

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

CHAPTER III

ONGOING INFORMATION

SECTION I

**Information about major holdings**

*Article 9*

**Notification of the acquisition or disposal of major holdings**

1 The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %.

The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. Moreover this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached.

2 The home Member States shall ensure that the shareholders notify the issuer of the proportion of voting rights, where that proportion reaches, exceeds or falls below the thresholds provided for in paragraph 1, as a result of events changing the breakdown of voting rights, and on the basis of the information disclosed pursuant to Article 15. Where the issuer is incorporated in a third country, the notification shall be made for equivalent events.

3 The home Member State need not apply:

- a the 30 % threshold, where it applies a threshold of one-third;
- b the 75 % threshold, where it applies a threshold of two-thirds.

4 This Article shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, or to custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.

5 This Article shall not apply to the acquisition or disposal of a major holding reaching or crossing the 5 % threshold by a market maker acting in its capacity of a market maker, provided that:

- a it is authorised by its home Member State under Directive 2004/39/EC; and
- b it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

6 Home Member States under Article 2(1)(i) may provide that voting rights held in the trading book, as defined in Article 2(6) of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>(1)</sup>, of a credit institution or investment firm shall not be counted for the purposes of this Article provided that:

- a the voting rights held in the trading book do not exceed 5 %, and
- b the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.

7 The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5 of this Article.

The Commission shall in particular specify the maximum length of the 'short settlement cycle' referred to in paragraph 4, as well as the appropriate control mechanisms by the competent authority of the home Member State. In addition, the Commission may draw up a list of the events referred to in paragraph 2.

#### *Article 10*

#### **Acquisition or disposal of major proportions of voting rights**

The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

- (a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
- (b) voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- (c) voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;
- (d) voting rights attaching to shares in which that person or entity has the life interest;
- (e) voting rights which are held, or may be exercised within the meaning of points (a) to (d), by an undertaking controlled by that person or entity;
- (f) voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in its own name on behalf of that person or entity;
- (h) voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

### Article 11

1 Articles 9 and 10(c) shall not apply to shares provided to or by the members of the ESCB in carrying out their functions as monetary authorities, including shares provided to or by members of the ESCB under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

2 The exemption shall apply to the above transactions lasting for a short period and provided that the voting rights attaching to such shares are not exercised.

### Article 12

#### **Procedures on the notification and disclosure of major holdings**

1 The notification required under Articles 9 and 10 shall include the following information:

- a the resulting situation in terms of voting rights;
- b the chain of controlled undertakings through which voting rights are effectively held, if applicable;
- c the date on which the threshold was reached or crossed; and
- d the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in Article 10, and of the natural person or legal entity entitled to exercise voting rights on behalf of that shareholder.

2 The notification to the issuer shall be effected as soon as possible, but not later than four trading days, the first of which shall be the day after the date on which the shareholder, or the natural person or legal entity referred to in Article 10,

- a learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
- b is informed about the event mentioned in Article 9(2).

3 An undertaking shall be exempted from making the required notification in accordance with paragraph 1 if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

4 The parent undertaking of a management company shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings managed by the management company under the conditions laid down in Directive 85/611/EEC, provided such management company exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such management company and the management company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

5 The parent undertaking of an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of Directive 2004/39/EC, provided that:

- the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/39/EC;
- it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms; and
- the investment firm exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

6 Upon receipt of the notification under paragraph 1, but no later than three trading days thereafter, the issuer shall make public all the information contained in the notification.

7 A home Member State may exempt issuers from the requirement in paragraph 6 if the information contained in the notification is made public by its competent authority, under the conditions laid down in Article 21, upon receipt of the notification, but no later than three trading days thereafter.

8 In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures:

- a to establish a standard form to be used throughout the Community when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3);
- b to determine a calendar of ‘trading days’ for all Member States;
- c to establish in which cases the shareholder, or the natural person or legal entity referred to in Article 10, or both, shall effect the necessary notification to the issuer;
- d to clarify the circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal;
- e to clarify the conditions of independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings to benefit from the exemptions in paragraphs 4 and 5.

### *Article 13*

1 The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

2 The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. It shall in particular determine:

- a the types of financial instruments referred to in paragraph 1 and their aggregation;
- b the nature of the formal agreement referred to in paragraph 1;

- c the contents of the notification to be made, establishing a standard form to be used throughout the Community for that purpose;
- d the notification period;
- e to whom the notification is to be made.

#### *Article 14*

1 Where an issuer of shares admitted to trading on a regulated market acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the home Member State shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

2 The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1.

#### *Article 15*

For the purpose of calculating the thresholds provided for in Article 9, the home Member State shall at least require the disclosure to the public by the issuer of the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred.

#### *Article 16*

### **Additional information**

1 The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.

2 The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

3 The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Without prejudice to Directive 2003/6/EC, this paragraph shall not apply to a public international body of which at least one Member State is member.

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**Status:** This is the original version (as it was originally adopted).

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- (1) [OJ L 141, 11.6.1993, p. 1](#). Directive as last amended by Directive 2004/39/EC.