

Amendments to Transparency Directive become effective by Implementation Act in the Netherlands

Relevance for Dutch group finance companies

The amendments to the EU Transparency Directive (2004/109/EC), dealing with ongoing reporting requirements for issuers of securities admitted to trading on regulated markets, introduced by the Amendment Directive (2013/50/EU of 22 October 2013) have been implemented into Dutch law. The amendments became effective on 29 January 2016. This client briefing focuses on the main changes relevant for the ongoing reporting requirements of Dutch group finance companies which have the Netherlands as their home member state for the purposes of the Transparency Directive.

Publication of home member state selection

Issuers must notify all relevant competent authorities of the identity of their home member state as soon as possible but not later than 26 February 2016. Before that date issuers must also disclose their home member state by way of a press release by 26 February 2016, unless issuers have already communicated their choice of home member state to the relevant competent authority before 27 November 2015.

This requirement, by exception, also applies if the issuer's home member state is another member state but its securities are exclusively admitted to trading on a regulated market in the Netherlands. Issuers of securities that have the Netherlands as their home member state and whose securities are admitted to trading on at most one regulated market outside the Netherlands are not required, as a matter of Dutch law, to disclose their home member state by way of a press release. However this may still be required under the laws of the host member state where the issuer's securities are traded.

An issuer needs to complete a standard form, which can be downloaded from the ESMA website; https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1596_standard_form_for_disclosure_of_home_member_state.docx and send it to the relevant competent authorities, eg for the AFM to HMS.Registration@afm.nl.

Publication deadline for semi-annual financial reports extended

The publication of semi-annual financial reports must take place at the latest three months after the end of the relevant reporting period. This used to be two months.

Ten years disclosure requirement

All published semi-annual and annual financial reports must remain available to the public on the issuer's website for at least ten years. This used to be five years.

Abolition of submitting draft amendments of articles of association to the competent authority and regulated markets

The requirement to submit draft amendments to the issuer's articles of association to the competent authority of its home member state and to the regulated markets on which its securities have been admitted to trading has been abolished.

Abolition of requirement to publish subsequent debt securities offerings

An onerous requirement to publish subsequent debt securities offerings has been abolished. The abolished rule, the result of an extensive interpretation of article 16 of the Transparency Directive by the Dutch legislator and competent authority, required issuers to issue a press release in relation to any Prospectus Directive exempt offer of debt securities regardless the target investor base, the offer jurisdiction or listing venue. With the abolition of the rule in the Transparency Directive this onerous Dutch rule has now been finally removed.

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