Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 September 2021 *

(Reference for a preliminary ruling – Securities admitted to trading on a regulated market situated or operating within a Member State – Obligation of transparency – Notification of 'major holdings' in companies acquired by 'persons acting in concert' – Directive 2004/109/EC – Fourth subparagraph of Article 3(1a) – Concept of 'more stringent' requirements – Directive 2004/25/EC – 'Supervision' by an authority designated pursuant to Article 4 of that directive)

In Case C-605/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Austria), made by decision of 25 September 2018, received at the Court on 25 September 2018, in the proceedings

Adler Real Estate AG,

Petrus Advisers LLP,

GM

v

Finanzmarktaufsichtsbehörde (FMA),

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra (Rapporteur), D. Šváby, S. Rodin and K. Jürimäe, Judges,

Advocate General: M. Bobek,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure,

having considered the observations submitted on behalf of:

– Adler Real Estate AG, by S. Hödl, Rechtsanwalt,

– GM, by M. Gall and W. Eigner, Rechtsanwälte,

* Language of the case: German.

– the Finanzmarktaufsichtsbehörde (FMA), by P. Wanek and D. Wagner, acting as Agents,

– the European Commission, by G. Braun, H. Støvlbæk and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 March 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L 390, p. 38), as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 294, p. 13) ('Directive 2004/109'), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Adler Real Estate AG ('Adler'), Petrus Advisers LLP ('Petrus') and GM, on the one hand, and the Finanzmarktaufsichtsbehörde (FMA) (Financial Market Surveillance Authority, Austria; 'the Financial Market Authority'), on the other, concerning the lawfulness of administrative sanctions imposed on them by that authority for breach of the duty to notify major holdings of securities in an issuer whose shares are admitted to trading on a regulated market in Austria.

Legal background

European Union law

Directive 2004/25/EC

3 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12) lays down measures, as is apparent from Article 1(1) thereof, coordinating all arrangements of the Member States relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market in one or more Member States.

4 Article 2(1)(d) of that directive is worded as follows:

'For the purposes of this Directive:

…

(d) "persons acting in concert" shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid'.

5 Article 4 of that directive, which is headed 'Supervisory authority and applicable law', provides in paragraph 1:

'Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the [European] Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.'

6 Article 5 of that directive, which is headed 'Protection of minority shareholders, the mandatory bid and the equitable price', provides in paragraph 1:

'Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.'

7 Article 10 of Directive 2004/25, which is headed 'Information on companies as referred to in Article 1(1)', provides in paragraph 1(c):

'Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

…

(c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of [Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ 2001 L 184, p. 1)].'

Directive 2004/109

8 Recitals 2 and 28 of Directive 2004/109 state:

'(2) … security issuers should ensure appropriate transparency for investors through a regular flow of information. To the same end, shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights, should also inform issuers of the acquisition of or other changes in major holdings in companies so that the latter are in a position to keep the public informed.

…

(28) A single competent authority should be designated in each Member State to assume final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as for international cooperation. …'

9 The directive states in Article 1(1) that it 'establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State'.

10 The fourth subparagraph of Article 3(1a) of that directive is worded as follows:

'The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Article 10 or 13, subject to requirements more stringent than those laid down in this Directive, except when:

(i) setting lower or additional notification thresholds than those laid down in Article 9(1) and requiring equivalent notifications in relation to thresholds based on capital holdings;

(ii) applying more stringent requirements than those referred to in Article 12; or

(iii) applying laws, regulations 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].'

11 Article 9 of Directive 2004/109, which is headed 'Notification of the acquisition or disposal of major holdings', provides, in the first subparagraph of paragraph 1:

'The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.'

12 Article 10 of Directive 2004/109, which is headed 'Acquisition or transfer of significant percentages of voting rights', provides:

'The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

(a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;

…'

13 Article 24 of that directive, which is headed 'Competent authorities and their powers', provides in paragraph 1:

'Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC [of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64)] as the central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission and ESMA accordingly. …'

Directive 2013/50

14 Directive 2013/50 inserted paragraph 1a into Article 3 of Directive 2004/109. Recital 12 of Directive 2013/50 states:

'A harmonised regime for notification of major holdings of voting rights, especially regarding the aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce the administrative burden for cross-border investors. … In particular, Member States should also be able to continue to apply laws, regulations 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] that impose disclosure requirements more stringent than those in Directive [2004/109].'

Austrian law

The ÜbG

15 Directive 2004/25 was transposed into Austrian law by the Bundesgesetz betreffend Übernahmeangebote (Federal Law on takeover bids) (BGBl. I, No 127/1998; 'the ÜbG').

16 Paragraph 1(6) of that law defines 'Legal entities acting in concert' as meaning 'natural or legal persons who cooperate with the offeror on the basis of an agreement in order to acquire or exert control over the offeree company, in particular by means of coordination of the voting rights, or cooperate with the offeree company on the basis of an agreement in order to prevent the

successful outcome of a takeover bid. If a legal entity holds an indirect or direct controlling interest (Paragraph 22(2) and (3)) in one or more other legal entities, there is a presumption that all those legal entities act in concert …'

17 Paragraph 22(1) of that law provides:

'Anyone who directly or indirectly obtains a controlling interest in an offeree company shall immediately report this fact to the Übernahmekommission (Takeover Commission, Austria; 'the Takeover Commission') and must notify a bid for all of the securities of the offeree company in accordance with the provisions of this Federal Act within 20 stock-market working days of obtaining a controlling interest.'

18 Pursuant to point 1 of Paragraph 22a of the ÜbG, the 'obligation to make a bid pursuant to Paragraph 22(1) shall apply … when a group of parties acting in concert is created that jointly acquires a controlling interest'.

19 Paragraph 23 of the ÜbG, which is headed 'Aggregation of shareholdings and extension of offeror's obligations', provides in its first subparagraph that, for the purposes of applying Paragraphs 22 to 22b, voting rights held by 'persons acting in concert', within the meaning of Paragraph 1(6) of the ÜbG, must have their voting rights reciprocally attributed.

The BörseG 1989

20 Paragraph 91 et seq. of the Bundesgesetz über die Wertpapier- und allgemeinen Warenbörsen und über die Abänderung des Börsesensale-Gesetzes 1949 und der Börsegesetz-Novelle 1903 (Federal law on stock and general commodities exchanges and on the amendment of the law on stockbrokers of 1949 and the law on stock exchanges of 1903 (Börsegesetz 1989 – BörseG)) of 8 November 1989 (BGBl., No 555/1989) ('the BörseG 1989') in the version published in the BGBl. No 558/1990 (DFB) (the 'BörseG1989') implement the requirements to notify 'major holdings' provided for in Section I of Chapter III of Directive 2004/109, which is entitled 'Information about major holdings', and especially in Article 9(1) of that directive.

21 Paragraph 92(7) of the BörseG 1989 extends the notification requirement of Paragraph 91 to the case, inter alia, of 'voting rights that are attributable to the person pursuant to Paragraph 23(1) or (2) of the ÜbG'.

The main proceedings and the questions referred for a preliminary ruling

22 By decisions of 29 June 2018, the Financial Markets Authority, which is 'the central competent administrative authority' as referred to in Article 24 of Directive 2004/109, imposed administrative pecuniary sanctions on Adler, Petrus and GM for infringement of the notification requirement imposed by Paragraph 92(7) of the BörseG 1989 on natural or legal persons who, individually or collectively, acquire a shareholding of at least 30% in the 'offeree company'. According to those decisions, Adler, Petrus and GM had 'acted in concert', within the meaning of Paragraph 1(6) of the ÜbG, when they acquired shares in Conwert Immobilien SE, and the voting rights attaching to their shareholdings in that company should therefore have been reciprocally attributed as from 29 September 2015.

23 In determining whether Adler, Petrus and GM came within the concept of 'persons acting in concert', within the meaning of Paragraph 1(6) of the ÜbG, the Financial Markets Authority considered itself bound by a decision given on 22 November 2016 by the Takeover Commission, which is the authority designated pursuant to Article 4 of Directive 2004/25 as the authority competent to supervise a bid. By that decision, which had become final in the meantime, the Takeover Commission had found that Adler, Petrus and GM had failed to submit a mandatory bid, despite having reached the threshold of 30% of voting rights in Conwert Immobilien, triggering the obligation to submit a bid as 'legal entities acting in concert'.

24 According to the Financial Markets Authority, the subjective aspect of the infringement allegedly committed by Adler Petrus and GM was the only matter open to investigation in the proceedings for an administrative sanction.

25 The referring court, before which an action against the decisions of 29 June 2018 has been brought, observes that the BörseG 1989, which transposes Directive 2004/109 into Austrian law, imposes notification requirements on persons with 'major holdings', of 30% upwards, in an 'issuer', and that those requirements are more stringent than those laid down by the directive. The referring court therefore considers that the notification requirement imposed on 'legal entities acting in concert' under Paragraph 92(7) of the BörseG 1989 comes within the notion of 'requirements more stringent than those laid down in Directive [2004/109]', as employed in the fourth subparagraph of Article 3(1a) thereof.

26 However, the referring court questions whether those 'more stringent' notification requirements are in conformity with point (iii) of Article 3(1a) of Directive 2004/109 given that, under that provision, such requirements must not only be laid down in laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids, but must also be 'supervised by the authorities appointed by Member States pursuant to Article 4 of Directive [2004/25]'. In the present case, the 'more stringent' requirement to notify the major holdings at issue in the main proceedings was supervised by the national authority designated pursuant to Article 24 of Directive 2004/109.

27 The referring court also questions the compatibility with Article 47 of the Charter of a national practice under which a decision which has become final, such as that of 22 November 2016, has binding effect in subsequent proceedings for an administrative sanction, such as those conducted, in the case before it, by the Financial Markets Authority.

28 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court, Austria) decided to stay the proceedings and to seek a preliminary ruling from the Court on the following questions:

'(1) Is Article 3(1a), fourth subparagraph, (iii), of Directive [2004/109] to be interpreted as meaning that it is a requirement for the permissibility of the imposition of "more stringent requirements" on the "holder of shares, or a natural person or legal entity" that the "laws, regulations or administrative provisions" providing for more stringent requirements for holdings publicity are "supervised" by an authority designated by the Member State pursuant to Article 4 of [Directive 2004/25] and that such supervision encompasses compliance with the more stringent requirements regarding holdings publicity within the meaning of Directive [2004/109]?

(2) Does Article 47 of the [Charter] preclude a national practice according to which a decision having the force of *res judicata* taken by the supervisory authority referred to in Article 4 of [Directive 2004/25] by means of which a natural person's breach of national provisions adopted in implementation of [Directive 2004/25] was established is also given binding effect in the context of administrative penal proceedings brought against that same natural person owing to a breach of national standards connected with such proceedings in implementation of [Directive 2004/109], with the result that that natural person is prevented from challenging, in law and fact, the breach of law already established with the force of *res judicata*?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, essentially, whether point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109 must be interpreted as precluding legislation of a Member State which makes the shareholders or the natural persons or legal entities referred to in Article 10 or 13 of that directive subject to requirements concerning the notification of major holdings which, from the purposes of the fourth subparagraph of that article, constitute requirements more stringent than those provided for by that directive, and which arise from laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids, without entrusting the power to ensure compliance with those requirements to an authority of that Member State designated in accordance with Article 4 of Directive 2004/25.

30 As is clear from the wording of the fourth subparagraph of Article 3(1a) of Directive 2004/109, the home Member State may not make a holder of shares, or a natural person or legal entity referred to in Article 10 or 13 of that directive, subject to requirements more stringent than those the directive lays down, though there are three exceptions to that prohibition, which are set out in points (i) to (iii) of that subparagraph.

31 The insertion of paragraph 1a into Article 3 of Directive 2004/109, effected by Directive 2013/50, was intended, as the Advocate General observed in points 29 to 31 of his Opinion, to remedy an unequal level of harmonisation of the notification requirements applicable to natural and legal persons acquiring or otherwise handling equity holdings in issuers operating on the regulated market of a Member State, arising from the fact that Directive 2004/109, prior to its amendment by Directive 2013/50, permitted the home Member State to subject holders of shares or other financial instruments to requirements more stringent than those it laid down. Directive 2013/50, which – as stated in recital 12 of that directive – was intended to establish a harmonised regime for notification of major holdings of voting rights, therefore removed that option of the Member States, subject to the exceptions set out in points (i) to (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109.

32 The exception in point (iii) of the fourth subparagraph of Article 3(1a) allows the home Member State to apply to holders of shares, or natural persons or legal entities referred to in Article 10 or 13 of the directive 'laws, regulations 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]'.

33 The first prerequisite laid down in point (iii), for the application of requirements more stringent than those of Directive 2004/109, is that such requirements, including those relating to the notification of major holdings, must be laid down by laws, regulations or administrative provisions relating to the types of transaction referred to in the preceding paragraph of the present judgment.

34 In that regard, it must be observed that the provisions of Directive 2004/25 govern the calculation relating to the threshold for a significant holding in a company, held by a natural or legal person, above which that person is required to make a takeover bid for the protection of the minority shareholders of the company. Those provisions lay down, as regards the aggregation of indirect holdings, requirements more stringent than those governing the calculation relating to the major holding thresholds triggering the requirement to notify the acquisition or disposal of major holdings under Directive 2004/109. Pursuant to Article 5(1) of Directive 2004/25, the holdings of 'persons acting in concert', as defined in Article 2(1)(d) of that directive, are included in that calculation. The expression 'persons acting in concert' encompasses 'natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid'.

35 By contrast, Directive 2004/109 does not employ the concept of 'persons acting in concert', and, for the purposes of the calculation relating to the holdings thresholds triggering the requirement to notify major holdings, takes into account, pursuant to Article 10(a), agreements between the persons concerned which oblige them 'to adopt, by concerted exercise of the voting rights they hold, a lasting common policy'. As the Advocate General stated in point 57 of his Opinion, that provision requires a high degree of commitment over a certain period of time, which cannot be fleeting or intermittent, and which must be uniform and addressed to the management of the company concerned.

36 It follows that laws, regulations or administrative provisions of a Member State adopted within the framework of Directive 2004/25 which are based on the concept of 'persons acting in concert', found in Article 2(1)(d) of that directive, and govern the calculation relating to the significant holding threshold which triggers not only the obligation to make a takeover bid, but also the related disclosure requirements, contain a 'requirement more stringent' that those laid down by Directive 2004/109, within the meaning of the fourth subparagraph of Article 3(1a) thereof, and constitute 'laws, regulations or administrative provisions adopted in relation to takeover bids' within the meaning of that provision. Consequently, such national laws, regulations or administrative provisions satisfy the first condition which, under point (iii) of the fourth subparagraph of Article 3(1) of Directive 2004/109, is required to be met if they are to be applied to the shareholders or natural persons or legal entities referred to in Article 10 or 13 thereof.

37 The second condition which, under point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109, is required to be met if the shareholders or the natural persons or legal entities referred to in Article 10 or 13 thereof are to be made subject to requirements more stringent than those laid down by the directive in relation to the notification of major holdings in a company as referred to in Article 1(1) of that directive, is that those more stringent requirements are supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25.

38 As is apparent from that article, those authorities are 'competent to supervise bids for the purposes of the rules which they make or introduce pursuant to [Directive 2004/25]'. Therefore, the requirements with which they ensure compliance must be laid down by laws, regulations or administrative provisions relating specifically to takeover bids and must fall within the scope of Directive 2004/25, not that of Directive 2004/109.

39 In those circumstances, contrary to the submissions made by the Financial Markets Authority in its written observations, point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109 cannot be interpreted as meaning that the authority designated under Article 24(1) of Directive 2004/109, responsible for supervising the application of the provisions of national law which transpose that directive, is substantively competent to monitor compliance with the more stringent requirements at issue, when those requirements fall within the scope of Directive 2004/25.

40 As the Advocate General observed in point 37 of his Opinion, the harmonisation effected by Directive 2004/109 can only take place within the scope of that directive. A competent authority under Article 24(1) of Directive 2004/109, which is responsible for ensuring that the provisions adopted in accordance with that directive are applied, cannot therefore have a competence which exceeds that which it derives from that provision and relates to an area beyond the scope of that harmonisation, namely that of takeover bids, mergers and other transactions affecting the ownership and control of undertakings.

41 Furthermore, the Financial Markets Authority's interpretation of point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109, referred to in paragraph 39 of the present judgment, is based on a broad interpretation of the exception set out in the fourth subparagraph of Article 3(1a) of that directive when, having regard to the purpose of that provision – which is to establish a harmonised regime for notification of the holding of significant percentages of voting rights – the exceptions to the prohibition on the home Member State subjecting holders of shares or other financial instruments to more stringent notification requirements must be interpreted strictly.

42 Furthermore, as the Advocate General observed, essentially, in points 42 to 46 of his Opinion, in order to define the competence enjoyed, under point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109, by the authorities designated by the Member States pursuant to Article 4 of Directive 2004/25, it is necessary to address the question whether the term 'supervision' also entails 'ensuring compliance' with the 'more stringent' notification requirements. An interpretation of point (iii) of the fourth subparagraph of Article 3(1a) on which those authorities, which are competent to supervise the transactions it refers to, might not, for that purpose, have power to ensure compliance with 'more stringent' requirements concerning the notification of major holdings, laid down by laws, regulations or administrative provisions relating to such transactions, would not be compatible with the normal everyday meaning of the word 'supervision', which implies control', or, therefore, with the task of 'ensuring compliance' with given standards or requirements.

43 In the present case, the referring court's doubts relate essentially to whether the requirement for notification of major holdings laid down by Paragraph 92(7) of the BörseG 1989 in relation to 'legal entities acting in concert', being more stringent than the requirements laid down by Directive 2004/109, meets the condition referred to in paragraph 37 of the present judgment, regarding 'supervision' and therefore control of that requirement by an authority designated pursuant to Article 4 of Directive 2004/25.

44 It is apparent from the observations of the parties to the main proceedings and from the answers to a written question posed by the Court that, under the ÜbG – which transposes Directive 2004/25 into Austrian law – the Takeover Commission is the only authority designated as a competent authority pursuant to Article 4 of that directive. In the main proceedings 'supervision' of the 'more stringent' requirement for notification of major holdings, formally laid down in Paragraph 92(7) of the BörseG 1989 – which does however refer to Paragraph 23(1) or (2) of the ÜbG – was carried out by the Financial Markets Authority. It therefore appears, subject to the matters to be verified by the referring court, that the task of 'ensuring compliance' with the 'more stringent' requirements is entrusted to an authority which is not designated pursuant to Article 4 of Directive 2004/25.

45 It follows from the foregoing considerations that point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109 must be interpreted as precluding legislation of a Member State which makes the holders of shares or the natural persons or legal entities referred to in Article 10 or 13 of that directive subject to requirements concerning the notification of major holdings which, for the purposes of the fourth subparagraph of that article, constitute requirements more stringent than those provided for by that directive, and which arise from laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids, without entrusting the power to ensure compliance with those requirements to an authority of that Member State designated in accordance with Article 4 of Directive 2004/25.

The second question

46 By its second question, the referring court asks, essentially, whether Article 47 of the Charter must be interpreted as precluding a practice of a Member State under which the central administrative authority referred to in Article 24(1) of Directive 2004/109 is bound, when conducting proceedings for an administrative penal sanction, by administrative decisions which have become final and contain findings of infringement of the national provisions transposing Directive 2004/25, taken by the authority of that Member State designated pursuant to Article 4 of that directive, thus depriving the person to whom the proceedings for an administrative penal sanction relate of the right to challenge the earlier finding of infringement on legal and factual grounds.

47 It follows from the examination of the first question that point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109 is to be interpreted as precluding legislation of a Member State under which the task of ensuring compliance with requirements concerning the notification of major holdings which, for the purposes of that subparagraph, constitute requirements more stringent than those laid down by that directive, and which arise from laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids, is entrusted to an authority which is not designated pursuant to Article 4 of Directive 2004/25.

48 In those circumstances, there is no need to interpret Article 47 of the Charter in order to determine whether the fundamental rights enshrined in that provision preclude a national practice such as that to which the question relates.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Point (iii) of the fourth subparagraph of Article 3(1a) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, is to be interpreted as precluding legislation of a Member State which subjects the holders of shares or the natural persons or legal entities referred to in Article 10 or 13 of Directive 2004/109, as amended by Directive 2013/50, to requirements concerning the notification of major holdings which, for the purposes of that subparagraph, constitute requirements more stringent than those laid down by Directive 2004/109, as amended by Directive 2013/50, and which arise from laws, regulations or administrative provisions adopted in relation, inter alia, to takeover bids, without entrusting the power to ensure compliance with those requirements to an authority of that Member State designated in accordance with Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

[Signatures]