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Delegated Act on protracted processes needs slight amendments

Position Paper on Draft Commission Delegated Regulation supplementing Regulation (EU) No 596/2014 as regards disclosure of inside information in protracted processes and delay of disclosure, 12 January 2026

Comments

The Draft Delegated Regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards disclosure of inside information in protracted processes and delay of disclosure is a key level 2 measure of the EU Listing Act.

It defines the non-exhaustive list of final events or circumstances that require disclosure according to the amended Art. 17 (1) of the Market Abuse Regulation, thus specifying this key compliance obligation

As we have always called for a pragmatic approach reducing the regulatory burden, improving legal certainty and recognizing the specifics of the member states' corporate governance systems we much appreciate that the EU Commission followed ESMA's final technical advice on the issue of publication of inside information in many respects.

More specifically we support the following elements of the Commission's proposal:

- The draft Delegated Regulation accepts the reality of two-tier corporate governance systems, so that the disclosure requirement will be triggered by the supervisory board's approval if the management board's decision requires such a supervisory board's endorsement (see recital (4)). This approach prevents the risk of disclosing preliminary information, avoids discrimination of two-tier systems and ensures orderly decision-making processes, regardless of the governance system applicable in the issuer's jurisdiction.

- Annex I (line 1) of the Draft Delegated Regulation determines the signing of agreements as the relevant point of time for disclosure which gives issuers significant more legal certainty and significantly reduces compliance risks and burdens for protracted processes like M&A and significant other developments involving a third party.

- Similarly, we support that the draft Delegated Regulation classifies both financial (interim) reports and forecasts (including the relevant key financial results) as protracted processes which is in line with the fact that compiling and consolidating financial information typically a process that occurs in stages. To avoid legal uncertainty we suggest to amend the wording in column 1 by adding "as well as financial results included therein" to reflect the wording already included in column 2 and 3.

- The draft Delegated Regulation accounts for situations where the power to decide on the disclosure of inside information has been delegated by the governing body to another committee within the issuers (recital (6)). This also reflects well the reality of issuers' internal organisation which aims at efficient and appropriate decision making in such cases.

Clarification of recital (8) would be helpful

Our understanding of the list has always been that it does not exclude the existence of additional protracted processes. However, other protracted processes not yet included might emerge in very similar procedural stages (e.g. because at the end of the process the governing body will have to make an informed decision or the process not yet included in the list is closely related to processes already specified in Annex I). For those cases, it would be helpful if recital (8) explicitly stated, that issuers can use the list as a pattern for their judgment.

Appointment or removal of members of an issuer's governing body, Section D. Item 13

We fully agree with the proposal.

However, the case of resignation from office or refusal to extend a term by members of an issuer's governing body appears to be not covered. In these cases, there is typically no formal need for approval by the issuer's governing body. We therefore suggest to add an explanation in column 3 for cases without the need for approval. More specifically, in these cases, the final event should be the legally binding receipt of the declaration by the issuer and the disclosure should be due as soon as possible upon receipt by the issuer's governing body of a legally binding declaration to resign from office or to not extend a term.

Interventions by public authorities, Section E

We believe that the duty of disclosure in processes where public authorities are involved should be triggered solely by a public authority's decision, rather than the initiation of an administrative procedure through an application by an issuer. We suggest to reconsider Section E which appears inconsistent and overly differentiated, especially since most cases will not involve inside information at the stage of the submission. In addition, even if the submission can be qualified as inside information it marks only the beginning of a lengthy and uncertain process, the outcome of which depends heavily on regulatory or judicial determinations.

Annex III (b) und (g)

Regarding points (b) and (g) of Annex III we note the lack of a definition of who is meant by “representing” the issuer. The absence of a narrow definition may – if taken literally – require issuers to review hundreds of communications every week, and issuers would not be able to obtain such communications in order to delay publication. We therefore propose to refer to persons legally (in the sense of statutory) representing the issuer or having a formal delegation to represent it.

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