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 situtated 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 (*) must inform the public within nine calender 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.

(*) OJ No L 348, 17. 12. 1988, p. 62.'

(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.
(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 %, 1/3, 50 % and 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 1/3 where they apply a single threshold of 25 %,

— the threshold of 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.