

# PRACTICAL INSTRUCTIONS FOR MAKING TRANSPARENCY NOTIFICATIONS<sup>1</sup>

## 1.1. Recipients of notifications and details of their transmission

Notifications shall be transmitted **to both the issuer and the FSMA**.

Notifications can be sent to the issuer electronically. They must be sent to the FSMA **electronically**, to the e-mail address **trp.fin@fsma.be**. The contact persons at the FSMA are Ms. N. Friche (+32(2)220.53.67) and Ms. P. Van Brantegem (+32(2)220.59.31).

As regards transmission to the issuer, the FSMA recommends to issuers that they mention on their website the name of a contact person as well as an e-mail address, so that notifications to the issuer can also be made electronically.

## 1.2. Content and form of the notifications

### 1.2.1. *Introduction*

Only the content of notifications is defined by law; the form is free. However, the FSMA recommends the use of a standard form it has developed, taking as a basis the European standard form (ESMA/2015/1597)<sup>2</sup> and adapting it to the Belgian legislation. Form TR-1 BE is available in xlsx format on the FSMA's website and should suit most cases<sup>3</sup>.

Form TR-1 BE consists of two parts: Part I, which must be transmitted to both the FSMA and the issuer, and Part II, to be sent exclusively to the FSMA.

Natural persons who act in concert may in certain circumstances remain anonymous toward the issuer (and the public). If they want to make use of this possibility, they will have to save Part I of the standard form twice: once - mentioning the names - for the FSMA and once – omitting the names - for the issuer.

The (unsigned) form should be transmitted in **xlsx** format. In addition, a signed copy should also be transmitted in **PDF** format.

### 1.2.2. *Part I of form TR-1 BE*

#### 1.2.2.1. General data

The following general data are **mandatory**:

- the **name of the issuer**;
- the **reason for the notification**;
- **data relating to the person subject to the notification requirement** (name and, for legal entities, address of the registered office<sup>4</sup>);

<sup>1</sup> This set of practical instructions is part of a longer guide (FSMA\_2011\_08, dated 10 November 2011 and last updated on 11 February 2020), available in Dutch and French.

<sup>2</sup> The European standard form is available on the website of ESMA.

<sup>3</sup> It cannot be excluded that form TR-1 BE will not be suitable in a number of specific situations.

<sup>4</sup> Or, in the absence thereof, a mailing address.

- where applicable, the **name of the holder of voting securities**, insofar as said holder is as such subject to the notification requirement;
- the **date** on which the threshold was crossed.

Form TR-1 BE also contains **other** general data:

- the **status** of the notification (draft/final);
- an indication of **who is carrying out the notification**;
- the **denominator**;
- the **threshold** that is crossed.

Below is an explanation of how these data can be provided if form TR-1 BE is used. The data are presented in the order in which they appear on the form.

#### *1.2.2.1.1. Status of the notification*

See TR-1 BE, point 1.

Where a notifier wishes to provide the FSMA with a draft notification, he/she shall indicate "**draft**" as the notification's status. A final notification shall be marked "**final**".

#### *1.2.2.1.2. Name of the issuer*

See TR-1 BE, point 2.

This shall be the name of the issuer of the voting securities or, for financial instruments that are treated as equivalent to voting securities, the name of the issuer of the underlying voting securities.

Where form TR-1 BE is used, a list will appear that mentions all issuers who are subject to FSMA supervision. That list shall also be available on the FSMA's website.

Where the name is mentioned, the identification number should also be mentioned. Where TR-1 BE is used, that number will appear automatically. It will also be available on the FSMA's website.

#### *1.2.2.1.3. Reason for the notification*

See TR-1 BE, point 3.

This should indicate which of the following **events** led to the notification (several options should be ticked if several events are involved):

- an acquisition or disposal of voting securities or voting rights (Article 6 or 7 of the Law) (Article 13, para 1, 2°, a) of the RD);
- an acquisition or disposal of financial instruments that are treated as equivalent to voting securities (Article 13, para 1, 2°, b) of the RD);
- the crossing of a threshold by persons acting in concert (Article 13, para 1, 2°, e) of the RD);
- the conclusion or modification of an agreement to act in concert<sup>5</sup>;

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<sup>5</sup> The FSMA recommends that persons acting in concert also make a notification when an agreement is modified even if no threshold has been crossed. E.g., four persons, each holding 2%, act in concert; one of the four persons leaves the agreement. By entering the shareholdings of the four persons in point 10 of form TR-1 BE under the heading "Previous

- the termination of an agreement to act in concert<sup>6</sup>;
- downward crossing of the lowest threshold;
- the passive crossing of a threshold (Article 13, para 1, 2°, d) of the RD);
- the holding of a participating interest upon first admission of an issuer's shares to trading on a regulated market (Article 13, para 1, 2°, c) of the RD);
- the acquisition or disposal of the control of an undertaking that holds a participating interest in an issuer (Article 13, para 2, of the RD);
- the introduction by the issuer of additional notification thresholds in the articles of association;
- an update of a previous notification concerning financial instruments that are treated as equivalent to voting securities (Article 14, § 4, of the RD);
- first application of the exemption from the obligation to aggregate (Article 21 of the RD).

#### 1.2.2.1.4. *Identification of the notifier*

See TR-1 BE, point 4.

There is a choice between the **following options**:

- a person that notifies alone;
- a parent undertaking or a controlling person (notifying together with or for a controlled undertaking);
- a person that acquires, disposes of, etc. voting rights (in a case as referred to in Article 7 of the Law) and that notifies together with the person that disposes of, acquires, etc., these voting rights;
- persons acting in concert (who therefore carry out a joint notification);
- a person for whose account a third party (that is also subject to the notification requirement) acts in his own name (and that notifies together with said third party).

The last four cases cover only cases of joint notification.

It should be remembered that in the last two cases, there **must be joint notification**. Controlling persons/parent undertakings and controlled undertakings, as well as persons in Article 7-type situations, may choose between individual and joint notification.

This section is intended to indicate the type of notification. Therefore it is not necessary for all persons involved in the notification to tick a box. Where for instance a parent undertaking notifies together with its controlled undertakings, it is sufficient if the parent undertaking ticks the appropriate box (the controlled undertakings need not tick any box). Where e.g. a person who acquires voting rights in a

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notification" and entering the shareholdings of the three persons who continue to act in concert under the heading "After the transaction", it is immediately clear that a person has left the agreement to act in concert. Where a person who leaves an agreement has an individual shareholding that crosses the first notification threshold, that person will also have to make an individual notification.

<sup>6</sup> Persons who terminate their agreement to act in concert are no longer required to submit a joint notification. The FSMA does, however, recommend that this be done. By entering the shareholding of each of the persons acting in concert in point 10 of form TR-1 BE under the heading "Previous notification", and entering under the heading "After the transaction" the shareholdings of only those persons who individually still exceed a threshold, it is immediately clear that the agreement to act in concert has been terminated. If they choose, as the reason for the notification, "Termination of an agreement to act in concert", their shareholdings will no longer be added up automatically.

case as referred to in Article 7 notifies together with the person who transfers the voting rights, it is sufficient if the former person ticks the appropriate box (the other person need not tick any box). However, where a person who acquires voting rights in a case as referred to in Article 7 notifies individually, that person must tick the box entitled "a person who notifies individually".

#### 1.2.2.1.5. *Data relating to the person(s) subject to the notification requirement*

See TR-1 BE, point 5.

This shall be the full name (and, for legal entities, the address of the registered office<sup>7</sup>) of:

- each holder<sup>8</sup> of voting securities;
- each natural person or legal entity who acquires or transfers voting rights or has the right to exercise them;
- all persons acting in concert;
- each holder of financial instruments that are treated as equivalent to voting securities;
- the person for whose account a third party is acting AND the third party in question to the extent that the latter is acting in his own name (and to the extent that both the third party and the person for whose account the third party is acting reach or cross a threshold);
- the (ultimate) controlling person AND the undertakings under his control (to the extent that they reach or cross a threshold)<sup>9</sup>.

The notification must **always contain data on the person(s) subject to the notification requirement**. This means that even where a **mandatary** is appointed, the person subject to the notification requirement still has to mention his own name (and registered office where applicable)<sup>10</sup>.

In the case of a notification by a person for whose account a third party is acting and by the third party in question, the FSMA recommends that the third party should clearly indicate that he is acting "on behalf of [name of the person for whose account he is acting]".

#### **Explanation of anonymity as regards natural persons**

In application of Article 6, § 4, para 3 and § 5, para 2, of the Law, the **name of a natural person need not be indicated** in the notification to the **issuer** in the case of persons acting in concert – as opposed to the necessary indications in the notification to the FSMA – if:

- the natural person's (directly or indirectly held) individual participating interest does not reach 5% or any lower threshold laid down in the articles of association; and if
- in addition, the natural person's participating interest<sup>11</sup> is lower than 3%.

**Natural persons who wish to benefit from anonymity shall save Part I of TR-1 BE twice: once (mentioning the names) for the FSMA and once (omitting the names) for the**

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<sup>7</sup> Or, in the absence thereof, a mailing address.

<sup>8</sup> Or former holder (in the case of a transfer).

<sup>9</sup> Unless the notification is carried out by the parent undertaking in application of Article 11, § 1, of the Law, in which case the names of the subsidiaries will appear under point 10.

<sup>10</sup> The data on the mandated proxy shall be included in Part II of the form.

<sup>11</sup> This rule was introduced in the Law of 2 May 2007 in order to bring it in line with the transitional rule in the law on takeover bids. That is why the rule is formulated both in terms of holding voting rights and in terms of holding a participating interest (which implies calculating ratios). See Doc. Parl./Parl. St., Chambre/Kamer, DOC 51, 2834/3, 7 and 2963/1, 25.

**issuer. The FSMA asks that both versions – with and without the names – be transmitted to the FSMA.**

*1.2.2.1.6. Where applicable, the name of the holder of voting securities, to the extent that he is himself subject to the notification requirement*

See TR-1 BE, point 6.

Art. 13 RD  
para 1, 4°

This information should only be provided in the cases referred to in Article 7 of the Law. The data to be included are the full name and, for legal entities, the address of the registered office<sup>12</sup>, of the holder of the voting securities who is the counterparty to the natural person or legal entity referred to in Article 7, **to the extent that the holder of the voting securities is himself subject to the notification requirement.**

Example 1: A has 11% of X, which has not introduced any additional thresholds into the articles of association, and transfers a 7% share of voting rights to B. Both A and B are subject to the notification requirement.

Example 2: A has 8% of X, which has not introduced any additional thresholds into the articles of association, and transfers a 2% share of voting rights to B, who already has 4% shares with voting rights. B is subject to the notification requirement but A is not.

Should B (who is subject to the notification requirement under Article 7) mention A's identity?

A first interpretation is that this is only the case in example 1, given that only in that case is A subject to the notification requirement as a result of the transfer of voting rights. A second interpretation is that this is only the case in example 2, given that only in that case does A still hold a participating interest that reaches the lowest threshold (5%) after the transfer of the voting rights (and is therefore in that sense subject to the notification requirement). A third interpretation is that this is the case both in example 1 and in example 2, since in both cases, until just before the transfer of the voting rights, A held a participating interest that reached the lowest threshold (5%) (and, in that sense, was therefore subject to the notification requirement).

In order to prevent any discussion<sup>13</sup> on compliance with this provision and to inform the public as best as possible, the FSMA recommends that in both cases, B should mention A's identity.

*1.2.2.1.7. Date*

See TR-1 BE, point 7.

Art. 13 RD  
para 1, 5°

This is the date on which the threshold (whether legal or laid down in the articles of association) was reached or crossed (i.e. the date on which the proportions of voting rights are calculated).

*1.2.2.1.8. Threshold*

See TR-1 BE, point 8.

Only the highest threshold which is reached or exceeded must be indicated (and vice versa, only the lowest threshold which is crossed going down).

Where several persons carry out a joint notification, it shall in principle be sufficient if they indicate which threshold they reach or cross together.

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<sup>12</sup> Or, in the absence thereof, a mailing address.

<sup>13</sup> And in order to cast off any doubts as to application in line with the Directive.

#### 1.2.2.1.9. Denominator

See TR-1 BE, point 9.

Where form TR-1 BE is used, the denominator will appear automatically, at least if the issuer has communicated it to the FSMA. It will also – under the same reservation – be available on the FSMA's website. Where the person carrying out the notification is aware that the denominator communicated to the FSMA is incorrect, he must correct it<sup>14</sup>.

#### 1.2.2.2. Figures

See TR-1 BE, point 10.

##### 1.2.2.2.1. In all notifications

The figures relate to the **situation arising from the event** that led to the notification (i.e. the situation after the transaction).

As regards **voting rights**, the notification shall contain:

- the number + percentage<sup>15</sup> of voting rights attached to voting securities (split per category, if any<sup>16</sup>);
- the number + percentage of voting rights held separately from the securities proper<sup>17</sup> (split per category, if any);
- the number + percentage<sup>18</sup> of voting rights that is held ("linked to securities " + "not linked to the securities").

#### Example

- there are 1,000 shares, each of which gives a right to 1 vote, making a total of 1,000 voting rights.
- there are not several categories of shares.
- X acquires 100 shares together with the attached voting rights (under Article 6 of the Law) and 50 voting rights (under Article 7 of the Law).

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<sup>14</sup> This can be the case e.g. where, prior to disclosure by the issuer, he is aware that the denominator has changed.

<sup>15</sup> The percentage is usually expressed with two decimals.

<sup>16</sup> Where there are several categories of voting securities, this percentage must be calculated in proportion to the total of all existing voting rights of the same category (i.e. not in proportion to the total of all voting rights). However, this is not provided for in TR-1 BE. Considering the limited importance of the calculation per category, the FSMA will accept that where TR-1 BE is used, the percentage in point 10 is calculated in proportion to the total of all voting rights. The percentage in proportion to the total of all existing voting rights of the same category can then be indicated in point 13.

<sup>17</sup> I.e. the number + percentage of voting rights relating to directly or indirectly held voting rights in one of the cases referred to in Article 7 of the Law.

<sup>18</sup> This percentage must always be calculated in proportion to the total of all existing voting rights (i.e. not per category).

A) Voting rights attached to voting securities					
Holders of voting rights	Previous notification	After the transaction			
		Number of voting rights		% voting rights	
		linked to securities	not linked to the securities	linked to securities	not linked to the securities
X		100	50	10.00%	5.00%
TOTAL		150		15.00%	

§ 2

As regards **financial instruments** that are treated as equivalent to voting securities, the notification shall contain:

- the number of voting rights that may be acquired by exercising the financial instruments;
- where applicable, the number of voting rights split per type of financial instrument;
- the percentages of these totals in relation to the total of all existing voting rights;
- information on expiry, exercise period or date of exercise, and whether the instrument confers a right to physical settlement or cash settlement.

The **number of voting rights** shall be **calculated** as follows:

- rule: based on the full nominal value of the number of underlying voting securities of the equivalent financial instrument;
- if the equivalent financial instrument is **referenced to a basket of shares or an index**: on the basis of the **weight** of the share in the basket of shares or index where any one of the following **conditions** applies<sup>19</sup>:
  - the voting rights held through the equivalent financial instruments referenced to the basket or index represent **1% or more of the voting rights attached to the shares**;
  - the shares in the basket or index represent 20% of more of the value of the securities in that basket or index<sup>20</sup>.
- where the equivalent financial instrument provides exclusively for a cash settlement: on a delta-adjusted basis by multiplying the nominal value of the underlying voting securities by the delta<sup>21</sup> of the instrument, on the understanding that<sup>22</sup>

<sup>19</sup> See Article 4 of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings, PB L. 120 of 13 May 2015.

<sup>20</sup> If a financial instrument is linked to a series of baskets of shares or indices, the voting rights that are held via the individual baskets of shares or indices shall not be accumulated for the purposes of the thresholds.

<sup>21</sup> The delta indicates the extent to which the theoretical value of a financial instrument would change in the event of a variation in the price of the underlying instrument and provides a careful image of the holder's exposure to the underlying instrument (see Report to the King relating to the RD of 11 September 2016). As regards the guarantees that the holder of the financial instrument must provide when determining delta and the features of the IT systems used to carry out the calculation of delta, please see Article 5.4 and 5.5 of the Regulation.

<sup>22</sup> See Article 5.1 and 5.2 of the Regulation.

- where the voting rights relate to financial instruments with a linear, symmetrical pay-off profile with the underlying share, they are to be calculated on a delta-adjusted basis with a cash position of 1;
- where the voting rights relate to financial instruments without a linear, symmetrical pay-off profile with the underlying share, they are to be calculated on a delta-adjusted basis using a generally accepted standard pricing model<sup>23</sup>.

“**Expiry**” refers to the date of expiration of the financial instrument; “**exercise period or date of exercise**” refers to the date on which, or the period of time within which, the voting securities can be acquired<sup>24</sup>.

§ 3

Subsequently, the total number of voting rights held and the number of voting rights that can be acquired by exercising financial instruments that are treated as equivalent to voting securities, are added up. The result, as well as its percentage of the total of all existing voting rights, shall be mentioned in the notification.

**This is the percentage to be considered where the holder of a participating interest calculates the proportions of voting rights under Articles 6 or 18 of the Law<sup>25</sup>.**

*1.2.2.2.2. Only in subsequent notifications*

Art. 14 RD

§ 5

Any subsequent notification (relating only to voting rights) shall additionally contain the corresponding information included in the previous notification (in the column entitled "previous notification"), but mentioning only the number of voting rights and not distinguishing between "linked to securities" and "not linked to securities".

*1.2.2.2.3. Particular case: crossing the lowest threshold*

Notifiers who have already notified and are subject to the notification requirement because they have **crossed the lowest threshold** referred to in the Law or in the articles of association must also tick the event "crossing of the lowest threshold" in point 3.

Art. 14 RD

§ 6

They may choose whether or not to enter figures in point 10<sup>26</sup>. If they do enter figures in point 10, they shall indicate how many voting rights they still hold after the crossing of the lowest threshold and click on “CALCULATE”. If they do not enter figures in point 10, they must **not** click on “CALCULATE”.

The possibility of not filling in point 10 derives from Article 14, § 6, of the RD. This option aims to ensure that outdated or sometimes even misleading information relating to shareholding does not remain available to investors. Where a person crossing the lowest threshold is required to notify how many voting rights they still hold, this information remains available without being updated when the person’s share is the subject of later changes without reaching the lowest threshold again. Such persons are therefore no longer subject to the notification requirement<sup>27</sup>.

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<sup>23</sup> For more information in this regard, see Article 5.3 of the Regulation.

<sup>24</sup> Report to the King relating to the RD, 13041.

<sup>25</sup> Report to the King relating to the RD, 13041.

<sup>26</sup> The names of the holders of voting rights must always be entered.

<sup>27</sup> Report to the King relating to the RD, 13041.

*1.2.2.2.4. Persons acting in concert*

Art. 17 RD  
para 1, 2° The figures shall be provided both separately for each person involved in the agreement and jointly for all persons involved in the agreement.

para 3 However, no separate figures need to be provided for natural persons whose individual shareholding is lower than 1%.

Where e.g. seven natural persons involved in an agreement to act in concert (A, B, C, D, E, F and G) each hold 20,000 voting rights totalling 0.20% of the voting rights of an issuer, it shall be sufficient to mention that A, B, C, D, E, F and G jointly hold 140,000 voting rights, totalling 1.40% of the voting rights. In addition, the names of the natural persons who jointly hold 1.40% of the voting rights need only be mentioned in the notification to the FSMA. Pursuant to Article 17, para 2, of the RD, they need not be mentioned in the notification to the issuer<sup>28</sup>.

*1.2.2.2.5. Third party acting in own name but on behalf of another person*

Where e.g. X notifies 150,000 voting rights held by him in the form of 50,000 in own name and for own account and 100,000 through Y (who is acting in own name but on behalf of X), and Y notifies for his part the same 100,000 voting rights, the FSMA recommends that they should clearly describe this special situation – in which two persons carry out a notification relating (entirely or partially) to the same voting rights.

*1.2.2.2.6. Notifications by controlling persons and controlled undertakings*

Art. 15 RD  
para 2 The (ultimate) controlling person (possibly a parent undertaking) must provide the following data:

- data on the person's (total) direct and/or indirect shareholdings;
- data on the shareholding(s) which the person holds directly<sup>29</sup>;
- data on the shareholding(s) which controlled undertakings hold directly.

Where the controlled undertakings do not hold any direct shareholdings, no (separate) data need to be provided for them.

**Example**

- natural person X holds 100% of the shares of A, which in turn holds 100% of the shares of B.
- X acquires 51% in N: 11% directly and 40% through B.
- there are 1,000 shares of N, representing 1,000 voting rights.

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<sup>28</sup> Report to the King relating to the RD, 13042.

<sup>29</sup> Please specify "0" if the person does not hold any shareholdings directly.

X carries out a notification and therefore fills in the figures, e.g. as follows:

<b>A) Voting rights attached to voting securities</b>						
Holders of voting rights	Previous notification	After the transaction				
		Number of voting rights	Number of voting rights		% voting rights	
			linked securities	to not linked to the securities	linked securities	to not linked to the securities
<b>X</b>		110		11.00%		
<b>B</b>		400		40.00%		
<b>TOTAL (in the hands of X)</b>		510		51.00%		

X includes the chain of controlled undertakings (pursuant to Article 15, para 1, of the RD): X controls A, which in turn controls B.

No figures need to be provided for A, which does not itself hold any direct shareholding.

Art. 15 RD  
para 3

If natural person X provides all these data, this is sufficient as a notification for controlled undertakings A and B. If additionally X acts as mandatary for A and B (under Article 12, § 4, of the RD), it is also sufficient if X signs; if X does not act as mandatary, A, B and X will all have to sign (voluntary joint notification under Article 12, § 2, of the RD).

A, B and X may also all notify separately, but even in that case X must provide all the above-mentioned information.

#### 1.2.2.2.7. *Combinations*

In the situation in which e.g. a controlling person X, together with his controlled undertakings A and B, acts in concert with M and N, it is necessary to calculate a "subtotal" for A, B and X together, and subsequently a total for A, B, X, M and N together. TR-1 BE makes it possible to calculate subtotals. It should be noted that in such a case the following rule should be observed for technical reasons: persons for whom a subtotal must be calculated (in our example, A, B and X) must first be included in the table containing the figures.

#### 1.2.2.3. Additional data

The additional data are as follows:

- (where applicable) the **control chain**;
- (where applicable) information on **proxies**;
- (where applicable) additional information;
- Indication of **place** and **date** and **name + signature** of the signatory.

#### 1.2.2.3.1. *Chain of controlled undertakings*

See TR-1 BE, point 11.

Art. 15 RD  
para 1

The inclusion of the control chain will be useful where voting securities are indirectly acquired, transferred or held, within the meaning of Article 6, § 5, 2° or 3°, of the Law.

Where there is a situation of control at various levels, **all levels** of the control chain must be indicated, although there is no obligation to mention the percentage of shareholding on which control relies<sup>30</sup>.

The chain of controlled undertakings, if any, can appear in a separate document (created in Word, PDF, etc.). Upon providing such document to the FSMA (preferably to trp.fin@fsma.be), a reference to the notification which it is part of must be included.

#### 1.2.2.3.2. *Proxies*

See TR-1 BE, point 12.

Art. 8 RD

Where a holder of securities grants a proxy **for one general meeting of shareholders**, both the holder of securities granting the proxy and the proxy holder can already indicate in the notification taking place prior to the general meeting what the resulting situation will be after the general meeting.

#### 1.2.2.3.3. *Additional information*

See TR-1 BE, point 13.

#### 1.2.2.3.4. *Place and date, and name/signature of the signatory*

See TR-1 BE, *in fine*.

The notification shall contain, in addition to the place and date, a signature as well as the name of the signatory.

#### 1.2.3. *Part II of form TR-1 BE*

Art. 18 RD

Part II is only intended **for the FSMA**. The data included in Part II must make it possible for the FSMA, where necessary, to contact the person subject to the notification requirement and/or that person's mandatary.

Thus Part II shall contain:

- for natural persons who are subject to the notification requirement: their full name and address, plus a telephone number and an e-mail address where they (or their mandatary)<sup>31</sup> can be contacted and any other useful information;
- for legal entities who are subject to the notification requirement: their name, the name of a contact person (this may be the mandatary), a telephone number, an e-mail address where that contact person can be reached and any other useful information;
- where the notification is carried out by a mandatary: the mandatary's name, a contact address, a telephone number and an e-mail address where the mandatary can be reached, and any other useful information;
- the necessary information for the purposes of invoicing;

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<sup>30</sup> Report to the King relating to the RD, 13041.

<sup>31</sup> Where the notification is carried out by a mandatary, it is sufficient, for the persons subject to the notification requirement, if their names and their addresses are indicated. In such a case the contacts will in the first place occur through the mandatary.

- any additional relevant information (on a voluntary basis).

### **1.3. When the proportions of voting rights must be calculated**

Art. 8 L.  
para 1

The proportions of voting rights shall be calculated:

- in the case of an **acquisition or transfer** of a participating interest: on the day of the acquisition or transfer;
- in the case of an **admission to trading**: on the day of admission to trading;
- in the case of a **passive threshold crossing**: on the day of the event resulting in the threshold being crossed;
- in the case of a **conclusion, modification or termination of an agreement to act in concert**: on the day of conclusion, modification or termination of the agreement.

Art. 18 L.  
§ 2

In the case of an **introduction of a threshold in the articles of association**, they shall be calculated on the day of their introduction.

Art. 14 RD  
§ 4

In the case of a **notification of an update**, they shall be calculated, according to the case, on the date of expiry or on the date of exercise of the financial instruments that are treated as equivalent to voting securities.

### **1.4. Notification deadline**

#### *1.4.1. Rule*

Art. 12 L.

The notification shall be made but not later than **four trading days** after:

- in the case of an **acquisition/transfer or the right to exercise voting rights**: the date on which the person subject to the notification requirement knows or should have known this;
- in the case of an **admission to trading**: the date on which the shares were traded for the first time;
- in the case of a **passive threshold crossing**: the date on which the person subject to the notification requirement was informed pursuant to Article 15 of the event resulting in a passive threshold crossing;
- in the case of an **action in concert**: the date on which the agreement was concluded, modified or terminated;
- in the case of a **notification of an update** as referred to in Article 14, § 4, of the RD: the date of expiry or the date of exercise of the financial instrument;
- for **inherited** participating interests: the date on which the inheritance was accepted.

Art. 4 RD

The **trading days** to be taken into consideration are Euronext Brussels' trading days. The list of trading days is available on the FSMA's website.

Art. 5 RD

The persons concerned are **incontestably presumed** to have known of an acquisition, transfer or right to exercise voting rights at the latest on the second trading day following the day of the transaction.

The information published by the issuer pursuant to Article 15 of the Law constitutes the basis for notifications of passive threshold crossings, but it is also useful for other notifications in calculating the proportions of voting rights. However, persons subject to the notification requirement are not entitled to invoke the issuers' obligation of disclosure in order to evade their own obligation to notify. In other

words, if - prior to disclosure by the issuer - they learn that the denominator has been modified, they must take this into consideration in calculating their proportions of voting rights<sup>32</sup>.

The FSMA insists that holders of large participating interests should verify, at least towards the end of each month, whether the issuer has disclosed changes in the denominator, in order to be able to determine whether they are subject to a notification requirement as a result of a passive threshold crossing. Where the issuer does not wait until the end of the month to disclose changes in the denominator, e.g. because of the obligations relating to disclosure of inside information, the allowed period of time for notifying the passive threshold crossing starts earlier. The FSMA therefore recommends to holders of large participating interests that they should register on the issuer's website for e-mail alerts<sup>33</sup>, in order to be informed (automatically) of any change in the information disclosed pursuant to Article 15 of the Law.

#### *1.4.2. Exceptions*

##### 1.4.2.1. Introducing thresholds into the articles of association after the Law has come into force

Art. 18 L.  
§ 2

Where thresholds are introduced after the Law came into force, holders of participating interests must, if these thresholds apply to their situation, carry out a notification within 10 trading days after the thresholds laid down in the articles of association were disclosed, regardless of whether they acquired or transferred.

#### **1.5. Use of languages**

Art. 17 L.  
para 1

The notifier may draw up his notification in Dutch, in French or in a language customary in the sphere of international finance. Form TR-1 BE is available in Dutch, French and English on the FSMA's website.

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<sup>32</sup> Doc. Parl./Parl. St., Chambre/Kamer, DOC 51, 2963/1, 37.

<sup>33</sup> Article 24 of the RD read in conjunction with Article 41, § 1, para 1, 4°, of the RD of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market.