing for notification, and to be able to require additional information regarding major holdings not provided for by Directive 2004/109/EC. In particular, Member States should also be able to continue to apply laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids[(7)] that impose disclosure requirements more stringent than those in Directive 2004/109/EC.

(13) Technical standards should ensure consistent harmonisation of the regime for notification of major holdings and adequate transparency levels. It would be efficient and appropriate to entrust the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(8)], with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices. The Commission should adopt the regulatory technical standards developed by ESMA to specify the conditions for the application of existing exemptions from the notification requirements for major holdings of voting rights. Using its expertise, ESMA should in particular determine the cases of exemptions while taking account of their possible misuse to circumvent notification requirements.

(14) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to specify the contents of notification of major holdings of financial instruments. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(15) To facilitate cross-border investment, investors should be able to easily access regulated information for all listed companies in the Union. However, the current network of officially appointed national mechanisms for the central storage of regulated information does not ensure an easy search for such information across the Union. In order to ensure cross-border access to information and to take account of technical developments in financial markets and in communication technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify minimum standards for dissemination of regulated information, access to regulated information at Union level and the mechanisms for the central storage of regulated information. The Commission, with assistance of ESMA, should also be empowered to take measures to improve the functioning of the network of officially appointed national storage mechanisms and to develop technical criteria for access to regulated information at Union level, in particular, concerning the operation of a central access point for the search for regulated information at Union level. ESMA should develop and operate a web portal serving as a European electronic access point ('the access point').

(16) In order to improve compliance with the requirements of Directive 2004/109/EC and following the communication from the Commission of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial sector', the sanctioning powers should be enhanced and should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction or measure, key sanctioning powers and levels of administrative pecuniary sanctions. Those sanctioning powers should be available at least in case of breach of key provisions of Directive 2004/109/EC. Member States should also be able to exercise them in other circumstances. In particular, Member States should ensure that the administrative sanctions and measures that can be applied include the possibility of imposing pecuniary sanctions which are sufficiently high to be dissuasive. In the case of breaches by legal entities, Member States should be able to provide for the application of sanctions to members of administrative, management or supervisory bodies of the legal entity concerned or other individuals who can be held liable for those breaches under the conditions laid down in national law. Member States should also be able to provide for the suspension of, or for the possibility of suspending, the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements. Member States should be able to provide that the suspension of voting rights is to apply only to the most serious breaches. Directive 2004/109/EC should refer to both administrative sanctions and measures in order to cover all cases of non-

compliance, irrespective of their qualification as a sanction or a measure under national law, and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.
Member States should be able to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in Directive 2004/109/EC, having regard to the need for sufficiently dissuasive sanctions in order to support clean and transparent markets. The provisions regarding sanctions, and those regarding the publication of administrative sanctions, do not constitute a precedent for other Union legislation, in particular for more serious regulatory breaches.

(17) In order to ensure that decisions imposing an administrative measure or sanction have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool to inform market participants of what behaviour is considered to be in violation of Directive 2004/109/EC and to promote wider good behaviour amongst market participants. However if the publication of a decision would seriously jeopardise the stability of the financial system or an ongoing official investigation or would, in so far as can be determined, cause disproportionate and serious damage to the institutions or individuals involved, or where, in the event that the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication, the competent authority should be able to decide to delay such publication or to publish the information on an anonymous basis.

(18) In order to clarify the treatment of non-listed securities represented by depository receipts admitted to trading on a regulated market and in order to avoid transparency gaps, the definition of 'issuer' should be further specified to include issuers of non-listed securities represented by depository receipts admitted to trading on a regulated market. It is also appropriate to amend the definition of 'issuer' taking into account the fact that in some Member States issuers of securities admitted to trading on a regulated market can be natural persons.

(19) Under Directive 2004/109/EC, in the case of a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares, the issuer's home Member State is the Member State referred to in point (1)(m)(iii) of Article 2 of Directive 2003/71/EC of the European Parliament and of the Council[(9)]. To clarify and simplify the determination of the home Member State of such third-country issuers, the definition of that term should be amended to establish that the home Member State is to be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market.

(20) All issuers whose securities are admitted to trading on a regulated market within the Union should be supervised by a competent authority of a Member State to ensure that they comply with their obligations. Issuers who, under Directive 2004/109/EC, have to choose their home Member State but who have not done so, can avoid being supervised by any competent authority in the Union. Therefore, Directive 2004/109/EC should be amended to determine a home Member State for issuers that have not disclosed their choice of home Member State to the competent authorities within a three-month

period. In such cases, the home Member State should be the Member State where the issuer's securities are admitted to trading on a regulated market. Where the securities are admitted to trading on a regulated market in more than one Member State, all those Member States will be home Member States until the issuer chooses, and discloses, a single home Member State. This would become an incentive for such issuers to choose and disclose their choice of home Member State to the relevant competent authorities, and in the meantime competent authorities would no longer lack the necessary powers to intervene until an issuer has disclosed its choice of home Member State.

(21) Under Directive 2004/109/EC, in the case of an issuer of debt securities the denomination per unit of which is EUR 1 000 or more, the issuer's choice of a home Member State is valid for three years. However, where an issuer's securities are no longer admitted to trading on the regulated market in the issuer's home Member State and remain admitted to trading in one or more host Member States, such issuer has no relationship with the home Member State originally chosen by it where that is not the Member State of its registered office. Such issuer should be able to choose one of its host Member States or the Member State where it has its registered office as its new home Member State before the expiration of the three-year period. The same possibility of choosing a new home Member State would also apply to a third-country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or of shares whose securities are no longer admitted to trading on the regulated market in the issuer's home Member State but remain admitted to trading in one or more host Member States.

(22) There should be consistency between Directives 2004/109/EC and 2003/71/EC concerning the definition of the home Member State. In this respect, in order to ensure supervision by the most relevant Member State, Directive 2003/71/EC should be amended to provide for greater flexibility for situations where the securities of an issuer incorporated in a third country are no longer admitted to trading on the regulated market in its home Member State but instead are admitted to trading in one or more other Member States.

(23) Commission Directive 2007/14/EC[(10)] contains, in particular, rules concerning the notification of the choice of the home Member State by the issuer. Those rules should be incorporated into Directive 2004/109/EC. To ensure that competent authorities of the host Member State(s) and of the Member State where the issuer has its registered office, where such Member State is neither home nor host Member State, are 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 their home Member State, the competent authorities of all host Member States and 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.

(24) The requirement under Directive 2004/109/EC regarding disclosure of new loan issues has led to many implementation problems in practice and its application is considered to be complex. Furthermore, that requirement overlaps partially with the requirements laid down in Directive 2003/71/EC 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)[(11)] and it does not provide much additional information to the market. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(25) The requirement to communicate any amendment of an issuer's instruments of incorporation or statutes to the competent authorities of the home Member State overlaps with the similar requirement under Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies[(12)] and can result in confusion regarding the role of the competent authority. Therefore, and in order to reduce unnecessary administrative burdens for issuers, that requirement should be abolished.

(26) A harmonised electronic format for reporting would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. Therefore, the preparation of annual financial reports in a single electronic reporting format should be mandatory with effect from 1 January 2020, provided that a cost-benefit analysis has been undertaken by ESMA. ESMA should develop draft technical regulatory standards, for adoption by the Commission, to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL). ESMA, when preparing the draft regulatory technical standards, should conduct open public consultations for all stakeholders concerned, make a thorough assessment of the potential impacts of the adoption of the different technological options, and conduct appropriate tests in Member States on which it should report to the Commission when it submits the draft regulatory technical standards. In developing the draft regulatory technical standards on the formats to be applied to banks and financial intermediaries and to insurance companies, ESMA should cooperate regularly and closely with the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(13)], and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(14)], in order to take into account the specific characteristics of those sectors, ensuring cross-sectoral consistency of work and reaching joint positions. The European Parliament and the Council should be able to object to the regulatory technical standards pursuant to Article 13(3) of Regulation (EU) No 1095/2010, in which case those standards should not enter into force.

(27) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(15)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(16)], are fully applicable to the processing of personal data for the purposes of this Directive.

(28) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty and has to be implemented in accordance with those rights and principles.

(29) Since the objective of this Directive, namely to harmonise the transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale or effects, be better achieved at Union level, the 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.

(30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[17], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(31) Directives 2004/109/EC, 2003/71/EC and 2007/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 93, 30.3.2012, p. 2.

(**2**) OJ C 143, 22.5.2012, p. 78.

(**3**) Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and decision of the Council of 17 October 2013.

(**4**) OJ L 390, 31.12.2004, p. 38.

(**5**) OJ L 295, 12.11.2010, p. 23.

(**6**) OJ L 182, 29.6.2013, p. 19.

(**7**) OJ L 142, 30.4.2004, p. 12.

(**8**) OJ L 331, 15.12.2010, p. 84.

(**9**) OJ L 345, 31.12.2003, p. 64.

(**10**) OJ L 69, 9.3.2007, p. 27.

(**11**) OJ L 96, 12.4.2003, p. 16.

(**12**) OJ L 184, 14.7.2007, p. 17.

(**13**) OJ L 331, 15.12.2010, p. 12.

(**14**) OJ L 331, 15.12.2010, p. 48.

(**15**) OJ L 281, 23.11.1995, p. 31.

(**16**) OJ L 8, 12.1.2001, p. 1.

(**17**) OJ C 369, 17.12.2011, p. 14.