



STATUTORY INSTRUMENTS.

S.I. No. 541 of 2015



TRANSPARENCY (DIRECTIVE 2004/109/EC)(AMENDMENT)(NO. 2)
REGULATIONS 2015

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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 1380 of the Companies Act 2014, and for the purpose of giving further effect to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004¹ (as amended by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008², Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010³, Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁴ and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013⁵) and for the other purposes mentioned in that section, hereby make the following Regulations

Citation and commencement

1. (1) These Regulations may be cited as the Transparency (Directive 2004/109/EC) (Amendment) (No. 2) Regulations 2015.

(2) These Regulations come into operation on 26 November 2015.

2. In these Regulations “Principal Regulations” means the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).

3. Regulation 1(3) of the Principal Regulations is amended by the substitution of “Companies Act 2014” for “Companies Acts”.

4. Regulation 2 of the Principal Regulations is amended—

(a) in paragraph (1) by—

(i) the insertion of the following definitions:

“ ‘authorised officer’ means an authorised officer appointed under Regulation 53;

‘European Financial Stability Facility’ means the société anonyme incorporated in Luxembourg (R.C.S. Luxembourg B153.414);

‘formal agreement’ means an agreement that is binding under applicable law;”;

¹OJ L390, 31.12.2004, p. 38.

²OJ L76, 19.3.2008, p. 50.

³OJ L327, 11.12.2010, p. 1.

⁴OJ L331, 15.12.2010, p. 120.

⁵OJ L294, 6.11.2013, p. 13.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 1st December, 2015.*

- (ii) the substitution of the following definition for the definition of “issuer”:

“ ‘issuer’ means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts admitted to trading on a regulated market, the issuer of the securities represented by those depository receipts, whether or not those securities are admitted to trading on a regulated market;”, and

- (iii) the deletion of the definition of “home Member State”,

(b) by the deletion of paragraph (2), and

(c) by the insertion of the following paragraph after paragraph (6):

“(7) References in these Regulations to a legal entity shall be construed as including references to registered business associations without legal personality and trusts.”.

5. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 2:

“Home Member State

2A. (1) In these Regulations ‘home Member State’ means—

- (a) in the case of an issuer of debt securities the denomination per unit of which is less than €1,000 (or, where the debt securities are in a currency other than euro, the value of such denomination per unit is, at the date of issue, less than €1,000, unless it is nearly equivalent to €1,000) or an issuer of shares—
- (i) if the issuer is incorporated or formed in a Member State, the Member State in which it has its registered office, or
- (ii) if the issuer is incorporated or formed in a state or territory which is not a Member State, the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market,
- (b) in the case of an issuer not falling within subparagraph (a), the Member State chosen by the issuer from among the Member States in which the issuer has its registered office, where applicable, and those Member States where its securities are admitted to trading on a regulated market, and

(c) in the case of an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State within the meaning of subparagraph (a)(ii) or subparagraph (b), but are admitted to trading in one or more other Member States, such new Member State as the issuer may choose from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office.

(2) The choice of home Member State under paragraph (1)(a)(ii) shall remain valid unless the issuer has chosen a new home Member State under paragraph (1)(c) and has disclosed the choice in accordance with paragraph (4).

(3) (a) For the purposes of paragraph (1)(b), the issuer may choose only one Member State as its home Member State.

(b) An issuer's choice of Member State under paragraph (1)(b) shall remain valid for at least three years, unless—

(i) the issuer's securities are no longer admitted to trading on any regulated market in the European Union, or

(ii) the issuer falls within subparagraph (a) or (c) of paragraph (1) during the three-year period.

(4) An issuer shall—

(a) disclose its home Member State in accordance with Regulations 32 and 33, and

(b) disclose its home Member State to the competent authority of the Member State where it has its registered office (where applicable), to the competent authority of the home Member State and to the competent authorities of all host Member States.

(5) (a) In the absence of disclosure by the issuer, in accordance with paragraph (4), of its home Member State within the meaning of paragraph (1)(a)(ii) or paragraph (1)(b) within a period of three months from the date the issuer's securities are first admitted to trading on a regulated market, the home Member State shall be the Member State where the issuer's securities are admitted to trading on a regulated market.

(b) Where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one Member State, those Member States shall be the issuer's home Member States until a subsequent choice of a single

home Member State has been made and disclosed by the issuer in accordance with paragraph (4).

- (c) For an issuer whose securities are already admitted to trading on a regulated market and whose choice of home Member State within the meaning of paragraph (1)(a)(ii) or paragraph (1)(b) has not been disclosed prior to 27 November 2015, the period of three months shall start on 27 November 2015.

(6) An issuer that—

- (a) has made a choice of a home Member State within the meaning of paragraph (1)(a)(ii), (1)(b) or (1)(c), and
- (b) has communicated that choice to the competent authorities of the home Member State prior to 27 November 2015,

shall be exempt from the requirement under paragraph (4), unless such issuer chooses another home Member State after 27 November 2015.”.

6. Regulation 3 of the Principal Regulations is amended—

(a) by the substitution of the following paragraph for paragraph (1):

“(1) Subject to paragraphs (3), (4) and (5), any requirement specified in Part 2, 3, 5, 6 or 7 shall be read as being, and shall operate, subject to the Bank’s not having exercised the power under Regulation 40(3) (in the circumstances where such power is exercisable) to make the person concerned subject to a more stringent requirement.”, and

(b) by the insertion of the following paragraphs after paragraph (2):

“(3) The Bank may require issuers to publish additional periodic financial information on a more frequent basis than the annual financial reports referred to in Regulation 4 and the half-yearly financial reports referred to in Regulation 6—

(a) where the issuers are financial institutions, or

(b) where the Bank is satisfied that imposition of the requirement is appropriate having regard to—

(i) the financial burden on issuers, and, in particular, on small and medium sized issuers, of having to provide the additional periodic financial information at the required intervals, and

(ii) the relevance and importance of the additional periodic financial information to factors contributing to investment decisions by investors.

(4) In deciding whether to require issuers to publish additional periodic financial information, the Bank shall also have regard to whether the requirement may—

- (a) result in an excessive focus on the issuers' short-term results and performance, or
- (b) impact negatively on the ability of small and medium-sized issuers to access regulated markets.

(5) The Bank may make a holder of shares, or a natural person or legal entity referred to in Regulation 15 or 17, subject to requirements more stringent than those laid down in these Regulations when—

- (a) setting notification thresholds lower than or additional to the thresholds laid down in Regulation 14 and requiring equivalent notifications in relation to thresholds based on capital holdings,
- (b) applying requirements more stringent than those set out in Regulation 21, or
- (c) applying laws or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies, supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁶.”.

7. Regulation 4 of the Principal Regulations is amended by the substitution of the following paragraph for paragraph (2):

“(2) An issuer shall make public its annual financial report at the latest 4 months after the end of each financial year and ensure that it remains publicly available for at least 10 years.”.

8. Regulation 6 of the Principal Regulations is amended in paragraph (2)—

- (a) by the substitution of the following subparagraph for subparagraph (b):

“(b) The half-yearly financial report shall be made public as soon as possible, but no later than 3 months, after the end of the period to which the report relates.”, and

- (b) by the substitution of the following subparagraph for subparagraph (c):

⁶OJ L142, 30.4.2004, p. 12.

“(c) An issuer shall ensure that the half-yearly financial report remains available to the public for at least 10 years.”.

9. The Principal Regulations are amended by the deletion of Regulation 9.

10. Regulation 10 of the Principal Regulations is amended—

(a) by the substitution of the following paragraph for paragraph (1):

“(1) Regulations 4 to 8 shall not apply to the following issuers:

(a) states;

(b) regional or local authorities of a state;

(c) public international bodies of which at least one Member State is a member;

(d) the European Central Bank;

(e) the European Financial Stability Facility or any other issuer established with the objective of preserving the financial stability of European monetary union by providing temporary financial assistance to the Member States whose currency is the euro;

(f) Member States’ national central banks, whether or not they issue shares or other securities.”, and

(b) in paragraph (2)(a) by the substitution of “Regulations 4 to 8” for “Regulations 4 to 9”.

11. Regulation 11 of the Principal Regulations is amended—

(a) in paragraph (1), by the substitution of “Regulations 4 to 8” for “Regulations 4 to 9”,

(b) by the deletion of paragraph (6), and

(c) in paragraph (10), by the substitution of “Regulations 31, 32 and 33” for “Articles 19, 20 and 21 of the Directive (as implemented in the State by Parts 6 and 7)”.

12. Regulation 12 of the Principal Regulations is amended in paragraph (1) by the substitution of “Regulations 4 to 8” for “Regulations 4 to 9”.

13. The Principal Regulations are amended by the insertion of the following after Regulation 13:

“Thresholds

13A. In this Part, a reference to a threshold is a reference to a percentage referred to in Regulation 14(4).”.

14. Regulation 14 of the Principal Regulations is amended—

- (a) in paragraph (1), by the substitution of “shareholder” for “person”,
- (b) in paragraph (2) by the substitution of “shareholder” for “person”,
- (c) by the substitution of the following paragraph for paragraph (4):

“(4) The percentages referred to in paragraph (1) are: 5%, 10%, 15%, 20%, 30%, 50% and 75%, each being a percentage of the total voting rights in the issuer.”,

- (d) in paragraph (5)—

- (i) by the substitution of the following subparagraph for subparagraph (c):

“(c) shares held by a market maker acting in that capacity subject to the percentage of such shares not being equal to or in excess of 10% and subject to the market maker satisfying the criteria and complying with the conditions and operating requirements specified in paragraph (6);”,

- (ii) by the substitution of the following subparagraph for subparagraph (d):

“(d) shares held in the trading book, within the meaning of Article 4.1(86) of Regulation (EU) No. 575/2013⁷ of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, of a credit institution or investment firm, where—

- (i) the voting rights held in the trading book do not exceed 5%, and
- (ii) the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer;”,

- (iii) in subparagraph (f), by the substitution of “from time to time;” for “from time to time.”, and

- (iv) by the insertion of the following subparagraph after subparagraph (f):

“(g) shares acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the

⁷OJ No. L176, 27.6.2013, p.1.

European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments,⁸ where the voting rights attached to those shares are not exercised or otherwise used to intervene in the management of the issuer.”, and

(e) in paragraph (6)—

(i) by the substitution of the following for subparagraph (b):

“(b) A market maker seeking to rely on the exemption set out in paragraph (5)(c) must notify the competent authority of the home Member State of the issuer, at the latest within the time limit provided for by Regulation 21(3), that it is conducting, intends to conduct or is ceasing market making activities on a particular issuer.”, and

(ii) the insertion of the following subparagraph after subparagraph (b):

“(c) (i) Without prejudice to the powers of the Bank under Part 9, where a market maker seeking to rely on the exemption set out in paragraph (5)(c) is requested by the Bank to identify the shares or financial instruments held for market making activity purposes, the market maker may identify the shares or financial instruments by any verifiable means.

(ii) Where the market maker is not able to comply with a request under clause (i), the Bank may, by notice in writing, require the market maker to hold the shares or financial instruments concerned in a separate account for the purposes of identification.”.

15. The Principal Regulations are amended by the substitution of the following for Regulation 17:

“17. (1) The notification requirements under Regulation 14(1) shall also apply to a person who holds, directly or indirectly—

(a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market, or

(b) financial instruments which are not referred to in subparagraph (a) but which are referenced to shares referred to in that subparagraph and with economic effect similar to that of the financial

⁸OJ L336, 23.12.2003, p. 33.

instruments referred to in that point, whether or not they confer a right to a physical settlement,

where the percentage of voting rights in the issuer, as calculated in accordance with paragraph (4), reaches, exceeds or falls below one or more of the thresholds.

(2) A notification required in respect of the financial instruments referred to in paragraph (1) shall include a breakdown by type of financial instruments held in accordance with subparagraph (a) and financial instruments held in accordance with subparagraph (b) of that paragraph, distinguishing between the financial instruments which confer a right to a physical settlement and the financial instruments which confer a right to a cash settlement.

(3) For the purposes of paragraph (1), the following shall be considered to be financial instruments, provided they satisfy any of the conditions set out in subparagraphs (a) or (b) of paragraph (1):

- (a) transferable securities;
- (b) options;
- (c) futures;
- (d) swaps;
- (e) forward rate agreements;
- (f) contracts for differences;
- (g) any other contracts or agreements with similar economic effects which may be settled physically or in cash.

(4) For the purposes of paragraph (1) and subject to paragraph (5), the number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights shall be calculated on a delta-adjusted basis, by multiplying the notional amount of underlying shares by the delta of the instrument.

(5) In calculating the number of voting rights for the purposes of paragraph (1), the holder of the financial instruments shall—

- (a) aggregate and notify all financial instruments relating to the same underlying issuer,
- (b) only take into account long positions, and
- (c) not net short positions against long positions relating to the same underlying issuer.

(6) Subparagraphs (a) to (d) of Regulation 14(5) shall apply to the financial instruments referred to in paragraph (1), subject to the modification that a reference to shares shall be construed as a reference to financial instruments referred to in paragraph (1).

(7) Regulation 18(1) and (2) shall apply to the financial instruments referred to in paragraph (1), subject to the following modifications:

- (a) a reference to a holding shall be construed as including a holding of financial instruments referred to in paragraph (1);
- (b) a reference to shares shall be construed as a reference to financial instruments referred to in paragraph (1);
- (c) a reference to voting rights shall be construed as a reference to voting rights that attach to the financial instruments referred to in paragraph (1).

(8) Regulation 21(5) shall apply to the financial instruments referred to in paragraph (1).

16. The Principal Regulations shall be amended by the insertion of the following Regulation after Regulation 17:

“Aggregation

17A. (1) The notification requirements under Regulations 14, 15 and 17 shall also apply to a person where the number of voting rights held directly or indirectly by such person under Regulations 14 and 15 aggregated with the number of voting rights relating to financial instruments held directly or indirectly by that person, as calculated in accordance with Regulation 17(4), reaches, exceeds or falls below one or more of the thresholds.

(2) A notification under paragraph (1) shall include a breakdown of the number of voting rights attached to shares held in accordance with Regulations 14 and 15 and voting rights relating to financial instruments as calculated in accordance with Regulation 17(4).

(3) Where voting rights relating to financial instruments held directly or indirectly by a person have been notified to an issuer in accordance with Regulation 17 and, as a result of the subsequent acquisition by that person of the underlying shares, the total number of voting rights attached to shares issued by the same issuer and held by that person reaches or exceeds one or more thresholds, that person shall notify the issuer.”.

17. Regulation 18 of the Principal Regulations is amended in paragraph (12) by the substitution of the following for subparagraph (a):

“(a) shall make a statement that in respect of each management company or investment firm concerned, the parent undertaking complies with the conditions of independence specified in paragraph (11), and”.

18. Regulation 21 of the Principal Regulations is amended in paragraph (3) by the substitution of the following for subparagraph (a):

“(a) 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 Regulation 15—”.

19. Regulation 24 of the Principal Regulations is amended in paragraph (5) by the substitution of “Regulations 31, 32 and 33” for “Articles 19, 20 and 21 of the Directive (as implemented in the State by Parts 6 and 7)”.

20. Regulation 25 of the Principal Regulations is amended by the deletion of paragraph (2).

21. Regulation 26 of the Principal Regulations is amended by the deletion of paragraph (3).

22. Regulation 30 of the Principal Regulations is amended in paragraph (3) by the substitution of “Regulations 31, 32 and 33” for “Articles 19, 20 and 21 of the Directive (as implemented in the State by this Part and Part 7)”.

23. Regulation 31 of the Principal Regulations is amended by the insertion of the following paragraph after paragraph (2):

“(3) An issuer or person referred to in paragraph (1) that discloses regulated information shall, at the same time, make that information available to the official mechanism referred to in Regulation 40(4).”.

24. Regulation 33 of the Principal Regulations is amended in paragraph (5)(c)—

(a) in clause (ii), by the substitution of “be made public.” for “be made public; and”, and

(b) by the deletion of clause (iii).

25. The Principal Regulations are amended by the deletion of Regulation 35.

26. Regulation 38 of the Principal Regulations is amended by the deletion of the definition of “authorised officer”.

27. Regulation 40 of the Principal Regulations is amended by the substitution of the following subparagraph for subparagraph (b) of paragraph (3):

“(b) Subject to Regulation 3(3) and (4), where this paragraph applies, the Bank may (by means of rules made under section 1383 of the Companies Act 2014) make—

(i) the issuer,

(ii) the holder of shares, or

(iii) a person referred to in Regulation 15 or 17(1),

subject to a requirement or requirements that is or are more stringent than a requirement or requirements specified in Part 2, 3, 5, 6 or 7.”

28. The Principal Regulations are amended by the substitution for the title of Part 10 of the following title:

“Sanctions and Measures”.

29. The Principal Regulations are amended by the insertion of the following after Regulation 61:

“Exercise of sanctioning powers

61A. The assessor shall, when determining the appropriate sanction under Regulation 61(8)(c), take into account all relevant circumstances, including, where appropriate—

- (a) the gravity and the duration of the relevant prescribed contravention,
- (b) the degree of responsibility of the assessee,
- (c) the financial strength of the assessee, for example as indicated by the total turnover or the annual income of the person responsible,
- (d) the importance of profits gained or losses avoided by the assessee, in so far as they can be determined,
- (e) the losses sustained by third parties as a result of the prescribed contravention, in so far as they can be determined,
- (f) the level of cooperation of the assessee with the Bank and the assessor, and
- (g) previous breaches by the assessee.”.

30. The Principal Regulations are amended by the substitution of the following for Regulation 67:

“67. (1) In the case of an adverse assessment, the Bank may impose on the assessee such of the following sanctions as are the specified sanctions:

- (a) a private caution or reprimand;
- (b) a public statement that identifies the assessee and the nature of the prescribed contravention concerned;
- (c) subject to Regulation 72(2), a direction to pay to the Bank, or, if the assessor has been appointed by the Bank at the request of IAASA, to IAASA, a monetary penalty—

(i) in the case of a legal person, up to the higher of—

(I) €10,000,000,

(II) 5 per cent of the total annual turnover of that person according to the annual accounts most recently approved by the management body of that person, or

(III) twice the amount of the profits gained or losses avoided because of the prescribed contravention, where the profits gained or losses avoided can be determined, and

(ii) in the case of a natural person, up to the higher of—

(I) €2,500,000,

or

(II) twice the amount of the profits gained or losses avoided because of the prescribed contravention, where the profits gained or losses avoided can be determined;

(d) a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for such time as is specified in the order;

(e) if the assessee is continuing to commit a prescribed contravention, a direction ordering the assessee to cease committing the prescribed contravention and to desist from repeating the prescribed contravention;

(f) a direction to pay to the Bank all or a specified part of the costs incurred by the Bank in investigating the matter to which the assessment relates and in holding the assessment (including any costs incurred by authorised officers);

(g) in the case of an adverse assessment resulting from a failure by a person to notify, within the required time limit, the acquisition or disposal of voting rights in accordance with Regulation 14, 15, 17, 17A or 21, the Bank may suspend the voting rights—

(i) where the acquisition or disposal relates to shares, attaching to those shares, or

(ii) where the acquisition or disposal relates to financial instruments referred to in Regulation 17(1), attaching to the shares to which those financial instruments relate.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking, the relevant total annual turnover for the purposes of

this Regulation shall be the total annual turnover according to the consolidated annual accounts most recently approved by the management body of the ultimate parent undertaking.

(3) Where the assessor had been appointed by the Bank at the request of IAASA, the Bank shall consult with IAASA before exercising the powers under paragraph (1).

(4) In this Regulation—

‘parent undertaking’ means an undertaking which controls one or more subsidiary undertakings;

‘subsidiary undertaking’ means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;”.

31. The Principal Regulations are amended by the substitution of the following for Regulation 71:

“Publication of Decisions

71. (1) The Bank shall publish decisions on the imposition of sanctions under Chapter 10 without undue delay.

(2) The Bank shall include with its publication of a decision under paragraph (1)—

(a) information on the type and nature of the breach of these Regulations giving rise to the sanction, and

(b) the identity of the person to whom the decision relates.

(3) Where the decision relates to a natural person, the Bank shall assess whether publication of personal data would be disproportionate.

(4) The Bank may delay publication of a decision or publish the decision on an anonymous basis, where—

(a) publication of personal data is found to be disproportionate under paragraph (3),

(b) publication would seriously jeopardise the stability of the financial system or an ongoing official investigation, or

(c) publication would, in so far as can be determined by the Bank, cause disproportionate and serious damage to the persons involved.

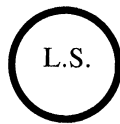
(3) Where an appeal is submitted against a decision published under paragraph (1), the Bank shall either include information to that effect in the publication at the time of the publication or amend the publication if the appeal is submitted after the initial publication.”.

32. Regulation 75 of the Principal Regulations is amended in paragraph (1) by the insertion of the following subparagraph after subparagraph (b):

“(c) In the exercise of their powers under Part 10, the Bank and IAASA shall—

- (i) cooperate with competent authorities in other Member States to ensure that sanctions imposed or measures taken are implemented, and
- (ii) coordinate their action with competent authorities of other Member States when dealing with cross-border cases.”.

33. Regulation 79 of the Principal Regulations is amended in paragraph (1) by the substitution of “Regulations 4 to 8” for “Regulations 4 to 9” in each place that it occurs.



GIVEN under my Official Seal,
25 November 2015.

MICHAEL NOONAN,
Minister for Finance.

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