

**14 NOVEMBER 2007**

**Royal Decree on the obligations of issuers of financial instruments admitted to trading on a regulated market**

(Belgisch Staatsblad/Moniteur belge [Belgian Official Gazette], 3 December 2007)

*(Unofficial consolidation)*

*Most recent update:*

*Royal Decree of 23 September 2018 (Belgian Official Gazette, 5 October 2018)*

**In accordance with Article 331, first paragraph, of the Royal Decree of 3 March 2011 (Belgian Official Gazette, 9 March 2011), the words "Banking, Finance and Insurance Commission" and the word "CBFA" shall be replaced by the words "Financial Services and Markets Authority" and the word "FSMA" respectively.**

ALBERT II, King of the Belgians,

To all present and future citizens, greetings.

Having regard to the Law of 2 May 2007 on the disclosure of major shareholdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions, in particular Article 62;

Having regard to the Law of 2 August 2002 on the supervision of the financial sector and on financial services, and in particular to Article 10, replaced by the Law of 2 May 2007;

Having regard to the Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a Belgian regulated market, amended by the Royal Decrees of 28 January 2005, 22 December 2005, 5 March 2006 and 4 October 2006;

Having regard to the opinion of the Banking, Finance and Insurance Commission issued on 17 April 2007;

Having regard to opinion 43.048/2 of the Council of State, issued on 4 June 2007, in application of Article 84, § 1, first paragraph, 1°, of the consolidated laws on the Council of State;

As proposed by Our Vice Prime Minister and Minister of Finance,

We have decreed and now decree:

## **TITLE I - General provisions**

### **Article 1.**

This decree transposes certain provisions of:

[1° ...]

*1° repealed by Article 2 of the Royal Decree of 25 April 2016 - Belgian Official Gazette, 19 May 2016*

[2° ...]

*2° repealed by Article 2 of the Royal Decree of 25 April 2016 - Belgian Official Gazette, 19 May 2016*

3° Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

4° Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization 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;

5° Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of 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.

### **Article 2**

§ 1. For the purposes of this Decree, the following definitions apply:

1° "securities": all classes of securities which are negotiable on the capital market (with the exception of money market instruments having a maturity of less than twelve months and payment instruments), such as:

a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

b) bonds and other forms of securitized debt, as well as depositary receipts in respect of such securities and real estate certificates;

c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

2° "money market instruments": those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial paper, and excluding instruments of payment;

3° "debt securities": bonds or other forms of transferable securitized debt, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares.

4° "real estate certificates": securitized debt incorporating rights to the income from, the yield of and the realization value of one or more of the immovable properties, ships or aircraft specified when issuing the certificates;

5° "regulated market": any Belgian or foreign regulated market as defined in Article 2, 5° or 6°, of the Law of 2 August 2002;

6° "Belgian regulated market": any Belgian regulated market as defined in Article 2, 5°, of the Law of 2 August 2002;

7° "multilateral trading facility" or "MTF": a multilateral system governed by Belgian law, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in such a way as to result in a contract;

8° "issuer": without prejudice to the application of Article 3, second paragraph, [a natural person or a legal entity governed by private or public law], including a State:

a) whose financial instruments are admitted to trading on a regulated market; or

b) which is referred to in § 2;

*§ 1, 8° amended by Article 2, 1° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

[9° "regulated information": the information referred to in Articles 4, first paragraph, 7, 11 to 15, 16, 2° and 3°, inside information as referred to in Article 7 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, quarterly information, [the statement of non-financial information, as referred to in Article 96, § 4, of the Companies Code, made in a separate report,] as well as any other information that the issuers are required to disclose in accordance with the rules laid down in Chapter I of Title V;]

*§ 1, 9° replaced by Article 2, 2° of the Royal Decree of 11 September 2016 - Belgian Official Gazette, 27 September 2016 and amended by Article 36 of the Royal Decree of 23 September 2018 - Belgian Official Gazette, 5 October 2018*

10° "undertakings for collective investment other than of the closed-end type": undertakings constituted by contract (common investment funds managed by a management company), as a unit trust or under articles of association (investment company):

a) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and

b) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings. Any action taken by such undertakings to ensure that the value of their units which are admitted to trading, whether or not on a regulated market, does not vary significantly from their net asset value, shall be regarded as equivalent to such repurchase or redemption;

11° "by electronic means": by means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies or any other electromagnetic means;

12° "credit institution": an undertaking as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

13° "debt securities issued in a continuous or repeated manner": debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class;

14° "Member State": a Member State of the European Economic Area;

15° "third country": a State that does not belong to the European Economic Area;

16° "related parties": related parties within the meaning of IAS 24, as approved in accordance with the procedure laid down in Article 6 of Regulation (EC) No 1606/2002;

[17° "foreign regulated market": a foreign regulated market as referred to in Article 2, 6° of the Law of 2 August 2002;]

*§ 1, 17° replaced by Article 2, 3° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

[18° "EFSF": the European Financial Stability Facility, created by the EFSF Framework Agreement;]

*§ 1, 18° replaced by Article 2, 4° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

[19° "legal entity": a legal person, registered company without legal personality or a trust;]

*§ 1, 19° replaced by Article 2, 5° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

20° "applicable accounting standards":

1° where the issuer is required to prepare consolidated annual financial statements, these are the international accounting standards;

2° where the issuer is not required to prepare consolidated annual financial statements, the applicable set of accounting standards (in accordance with the national law of the Member State where the issuer is incorporated);

21° "international accounting standards": the international accounting standards approved in accordance with the procedure laid down in Article 6 of Regulation (EC) No 1606/2002;

22° "FSMA": Financial Services and Markets Authority;

[23° "quarterly information": information published after the first and the third quarter of the financial year;]

*§ 1, 23° replaced by Article 2, 6° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

[24° "Directive 2013/34/EU": Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;]

*§ 1, 24° replaced by Article 2, 7° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

25° "Directive 2004/109/EC": 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;

26° "Directive 2006/43/EC": Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC;

27° "Regulation (EC) No 1606/2002": Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;

28° "Companies Code": the Companies Code introduced by the Law of 7 May 1999;

29° "Law of 2 August 2002": the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

30° "Law of 16 June 2006": the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets;

31° "Law of 2 May 2007": the Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions;

[32° "ESMA": the European Securities and Markets Authority as established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010.]

*§ 1, 32° inserted by Article 17 of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013*

[§ 2. For the purposes of this Decree, a natural person or legal entity which has issued financial instruments shall also be regarded as an issuer if certificates representing those financial instruments are admitted to trading on a regulated market, even if those certificates are issued by another natural person or legal entity.]

*§ 2 replaced by Article 2, 8° of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

## **TITLE II. - Obligations regarding periodic and certain types of ongoing information**

### **Chapter I. - Issuers for which Belgium is the home Member State**

#### **Section I. - Issuers concerned**

##### **Article 3**

This Chapter shall apply to the issuers referred to in Article 10, § 3, of the Law of 2 August 2002, insofar as they have issued securities. It shall not, however, apply to units of undertakings for collective investment other than of the closed-end type.

The provisions of this Chapter which relate to or are formulated with reference to an issuer shall apply exclusively to issuers as referred to in the first paragraph.

##### **[Article 4**

An issuer as referred to in Article 10, § 3, first paragraph, 1° or 2°, of the Law of 2 August 2002 shall make public as soon as possible, in accordance with the provisions of Title V, its choice of home Member State.

Issuers that, pursuant to the provisions of Title V, make public that Belgium is their home Member State shall also inform, where applicable, the competent authorities of their host Member State(s) and of the Member State where their registered office is situated.]

*Article replaced by Article 3 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

#### **Section II. - General obligations**

##### **Article 5**

Issuers shall make the necessary information available to the public in order to ensure the transparency, integrity and proper operation of the market. The information provided shall be true, accurate and genuine, and shall enable securities holders and the public to assess the effect of the information on the issuer's position, business and results.

Issuers shall in particular be responsible for the information to be drawn up and make public in accordance with Section IV, Subsections I and II.

#### **Section III. - Obligations towards securities holders**

##### **Article 6**

Issuers shall ensure equal treatment of all securities holders who are in the same position.

## **Article 7**

§ 1. Issuers shall ensure that all the facilities and information necessary to enable securities holders to exercise their rights are available in Belgium and that the integrity of the data is preserved. [More specifically, issuers shall disclose without delay the financial institution they have designated as agent through which securities holders may exercise their financial rights in Belgium.]

***§ 1 amended by Article 2, 1° of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014***

[§ 2. Issuers of shares admitted to trading on a regulated market shall, moreover, publish without delay:

1° information on the place, time and agenda of the general meetings of shareholders, on the total number of shares and voting rights, and on the right of shareholders to participate in therein;

2° all information regarding the rights attached to the holding of shares and, among other things, regarding the allocation or payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.]

***§ 2 replaced by Article 2, 2° of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014***

[§ 3. Issuers of debt securities admitted to trading on a regulated market shall, moreover, publish without delay:

1° information on the place, time and agenda of the general meetings of holders of debt securities and on the right of the said holders to participate therein;

2° all information regarding the rights attached to the holding of debt securities and, among other things, regarding the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment.]

***§ 3 inserted by Article 2 of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014***

## **Article 8**

Issuers shall make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at the general meeting of shareholders or debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting.

Shareholders or debt securities holders may exercise their rights by proxy, subject to the law of the country in which the issuer is incorporated.

## **Article 9**

§ 1. Without prejudice to the application of the rules of company law, issuers shall be allowed the use of electronic means for conveying information to shareholders or other

persons entitled to exercise voting rights, provided such a decision is taken in a general meeting and meets at least the following conditions:

1° the use of electronic means to convey information shall in no way depend on the location of the seat or residence of the shareholder or, in the cases referred to in Article 7, first paragraph, of the Law of 2 May 2007, of [the natural persons or legal entities] entitled to exercise voting rights;

2° identification arrangements shall be put in place so that the shareholders, or in the cases referred to in Article 7, first paragraph, of the Law of 2 May 2007 [the natural persons or legal entities] entitled to exercise voting rights, are effectively informed;

3° the shareholders, or in the cases referred to in Article 7, first paragraph, 1°, 2° and 3°, of the Law of 2 May 2007 [the natural persons or legal entities] entitled to exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information. If they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information again be conveyed in writing;

4° any apportionment of the costs entailed in conveying such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in Article 6.

*§ 1 amended by Article 4 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

§ 2. The first paragraph shall apply by analogy to the use of electronic means for conveying information to debt securities holders.

#### **Article 10**

[If the intention is to invite to the meeting only those holders of debt securities whose denomination per unit amounts to least EUR 100,000 or, in the case of debt securities denominated in a currency other than euro, whose denomination per unit is, at the date of the issue, equivalent to at least EUR 100,000, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

The option mentioned in the first paragraph also applies to holders of debt securities whose denomination per unit is at least EUR 50,000 or, in the case of debt securities denominated in a currency other than euro, whose denomination per unit is equivalent to at least EUR 50,000 at the date of the issue, and which were admitted to trading on a regulated market before 31 December 2010; the option continues to apply for the lifetime of the said debt securities.]

*Article replaced by Article 18 of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013*

### **Section IV. - Obligations regarding the provision of information to the public**

#### **Subsection I. - Obligations regarding periodic information**

## **Article 11**

§ 1. If the issuer publishes an annual announcement on its business and its results after the Board of Directors has prepared the annual financial statements and before the annual financial report referred to in Article 12 is published, that announcement shall include at least the figures referred to in § 2 and an explanatory statement as referred to in § 3.

Where the issuer is required to prepare consolidated annual financial statements, it shall publish its annual announcement in consolidated form.

§ 2. The figures shall be derived from the annual financial statements and be presented in tabular form.

Where the issuer is required to prepare consolidated annual financial statements or where it prepares its unconsolidated annual financial statements in accordance with international accounting standards, the figures shall include information for all line items, headings and subtotals to be included in the profit and loss statement for the financial year concerned.

For issuers not governed by the second paragraph, the figures shall include at least the net turnover, operating income, financial income, income from ordinary activities, extraordinary income, income before tax, taxes, and the net income, in accordance with the national law of the Member State in which the issuer is incorporated. The figures shall include the basic and the diluted net earnings per share. Where these figures fail to reflect accurately the issuer's business or position or the applicable set of accounting standards, the issuer shall replace them by the relevant figures providing equally detailed information.

Where the issuer proposes to pay a dividend or has paid an interim dividend, the dividend or interim dividend paid or proposed shall be indicated in the figures.

Against each figure there must be shown the figure for the corresponding period in the preceding financial year.

§ 3. The explanatory statement must include any significant information enabling investors to make an informed assessment of the development and performance of the business and the position of the issuer. It shall mention any special factor which has influenced the aforementioned elements during the period under review, and shall enable a comparison to be made with the corresponding period of the preceding financial year. It shall, in particular, comment on the figures referred to in § 2.

It shall also, as far as possible, refer to the issuer's likely future development in the current financial year.

§ 4. The annual announcement shall mention explicitly whether or not the annual financial statements have been verified by the auditor or person responsible for auditing the annual financial statements. Where the audit has not yet been completed, the announcement shall state how far along it is and indicate, where applicable, whether the accounting information contained in the announcement that is included in the annual

financial statements will result in a reservation. Where the audit has been concluded, the announcement shall mention the form of the report by the auditor or person responsible for auditing the annual financial statements. Where the report is not unqualified, it shall be reproduced in full in the annual announcement.

## **Article 12**

§ 1. Issuers shall make public their annual financial report at the latest four months after the end of each financial year.

[Without prejudice to the first paragraph, issuers governed by Belgian law whose shares are admitted to trading on a regulated market shall make their annual financial report public at the latest thirty days before their annual general meeting, and other issuers governed by Belgian law shall make their annual financial report public at the latest fifteen days before their annual general meeting.]

***Second paragraph inserted by Article 34 of the Royal Decree of 14 February 2008 - Belgian Official Gazette, 4 March 2008 and replaced by Article 3 of the Royal Decree of 26 March 2014 – Belgian Official Gazette, 22 April 2014***

§ 2. The annual financial report shall comprise:

- 1° the audited annual financial statements;
- 2° the management report;
- 3° a statement made by the persons responsible within the issuer, whose names and titles shall be clearly indicated, to the effect that, to the best of their knowledge,
  - a) the annual financial statements prepared in accordance with the applicable accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and of the undertakings included in the consolidation;
  - b) the management report includes a fair review of the development and performance of the business and the position of the issuer and of the undertakings included in the consolidation, together with a description of the principal risks and uncertainties that it faces; and
- 4° the report signed by the auditor or person responsible for auditing the annual financial statements.

§ 3. Where the issuer is required to prepare consolidated annual financial statements, the audited annual financial statements shall comprise such consolidated financial statements prepared in accordance with international accounting standards, and the issuer's unconsolidated financial statements prepared in accordance with the national law of the Member State in which the issuer is incorporated.

In that case, the unconsolidated annual financial statements may be presented in condensed form if authorized by national law.

Where the issuer is not required to prepare consolidated annual financial statements, the audited annual financial statements shall comprise the unconsolidated annual

financial statements prepared in accordance with the national law of the Member State where the issuer is incorporated.

§ 4. The management report shall be prepared in accordance with Article 96 of the Companies Code or in accordance with the national legislation [transposing Article 19 of Directive 2013/34/EU] and, where the issuer is required to prepare consolidated annual financial statements, in accordance with Article 119 of the Companies Code or in accordance with the national legislation [transposing Article 29 of Directive 2013/34/EU].

*§ 4 amended by Article 5 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

### **Article 13**

§ 1. Issuers of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest [three months] thereafter.

*§ 1 amended by Article 4 of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014*

§ 2. The half-yearly financial report shall comprise:

1° the condensed set of financial statements;

2° an interim management report; and

3° a statement made by the persons responsible within the issuer, whose names and positions shall be clearly indicated, to the effect that, to the best of their knowledge,

a) the condensed set of financial statements which has been prepared in accordance with the applicable accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and of the undertakings included in the consolidation, as required under § 3;

b) the interim management report gives a fair review of the information required under §§ 5 and 6.

§ 3. Where the issuer is required to prepare consolidated annual financial statements or where it prepares unconsolidated accounts in accordance with international accounting standards, the condensed set of financial statements shall be prepared in accordance with the international accounting standards applicable to interim financial reporting.

§ 4. For issuers not governed by § 3, the condensed set of financial statements shall contain at least a condensed balance sheet, a condensed profit and loss statement and explanatory notes on these statements. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognizing and measuring as when preparing the annual financial reports.

The condensed balance sheet and condensed profit and loss account referred to in the first paragraph shall contain all line items, headings and subtotals included in the issuer's

most recent annual financial statements. Additional line items shall be added if, as a result of their omission, the half-yearly financial statements would give a misleading view of the issuer's assets, liabilities, financial position and profit or loss.

The condensed profit and loss account shall include the basic and the diluted net earnings per share.

In addition to the condensed balance sheet for the end of the first six-month period of the current financial year, the condensed set of financial statements shall include a comparative condensed balance sheet for the end of the preceding financial year, and in addition to the condensed profit and loss account for the first six-month period of the current financial year, a comparative condensed profit and loss account for the comparable period of the preceding financial year.

The explanatory notes shall contain the following:

1° sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements;

2° sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

§ 5. The interim management report shall include at least an indication of any important events that have occurred during the first six months of the financial year, and their effect on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining months of the financial year.

§ 6. The interim management report of issuers of shares shall also include major transactions with related parties and their effect on the condensed set of financial statements.

Where the issuers referred to in the first paragraph are required to prepare consolidated annual financial statements, the information therein must pertain in particular to:

1° related party transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or performance of the issuer during that period;

2° any changes in the related party transactions described in the last management report that could have a material effect on the financial position or performance of the issuer in the first six months of the current financial year.

Where the issuers referred to in the first paragraph are not required to prepare consolidated annual financial statements and where they do not prepare their unconsolidated annual financial statements in accordance with international accounting standards, they shall disclose, as a minimum, the related party transactions, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the issuer, where such transactions are material and have not been concluded

under normal market conditions. Information about the individual transactions may be aggregated according to their nature, except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the issuer.

§ 7. Where the condensed set of financial statements has been audited by the auditor or person responsible for auditing the financial statements, the auditor's report must be reproduced in full. That rule shall also apply in case of an auditor's review. Where the condensed set of financial statements has not been audited or reviewed, the issuer must make a statement to that effect in its report.

#### **[Article 14**

An issuer active in the extractive industry or in the logging of primary forests, as defined in Article 41 of Directive 2013/34/EU, shall publish annually a report on payments to governments. The said report shall be published at the latest six months after the end of each financial year.

Where the issuer is required to prepare consolidated annual financial statements, it shall also prepare a consolidated report on payments to governments.]

*Article repealed by Article 5 of the Royal Decree of 26 March 2014 – Belgian Official Gazette, 22 April 2014 and restored by Article 6 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

#### **Subsection II. - Obligations regarding additional information.**

##### **Article 15**

Issuers of shares admitted to trading on a regulated market shall make public without delay any change in the rights attached to the various classes of shares, including changes in the rights attached to derivative securities issued by the issuer itself and granting the right to acquire shares of that issuer.

Issuers of securities, other than shares, admitted to trading on a regulated market shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

[...]

*Third paragraph repealed by Article 6 of the Royal Decree of 26 March 2014 - Belgian Official Gazette 22 April 2014*

#### **Subsection III. - Other obligations**

##### **[Article 16**

Without prejudice to the application of the provisions of company law, Belgian issuers of shares shall:

1° make available to the public, in accordance with Article 41, § 1, the documents that must be submitted to the general meeting of shareholders at the latest on the date of convening the general meeting;

2° make public as soon as possible, and at the latest on the date of the capital increase, the special reports prepared in connection with the use of the authorized capital;

3° publish the minutes as referred to in Article 546 of the Companies Code within fifteen days of the general meeting.]

*Article replaced by Article 7 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

## **Section V. - Exemptions**

### **Subsection I. - Exception clauses**

#### **Article 17**

Articles 7, 8, 9, § 2, 10[...] and 41, § 1] shall not apply to the securities admitted to trading on a regulated market which have been issued by the State, the Communities or the Regions or by the local authorities.

*First paragraph amended by Article 3 of the Royal Decree of 23 February 2010 - Belgian Official Gazette, 13 April 2010 and by Article 7, 1° of the Royal Decree of 26 March 2014 – Belgian Official Gazette, 22 April 2014*

[...]

*Second paragraph repealed by Article 7, 2° of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014*

#### **Article 18**

[§ 1. [Articles 11, 12 and 13 shall not apply to:]

*§ 1, introductory sentence replaced by Article 8, a) of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014*

[1° a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the European Central Bank, the European Financial Stability Facility (EFSF) and any other mechanism established with the objective of preserving the financial stability of the European monetary union by providing temporary financial assistance to the Member States whose currency is the euro and Member States' national central banks, whether or not they issue shares or other securities;]

*§ 1, 1° replaced by Article 8, b) of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014*

2° an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR,100 000;

3° an issuer exclusively of debt securities admitted prior to 31 December 2010 to trading on a regulated market, the denomination per unit of which is at least EUR 50,000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50,000, and this for the lifetime of the debt securities in question.]

***§ 1 replaced by Article 19 of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013***

§ 2. Article 13 shall not apply to:

1° credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100,000,000 and that they have not published a prospectus under Directive 2003/71/EC;

2° issuers already existing on 31 December 2003 and which exclusively issue debt securities unconditionally and irrevocably guaranteed by the State, the Communities and the Regions or by the local authorities, on a regulated market.

#### **Subsection II. – Issuers from third countries**

##### **Article 19**

Without prejudice to the application of Article 27, the FSMA may exempt issuers whose registered office is in a third country from the requirements under Sections III and Subsections I and II of Section IV, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with equivalent requirements of the law of a third country.

[The FSMA shall then inform ESMA of the exemption granted.]

***Paragraph inserted by Article 20 of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013***

This exemption may not apply, however, to the rules governing the disclosure and storage of information or to the communication of information, as provided for in Title V.

##### **Article 20**

A third country shall be deemed to set requirements equivalent to those set out in Article 7, § 2, 1° and 2°, as far as the content of the information about general meetings is concerned, where, under the law of that country, an issuer whose registered office is in that third country is required to provide information at least on the place, time and agenda of general meetings.

##### **Article 21**

A third country shall be deemed to set requirements equivalent to those set out in Article 12, § 4, where, under the law of that country, the management report is required to include at least the following information:

1° a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces. The review must present a balanced and full analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

2° an indication of any important events that have occurred since the end of the financial year;

3° indications of the issuer's likely future development.

The analysis referred to in 1° shall, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the issuer's particular business.

#### **Article 22**

A third country shall be deemed to set requirements equivalent to those set out in Article 13, §§ 5 and 6, where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information:

1° a review of the period covered;

2° indications of the issuer's likely future development for the remaining months of the financial year;

3° for issuers of shares and if not already disclosed on an ongoing basis, major related party transactions.

#### **Article 23**

A third country shall be deemed to set requirements equivalent to those set out in Articles 12, § 2, 3°, and 13, § 2, 3°, where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information, and in particular for the following:

1° the compliance of the financial statements with the applicable reporting framework or set of accounting standards;

2° the fairness of the management review included in the management report.

#### **Article 24**

[...]

*Article repealed by Article 9 of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014*

#### **Article 25**

A third country shall be deemed to set requirements equivalent to those set out in Article 12, § 3, first paragraph, where under the law of that country, an issuer is not required to

provide unconsolidated annual financial statements but is required, when preparing its consolidated annual financial statements, to include the following information:

1° for issuers of shares, dividends computation and ability to pay dividends;

2° for issuers of securities: where applicable, minimum capital and equity requirements and liquidity issues.

If requested, the issuers must also be able to provide the FSMA with additional audited information on their unconsolidated annual financial statements that is relevant to the information referred to under 1° and 2°. This information may be presented in accordance with the national accounting standards of the third country.

#### **Article 26**

A third country shall be deemed to set requirements equivalent to those set out in Articles 11, § 2, paragraph 3, and 12, § 3, third paragraph, in relation to unconsolidated annual financial statements where, under the law of a third country, an issuer whose registered office is in that third country is not required to prepare consolidated annual financial statements but is required to prepare its unconsolidated annual financial statements in accordance with international accounting standards or with third country national accounting standards equivalent to those standards.

For the purposes of equivalence, if such financial information is not in line with those standards, it must be presented in the form of restated financial statements.

Without prejudice to the provisions transposing Directive 2006/43/EC, the unconsolidated annual financial statements must be audited independently.

#### **Article 27**

Issuers whose registered office is in a third country shall be exempted from the requirements regarding the applicable accounting standards in the cases and under the conditions where the European rules laid down in implementation of Article 23(4), second paragraph, of Directive 2004/109/EC, such as Commission Decision 2006/891/EC of 4 December 2006 on the use by third country issuers of information prepared under internationally accepted accounting standards, treat the third country national accounting standards applied by the issuer as being equivalent or authorize the use of those accounting standards during a transitional period.

### **CHAPTER II. - Issuers whose securities are admitted to trading on a Belgian regulated market but whose home Member State is not Belgium**

#### **Section I. - Issuers concerned**

#### **Article 28**

This Chapter shall apply to the issuers not referred to in Article 3, first paragraph, and whose securities are, exclusively or not, admitted to trading on a Belgian regulated market. It shall not, however, apply to the units of undertakings for collective investment other than of the closed-end type.

[Article 28/1.

An issuer as referred to in Article 28 shall inform the FSMA by electronic means, at the time when it informs the supervisory authority of its home Member State, of the identity of its home Member State.]

*Article inserted by Article 8 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

## **Section II. - Precautionary measures**

### **Article 29**

Where the FSMA finds that an issuer referred to in Article 28 has committed irregularities in respect of Directive 2004/109/EC or has failed to meet its obligations, it shall refer its findings to the competent authority of the home Member State as defined in Directive 2004/109/EC [and to ESMA].

*first paragraph amended by Article 21, 1° of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013*

If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, an issuer referred to in Article 28 persists in infringing the relevant legal or regulatory provisions, the FSMA may, after informing the competent authority of the home Member State and, except in case of urgency, after enabling the issuer concerned to formulate its comments in the manner and within the term determined by the FSMA, take any appropriate measure in order to protect investors. The FSMA may in particular take the measures referred to in Article 34, § 1, 1°, of the Law of 2 August 2002 and in Article 43, on the understanding that they may be taken on account of non-compliance by the issuer with the legal or regulatory provisions of the home Member State. Moreover, the FSMA shall at the earliest opportunity inform the European Commission [and ESMA] of the measures taken.

*second paragraph amended by Article 21, 2° of the Royal Decree of 26 September 2013 - Belgian Official Gazette, 9 October 2013*

## **Section III. - Obligations incumbent on issuers whose securities are exclusively admitted to trading on a Belgian regulated market**

### **Article 30**

The issuers referred to in Article 28 whose securities are exclusively admitted to trading on a Belgian regulated market shall publish, in accordance with Articles 35, § 1, 36 and 37, the regulated information referred to in the applicable national legislation transposing Article 2(1)(k) of Directive 2004/109/EC, which they are required to publish pursuant to that legislation.

They shall simultaneously communicate that information to the FSMA, in accordance with Article 42.

**[CHAPTER III – Issuers whose registered office is situated in Belgium but for which Belgium is not the home Member State**

**Article 30/1.**

This chapter applies to issuers not covered in Article 3, first paragraph, whose registered office is in Belgium but whose securities are admitted to trading only on one or more foreign regulated markets. It does not apply, however, to units of undertakings for collective investment other than those of the closed-end type.

**Article 30/2.**

An issuer as referred to in Article 30/1 shall inform the FSMA, by electronic means, at the time when it informs the supervisory authority of its home Member State, of the identity of its home Member State.]

*Chapter III inserted by Article 9 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

**[TITLE III - Implementing provisions on the publication of inside information**

**[Articles 31 – 33 ...]**

*Title III repealed by Article 4 of the Royal Decree of 25 April 2016 – Belgian Official Gazette, 19 May 2016*

**TITLE IV - Information to be included in the management report**

**Article 34**

For an issuer governed by Belgian law of which at least some of the securities carrying voting rights are admitted to trading on a regulated market, the management report referred to in Articles 95 and 119 of the Companies Code shall enumerate and, if need be, comment on the following elements where their nature is such that they may have an impact in the event of a takeover bid:

- 1° its capital structure, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attached to it and the percentage of total share capital that it represents;
- 2° any restrictions, either legal or prescribed by the articles of association, on the transfer of securities;
- 3° the holders of any securities with special control rights and a description of those rights;
- 4° the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- 5° any restrictions, either legal or prescribed by the articles of association, on voting rights;
- 6° any agreements between shareholders which are known to the issuer and may result in restrictions on the transfer of securities and/or the exercise of voting rights;

7° the rules governing the appointment and replacement of board members and the amendment of the issuer's articles of association;

8° the powers of board members, and in particular the power to issue or buy back shares;

9° any significant agreements to which the issuer is a party and which take effect, alter or terminate upon a change of control of the issuer following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the issuer; this exception shall not apply where the issuer is specifically obliged to disclose such information on the basis of other legal requirements;

10° any agreements between the issuer and its board members or employees providing for compensation if the board members resign or are made redundant without valid reason or if the employment of the employees ceases because of a takeover bid.

## **TITLE V. - Publication, storage and transmission of information**

### **Chapter I. - Publication**

#### **Article 35**

§ 1. Without prejudice to the possible application of the rules of company law, the issuers referred to in Article 3 shall disclose regulated information in a manner:

1° ensuring fast access to such information on a non-discriminatory basis,

2° ensuring that it is capable of being disseminated to as wide a public as possible; and

3° ensuring that it is capable of being disseminated as close to simultaneously as possible in Belgium and the other Member States;

The issuers may not charge investors any specific cost for providing the information.

They shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Economic Area.

[§ 2. ...]

*§ 2 repealed by Article 5 of the Royal Decree of 25 April 2016 – Belgian Official Gazette, 19 May 2016*

#### **Article 36**

§ 1. The issuers referred to in Article 3 shall communicate regulated information to the media in unedited full text.

In the case of [the information referred to in Articles 12, 13, 14, 16, 2° and 3° and quarterly information,] this requirement shall be deemed fulfilled if an announcement is communicated to the media indicating on which websites, in addition to the storage mechanism [referred to in Article 41, § 2], the information in question is available.

*§ 1, second paragraph amended by Article 10 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

The issuers shall, moreover, publish the information referred to in Article 12 in the form of a brochure.

§ 2. The issuers shall communicate regulated information to the media in a manner which ensures the security of the communication, minimizes the risk of data modification and unauthorized access, and provides certainty as to the source of the regulated information.

Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information.

The issuers shall not be responsible for systemic errors or failures in the media to which the regulated information has been communicated.

§ 3. The issuers shall communicate regulated information to the media in a manner that:

- 1° clearly indicates that the information is regulated information;
- 2° clearly identifies the issuer concerned;
- 3° clearly identifies the subject matter of the regulated information;
- 4° clearly indicates the time and date of the communication of the information by the issuer;
- 5° clearly indicates, where applicable, that the issuer has placed an embargo on the information.

#### **Article 37**

The issuers referred to in Article 3 shall be able to communicate the following to the FSMA, upon request, in relation to any disclosure of regulated information:

- 1° the name of the person who communicated the information to the media;
- 2° the security validation details;
- 3° the date and time when the information was communicated to the media;
- 4° the medium on which the information was communicated;
- 5° where applicable, details of any embargo placed on the regulated information by the issuer.

#### **Article 38**

The issuers referred to in Article 3 shall ensure that the information disclosed in a third country which may be important to the public in the European Economic Area is disclosed in accordance with Articles 35, § 1, 36 and 37, even if such information is not regulated.

Article 36, § 1, second paragraph shall apply by analogy to extensive information.

#### **Article 39**

Where securities have been admitted to trading on a regulated market without the issuer's consent, Articles 30 and 35 to 38 shall not apply to the issuer but to the person who requested admission to trading on a regulated market without the issuer's consent.

#### **Article 40**

The issuers referred to in Article 3 whose securities are admitted to trading exclusively on a regulated market in one Member State other than Belgium shall be exempted from complying with the provisions of Articles 35 to 37 when publishing regulated information. This exemption shall also apply to the person referred to in Article 39.

### **CHAPTER II. - Storage**

#### **Article 41**

[§ 1. The issuers referred to in Article 3 shall, simultaneously with its publication or disclosure to the public or the securities holders, place all information referred to in the present Decree on their website, provided that the following conditions are observed:

1° a separate, updated section of the website, freely and easily accessible to everyone at no charge, shall be reserved for this information;

2° a calendar of the issuer's periodic publications and any postponement of a publication shall be published on that website;

3° the prospectuses relating to the admission of the issuer's securities to trading on a regulated market shall be published on the website, as long as this admission is at their request or with their consent;

4° once securities holders have subscribed, the website shall enable them and all interested parties to receive all information referred to in the present Decree at no charge via email sent concurrently with publication;

5° all information which, pursuant to the present Decree, the issuer has published over the last five years shall be placed on the website; and

6° the website shall comply with minimum quality standards regarding security and time recording.

[By way of derogation from the first paragraph, 5°, the website shall retain the information referred to in Articles 12, 13 and 14 which the issuer has published in the past ten years.]

*paragraph inserted by Article 11 of the Royal Decree of 11 September 2016 – Belgian Official Gazette, 27 September 2016*

The FSMA may, by regulation enacted in application of Article 64 of the Law of 2 August 2002, impose additional technical conditions on issuers in respect of the use of their website for the publication of the information referred to in the present Decree.

The FSMA shall place on its website a hyperlink to the websites of the issuers. The issuers shall assist the FSMA to that effect.]

***The present text of Article 41 constitutes § 1, amended by Article 4, 1° of the Royal Decree of 23 February 2010 - Belgian Official Gazette, 13 April 2010***

[§ 2. The FSMA shall store the regulated information communicated to it by the issuers and shall make the information available to the public in the manner that the FSMA shall determine.]

***§ 2 inserted by Article 4, 2° of the Royal Decree of 23 February 2010 - Belgian Official Gazette, 13 April 2010***

### **Chapter III - Submission of information to the FSMA**

#### **Article 42**

The issuers referred to in Article 3 shall communicate all information referred to in the present Decree to the FSMA immediately and no later than the moment when it is published or made available to the public or to securities holders.

[By way of derogation from the first paragraph, the calendar of the issuer's period publications as referred to in Article 41, § 1, 2° need not be communicated to the FSMA.]

***paragraph inserted by Article 10 of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014***

The communication of the information to the FSMA [shall take place by electronic means] in the manner determined by the FSMA.

***second paragraph amended by Article 5 of the Royal Decree of 23 February 2010 - Belgian Official Gazette, 13 April 2010***

### **TITLE VI – Powers of the FSMA**

#### **Article 43**

§ 1. Where the FSMA is of the opinion that:

1° the information that the issuer makes available to securities holders or to the public, pursuant to the present Decree, is incomplete or inadequate for an informed assessment to be made of the issuer's position, business and profit or loss or of the results of the transaction or, more particularly, that the annual announcements, [the annual or the half-yearly financial statements] do not give a true and fair view or could give a misleading view of the issuer's position, business or profit or loss;

***§ 1, 1° amended by Article 11 of the Royal Decree of 26 March 2014 - Belgian Official Gazette, 22 April 2014***

2° information has not been made available to securities holders or to the public within the terms laid down by the present Decree or, for issuers governed by Belgian law, within the terms laid down by or in application of the Companies Code;

3° there is or could be a threat to the equal treatment of securities holders;

4° the issuer is not meeting one or more of its obligations arising from the present Decree or from Article 10, § 2, paragraphs 3 to 5, of the Law of 2 August 2002;

5° the issuer is failing to disclose information in a timely manner, the aim of which is to ensure effective and equal access to the public in all Member States where the securities are traded;

it shall notify its opinion to the issuer concerned and summon the issuer to present its comments within the term the FSMA specifies.

After the expiry of the term it has specified, the FSMA may, at the issuer's expense and according to the method it determines, publish a warning. Where the FSMA deems it appropriate, that warning may, in order to take account of the issuer's comments, be at variance with the FSMA's initial standpoint.

§ 2. When applying Article 34, § , 3°, of the Law of 2 August 2002, the FSMA may request the issuer to provide its comments, in particular about its reasons for not disclosing the information, within the term the FSMA specifies. After expiry of the term it has specified, the FSMA may, at the issuer's expense, proceed to the publication of that information;

§ 3. Where securities have been admitted to trading on a regulated market without the issuer's consent, the FSMA may exercise the powers referred to in §§ 1 and 2 not only with in respect of the issuer but also in respect of the person having requested the admission to trading without the issuer's consent.

§ 4. The FSMA may, in exceptional cases, require that the issuer provide it with the information referred to in the present Decree before that information is published and in a way specified by the FSMA, in order to make possible ex ante supervision.

## **TITLE VII. – Amending, repealing and transitional provisions, entry into force and implementing provision**

### **Art. 44-51**

***These provisions are not included.***