

COUNTDOWN TO COMPLIANCE:

THE TRANSPARENCY DIRECTIVE

By January 20, 2007, EU member states will have finalised their implementation plans for the Transparency Directive. But has all the consultation and lobbying produced a workable set of disclosure rules and a level playing field for Europe?

It's been a long time coming but the Transparency Directive is finally here. First and foremost, it establishes minimum requirements on periodic financial reporting. In addition, it covers the disclosure of major shareholdings by issuers whose securities trade on a regulated market in the EU, and it deals with how this information should be stored and disseminated.

In terms of reporting requirements, for example, listed companies must produce annual and half-yearly financial reports, as well as interim management statements – if they are not already producing quarterly reports. These reports must meet standards established under the directive and be made within certain deadlines. The directive also sets out other types of information that issuers must disclose, such as notification of shareholder meetings and changes to the terms and conditions of a security.

All information disclosable under the Transparency Directive must be disseminated on a pan-European basis, as well as centrally stored. Shareholders also have obligations under the directive and must notify their holdings when they move across certain thresholds.

Beyond the basics

The directive is a minimum harmonisation directive, meaning that individual member states can impose greater – so-called “super-equivalent”

SUPER-EQUIVALENCE IN THE UK

THE UK'S FINANCIAL SERVICES AUTHORITY plans to go beyond the Transparency Directive's minimum requirements in a number of areas.

FOR EXAMPLE, the UK's Listing Rules contain requirements relating to matters such as: the comply or explain approach to corporate governance; directors' remuneration disclosure; and the statement by directors that the business is a going concern. The FSA said it intends to retain these requirements.

IN ADDITION, under the directive, shareholders must inform issuers when their holdings reach, exceed, or subsequently fall below, certain thresholds – five per cent, ten per

cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent. However, the FSA has proposed adopting thresholds for UK issuers based on the UK's previous thresholds under the Companies Act.

IN TERMS OF notification deadlines, the directive requires shareholders to notify the issuer no later than four trading days after the notifiable event, and the issuer must notify the market no later than three trading days following receipt. The FSA proposes to retain the current UK requirements for holdings in UK issuers.

Source: Clifford Chance, Client Briefing on UK Proposals for Transparency Directive Implementation

– requirements if they wish (see box for UK examples). In some cases, member states have tried to go beyond the minimum requirements, only to change their minds following consultation and lobbying.

In Germany, legislators originally proposed going beyond the minimum declaration required of responsible individuals, such as company directors, in their “statement of assurance” accompanying annual and half-yearly reports. The Transparency Directive requires those responsible to affirm that the financial statements have been properly prepared “to the best of their knowledge”. But the German legislators initially removed that caveat, causing great anxiety about the impact on directors' liability.

“Now the lawmakers have put the ‘best of their knowledge’ bit back after heavy lobbying from us and other organisations,” says Kay Bommer, managing director of DIRK, the German IR association.

German legislators initially wanted half-yearly reports – not just annual ones – to be audited. “For small companies that would have meant a lot of extra cost,” Bommer notes. That requirement has been dropped, as have proposals for the random testing of half-yearly reports by the German regulator.

Not all super-equivalent proposals in Germany have been defeated, however. The threshold at which shareholders must notify issuers of their holding has been lowered from five to three per cent. “There were many people against that,” says Bommer. “But we like the idea of the lower rate. Companies have to be so transparent. Why not investors?”

The impact on IR

The impact of the directive on IR teams will vary. Lene Aabo, head of IR at Danish biotech company Novozymes, believes she will be relatively unaffected. “For us, the directive doesn't imply changes because we have been providing quarterly reports and following a lot of the directive's requirements all along,” she says. “The only direct impact will be that we have to make sure all stock exchange information is provided throughout Europe at the same time. That's going to be an additional cost.” Traditionally, Novozymes has published its regulatory news only in Denmark. “Now we will need to subscribe to a news channel,” Aabo says. “It's a practical problem I need to solve.”

Guy Elewaut, head of IR at Belgian food retailer Delhaize Group, believes that while much attention has focused on the information dissemination elements of the directive, there are other potentially more important issues for IR. For example, half-yearly financial reports must comply with International Accounting Standard 34 on interim financial reporting. “We will need to add a risk section,” he says. Elewaut also refers to the requirement for a statement of assurance. “All that is new,” he says, noting that delays in translating the directive into local legislation have not helped IR preparations.

Nevertheless, Elewaut supports the directive. “It's creating a level playing field for companies and investors in Europe,” he says. He also welcomes the fact that national legislation will no longer be able to require companies to

publish their annual and half-yearly results in newspapers, as had been the case in Belgium. “That will free up a nice bit of the budget,” he says.

Tackling monopoly distribution

In terms of how information is disseminated, Rudi de Ceuster, senior director of news distribution company Business Wire Europe, notes that the market for professional information provision is a competitive one. “It's automatically going to keep the cost of those operations under control,” he says. “Wherever competing professional information providers start handling the dissemination of regulatory information, the rates go down.”

De Ceuster refers to the UK, where the London Stock Exchange's Regulatory News Service used to be the sole distribution mechanism for regulatory information before the market was opened up to competition in 2002. UK-listed companies can now publish their regulatory announcements via a choice of approved service providers. “We have seen a quite considerable decrease in the rates of regulatory news services from the moment there were competitors,” he says.

One issue of concern to de Ceuster, however, is that the monopolistic provision of regulatory news dissemination services could continue in practice. He says the EU has “left the door open”. At present, in states such



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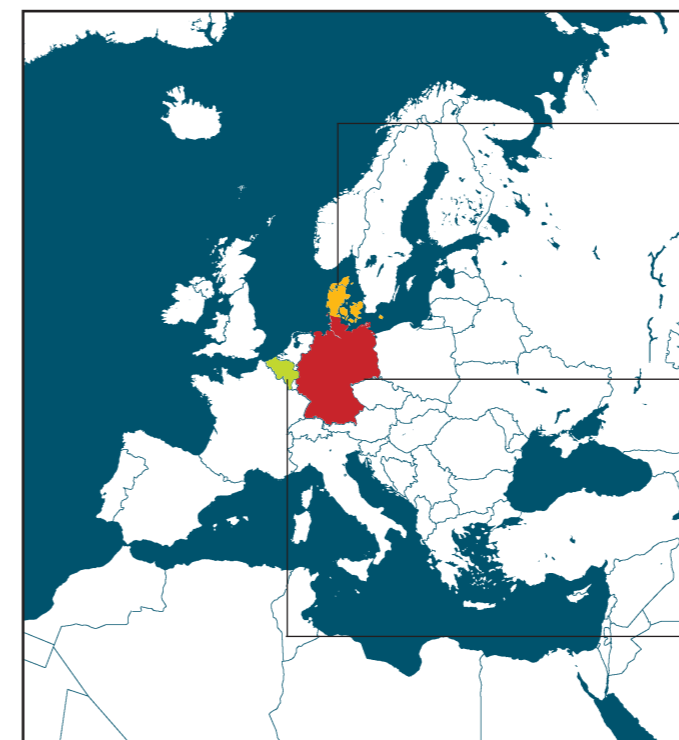
Rudi de Ceuster, senior director, Business Wire Europe

as Italy, Denmark and Spain there is no competition and companies use a single regulated system. “The directive says that no member state can exclude anyone from disseminating disclosure news in that member state,” de Ceuster says. “But in some countries there is a monopolistic system in place where the stock exchange or market authority has its own dissemination system and in certain cases charges users for access to it. We think that's wrong.”

Healthy competition?

De Ceuster stresses that Business Wire is “not afraid of competition”. His concern is that even though information providers will be able to challenge these monopolistic providers, existing players could have an unfair advantage. Could companies decide to go with the market authority's system, for example, just to avoid falling out with the authority? What if some element of a listing fee is nominally allocated for news dissemination services? There is a risk that the creation of a truly competitive news dissemination market in such states could be impeded. That won't help IR teams trying to keep down the cost of compliance with the Transparency Directive.

SARAH PERRIN is a freelance business journalist and regular contributor to *Real IR*.



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Lene Aabo, head of IR, Novozymes



“We like the lower notification rate for shareholders. Companies have to be transparent, why not investors?”

Kay Bommer, managing director, DIRK



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Guy Elewaut, head of IR, Delhaize Group