

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.

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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⁽¹⁾, 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:

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- 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.

SECTION II

Information for holders of securities admitted to trading on a regulated market

Article 17

Information requirements for issuers whose shares are admitted to trading on a regulated market

1 The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.

2 The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated. In particular, the issuer shall:

- a provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;
- b make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;
- c designate as its agent a financial institution through which shareholders may exercise their financial rights; and
- d publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

3 For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

- a the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (h), of the natural persons or legal entities;
- b identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
- c shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and
- d any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

4 The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. It shall, in particular, specify the types

of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).

Article 18

Information requirements for issuers whose debt securities are admitted to trading on a regulated market

1 The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

2 The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the issuer is incorporated. In particular, the issuer shall:

- a publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;
- b make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and
- c designate as its agent a financial institution through which debt securities holders may exercise their financial rights.

3 If only holders of debt securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

4 For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

- a the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
- b identification arrangements shall be put in place so that debt securities holders are effectively informed;
- c debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and
- d any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

5 The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial

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markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).

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