

COUNCIL DIRECTIVE

of 12 December 1988

on the information to be published when a major holding in a listed company is acquired or disposed of

(88/627/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas a policy of adequate information of investors in the field of transferable securities is likely to improve investor protection, to increase investors' confidence in securities markets and thus to ensure that securities markets function correctly;

Whereas, by making such protection more equivalent, coordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market;

Whereas to that end investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community;

Whereas coordinated rules should be laid down concerning the detailed content and the procedure for applying that requirement;

Whereas companies, the shares of which are officially listed on a Community stock exchange, can inform the public of changes in major holdings only if they have been informed of such changes by the holders of those holdings;

Whereas most Member States do not subject holders to such a requirement and where such a requirement exists there are appreciable differences in the procedures for

applying it; whereas coordinated rules should therefore be adopted at Community level in this field,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.

2. Where the acquisition or disposal of a major holding such as referred to in paragraph 1 is effected by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.

3. This Directive shall not apply to the acquisition or disposal of major holdings in collective investment undertakings.

4. Paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing ⁽⁴⁾, as last amended by Directive 82/148/EEC ⁽⁵⁾, is hereby replaced by the following:

(c) The company must inform the public of any changes in the structure (shareholders and breakdowns of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of ⁽⁶⁾ must inform the public within nine calendar days whenever it comes to its notice that a person or entity has acquired or disposed of a number of shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.

⁽¹⁾ OJ No C 351, 31. 12. 1985, p. 35, and OJ No C 255, 25. 9. 1987, p. 6.

⁽²⁾ OJ No C 125, 11. 5. 1987, p. 144, and OJ No C 309, 5. 12. 1988.

⁽³⁾ OJ No C 263, 20. 10. 1986, p. 1.

⁽⁶⁾ OJ No L 348, 17. 12. 1988, p. 62.

⁽⁴⁾ OJ No L 66, 16. 3. 1979, p. 21.

⁽⁵⁾ OJ No L 62, 5. 3. 1982, p. 22.

Article 2

For the purposes of Directive, 'acquiring a holding' shall mean not only purchasing a holding, but also acquisition by any other means whatsoever, including acquisition in one of the situations referred to in Article 7.

Article 3

Member States may subject the natural persons, legal entities and companies referred to in Article 1 (1) to requirements stricter than those provided for in this Directive or to additional requirements, provided that such requirements apply generally to all those acquiring or disposing of holdings and all companies or to all those falling within a particular category acquiring or disposing of holdings or of companies.

Article 4

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, $\frac{1}{3}$, 50 % and $\frac{2}{3}$, he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

- the thresholds of 20 % and $\frac{1}{3}$ where they apply a single threshold of 25 %,
- the threshold of $\frac{2}{3}$ where they apply the threshold of 75 %.

The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

2. Member States shall, if necessary, establish in their national law, and determine in accordance with it, the manner in which the voting rights to be taken into account for the purposes of applying paragraph 1 are to be brought to the notice of the natural persons and legal entities referred to in Article 1 (1).

Article 5

Member States shall provide that at the first annual general meeting of a company referred to in Article 1 (1) to take place more than three months after this Directive has been transposed into national law, any natural person

or legal entity as referred to in Article 1 (1) must notify the company concerned and at the same time the competent authority or authorities where he holds 10 % or more of its voting rights, specifying the proportion of voting rights actually held unless that person or entity has already made a declaration in accordance with Article 4.

Within one month of that general meeting, the public shall be informed of all holdings of 10 % or more in accordance with Article 10.

Article 6

If the person or entity acquiring or disposing of a major holding as defined in Article 4 is a member of a group of undertakings required under Directive 83/349/EEC⁽¹⁾ to draw up consolidated accounts, that person or entity shall be exempt from the obligation to make the declaration provided for in Article 4 (1) and in Article 5 if it is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.

Article 7

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) is required to make a declaration as provided for in Article 4 (1) and in Article 5, the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,
- voting rights attaching to shares of which that person or entity has the life interest,

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1.

- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

Article 8

1. For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:

- (a) has a majority of the shareholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

Article 9

1. The competent authorities may exempt from the declaration provided for in Article 4 (1) the acquisition or disposal of a major holding, as defined in Article 4, by a professional dealer in securities, in so far as that acquisition or disposal is effected in his capacity as a professional dealer in securities and in so far as the acquisition is not used by the dealer to intervene in the management of the company concerned.

2. The competent authorities shall require the professional dealers in securities referred to in paragraph 1 to be members of a stock exchange situated or operating within a Member State or to be approved or supervised by a competent authority such as referred to in Article 12.

Article 10

1. A company which has received a declaration referred to in the first subparagraph of Article 4 (1) must in turn disclose it to the public in each of the Member States in which its shares are officially listed on a stock exchange as soon as possible but not more than nine calendar days after the receipt of that declaration.

A Member State may provide for the disclosure to the public, referred to in the first subparagraph, to be made not by the company concerned but by the competent authority, possibly in cooperation with that company.

2. The disclosure referred to in paragraph 1 must be made by publication in one or more newspapers distributed throughout or widely in the Member State or States concerned or be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout or widely in the Member State or States concerned or by other equivalent means approved by the competent authorities.

The said disclosure must be made by publication in the official language or languages, or in one of the official languages or in another language, provided that in the Member State in question the official language or languages or such other language is or are customary in the sphere of finance and accepted by the competent authorities.

Article 11

The competent authorities may, exceptionally, exempt the companies referred to in Article 1 (1) from the obligation to notify the public set out in Article 10 where those authorities consider that the disclosure of such information would be contrary to the public interest or seriously detrimental to the companies concerned, provides that, in the latter case, such omission would not be likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the transferable securities in question.

Article 12

1. Member States shall designate the competent authority or authorities for the purposes of this Directive and shall inform the Commission accordingly, specifying, where appropriate, and division of duties between those authorities.

2. Member States shall ensure that the competent authorities have such powers as may be necessary for the performance of their duties.

3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of performing their duties and shall exchange any information useful for that purpose.

Article 13

For the purpose of this Directive, the competent authorities shall be those of the Member State the law of which governs the companies referred to in Article 1 (1).

Article 14

1. Member States shall provide that every person who carries on or has carried on an activity in the employment of a competent authority shall be bound by professional secrecy. This means that no confidential information received in the course of their duties may be divulged to any person or authority except by virtue of provisions laid down by law.

2. Paragraph 1. shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or previously employed by the competent authorities receiving the information are subject.

3. A competent authority which receives confidential information pursuant to paragraph 2 may use it solely for the performance of its duties.

Article 15

Member States shall provide for appropriate sanctions in cases where the natural persons or legal entities and the companies referred to in Article 1 (1) do not comply with the provisions of this Directive.

Article 16

1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function :

- (a) to permit regular consultations on any practical problems which arise from the application of this Directive and on which exchanges of view are deemed useful ;
- (b) to facilitate consultations between the Member States on the stricter or additional requirements which they may lay down in accordance with Article 3, so that the requirements imposed in all the Member States may be brought into line, in accordance with Article 54 (3) (g) of the Treaty ;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

Article 17

1. Member States shall take the measures necessary for them to comply with this Directive before 1 January 1991. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 12 December 1988.

For the Council

The President

P. ROUMELIOTIS