

DIRECTIVE 2008/11/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 March 2008****amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Treaty, *inter alia*, by deleting some of those elements or by supplementing the instrument with new non-essential elements.

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

- (3) In accordance with the statement by the European Parliament, the Council and the Commission⁽⁶⁾ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

- (4) The Commission should be empowered to adopt the measures necessary for the implementation of Directive 2003/71/EC in order to take account of technical developments in financial markets and ensure the uniform application of that Directive. Those measures are designed to adapt definitions and elaborate upon or supplement the provisions of Directive 2003/71/EC by detailed specification of the form and contents of a prospectus. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2003/71/EC by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Having regard to the opinion of the European Central Bank⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) Directive 2003/71/EC of the European Parliament and of the Council⁽⁴⁾ provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁵⁾.

- (5) Directive 2003/71/EC provides for a time restriction concerning the implementing powers conferred on the Commission. In their statement concerning Decision 2006/512/EC, the European Parliament, the Council and the Commission stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time limit. The European Parliament and the Council also declared that they would ensure that the proposals aimed at repealing the provisions in the instruments that provide for a time limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2003/71/EC should be deleted.

- (2) Council Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the

⁽¹⁾ OJ C 161, 13.7.2007, p. 45.

⁽²⁾ OJ C 39, 23.2.2007, p. 1.

⁽³⁾ Opinion of the European Parliament of 14 November 2007 (not yet published in the Official Journal) and Council Decision of 3 March 2008.

⁽⁴⁾ OJ L 345, 31.12.2003, p. 64.

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽⁶⁾ OJ C 255, 21.10.2006, p. 1.

- (6) The Commission should, at regular intervals, evaluate the functioning of the provisions concerning the implementing powers conferred on it in order to allow the European Parliament and the Council to determine whether the extent of those powers and the procedural requirements imposed on the Commission are appropriate and ensure both efficiency and democratic accountability.
- (7) Directive 2003/71/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directive 2003/71/EC by this Directive are technical in nature and concern committee procedure only, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2003/71/EC is hereby amended as follows:

1. Articles 2(4), 4(3), 5(5), 7(1), 8(4), 11(3), 13(7), 14(8) and 15(7) shall be amended as follows:
- (a) the words 'in accordance with the procedure referred to in Article 24(2)' shall be deleted;
- (b) the following sentence shall be added:

'Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 24(2a).';

2. Article 20(3) shall be replaced by the following:

'3. In order to ensure uniform application of this Directive, the Commission shall adopt implementing measures aimed at establishing general equivalence criteria, based on the requirements laid down in Articles 5 and 7. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 24(2a).

On the basis of the above criteria, the Commission may adopt implementing measures in accordance with the regu-

latory procedure referred to in Article 24(2), stating that a third country ensures the equivalence of prospectuses drawn up in that country with this Directive by reason of its national law or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards.';

3. Article 24 shall be amended as follows:

- (a) the following paragraph shall be inserted:

'2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.';

- (b) paragraphs 3 and 4 shall be replaced by the following:

'3. By 31 December 2010 and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.'

Article 2

Entry into force

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 3

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ