

The Transparency Directive

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Screening process

Explanatory meeting with Croatia and Turkey

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Key features of the Directive

- **Lamfalussy type Directive - Minimum harmonisation**
 - **Applies to issuers whose securities are admitted to trading on an EU regulated market** (= EU and non EU; shares and bonds)
 - **Harmonises minimum requirements for**
 - **the content of information to be provided by issuers; and**
 - **the dissemination of information by issuers** (Language regime, means of dissemination and storage of information)
 - **Removes barriers to multiple listings** (Home Member State rule)
 - **Accepts third country equivalent standards**
 - **Simplifies national supervisory regimes** (same competent authority per MS as authority responsible for ensuring compliance with Prospectus Directive)
- ➔ **Minimum level of information** throughout the EU
- ➔ **EU-Passport for issuers**

Timetable

March 2003	Commission Proposal
May 2004	Council Common Position
June 2004	Commission Mandate to CESR
15 December 2004	Formal adoption of the Directive
June 2005	Delivery of CESR's advice
November 2005	On-line publication of Commission working document on possible Level 2 measures
January 2006	Consultation on working document closes
<i>Summer/Autumn 2006</i>	<i>Adoption of Level 2 measures</i>
20 January 2007	Deadline for the transposition of the Directive



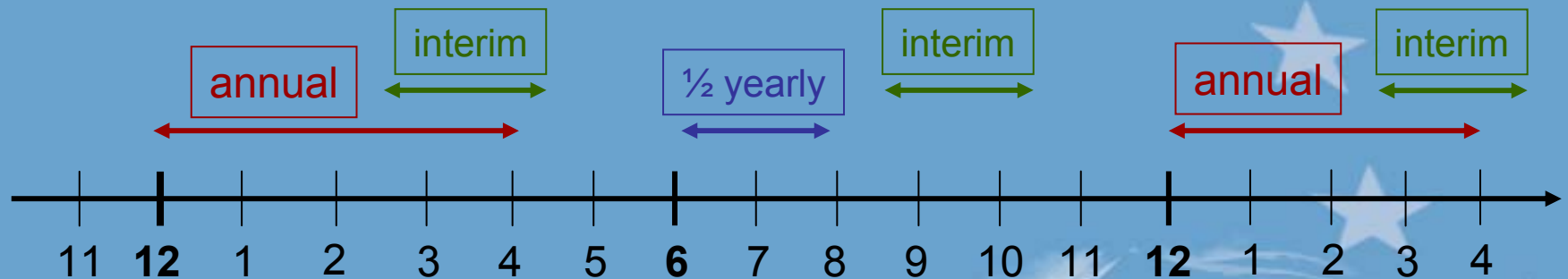
Information content: Periodic Information

Periodic Information, i.e.,

- Annual Financial Report (art. 4)
- Half-yearly Financial Report (art. 5)
- Interim management statements (art. 6) [not if issuers already publish quarterly financial reports]

The Directive prescribes contents of reports and statements, publication periods and availability to the public.

Publication periods



Information content: On-Going Information

On-going Information, i.e., Major holdings of voting rights

- ➔ Shareholder (Art. 9) and any person who controls voting rights (Art. 10 situations) must notify to issuer each time they reach or cross 5%, 10%, 15%, 20%, 25%, 30% (or 1/3), 50% or 75% (or 2/3) of voting rights
- ➔ Issuer must disclose this information to public (Art. 12(6)).
- ➔ *Specific exemptions for*
 - *Controlled undertakings (notification by parent) (Art. 12(3))*
 - *Parents of management companies and of investment firms (no aggregation of holdings if management company/investment firm is independent from parent) (Art. 12(4) and (5))*
 - *Custodians (exemption if no discretion to vote on shares held in custody) (Art. 9(4))*
 - *Market makers (exemption from notification of 5% threshold) (Art. 9(5))*
 - *Trading book (not counted, subject to conditions) (Art.9(6))*

Dissemination of information

Dissemination obligations apply to regulated information, i.e., :

- information to be disclosed under the Transparency Directive; and
- ‘inside information’ (Art. 6 of the Market Abuse Directive)

Issuers must disseminate information (Art. 21(1)):

- in a manner ensuring fast access;
- on a non-discriminatory basis;
- using such media as may reasonably be relied upon for effective dissemination to the public throughout the EU; and
- without charging investor any specific cost for the information

MS may not impose use of national media only (Art. 21(1))

The Directive is neutral as to the media used for dissemination.

MS may still impose newspaper publications (Recital 8)

Storage of information and filing with the competent authority

Each MS must ensure that there is **at least one officially appointed mechanism (OAM) for the storage of regulated information (Art. 21(2))**.

The OAM must comply with minimum standards of

- Security;
- Time recording;
- Certainty as to the information source; and
- Easy access to end users

When issuer disseminates information, it must at the same time

- Make it available to the storage mechanism; and
- File it with the Competent Authority

Competent Authorities to draw up guidelines aiming at the creation of a pan EU network of OAMs (Art. 22)

Third country issuers - equivalence

Third country issuers whose securities are traded on a regulated market in the EU must comply with TD requirements, unless the requirements of their country of incorporation are considered to be equivalent to those of the TD (Art. 23(1))

Commission to take implementing measures on equivalence (Art. 23(4))

But even in such a case, third country issuers must comply with the TD obligations regarding:

- The language regime (art. 20)
- Filing the information with the competent authority (art. 19) and
- Disseminating the information (art. 21)

Supervisory regime and penalties

- **Supervisory regime (Art. 24 & 25)**

- Same competent authority (CA) for TD and Prospectus directive
- CA may delegate tasks to another entity (reviewed 5 years and ends 8 years after entry into force of the Directive)
- CAs given minimum powers including requiring information disclosure, suspending trading, making infringements public and carrying out on-site inspections
- Co-operation between CAs. Member States may conclude agreements for the exchange of information

- **Penalties**

- Member States to impose administrative and/or civil penalties: “effective, proportionate and dissuasive”
- Member States may impose criminal penalties

'Level 2' implementing measures

- **Commission granted three mandates to the Committee of European Securities Regulators (CESR)**
 - General mandate on most provisions of the Directive – *Technical advice delivered by CESR in June 2005*
 - Specific mandate on the equivalence of US, Japanese and Canadian GAAP with IFRS – *Technical advice delivered by CESR in June 2005*
 - Specific mandate on the storage of regulated information – *Technical advice to be delivered in June 2006*
- **Commission submitted to public consultation a working document on possible Level 2 measures in November 2005.**
- **Level 2 measures probably in Summer-Autumn 2006**

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 in a regulated market and amending Directive 2001/34/EC

O.J. L390/38 of 31.12.2004

http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm