

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 February 2012

on a proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC

(CON/2012/10)

(2012/C 93/02)

Introduction and legal basis

On 30 November 2011, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC ⁽¹⁾ (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed directive contains provisions affecting the European System of Central Banks' contribution to the smooth conduct of policies by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system under Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The proposed directive amends Directive 2004/109/EC ⁽²⁾ to achieve *inter alia* the following regulatory objectives.

1. Limit the reporting burden for issuers of listed securities by eliminating or harmonising certain reporting obligations. The proposed directive abolishes the requirement for the issuers to make public interim management statements with a view to decreasing the reporting burden that has become excessive particularly for small and medium-sized enterprises ⁽³⁾. The ECB in principle supports these amendments, while it considers that the obligation to make public interim management statements should continue to apply to financial institutions with a view to contributing to public confidence in such institutions and to preserving financial stability ⁽⁴⁾. At the same time, the standard forms and templates used to prepare management reports and interim management reports should be harmonised through technical standards to be developed by the European Securities and Markets Authority (ESMA). The contents of financial statements accompanying the management reports and interim management reports should also be harmonised with the use of technical standards ⁽⁵⁾.

⁽¹⁾ COM(2011) 683 final.

⁽²⁾ Directive 2004/109/EC 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 (OJ L 390, 31.12.2004, p. 38).

⁽³⁾ See Article 1(5) and (6) of the proposed directive.

⁽⁴⁾ See proposed Amendments 1, 2 and 5 in the Annex.

⁽⁵⁾ See proposed Amendments 3 and 4 in the Annex.

2. Ensure the effectiveness of the obligation to report acquisitions of major holdings of shares, including such acquisitions made with the use of derivative financial instruments. The proposed directive introduces an obligation to report financial instruments with economic effects similar to entitling their holder to acquire the underlying shares of a listed company, also where this economic effect is achieved without a formal agreement between the holder of a financial instrument and its counterparty⁽¹⁾. Consequently, the proposed directive subjects three categories of holdings to the reporting obligation: (a) major holdings of shares or holdings of major proportions of voting rights⁽²⁾, (b) holdings of instruments having equivalent effect to the holdings in the first category⁽³⁾, and (c) aggregate holdings in the two preceding categories⁽⁴⁾. The ECB agrees with this amendment, while it also supports maintaining the existing exemptions from the disclosure obligations, including the exemption of holdings related to market making activity.

3. Improve access to financial information disclosed by the issuers. The proposed directive delegates to the Commission the power to adopt measures, and technical standards to be developed by ESMA, which will: (a) introduce interoperability rules to be followed by the national officially appointed mechanisms collecting regulated information from issuers of listed securities, and (b) facilitate the creation of a central access point to such regulated information at Union level⁽⁵⁾. The ECB supports these amendments but makes a number of drafting proposals aimed at increasing their effectiveness and legislative precision⁽⁶⁾.

Where the ECB recommends that the proposed directive is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 10 February 2012.

The Vice-President of the ECB
Vitor CONSTÂNCIO

⁽¹⁾ See Article 1(8) of the proposed directive.

⁽²⁾ See Articles 9-10 of Directive 2004/109/EC.

⁽³⁾ See Article 13 of Directive 2004/109/EC.

⁽⁴⁾ See Article 13a of Directive 2004/109/EC inserted by Article 1(9) of the proposed directive.

⁽⁵⁾ See Article 1(12) and (13) of the proposed directive.

⁽⁶⁾ See proposed Amendments 6, 7 and 8 in the Annex.

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
Amendment 1	
Recital 5 of the proposed directive	
<p>(5) In order to ensure that the administrative burden is effectively reduced across the Union, Member States should not be allowed to continue to impose the requirement to publish interim management statements in their national legislation.'</p>	<p>(5) In order to ensure that the administrative burden is effectively reduced across the Union, Member States should not be allowed to continue to impose in their national legislation the general requirement to make public publish interim management statements in their national legislation. This requirement should only be maintained for financial institutions where financial stability considerations impose higher transparency standards. Moreover, the possibility should be maintained for all categories of issuers to make public interim management statements or quarterly reports on a voluntary basis or where this is required by a trading venue's rules as part of a specified listing standard.'</p>

Explanation

The abolition of the requirement to make public interim management statements should not apply to financial institutions. In this respect, higher transparency standards should be maintained, contributing to public confidence in financial institutions and to preserving financial stability. This Amendment is related to Amendments 2 and 5.

Moreover, the changes introduced should not affect the possibility for all issuers to make public interim management statements or quarterly reports on a voluntary basis or where the issuer seeks to comply with a specified listing standard provided by a trading venue. Such types of disclosures address the demand for a higher level of issuer transparency by some classes of investors. This possibility to make more comprehensive disclosures contributes to the efficient operation of capital markets and should be maintained.

Amendment 2

Article 1(1) of the proposed Directive

<p>(1) Article 2(1) is amended as follows:</p> <p>...</p> <p>(c) the following point (q) is added:</p> <p>“(q) ‘formal agreement’ means an agreement which is binding under the applicable law.”’</p>	<p>(1) Article 2(1) is amended as follows:</p> <p>...</p> <p>(c) point (o) is replaced by the following:</p> <p>“(o) ‘credit institution’ means an undertaking as defined in Article (4)(1) of Regulation (EU) No xx/xx of the European Parliament and of the Council of [date] on prudential requirements for credit institutions and investment firms (*)”;</p> <p>(d) the following point (q) is inserted:</p> <p>“(q) ‘financial institution’ means an entity authorised to carry on any of the activities listed in Directive xx/xx/EU of the European Parliament and of the Council of [date] on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (**), Regulation (EU) No xx/xx of the European Parliament and of the Council of [date] on markets in financial instruments and amending Regulation</p>
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
	<p>No xx/xx of [date] on OTC derivatives, central counterparties and trade repositories (**), Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (****), Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (*****), Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (*****), as well as Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (*****).</p> <p>(*) OJ L [...]. (**) OJ L [...]. (***) OJ L [...]. (****) OJ L 335, 17.12.2009, p. 1. (*****) OJ L 302, 17.11.2009, p. 32. (*****) OJ L 235, 23.9.2003, p. 10. (*****) OJ L 174, 1.7.2011, p. 1.”;</p> <p>(e) the following point (qr) is added:</p> <p>“(qr) ‘formal agreement’ means an agreement which is binding under the applicable law.”.</p>

Explanation

The ECB proposes not to remove the requirement to make public interim management statements as far as financial institutions are concerned (see Amendments 1 and 5). Consequently, a definition of ‘financial institution’ needs to be introduced in the proposed directive. Moreover, the definition of ‘credit institution’ in Directive 2004/109/EC referring to Directive 2000/12/EC needs to be updated to refer to the proposed regulation on prudential requirements for credit institutions and investment firms.

Amendment 3

Article 1(3) of the proposed directive

<p>(3) In Article 4, the following paragraph 7 is added:</p> <p>“7. The European Securities and Markets Authority (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*), shall issue guidelines, including standard forms or templates, to specify the information to be included in the management report.</p> <p>(*) OJ L 331, 15.12.2010, p. 84.”</p>	<p>(3) In Article 4, the following paragraph 7 is added:</p> <p>“7. The European Securities and Markets Authority (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*), shall issue guidelines develop, in cooperation with the European Banking Authority (hereinafter ‘EBA’), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (**), draft implementing technical standards, including standard forms or templates, to specify the information to be included in:</p> <p>(a) the management report, whereby ESMA shall ensure that such templates are compatible with Articles 20 and 29 of Directive xx/xx/EU of the European Parliament and of the Council of [date] on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (**);</p>
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
	<p>(b) the financial statements referred to in paragraph 2, whereby ESMA shall ensure that such templates are compatible with the templates for the reporting of financial information by credit institutions and investment firms that will be specified in draft implementing technical standards developed by the EBA on the basis of Article 95 of Regulation (EU) No xx/xx [on prudential requirements for credit institutions and investment firms].</p> <p>ESMA shall involve as appropriate the Joint Committee of European Supervisory Authorities (hereinafter the 'Joint Committee') referred to in Article 54 of Regulation (EU) No 1095/2010 and shall submit the draft implementing technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.</p> <p>(*) OJ L 331, 15.12.2010, p. 84. (**) OJ L 331, 15.12.2010, p. 12. (***) OJ L [...]."</p>

Explanation

With the view to achieving the proposed directive's objectives of modernising the reporting framework for issuers and decreasing the reporting burden, ESMA should develop implementing technical standards harmonising the standard forms and templates used to meet reporting obligations. Such harmonisation should concern both the management reports and the accompanying financial statements, whereby:

- (a) the standard forms and templates used for management reports should be aligned with the provisions on the content of management reports and consolidated management reports in the proposed directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ⁽²⁾;
- (b) the standard forms and templates for financial statements accompanying management reports should be aligned with the reporting templates to be developed by the EBA on the basis of the proposed regulation on prudential requirements for credit institutions and investment firms.

Amendment 4

Article 1(4) of the proposed directive

<p>'(4) In Article 5, the following paragraph 7 is added:</p> <p>"7. ESMA shall issue guidelines, including standard forms or templates, to specify the information to be included in the interim management report."</p>	<p>'(4) In Article 5, the following paragraph 7 is added:</p> <p>"7. ESMA shall issue guidelines develop, in cooperation with the EBA, draft implementing technical standards, including standard forms or templates, to specify the information to be included in:</p> <p>(a) the interim management report;</p> <p>(b) the condensed set of financial statements referred to in paragraph 2, whereby ESMA shall ensure that such templates are compatible with the templates for the reporting of financial information by credit institutions and investment firms that will be specified in draft implementing technical standards developed by the EBA on the basis of Article 95 of Regulation (EU) No xx/xx [on prudential requirements for credit institutions and investment firms].</p>
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Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
	<p>ESMA shall involve as appropriate the Joint Committee and shall submit the draft implementing technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”</p>

Explanation

See the explanation relating to Amendment 3 which applies to standard forms and templates for interim management reports and the accompanying condensed sets of financial statements.

Amendment 5

Article 1(5) and new Article 1(5a) of the proposed directive

<p>(5) Article 6 is replaced by the following:</p> <p>“Article 6</p> <p>Report on payments to governments</p> <p>...”’</p>	<p>(5) Article 6 is replaced by the following:</p> <p>“Article 6</p> <p>Report on payments to governments</p> <p>Interim management statements</p> <p>1. Without prejudice to Article 12 of Regulation (EU) No xx/xx of the European Parliament and of the Council of [date] on insider dealing and market manipulation (market abuse) (*), an issuer which is a financial institution whose shares are admitted to trading on a regulated market shall make public management statements in the first and second six-month periods of the financial year. Such statements shall be made in the period between 10 weeks following the beginning and six weeks before the end of the relevant six-month period. They shall contain information covering the period between the beginning of the relevant six-month period and the date of publication. Such statements shall provide:</p> <ul style="list-style-type: none"> — an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and — a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period. <p>2. Issuing financial institutions which, under national legislation or the rules of the relevant regulated market, or on their own initiative, publish quarterly financial reports shall not be required to make public interim management statements as referred to in paragraph 1.</p> <p>3. A competent authority may decide that an issuing financial institution may delay the publication of specified information in an interim management statement when the following conditions are satisfied:</p> <ul style="list-style-type: none"> (a) the information is of systemic importance; (b) it is in the public interest to delay its publication; (c) the confidentiality of the information can be ensured.
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Text proposed by the Commission	Amendments proposed by the ECB (*)
	<p>The competent authority shall adopt the decision on its own initiative or at the request of an issuing financial institution, the relevant ESCB central bank, the authority supervising the issuing financial institution or the national macroprudential authority.</p> <p>The decision shall be in writing.</p> <p>The competent authority shall ensure that the delay is only for a period justified by the public interest.</p> <p>The competent authority shall at least once a week assess the fulfilment of the conditions in points (a), (b) or (c), in close cooperation with the relevant ESCB central bank, the authority supervising the issuing financial institution and, as appropriate, the national macroprudential authority and shall revoke its decision immediately if any of the conditions are no longer satisfied.</p> <p>4. ESMA shall develop, in cooperation with the EBA, draft implementing technical standards, including standard forms or templates, to specify the information to be included in the interim management statements referred to in paragraph 1, whereby ESMA shall ensure that such templates are compatible with the templates for the reporting of financial information by credit institutions and investment firms that will be specified in draft implementing technical standards developed by the EBA on the basis of Article 95 of Regulation (EU) No xx/xx [on prudential requirements for credit institutions and investment firms].</p> <p>ESMA shall involve as appropriate the Joint Committee and shall submit the draft implementing technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.</p> <p>(*) OJ L [...].”</p> <p>(5a) The following Article 6a is inserted:</p> <p>“Article 6a</p> <p>Report on payments to governments</p> <p>...”:</p>

Explanation

The current Article 1(5) of the proposed directive replaces the current Article 6 of Directive 2004/109/EC on interim management statements with new text on reporting by issuers active in the extractive or logging industries. The ECB proposes maintaining Article 6 as a provision relating to interim management statements. At the same time, the ECB proposes amending Article 6 to achieve the following objectives:

- (a) the requirement to make public interim management statements should continue to apply only to issuing financial institutions (see the explanations relating to Amendments 1 and 2);
- (b) implementing technical standards developed by ESMA should be used to harmonise interim management statements and to align them with the reporting templates to be developed by the EBA on the basis of the proposed regulation on prudential requirements for credit institutions and investment firms;

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
(c) <i>the competent securities market authority should be able to delay the disclosure by the issuer of information of systemic importance where this would be in the public interest, on its own initiative or if requested by the issuing financial institution, the relevant ESCB central bank, the authority supervising the issuing financial institution or the national macroprudential authority ⁽³⁾. This proposal is consistent with Article 12 of the proposed regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) ⁽⁴⁾;</i>	
(d) <i>The reference to Directive 2003/6/EC in Article 6 of Directive 2004/109/EC needs to be replaced with a reference to the abovementioned proposed regulation.</i>	

Amendment 6

New Article 1(11a) of the proposed directive

[no text]	<p>“(11a) In Article 19, the following paragraph 5 is added:</p> <p>“5. ESMA shall develop draft regulatory technical standards regarding:</p> <p>(a) the introduction of common taxonomy for types of regulated information;</p> <p>(b) the harmonisation of the formats in which regulated information is reported, taking account of various levels of harmonisation that may be feasible for specific types of regulated information.</p> <p>ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”:</p>
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Explanation

The ECB supports initiatives to improve access to financial information, including also access to corporate information regulated by Directive 2004/109/EC. Implementation of well-defined reporting practices, based on standardised data formats and efficient reporting infrastructure, will allow regulated information to be used by investors and regulators to monitor market developments and, in particular, to analyse systemic risks in a timely manner. Hence, the ECB supports the amendments introduced by the proposed directive improving access to regulated information, through better functioning of officially appointed mechanisms (OAMs) and by establishing at Union level a single access point for searching information collected by national OAMs. At the same time, the ECB notes that the usefulness of a single access point will depend on a number of factors, including:

- (a) *the introduction of common taxonomy for types of regulated information;*
- (b) *the harmonisation of formats in which regulated information is reported, taking account of differences between types of regulated information which may be easily harmonised, e.g. reporting of major holdings, and other types of regulated information which are more heterogeneous, e.g. insider information, where harmonisation may be limited to general reporting categories;*
- (c) *the harmonisation of technical filing standards used by the issuers in their filing to the OAMs, which should provide for (i) straight-through processing of the reported information and (ii) reliable electronic docketing and versioning functions;*
- (d) *the choice of efficient technical solutions to the central search functionality, including the scope of information, e.g. metadata or indexes, collected centrally with respect to information and documents maintained at OAM level;*
- (e) *the provision of an adequate multilingual search interface for users accessing the OAMs through the central access point, which should accommodate (i) interactive search functions such as dynamic and chain searches, and (ii) multiple-country searches initiated with a single request;*
- (f) *the harmonisation of search interfaces provided by national OAMs, which will benefit in particular investors seeking to enhance search results obtained through a central access point by way of follow-up searches in the relevant national OAMs.*

Detailed requirements in the above areas should be set out in measures adopted by the Commission and in regulatory technical standards developed by ESMA for adoption by the Commission. The ECB proposes a number of drafting proposals in this respect, building on earlier recommendations by the Commission and the CESR ⁽⁵⁾.

Text proposed by the Commission	Amendments proposed by the ECB (1)
<p>Moreover, the ECB considers for reasons of proper legislative technique that: (i) delegated powers related to the common reporting taxonomy and formats should be included in Article 19 of Directive 2004/109/EC, (ii) delegated powers related to technical arrangements used in filings to the national OAMs and to harmonisation of OAM search interfaces should be included in Article 21 of this Directive, and (iii) delegated powers related to interoperability of national OAMs, including the use of the unique identifier, as well as with operation of the central access point at Union level, will need to be included in Article 22 of this Directive, as proposed in Amendments 6 to 8.</p>	

Amendment 7

Article 1(12) of the proposed directive

<p>'(12) Article 21(4) is replaced by the following:</p> <p>"4. The Commission shall be empowered to 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 to specify the following minimum standards and rules:</p> <p>(a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;</p> <p>(b) minimum standards for the central storage mechanism as referred to in paragraph 2;</p> <p>(c) rules concerning the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.</p> <p>The Commission may also specify and update a list of media for the dissemination of information to the public."</p>	<p>'(12) In Article 21(4) is replaced by the following, the following paragraph 5 is added:</p> <p>"4. The Commission shall be empowered to 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 to specify the following minimum standards and rules:</p> <p>(a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;</p> <p>(b) minimum standards for the central storage mechanism as referred to in paragraph 2;</p> <p>(c) rules concerning the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, as referred to in paragraph 2.</p> <p>The Commission may also specify and update a list of media for the dissemination of information to the public."</p> <p>5. ESMA shall develop draft regulatory technical standards setting technical requirements regarding:</p> <p>(a) the harmonisation of technical arrangements used by the issuers in their filing to the officially appointed mechanisms, in particular allowing for the use of straight-through processing technology, recording of the filing time (electronic docketing) and recording of any subsequent amendments to the originally reported information (versioning);</p> <p>(b) the harmonisation of the search interfaces provided by the officially appointed mechanisms.</p> <p>ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010."</p>
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Explanation

See the explanation relating to Amendment 6. Delegated powers under Article 21 of Directive 2004/109/EC should deal with harmonisation of technical arrangements for filing and of the search interfaces operated by national OAMs, building in this respect on earlier recommendations by the Commission and the CESR.

Text proposed by the Commission

Amendments proposed by the ECB (*)

Amendment 8

Article 1(13) of the proposed directive

‘(13) Article 22 is replaced by the following:

“Article 22

Access to regulated information at the Union level

1. ESMA shall develop draft regulatory technical standards setting technical requirements regarding access to regulated information at the Union level in order to specify the following:

- (a) the technical requirements regarding the interoperability of the information and communication technologies used by the national officially appointed mechanisms;
- (b) the technical requirements for the operation of a central access point for the search of regulated information at the Union level;
- (c) the technical requirements regarding the use of a unique identifier for each issuer by the national officially appointed mechanisms;
- (d) the common format for storing regulated information by national officially appointed mechanisms;
- (e) the common classification of regulated information by national officially appointed mechanisms and the common list of types of regulated information.

2. In developing the draft regulatory technical standards, ESMA shall ensure that the technical requirements specified in Article 22(1), are compatible with the technical requirements for the electronic network of national company registers set up by the Directive 2011/.../EU of the European Parliament and of the Council (*).

ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(*) OJ L [...].’

‘(13) Article 22 is replaced by the following:

“Article 22

Interoperability and aAccess to regulated information at the Union level

1. The Commission shall be empowered to 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 to specify the following minimum standards and rules:

- (a) the rules for the interoperability of the information and communication technologies used by the national officially appointed mechanisms;**
- (b) the rules for the operation of the central access point to regulated information established at the Union level to facilitate the conduct by investors of efficient, complete and reliable searches of regulated information and, in particular, to allow for direct comparisons between information reported by the issuers from various Member States.**

2. ESMA shall develop draft regulatory technical standards setting technical requirements regarding access to regulated information at the Union level in order to specify the following:

- (a) the technical requirements regarding the interoperability of the information and communication technologies used by the national officially appointed mechanisms;**
- (b) the technical requirements for the operation at the Union level of a central access point to officially appointed mechanisms that as a minimum will: (i) be based on a technical solution allowing for efficient multiple-country searches of regulated information at the Union level to be initiated with a single request, and (ii) will offer a multilingual search interface with advanced functions such as dynamic and chain searches;**
- (c) the technical requirements regarding the use of a unique identifier for each issuer by the national officially appointed mechanisms; and the application of the unique identifier in the search functions of national officially appointed mechanisms and of the central access point to allow investors to identify basic corporate group relations between the entities with different unique identifiers**
- ~~(d) the common format for storing regulated information by national officially appointed mechanisms;~~
- ~~(e) the common classification of regulated information by national officially appointed mechanisms and the common list of types of regulated information.~~

Text proposed by the Commission	Amendments proposed by the ECB ⁽¹⁾
	<p>23. In developing the draft regulatory technical standards, ESMA shall ensure that the technical requirements specified in Article 22(42), are compatible with the technical requirements for the electronic network of national company registers set up by Directive 2011/.../EU of the European Parliament and of the Council ^(*).</p> <p>ESMA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.</p> <p>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.</p> <p>(*) OJ L [...]</p> <p>4. The Commission shall report to the European Parliament and to the Council by 30 June 2016 on the functioning of interoperability arrangements and access to the regulated information at Union level to examine whether the solutions introduced for access to the regulated information meet the objective of allowing investors to efficiently compare issuers from different Member States. Such a report shall include an impact assessment of any proposed amendments to this Article.’</p>

Explanation

See the explanation relating to Amendment 6. Delegated powers under Article 22 of Directive 2004/109/EC should comprehensively address access to regulated information, the interoperability of national OAMs and the operation of the central access point at the Union level. The technical parameters and interface features of such a Union-level central access point should allow investors to treat it as a convenient one-stop access point to search for the regulated information reported to all national OAMs and to obtain reliable comparative information about issuers from the various Member States. The functioning of the interoperability and central access point arrangements should be assessed by the Commission after a specified period with the view to proposing any necessary adjustments.

The development and use of a unique identifier for each issuer is a particularly useful feature of the proposed arrangements. The Commission proposals in this respect could use the outcome of the international work on introducing the Legal Entity Identifier as a standard reference code for issuers and counterparties to financial transactions ⁽²⁾. More specifically, a unique identifier will increase the reliability and comparability of regulated information collected by national OAMs and will allow this information to be related to data collected in other regulatory databases that may use the same unique identifier. The benefits of using a unique identifier will be visible in connection with various types of reporting obligations, such as the publication of annual reports identifying subsidiaries or reporting on acquisitions of major holdings. Information about group composition and group relations has multiple implications for investors, and also for supervisors and regulators who, for example, may be able to better assess potential propagation of risks within the corporate group. While there may be a number of practical limitations to disclosing group relations in a comprehensive manner, even partial access to such information would be a welcome improvement.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

⁽²⁾ COM(2011) 684 final.

⁽³⁾ See in this respect the ESRB Recommendation ESRB/2011/3 on the macro-prudential mandate of national authorities, available on the ESRB's website at <http://www.esrb.europa.eu>

⁽⁴⁾ COM(2011) 651 final.

⁽⁵⁾ See Commission Recommendations of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council (OJ L 267, 12.10.2007, p. 16); see also the CESR consultation paper of July 2010, 'Development of Pan-European access to financial information disclosed by listed companies', available on the ESMA's website at <http://www.esma.europa.eu>

⁽⁶⁾ See Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, 'Report on OTC derivatives data reporting and aggregation requirements — Consultative report', August 2011, Section 4.5.1, available on the website of the Bank for International Settlements at <http://www.bis.org>