

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 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 ^[F1]The notification to the issuer shall be effected promptly, but not later than four trading days after the date on which the shareholder, or the natural person or legal person 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

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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.

[^{F2}8 In order to take account of technical developments on financial markets and to specify the requirements laid down in paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures:]

- [^{F3}(a)] ^{F3}
- 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.

[^{F3}]

[^{F4}9 In order to ensure the uniform conditions of application of this Article and to take account of technical developments on financial markets, the European Supervisory Authority (European Securities and Markets Authority) (hereinafter ‘ESMA’), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽¹⁾ may develop draft implementing technical standards to establish standard forms, templates and procedures to be

used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Substituted by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (Text with EEA relevance).
- F2** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Deleted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

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(1) [^{F4}OJ L 331, 15.12.2010, p. 84.]

Textual Amendments

- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).