

**MEMO# 16848**

December 16, 2003

## **EU COUNCIL OF MINISTERS AGREES TO GENERAL APPROACH OF THE TRANSPARENCY DIRECTIVE**

[16848] December 16, 2003 TO: INTERNATIONAL COMMITTEE No. 82-03 RE: EU COUNCIL OF MINISTERS AGREES TO GENERAL APPROACH OF THE TRANSPARENCY DIRECTIVE In late November, the Council of Ministers of the European Union (ECOFIN) agreed to a general approach on the Transparency Directive (General Approach).<sup>1</sup> ECOFIN will use the text of the General Approach as a basis for negotiations with the European Parliament to reach agreement on the Directive before the end of the parliamentary term in May 2004. The Transparency Directive would require (1) investors to inform issuers of the acquisition or disposition of major holdings in companies so that issuers can inform the public, and (2) issuers to ensure transparency for investors by providing regular flows of information. As you know, the Institute has been working to include provisions in the Transparency Directive that (1) would permit periodic reporting of beneficial ownership by investment managers and (2) would not require aggregation of affiliate holdings in circumstances in which affiliates exercise investment and voting decisions independently.<sup>2</sup> In the General Approach, ECOFIN addresses the aggregation issue with respect to asset managers. Unlike the text suggested by industry, including the Institute, the text of the General Approach bifurcates the treatment of EU asset managers and non-EU asset managers. Specifically, in Articles 11(3a) and 11(3b) of the General Approach, management companies that manage under the conditions laid down in the UCITS Directive and investment firms that provide portfolio management on an individual basis under the Investment Services Directive would not be required to aggregate holdings at the parent level. In Articles 19(4) and 19(5) of the General Approach, non-EU asset managers that would have been required to receive authorization under the UCITS Directive if they had a registered office within the European Union also would be exempt from aggregating holdings at the parent level if they comply with “equivalent conditions of independence as management companies” and the Commission adopts implementing measures stating that the “third country ensures the equivalence of the independence requirements” provided for under the Transparency Directive. <sup>1</sup> The text of the General Approach is available at, <http://register.consilium.eu.int/pdf/en/03/st15/st15275.en03.pdf>. See Memorandum to International Members No. 12-03 (15830) (Apr. 8, 2003). <sup>2</sup> See Memorandum to International Committee No. 69-03 (16664) (Oct. 15, 2003) (attaching Institute’s letters to Parliament). <sup>2</sup> The text of the General Approach does not provide an exemption from aggregation for non-EU firms that manage portfolios on an individual basis. (We understand that this omission was an oversight that is expected to be corrected.) For the Transparency Directive to be adopted in one reading, Parliament and ECOFIN must agree on a text, and the Economic and Monetary Affairs Committee of the Parliament is expected to vote on a

draft report to be presented to the entire Parliament in February 2004. We will be monitoring the negotiations between ECOFIN and the Parliament closely and will likely provide comment on the text of the General Approach. We are evaluating the text of the General Approach for any issues. If you have particular concerns with the ECOFIN text, please contact me at [jchoi@ici.org](mailto:jchoi@ici.org) or at (202) 326-5810 immediately. Jennifer S. Choi  
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