

COMMISSION DECISION

of 4 December 2006

on the use by third country issuers of securities of information prepared under internationally accepted accounting standards

(notified under document number C(2006) 5804)

(2006/891/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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⁽¹⁾, and in particular the second subparagraph of Article 23(4) thereof,

Whereas:

(1) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁽²⁾ requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State to prepare their consolidated accounts in accordance with adopted international accounting standards now commonly referred to as International Financial Reporting Standards (IFRS) for each financial year starting on or after 1 January 2005.

(2) Article 4 of Directive 2004/109/EC requires that where an issuer is required to prepare consolidated accounts, the audited financial statements should comprise such consolidated accounts prepared in accordance with IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002. Likewise, Article 5 of Directive 2004/109/EC on half-yearly financial reports requires that the condensed set of financial statements of issuers required to prepare consolidated accounts should be prepared in accordance with these standards. These requirements apply to all issuers whose securities are admitted to trading on a regulated market, regardless of whether their registered office is situated in the Community or in a third country.

(3) However, Article 23(1) of Directive 2004/109/EC permits the competent authority of the home Member State to exempt a third country issuer from certain requirements of the Directive, including the requirements of Articles 4 and 5 on annual and half-yearly financial reports, provided that the law of the third country 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. In addition, Article 23(2) of Directive 2004/109/EC provides a transitional exemption for issuers whose registered office is in a third country. Such issuers are exempt from the requirement to prepare their financial statements in accordance with Article 4 or 5 of that Directive prior to the financial year starting on or after 1 January 2007, provided that those financial statements are prepared in accordance with internationally accepted standards as referred to in Article 9 of Regulation (EC) No 1606/2002.

(4) Since the adoption of Regulation (EC) No 1606/2002, many countries have adopted IFRS directly into their national accounting standards. This clearly demonstrates that one of the aims of this Regulation, namely to encourage the increasing convergence of accounting standards so that IFRS are accepted internationally and are truly global standards, is being fulfilled. Accordingly, it is appropriate that third country issuers should be exempt from the obligation to prepare annual financial statements or half-yearly financial statements in accordance with IFRS, as required by Articles 4 and 5 of Directive 2004/109/EC, if those statements are prepared in accordance with the national accounting standards of a third country and if, in accordance with IAS 1 Presentation of Financial Statements, they contain an explicit and unreserved statement that they comply with IFRS.

(5) In its advice delivered in June 2005, the Committee of European Securities Regulators (CESR), established by Commission Decision No 2001/527/EC⁽³⁾, considered that the Generally Accepted Accounting Principles (GAAP) of Canada, Japan and the United States, each taken as a whole, are equivalent to IFRS adopted pursuant to Article 3 of Regulation (EC) No 1606/2002, subject to remedies, such as additional disclosures and in some instances supplementary financial statements.

(¹) OJ L 390, 31.12.2004, p. 38.

(²) OJ L 243, 11.9.2002, p. 1.

(³) OJ L 191, 13.7.2001, p. 43.

- (6) In January 2005, the Accounting Standards Board of Japan (ASBJ) and the International Accounting Standards Board (IASB) announced their agreement to launch a joint project to reduce differences between IFRS and Japanese GAAP and launched a joint work programme in March 2005 towards the convergence of Japanese GAAP with IFRS. In January 2006, the Accounting Standards Board of Canada publicly stated its objective to move to a single set of globally accepted high-quality standards for public companies and concluded that this objective is best accomplished by converging Canadian accounting standards with IFRS within five years. In February 2006, the IASB and the US Financial Accounting Standards Board published a memorandum of understanding which outlines a work programme for convergence between IFRS and US GAAP with a view to fulfilling one of the US Securities and Exchange Commission's (SEC) conditions that need to be met before it will lift the reconciliation requirement for foreign issuers using IFRS that are registered with the SEC, by 2009 at the latest.
- (7) It is important, however, that the quality of the principle-based IFRS financial reporting is preserved, that the IFRS standards are consistently implemented, that appropriate legal certainty is provided for companies and investors and that equal treatment of financial statements on a worldwide basis is offered to EU companies. The future assessment of equivalence should be based on a detailed technical and objective analysis of the differences between IFRS and third country accounting standards, as well as on the concrete implementation of these GAAP compared to IFRS. The progress of the convergence process should be closely examined before any decision on equivalence is taken.
- (8) In light of the efforts of the accounting standard setters in Canada, Japan and the United States to converge with IFRS, it is appropriate, for a two-year transitional period while standard setters and regulators pursue an active dialogue, the convergence process continues and the progress report is completed, to allow third country issuers to prepare their annual financial statements and half-yearly financial statements in accordance with the accounting standards of Canada, Japan or the United States.
- (9) Whilst many countries have adopted IFRS directly into their national GAAP, other countries are converging national GAAP to IFRS over a period of time. In the light of this, it is appropriate, for a maximum two-year transitional period, also to allow such third country issuers to continue preparing their annual and half-yearly financial statements in accordance with a GAAP that is converging with IFRS, provided that the national authority responsible has made a public commitment to this effect and established a work programme. In order to ensure that the exemption is available only in cases where these conditions are satisfied, the third country issuer should be required to provide evidence that satisfies the competent authority that the national authority has made a public statement and established a work programme. To ensure consistency within the Community, CESR should co-ordinate the competent authorities' assessment as to whether those conditions are satisfied in respect of individual third country GAAPs.
- (10) During that two-year period, the Commission should not only pursue an active dialogue with the relevant third country authorities but also closely monitor the progress in the convergence between IFRS and the GAAPs of Canada, Japan, the United States, and other third countries that have established a convergence programme, in order to ensure that it is in a position to take a decision on equivalence at least six months before 1 January 2009. In addition, the Commission will actively monitor ongoing progress in the work by the relevant third country authorities to eliminate any requirement for Community issuers accessing the financial markets of a third country to reconcile financial statements prepared using IFRS. At the end of the additional transitional period, the decision of the Commission will have to be such that community and non-EU issuers should be on equal footing.
- (11) The Commission should keep the European Securities Committee and the European Parliament regularly informed of the progress made towards the elimination of reconciliation obligations and of the process towards convergence. Accordingly, the Commission shall report to the European Securities Committee and the European Parliament before 1 April 2007 on the timetable envisaged by national accounting authorities of Canada, Japan and the United States for the convergence. In addition, before 1 April 2008 and after consulting CESR, the Commission should report to the European Securities Committee and the European Parliament on the evaluation of the GAAPs of third countries used by issuers which are not required to prepare their annual and half-yearly financial statements in accordance with IFRS prior to financial years starting on or after 1 January 2009. Lastly, before 1 January 2008, and after appropriate consultation with CESR, the Commission should ensure that there is a definition of equivalence which is used for the determination of the equivalence of third country GAAP, on the basis of an equivalence mechanism set up to that end.

- (12) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Prior to financial years starting on or after 1 January 2009, an issuer whose registered office is in a third country may prepare its annual consolidated financial statements and half-yearly consolidated financial statements in accordance with the accounting standards of a third country provided that one of the following conditions is met:

- (a) the notes to the financial statements contain an explicit and unreserved statement that they comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;
- (b) the financial statements are prepared in accordance with the Generally Accepted Accounting Principles of either Canada, Japan or the United States of America;
- (c) the financial statements are prepared in accordance with the Generally Accepted Accounting Principles of a third country other than Canada, Japan or the United States of America, and the following conditions are satisfied:
 - (i) the third country authority responsible for the national accounting standards in question has made a public commitment, before the start of the financial year to which the financial statements relate, to converge those standards with International Financial Reporting Standards;
 - (ii) that authority has established a work programme which demonstrates the intention to progress towards convergence before 31 December 2008; and
 - (iii) the issuer provides evidence that satisfies the competent authority that the conditions in (i) and (ii) are met.

Article 2

1. By 1 April 2007, the Commission shall present to the European Securities Committee and the European Parliament a first report on the work timetable of the authorities responsible for national accounting standards in the US, Japan and Canada for the convergence between IFRS and the Generally Accepted Accounting Principles of those countries.

2. The Commission shall closely monitor, and regularly inform the European Securities Committee and the European Parliament about the amount of progress in the convergence between International Financial Reporting Standards and the

Generally Accepted Accounting Principles of Canada, Japan and the United States of America and of progress on the elimination of reconciliation requirements that apply to Community issuers in those countries. In particular, it shall inform the European Securities Committee and the European Parliament immediately if the process is not proceeding satisfactorily.

3. The Commission shall also regularly inform the European Securities Committee and the European Parliament about the development of regulatory discussions and the amount of progress in the convergence between International Financial Reporting Standards and the Generally Accepted Accounting Principles of third countries mentioned in paragraph (c) of Article 1 and progress towards the elimination of any reconciliation requirements. In particular, the Commission shall inform the European Securities Committee and the European Parliament immediately if the process is not proceeding satisfactorily.

4. In addition to the obligations under paragraphs 2 and 3, the Commission shall engage in and maintain a regular dialogue with third country authorities and, before 1 April 2008 at the latest, the Commission shall present a report to the European Securities Committee and to the European Parliament on the progress in convergence and progress towards the elimination of any reconciliation requirements that apply to Community issuers under the rules of a third country covered by paragraph (b) or (c) of Article 1. The Commission may request or require another person to prepare the report.

5. At least six months before 1 January 2009, the Commission shall ensure a determination of the equivalence of the Generally Accepted Accounting Principles of third countries, pursuant to a definition of equivalence and an equivalence mechanism that it will have established before 1 January 2008 in accordance with the procedure referred to in Article 27(2) of Directive 2004/109/EC. When complying with this paragraph, the Commission shall first consult the Committee of European Securities Regulators on the appropriateness of the definition of equivalence, equivalence mechanism and the determination of the equivalence that is made.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 4 December 2006.

For the Commission
Charlie McCREEVY
Member of the Commission