

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 422 final

Brussels, 4 September 1987

Amended proposal for a

COUNCIL DIRECTIVE

on information to be published when major holdings in the
capital of a listed company are acquired or
disposed of

(Presented by the Commission pursuant to the third
paragraph of Article 149 of the EEC Treaty)

COM(87) 422 final

Amended proposal for a Council Directive on information
to be published when major holdings in the capital of a
listed company are acquired or disposed of

I. Explanatory memorandum

1. General introduction

1. On 23 December 1985 the Commission transmitted to the Council a proposal for a Directive on information to be published when major holdings in the capital of a listed company are acquired or disposed of.¹

The proposal is intended to reinforce at Community level the policy of providing investors with information.

2. The Commission proposal has received the support of both the Economic and Social Committee and Parliament.

The Economic and Social Committee expressed its agreement in principle with the broad lines of the Commission proposal in its opinion of 2 July 1986. It also stressed that it welcomed the progress being made towards the interpenetration of securities markets.

Parliament has also approved the aim underlying the proposed Directive. It has put forward a number of amendments, mostly technical, which constitute improvements to the Commission's wording and can therefore be accepted.

¹ Document COM(85)791 of 23.12.1985
OJ C No 351, 31.12.1985, pp. 35-37

However, one of them would not seem to be acceptable. That amendment would have the effect of adding the following second paragraph to Article 3 :

"Where a person disposes of shares in a company as referred to in Article 1 and where the percentage of subscribed capital disposed of during any one-month period exceeds 10 % of the subscribed capital, he shall notify the company of the amount disposed of within seven calendar days of that threshold being reached."

That paragraph would needlessly complicate the information process by increasing almost ad infinitum the number of thresholds which trigger the obligation to inform the public.

2. Commentary on the Articles

Article 1

Article 1(1) now specifies that the Directive applies only to persons who acquire or dispose of major holdings in a listed company in their capacity as owners. The aim of this amendment is to exclude from the scope of the Directive persons who acquire or dispose of holdings on behalf of another person (e.g. banks, nominees, etc.).

In Article 1, a third paragraph has been added which amends paragraph 5(c) of Schedule C of Directive 79/279/EEC.²

The main aim of this amendment is to impose on third country companies listed on one or more Community stock exchanges disclosure obligations which are similar to those to which companies with head offices in a Community Member State will be subject once the Directive comes into force.

² OJ L 66, 16.3.1979

Article 2

The provisions of this Article already appeared in a more general form in the original proposal. The new wording explicitly states that additional requirements are to apply generally.

Article 4

The rewording of Article 4 is intended primarily to make its content clearer.

Article 5

The definition of "subsidiary" has been reworded to bring it into line with that in Article 41 of the Seventh company law Directive.³

Article 6

A second paragraph has been added to Article 6 to the effect that companies belonging to the same group are always presumed to be acting in concert.

Article 7

Member States are permitted to exempt "market makers" from the declaration provided for in Article 3. In order to forestall any possible abuse of this exemption, it has been decided to replace the term "market makers" by a definition of those persons who may benefit from the exemption.

³ Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983).

Article 8

Article 8 stipulates that a company which has received a declaration referred to in Article 3 must notify it to the public. Paragraph 2 has been amended to make it clear that that notification must be made both for voting shares and for non-voting shares.

Paragraph 3, which stipulates that the information must be made available to the public in accordance with the rules of Article 17 of Directive 79/279/EEC, has been amended to incorporate the wording of Article 17 of Directive 79/279/EEC.

Article 9

The amendment to Article 9 is of a purely formal kind. It consists of taking over the terminology used in Directive 79/279/EEC.

Article 10

As in the case of Article 9, the wording of this Article, which deals with the designation of competent authorities, has been aligned on the terminology used in the other Directives adopted in the stock exchange field.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on information to be published when major holdings in the capital of a listed company are acquired or disposed of (*)

COM(87) 422 final

(Submitted by the Commission to the Council pursuant to the third paragraph of Article 149 of the EEC Treaty on 4 September 1987)

(87/C 255/05)

(*) OJ No C 351, 31. 12. 1985, S. 35.

ORIGINAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

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

Unchanged

In cooperation with the European Parliament,

Unchanged

Recitals Unchanged

Article 1

1. This Directive shall apply to persons who acquire or dispose of major holdings, as defined in Article 3, in the subscribed capital of a company which is incorporated in a Member State and whose shares are officially listed on a stock exchange situated or operating within a Member State.

2. Where the acquisition or disposal of major holdings is carried out by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.

Article 1

1. This Directive shall apply to persons who as owners acquire or dispose of major holdings, as defined in Article 3 in the subscribed capital of a company which is incorporated in a Member State and whose shares are officially listed on a stock exchange situated or operating within a Member State.

2. Unchanged

3. Paragraph 5 (c) of Schedule C of Directive 79/279/EEC coordinating the conditions for the admission of securities to official stock exchange listing is hereby replaced by the following:

'(c) The company must inform the public of any changes in the structure (shareholders and breakdown 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.'

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Article 2

Member States may subject the persons and companies respectively referred to in Articles 1 and 8 to stricter requirements than those provided for by this Directive, or to additional requirements, provided that they are generally applicable.

Article 3

Where a person acquires or disposes of shares in a company as referred to in Article 1 and where, following that acquisition or disposal, the percentage of subscribed capital held by that person in that company reaches or exceeds the thresholds of 10 %, 20 %, $\frac{1}{3}$, 50 %, $\frac{2}{3}$ or 90 % of the subscribed capital or goes below those thresholds, he shall notify the company within seven calendar days of the percentage of subscribed capital he holds following that acquisition or disposal.

Article 4

1. In order to assess whether a person acquiring or disposing of holdings is required to make the declaration provided for in Article 3, account shall be taken of shares held by other persons in their own name but on behalf of the person acquiring or disposing of the holdings.

2. Where the person acquiring or disposing of holdings is an undertaking, shares held by a subsidiary or shares held by other persons in their own name but on behalf of a subsidiary shall also be deemed to belong to the person acquiring or disposing of the holdings.

Article 5

1. For the purposes of this Directive, 'subsidiary' means any undertaking in which another undertaking:

(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 or member;

In particular, companies which are not subject to the provisions of Council Directive .../EEC on information to be published when major holdings in the capital of a listed company are acquired or disposed of must inform the public where it has come to their notice that a person has acquired or disposed of a percentage of shares so that his holding exceeds or falls below one of the thresholds set out in Article 3 of that Directive.'

Article 2

Member States may subject the persons and companies referred to in Articles 1 and 8 to stricter requirements than those provided for by this Directive, or to additional requirements, provided that they apply generally to all shareholders and to all companies or to all companies of a given class.

Article 3

Unchanged

Article 4

1. In order to assess whether a person acquiring or disposing of holdings is required to make the declaration provided for in Article 3, shares held by other persons in their own name but on behalf of that person shall also be deemed to belong to that person.

2. Unchanged

Article 5

1. For the purposes of this Directive, 'subsidiary' means any undertaking in which another undertaking:

(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 (**subsidiary undertaking**) and is at the same time a shareholder in or member of that **undertaking**;

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or
(c) is a shareholder or member and controls alone a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking (subsidiary).

2. For the purposes of paragraph 1, the parent undertaking's rights as regards voting, appointment and removal shall have added to them the rights of any other subsidiary and those of persons acting in their own name but on behalf of the parent undertaking or any other subsidiary.

Article 6

1. For the purposes of Article 3, where persons act in concert, the holdings of each one of such persons shall be added together. In this case, the obligation to make the declaration provided for in Article 3 shall fall upon each one of them. This declaration shall indicate the percentage of subscribed capital held by the person making the declaration and the percentages of such capital held by the persons with whom he is acting in concert.

2. 'Persons acting in concert' means persons who have concluded an agreement which may lead to their adopting a common policy in respect of a company.

Article 7

Member States may exempt acquisitions or disposals of major holdings made by a market maker in the pursuit of his activity from the declaration provided for in Article 3.

Article 8

1. A company which has received the declaration referred to in Article 3 shall in turn notify it to the public in each of the Member States in which its shares are officially listed on a stock exchange not later than seven calendar days following receipt of that information.

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or
(c) is a shareholder or member and controls alone a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the subsidiary undertaking.

2. Unchanged

Article 6

1. Unchanged

2. **For the purposes of paragraph 1, 'persons acting in concert' means persons who have concluded an agreement which may lead to their adopting a common policy in respect of a company in the subscribed capital of which each of such persons owns a holding. It shall be presumed that such an agreement exists between a parent and a subsidiary undertaking or between undertakings which have a common parent unless such undertakings prove the contrary.**

Article 7

Member States may exempt from the declaration provided for in Article 3 acquisitions or disposals of major holdings made by a **dealer in securities who undertakes to maintain a market in certain securities by buying and selling such securities on his own account at a price fixed by him in the light of the state of the market.**

Article 8

1. Unchanged

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2. Should the percentage of subscribed capital held by the person making the declaration provided for in Article 5 differ from the percentage of voting rights actually held by that person, the company which has received the declaration shall notify the public of both percentages.

3. The information shall be made available to the public in accordance with the rules of Article 17 of Directive 79/279/EEC.

Article 9

The competent authorities referred to in Article 10 may exempt the persons and companies respectively referred to in Articles 1 and 8 from the requirement to notify, as defined in Articles 3 and 8 respectively, where those authorities consider that the disclosure of such information would be against the public interest or would seriously harm those persons or companies, provided that the absence of such notification would not mislead the public in its assessment of the shares concerned.

Article 10

1. Member States shall designate the competent authority or authorities and shall inform the Commission accordingly, specifying any division of duties between those authorities. They shall, moreover, ensure that this Directive is applied.

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

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

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2. Where the subscribed capital of a company is divided into shares which carry voting rights and those which do not, the company shall notify the public where the percentage of either category of shares held by a person as a result of acquiring or disposing of such shares reach or exceed the thresholds specified in Article 3.

3. The information shall be published in one or more newspapers distributed throughout the Member State or distributed widely therein or shall be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout the Member State or distributed widely therein or by other equivalent means approved by the competent authorities. The issuers must simultaneously send such information to the competent authorities.

The information referred to in the first subparagraph shall be published 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 9

The competent authorities referred to in Article 10 may exempt the persons and companies respectively referred to in Articles 1 and 8 from the requirement to notify, as defined in Articles 3 and 8 respectively, where those authorities consider that the disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer, provided that, in the latter case, such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

Article 10

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, any division of duties between those authorities. They shall, moreover, ensure that this Directive is applied.

2. Unchanged

3. Unchanged

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<i>Article 11</i>	<i>Article 11</i>
The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:	Unchanged
(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;	Unchanged
(b) to facilitate consultations between Member States on the stricter or additional requirements which they may lay down in accordance with Article 2, so that the requirements imposed in all the Member States may finally be brought into line, in accordance with Article 54 (3) (g) of the Treaty;	Unchanged
(c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.	Unchanged
<i>Article 12</i>	<i>Article 12</i>
1. Member States shall take the measures necessary to comply with this Directive not later than 1 January 1991. They shall forthwith inform the Commission thereof.	1. Unchanged
2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.	2. Unchanged
<i>Article 13</i>	<i>Article 13</i>
This Directive is addressed to the Member States.	Unchanged
