

# 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)
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- ➔ **Minimum level of information** throughout the EU
  - ➔ **EU-Passport for issuers**



# Timetable

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



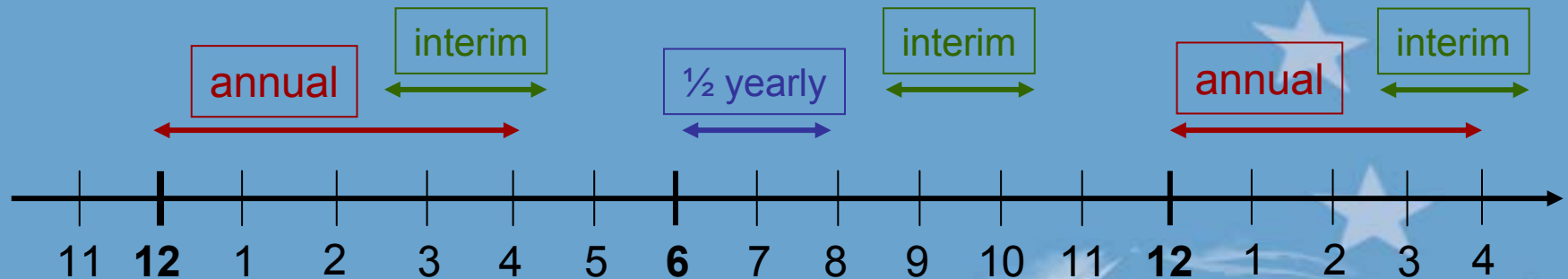
# Information content: Periodic Information

## 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

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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

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**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](http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm)**