# ESMA_QA_2041

**Submission Date**
23/10/2015

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Transparency Directive (TD) Directive 2004/109/EC

**Topic**
Notifications of major shareholdings

**Historic Question Reference**
[ESMA31-67-127 TD Q25]

**Subject Matter**
Major shareholding notification – group notifications; TD Art. 12(3)

**Question**
Question a: According to Article 12(3) an undertaking is exempted from making the notification if the notification is made by its (ultimate) parent undertaking – in which cases

does Article 12(3) apply?

Question b: What details regarding its subsidiary undertakings does a parent undertaking have to provide if it makes use of Art. 12(3)?

## ESMA Answer

23-10-2015

Original language

*[ESMA31-67-127 TD Q25]*

**Answer a**: Article 12(3) applies in cases, where one or more subsidiary undertakings cross a threshold irrespectively whether the parent undertaking crosses a threshold itself or not.

The basic principle of Article 12(3) is to treat groups as a single investor and to require only a single notification in a case of groups. However, in the situations provided for in Article 12(4) and (5), subsidiaries can disregard the interests of its parent undertaking(s) and thus the group cannot be considered as a single investor.

Although Art. 12(3) is not mandatory it is according to the purpose of Art. 12(3) recommended that even in cases where only on subsidiary level a threshold is crossed the (ultimate) parent undertaking discloses the notification as only by this way the markets get always the full picture of the aggregated group holdings. If the notification is disclosed on an individual level, it is expected that at least the group's full chain of controlled undertakings i.e. including the parent undertaking(s), is provided.

The following table* reflects when Art. 12(3) is applicable and when not. Parent undertaking A has only indirect holdings in the issuer through subsidiary B and C. Both B and C have only direct holdings in the issuer and are directly controlled by A.

**The examples in the table are based on the thresholds set out in the Transparency Directive.*

| Day | Aggregated holdings of parent undertaking A | Holdings of subsidiary undertaking B | Holdings of subsidiary undertaking C | Case of Art. 12(3)? (Yes/No) | Threshold crossed by? |
|---|---|---|---|---|---|
| **1st** | 18% | 9% | 9% | Yes | A, B, C |
| **2nd** | 18% | 7% | 11% | Yes | C |
| **3rd.** | 18% | 6% | 12% | No | None |
| **4th.** | 18% | 0% | 18% | Yes | B, C |
| **5th** | 17% | 1% | 16% | No | None |
| **6th.** | 14% | 0% | 14% | Yes | A, C |

**Answer b:** In principle the information according to Art. 12(1) and Art. 11(3) of the Commission Directive 2007/14/EC has to be contained in the notification. As the parent undertaking discloses the notification, the information of the resulting situation in terms of voting rights according to Art. 12(1)(a) and Art. 11(1) 2007/14/EC has to reflect the situation of the whole group. However, it is expected that the notification reflects at least the names and the individual holdings of Art. 10(a) to (d) of such subsidiary undertakings, which hold more than the minimum threshold set out in Article Art. 9**.**