



**EU Directives:  
Impact for us all**

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**EU Directives:  
Impact for us all**

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**What's happening**  
Financial Services Action Plan

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Prospectus Directive	Money Laundering Directive
Transparency Directive	Market Abuse Directive
Investment Services Directive	Tax harmonisation
IAS Regulation	Corporate Governance
Takeover Directive	Settlement Finality Directive
European Company Law Statute	Cross-border selling of UCITS
Savings Directive	

and ...

Information & Consultation Directive

**42** European Employment Directive



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**When**

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Already started!  
Main implementation 2005  
All in place by 2007

Impact on ALL companies operating plans  
in the EU



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**Why?**

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Need to create a pan-European market



- 450+ million people
- Ageing population
- Pension funding
- Euro
- Political union?



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**Why?**

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Need to create a pan-European market

Competition from China and India



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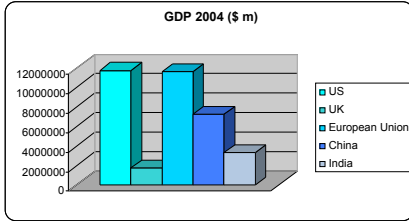
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### Threat from China and India

GDP by Country 2004



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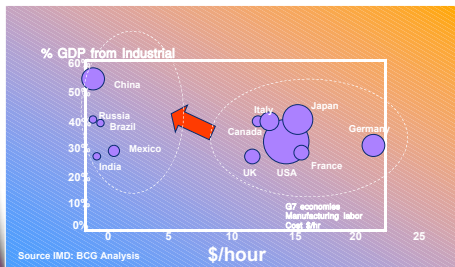
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### Threat from China and India: labour rates



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### EU at the crossroads?



But 49% of EU population already yes

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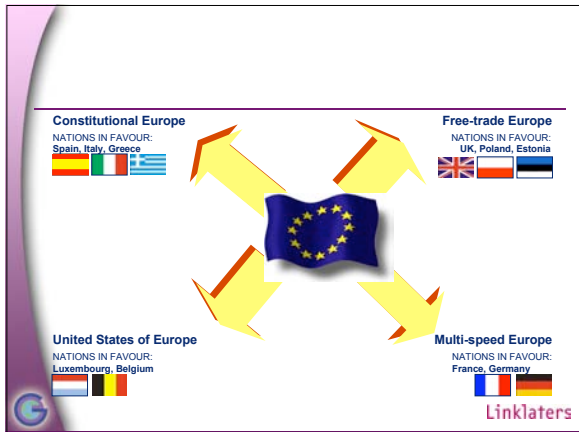
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### Impact on share plans: Overview

Change:

- Share plans: securities law exemptions in Europe and filings
- Share dealing codes
- Disclosure and filings
- Exec comp disclosure
- Related services, broking, portfolio management and their **prices**
- Directors' liability!

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EU Directives	Deadline to Implement
• Prospectus Directive	1 July 2005
• Corporation governance and directors' remuneration recommendations	2/3 years
• Information and Consultation Directive	In force
• Takeover Directive	20 May 2006
• Market Abuse Directive	1 July 2005
• Savings Directive	2008/7
• Money Laundering Directive	In force
• Investment Services Directive	30 Oct 2006
• Transparency Directive	20 Jan 2007

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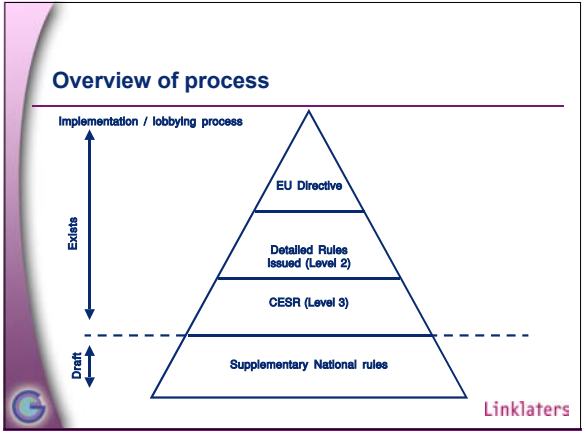
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**Corporate Governance and directors' remuneration recommendation**

Aim

- Board composition
- Independence
- Board committees
  - Internal controls

Key issues

- No binding recommendation
- Covers non-EU companies listed in EU

Timing

- No specific date

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**Directors' Remuneration**

Aim:

- Consistent and full disclosure of all EU listed companies
- Shareholder approval to remuneration policy and all share schemes involving directors

Key Issues:

- Non-binding at the moment
- Massive variation of disclosure currently
- Variable "control" on executive pay

Timing:

- None specified

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**Impact for EU listed companies**

- UK and Netherlands: do not expect major differences from current requirements
- Other EU companies: changes being brought in, e.g. Germany

⇒ Significant changes throughout EU on disclosure and pay, may force changes in compensation design



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**Takeover Directive**

Aim:

- Standard rules on bids throughout EU
- Protection of minority shareholders
- Mutual recognition of offer documents

Key Issues:

- Taken 15 years and two rewrites to get this far
- Real impact lessened because of lack of agreement
- Not clear whether individual member states will require pre-vetting, no mutual recognition



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**Takeover Directive**

Covers:

- Squeeze-out
- Frustrating actions (poison pills) opt in/out
- Disclosure of defensive mechanisms
- Shareholder and **employee notification!**



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**Impact on share plans**

- Communicate to employee reps/employees when bid made public, including offer document
- If employees' reps have separate opinion on bid and impact on employee issues this should be appended to board's opinion and circulated
  - ⇒ Impact on practicalities of launching and conducting bid
  - ⇒ Still need due diligence on takeover offer/proposals for share plan participants.



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**Market Abuse Directive**

Aim:

- Disclosure of all price-sensitive information:
  - safe harbour to protect legitimate interests
- Market abuse:
  - no "regular user" test for some offences
  - in addition to criminal insider dealing
    - ⇒ civil offence (easier burden of proof)
- Insider lists:
  - names of everyone who has inside information

Timing:

- Amend Financial Services and Markets Act - July 2005



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**Impact on share plans**

- Extra layer on top of existing requirements
    - ⇒ Review your dealing codes, and amend
    - ⇒ Maintain insider lists
- Now!



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**Savings Directive**

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Aim:


- One market for savings
- Co-operation between tax authorities and withholding

Key issues:

- "Paying agent" must pass tax identifier to its home Revenue at time of payment
- Collecting data
- Next stage withholding

Timing:

- 2006



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**Savings Directive  
Impact on share plans**

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- Savings carriers obtain tax identifier on grant
- But what about maturity?

⇒ Expect changes on their forms



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**Money laundering**

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Aim:


Cut off "legitimate" money flow of drug dealers and terrorists

Key issues:

- Require financial and professional services to identify customers
- Report suspects

Timing:

In force already



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Money laundering


**Impact on share plans**

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- Brokers “identify” share plan participants
- Issues for overseas participants

⇒ Review of processes

⇒ Increase in use of nominees



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**Investment Services Directive**

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Aim:

- Harmonised conduct of business rules
- Increase efficiency of markets **without** putting investors at risk

Key issues:

- Pre-trade transparency: must be a market maker
- Best execution
- Suitability of transactions: know your customer (KYC)

Timing:  
30 October 2006



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Investment Services Directive

**Impact on share plans**

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- Polarisation of retail markets. Some execution only brokers will not want to offer a market making facility
- Suitability of transaction. Execution only still permitted, brokers make sure customers fall into this category
- If offering any wealth management then EU wide rules on KYC
- Best execution: search for best price. Terms will need to show meaning best execution, possibly look at most liquid market, like LSE SETS price (or other relevant SE)
- Increased competition from large providers as some local rules disappear



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**Transparency Directive**

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Aim:

- Periodic information on listed companies
- Major shareholdings disclosure
- Equality of treatment for securities holders
- Voting arrangements



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Transparency Directive

**Periodic information - what?**  
Accounts (and audit) - international standards OR equivalent standards


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**Management report**

- (annual) a fair review of the development of the company's business and of its position, and the risks and uncertainties it faces
- (half-yearly) as annual, together with an indication of any important events that have occurred since the end of the financial year

**Interim management statement**

- explanation of material events and transactions and their impact since the prior period end
- general description of the issuer's financial position and performance since the period end



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Transparency Directive

**Impact of changes**

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International accounts/audit standards  
 Quarterly reporting  
 Half yearly director-certified "management report" published across EU  
 Mandatory pro forma's, Trends and Risk factors  
Increased liability?



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Transparency Directive

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**Impact on share plans**

- Possible some companies will de-list! Unlisted issuers
- Possible changes in disclosure requirements of share plans



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**Prospectus Directive**

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Enemy: local regulators require:

- translations
- additional information, like tax consequences for local investors



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**Prospectus Directive**


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Remove barriers

- ⇒ no translations
- ⇒ no host state control

But

- fear of incoming prospectuses
- ... and loss of control over home country issues



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**Prospectus Directive**

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So by 1 July 2005

- One document to sell across Europe
- Maximum harmonisation of disclosure
- New disclosure requirements
- Home state approval
- Control of advertising

But what does this mean for companies operating share plans?



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Prospectus Directive

**EU listed Issuer**

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- For this purpose: securities of the class offered to employees listed anywhere in the EU
- Therefore, debt only listed = not an EU listed Issuer for this purpose



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Prospectus Directive


**EU listed Issuers Employee offers**

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If a “public offer” (100+ and €2.5m+)

Exemption from publishing prospectus if:

- offer to existing/former employees/directors of company or subsidiary
- by employer (i.e. not trust!)
- with **those** securities admitted to trading already
- and a document is published detailing:
  - number/nature of securities
  - reasons for/details of the offer
  - where to find info on the company



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Prospectus Directive

**Private/Non EU companies' Employee offers**

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Public offer if:

- more than €2,500,000 - **consideration**
- more than **100** persons in any country
- securities offered transferable/negotiable

⇒ grants of **non-transferable** options not a public offer!

⇒ gifts/free shares = €0 therefore not public offer!?

⇒ Exec grants to less than 100 per country, not a public offer!

Some share purchase / matching arrangements caught

⇒ full prospectus!

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Prospectus Directive

**Non-EU Issuers "Home state" regulation**

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The "home state" for equity and retail debt:

- ... for EU issuers, where their HQ is
- ... for other issuers, where they **first list or make a public offer after 31 December 2003 or 1 July 1995** - still to be decided!

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Prospectus Directive

**Non-EU Issuer: Home state choice**

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```

graph TD
    HS[Home state] --> FPO[First public offer since 31.12.03]
    HS --> FAM[First application to regulated market]
    FPO <--> |Issuer choice| FAM
    subgraph Definitions
        direction LR
        NPP((New PP definition))
        LOD((Local old definition))
    end
    subgraph Dates
        direction TB
        D1((1 July 2005))
        D2((1 July 1995))
        D3((31 Dec 2003))
    end
  
```

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Prospectus Directive

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**But.....not fully implemented by 1 July**

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- What laws apply?
- Risk of Home Member State selection?

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Prospectus Directive

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**International accounting standards**

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All EU companies

- traded on an EU regulated market
- must from 1 January 2005
- prepare consolidated accounts
- in accordance with IFRS

Member states may extend IFRS to

- consolidated/individual accounts of other companies

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Prospectus Directive

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**So...**

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For EU Listed Companies with grants/offers to employees

- Confusion whether Prospectus Directive applies to some grants; options, free shares?
- <100 per country?
- any country 100+: issue "booklet" for all participants
- ... but grants by trust! Exemption does not apply  
⇒ prospectus!

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### Impact 1 July 2005

#### EU-listed companies

- May need to issue "booklet"
- Replace EU state local requirements (hoorah)
- Not all countries implementing on 1 July: confusion!

#### Non-EU-listed companies

- If not public offer ⇔ no regulations
- if public ⇔ prospectus (and potential risk selection home member state)



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### Summary

#### Winners

- options
- free shares
- EU listed Issuers who issue "booklet"

#### Losers?

- non-EU listed:
  - share purchase plans
  - co-investment plans



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### How will the markets react?

Zurobonds - or US/Asian market listings with private placings into Europe?

More pan-European offerings?

Increase in unlisted offerings?

De-listings...

Deregulation of Alternative Investment Market



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**EU Directive impact: Action Share plans grants**

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<ul style="list-style-type: none"> <li>• EU listed Issuers: Need to issue "booklet"? <small>(Prospectus Directive)</small></li> <li>• Update dealing code? <small>(Market Abuse Directive)</small></li> <li>• Update savings application forms? <small>(Savings Directive)</small></li> </ul>	<p>When:</p> <p>July 2005+</p> <p>July 2005</p> <p>2005</p>
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**Share plan maturities**

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<ul style="list-style-type: none"> <li>• review dealing cashless exercise facilities <small>(ISD)</small></li> <li>• exit arrangements, nominee required <small>(Money Laundering Directive)</small></li> <li>• Introduce closure of savings forum? <small>(Savings Directive)</small></li> </ul>	<p>When:</p> <p>2005</p> <p>2004</p> <p>2005</p>
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**Thank you**

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Any questions?



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**Contacts**

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