

COMMISSION DIRECTIVE 2003/125/EC**of 22 December 2003****implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽¹⁾, and in particular the sixth indent of Article 6(10) thereof,

After consulting the Committee of European Securities Regulators (CESR) ⁽²⁾ for technical advice,

Whereas:

- (1) Harmonised standards are necessary for the fair, clear and accurate presentation of information and disclosure of interests and conflicts of interest, to be complied with by persons producing or disseminating information recommending or suggesting an investment strategy, intended for distribution channels or for the public. In particular, market integrity requires high standards of fairness, probity and transparency when information recommending or suggesting an investment strategy is presented.
- (2) Recommending or suggesting an investment strategy is either done explicitly (such as 'buy', 'hold' or 'sell' recommendations) or implicitly (by reference to a price target or otherwise).
- (3) Investment advice, through the provision of a personal recommendation to a client in respect of one or more transactions relating to financial instruments (in particular informal short-term investment recommendations originating from inside the sales or trading departments of an investment firm or a credit institution expressed to their clients), which are not likely to become publicly available, should not be considered in themselves as recommendations within the meaning of this Directive.
- (4) Investment recommendations that constitute a possible basis for investment decisions should be produced and disseminated in accordance with high standards of care in order to avoid misleading market participants.
- (5) The identity of the producer of investment recommendations, his conduct of business rules and the identity of his competent authority should be disclosed, since it may be a valuable piece of information for investors to consider in relation to their investment decisions.

(6) Recommendations should be presented clearly and accurately.

(7) Own interests or conflicts of interest of persons recommending or suggesting investment strategy may influence the opinion that they express in investment recommendations. In order to ensure that the objectivity and reliability of the information can be evaluated, appropriate disclosure should be made of significant financial interests in any financial instrument which is the subject of the information recommending investment strategies, or of any conflicts of interest or control relationship with respect to the issuer to whom the information relates, directly or indirectly. However, this Directive should not require relevant persons producing investment recommendations to breach effective information barriers put in place in order to prevent and avoid conflicts of interest.

(8) Investment recommendations may be disseminated in unaltered, altered or summarised form by a person other than the producer. The way in which disseminators handle such recommendations may have an important impact on the evaluation of those recommendations by investors. In particular, the knowledge of the identity of the disseminator of investment recommendations, his conduct of business rules or the extent of alteration of the original recommendation can be a valuable piece of information for investors when considering their investment decisions.

(9) Posting of investment recommendations on internet sites should be in accordance with the rules on transfer of personal data to third countries as laid down in 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 movement of such data ⁽³⁾.

(10) Credit rating agencies issue opinions on the credit-worthiness of a particular issuer or financial instrument as of a given date. As such, these opinions do not constitute a recommendation within the meaning of this Directive. However, credit rating agencies should consider adopting internal policies and procedures designed to ensure that credit ratings published by them are fairly presented and that they appropriately disclose any significant interests or conflicts of interest concerning the financial instruments or the issuers to which their credit ratings relate.

⁽¹⁾ OJ L 96, 12.4.2003, p. 16.

⁽²⁾ CESR was established by Commission Decision 2001/527/EC (OJ L 191, 13.7.2001, p. 43).

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

- (11) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular by Article 11 thereof and Article 10 of the European Convention on Human Rights. In this regard, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.
- (12) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,
5. 'relevant person' means a natural or legal person producing or disseminating recommendations in the exercise of his profession or the conduct of his business;
6. 'issuer' means the issuer of a financial instrument to which a recommendation relates, directly or indirectly;
7. 'distribution channels' shall mean a channel through which information is, or is likely to become, publicly available. 'Likely to become publicly available information' shall mean information to which a large number of persons have access;
8. 'appropriate regulation' shall mean any regulation, including self-regulation, in place in Member States as referred to by Directive 2003/6/EC.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER II

PRODUCTION OF RECOMMENDATIONS

CHAPTER I

Article 2

DEFINITIONS

Identity of producers of recommendations

Article 1

Definitions

For the purposes of this Directive, the following definitions shall apply in addition to those laid down in Directive 2003/6/EC:

1. 'investment firm' means any person as defined in Article 1(2) of Council Directive 93/22/EEC ⁽¹⁾;
2. 'credit institution' means any person as defined in Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council ⁽²⁾;
3. 'recommendation' means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;
4. 'research or other information recommending or suggesting investment strategy' means:
 - (a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments;
 - (b) information produced by persons other than the persons referred to in (a) which directly recommends a particular investment decision in respect of a financial instrument;

1. Member States shall ensure that there is appropriate regulation in place to ensure that any recommendation discloses clearly and prominently the identity of the person responsible for its production, in particular, the name and job title of the individual who prepared the recommendation and the name of the legal person responsible for its production.

2. Where the relevant person is an investment firm or a credit institution, Member States shall require that the identity of the relevant competent authority be disclosed.

Where the relevant person is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, Member States shall ensure that a reference to those standards or codes is disclosed.

3. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraphs 1 and 2 are adapted in order not to be disproportionate in the case of non-written recommendations. Such adaptation may include a reference to the place where such disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

4. Paragraphs 1 and 2 shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self regulation, in the Member States, provided that such regulation achieves similar effects as those of paragraphs 1 and 2.

Article 3

General standard for fair presentation of recommendations

1. Member States shall ensure that there is appropriate regulation in place to ensure that all relevant persons take reasonable care to ensure that:

- (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

⁽¹⁾ OJ L 141, 11.6.1993, p. 27.

⁽²⁾ OJ L 126, 26.5.2000, p. 1.

- (b) all sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated;
- (c) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are indicated.

2. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraph 1 are adapted in order not to be disproportionate in the case of non-written recommendations.

3. Member States shall require that all relevant persons take reasonable care to ensure that any recommendation can be substantiated as reasonable, upon request by the competent authorities.

4. Paragraphs 1 and 3 shall not apply to journalists subject to equivalent appropriate regulation in the Member States, including equivalent appropriate self regulation, provided that such regulation achieves similar effects as those of paragraphs 1 and 3.

Article 4

Additional obligations in relation to fair presentation of recommendations

1. In addition to the obligations laid down in Article 3, where the relevant person is an independent analyst, an investment firm, a credit institution, any related legal person, any other relevant person whose main business is to produce recommendations, or a natural person working for them under a contract of employment or otherwise, Member States shall ensure that there is appropriate regulation in place to ensure that person to take reasonable care to ensure that at least:

- (a) all substantially material sources are indicated, as appropriate, including the relevant issuer, together with the fact whether the recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;
- (b) any basis of valuation or methodology used to evaluate a financial instrument or an issuer of a financial instrument, or to set a price target for a financial instrument, is adequately summarised;
- (c) the meaning of any recommendation made, such as buy, sell or hold, which may include the time horizon of the investment to which the recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
- (d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced;
- (e) the date at which the recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any financial instrument price mentioned;

- (f) where a recommendation differs from a recommendation concerning the same financial instrument or issuer, issued during the 12-month period immediately preceding its release, this change and the date of the earlier recommendation are indicated clearly and prominently.

2. Member States shall ensure that, where the requirements laid down in points (a), (b) or (c) of paragraph 1 would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where the required information can be directly and easily accessed by the public, such as a direct Internet link to that information on an appropriate internet site of the relevant person, provided that there has been no change in the methodology or basis of valuation used.

3. Member States shall ensure that there is appropriate regulation in place to ensure that, in the case of non-written recommendations, the requirements of paragraph 1 are adapted so that they are not disproportionate.

Article 5

General standard for disclosure of interests and conflicts of interest

1. Member States shall ensure that there is appropriate regulation in place to ensure that relevant persons disclose all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, in particular where relevant persons have a significant financial interest in one or more of the financial instruments which are the subject of the recommendation, or a significant conflict of interest with respect to an issuer to which the recommendation relates.

Where the relevant person is a legal person, that requirement shall apply also to any legal or natural person working for it, under a contract of employment or otherwise, who was involved in preparing the recommendation.

2. Where the relevant person is a legal person, the information to be disclosed in accordance with paragraph 1 shall at least include the following:

- (a) any interests or conflicts of interest of the relevant person or of related legal persons that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the recommendation;
- (b) any interests or conflicts of interest of the relevant person or of related legal persons known to persons who, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to customers or the public.

3. Member States shall ensure that there is appropriate regulation in place to ensure that the recommendation itself shall include the disclosures provided for in paragraphs 1 and 2. Where such disclosures would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosures can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate internet site of the relevant person.

4. Member States shall ensure that there is appropriate regulation in place to ensure that the requirements laid down in paragraph 1 are adapted in order not to be disproportionate in the case of non-written recommendations.

5. Paragraphs 1 to 3 shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self regulation, in the Member States, provided that such regulation achieves similar effects as those of paragraphs 1 to 3.

Article 6

Additional obligations in relation to disclosure of interests or conflicts of interest

1. In addition to the obligations laid down in Article 5, Member States shall require that any recommendation produced by an independent analyst, an investment firm, a credit institution, any related legal person, or any other relevant person whose main business is to produce recommendations, discloses clearly and prominently the following information on their interests and conflicts of interest:

- (a) major shareholdings that exist between the relevant person or any related legal person on the one hand and the issuer on the other hand. These major shareholdings include at least the following instances:
 - when shareholdings exceeding 5 % of the total issued share capital in the issuer are held by the relevant person or any related legal person, or
 - when shareholdings exceeding 5 % of the total issued share capital of the relevant person or any related legal person are held by the issuer.

Member States may provide for lower thresholds than the 5 % threshold as provided for in these two instances;

- (b) other significant financial interests held by the relevant person or any related legal person in relation to the issuer;
- (c) where applicable, a statement that the relevant person or any related legal person is a market maker or liquidity provider in the financial instruments of the issuer;
- (d) where applicable, a statement that the relevant person or any related legal person has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of financial instruments of the issuer;

- (e) where applicable, a statement that the relevant person or any related legal person is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of a compensation or to the promise to get a compensation paid;

- (f) where applicable, a statement that the relevant person or any related legal person is party to an agreement with the issuer relating to the production of the recommendation.

2. Member States shall require disclosure, in general terms, of the effective organisational and administrative arrangements set up within the investment firm or the credit institution for the prevention and avoidance of conflicts of interest with respect to recommendations, including information barriers.

3. Member States shall require that for natural or legal persons working for an investment firm or a credit institution, under a contract of employment or otherwise, and who were involved in preparing the recommendation, the requirement under the second subparagraph of paragraph 1 of Article 5 shall include, in particular, disclosure of whether the remuneration of such persons is tied to investment banking transactions performed by the investment firm or credit institution or any related legal person.

Where those natural persons receive or purchase the shares of the issuers prior to a public offering of such shares, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

4. Member States shall require that investment firms and credit institutions disclose, on a quarterly basis, the proportion of all recommendations that are 'buy', 'hold', 'sell' or equivalent terms, as well as the proportion of issuers corresponding to each of these categories to which the investment firm or the credit institution has supplied material investment banking services over the previous 12 months.

5. Member States shall ensure that the recommendation itself includes the disclosures required by paragraphs 1 to 4. Where the requirements under paragraphs 1 to 4 would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosure can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate internet site of the investment firm or credit institution.

6. Member States shall ensure that there is appropriate regulation in place to ensure that, in the case of non-written recommendations, the requirements of paragraph 1 are adapted so that they are not disproportionate.

CHAPTER III

DISSEMINATION OF RECOMMENDATIONS PRODUCED BY THIRD PARTIES*Article 7***Identity of disseminators of recommendations**

Member States shall ensure that there is appropriate regulation in place to ensure that, whenever a relevant person under his own responsibility disseminates a recommendation produced by a third party, the recommendation indicates clearly and prominently the identity of that relevant person.

*Article 8***General standard for dissemination of recommendations**

Member States shall ensure that there is appropriate regulation in place to ensure that whenever a recommendation produced by a third party is substantially altered within disseminated information, that information clearly indicates the substantial alteration in detail. Member States shall ensure that whenever the substantial alteration consists of a change of the direction of the recommendation (such as changing a 'buy' recommendation into a 'hold' or 'sell' recommendation or vice versa), the requirements laid down in Articles 2 to 5 on producers are met by the disseminator, to the extent of the substantial alteration.

In addition, Member States shall ensure that there is appropriate regulation in place to ensure that relevant legal persons who themselves, or through natural persons, disseminate a substantially altered recommendation have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the recommendation, the recommendation itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.

The first and second paragraphs do not apply to news reporting on recommendations produced by a third party where the substance of the recommendation is not altered.

In case of dissemination of a summary of a recommendation produced by a third party, the relevant persons disseminating such summary shall ensure that the summary is clear and not misleading, mentioning the source document and where the disclosures related to the source document can be directly and easily accessed by the public provided that they are publicly available.

*Article 9***Additional obligations for investment firms and credit institutions**

In addition to the obligations laid down in Articles 7 and 8, whenever the relevant person is an investment firm, a credit institution or a natural person working for such persons under

a contract of employment or otherwise, and disseminates recommendations produced by a third party, Member States shall require that:

- (a) the name of the competent authority of the investment firm or credit institution is clearly and prominently indicated;
- (b) if the producer of the recommendation has not already disseminated it through a distribution channel, the requirements laid down in Article 6 on producers are met by the disseminator;
- (c) if the investment firm or credit institution has substantially altered the recommendation, the requirements laid down in Articles 2 to 6 on producers are met.

CHAPTER IV

FINAL PROVISIONS*Article 10***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2004 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between these provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 11***Entry into force**

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

*Article 12***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 22 December 2003.

For the Commission

Frederik BOLKESTEIN

Member of the Commission