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Report

drawn up on behalf of the Legal Affairs Committee

on the proposals from the Commission of the European Communities to the Council (Doc. 186/72) for

- I. a directive concerning the content, supervision and distribution of the prospectus to be published when securities issued by companies or firms within the meaning of the second paragraph of Article 58 of the Treaty are officially quoted on a stock exchange for the first time
- II. a recommendation concerning the content of the prospectus to be published when securities issued by States or their regional or local authorities are officially quoted on a stock exchange for the first time

Rapporteur : Mr André ARMENGAUD

PE 32.443/fin.

By letter of 8 November 1972, the President of the Council of the European Communities requested the opinion of the European Parliament on the proposals in question.

On 14 November 1972 the President of the Parliament referred these proposals to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 23 November 1972 the Legal Affairs Committee appointed Mr ARMENGAUD rapporteur.

It discussed these proposals at its meetings of 8 February 1973, 21 March 1973 and 28 September 1973.

At the latter meeting the Legal Affairs Committee adopted unanimously with one abstention the motion for a resolution together with explanatory statement.

Members present were : Mr Schuijt, Chairman; Mr Armengaud, rapporteur; Mr Brewis, Mr Broeks, Mr Brugger, Mr Corterier, Mr D'Angelosante, Mr Héger, Mrs Nielsen, Mr Schmidt, Mr Schwörer, Mr Springorum and Mr Vermeulen.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for

- I. a directive concerning the content, supervision and distribution of the prospectus to be published when securities issued by companies or firms within the meaning of the second paragraph of Article 58 of the Treaty are officially quoted on a stock exchange for the first time
- II. a recommendation concerning the content of the prospectus to be published when securities issued by States or their regional or local authorities are officially quoted on a stock exchange for the first time

The European Parliament,

- having regard to the proposals from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 54 of the EEC Treaty (Doc. 186/72),
 - having regard to the report of the Legal Affairs Committee and the opinion of the Economic Affairs Committee (Doc. 186/73),
1. Welcomes the submission of this proposed directive which is designed to ensure that in all Member States of the Community the fullest and most objective information is made available on the economic and financial position of the issuing company and the nature of the securities issued, before they are officially quoted on a stock exchange in the territory of a Member State;
 2. Insists, however, that the Commission draw up - within a time-limit to be notified to Parliament - a directive concerning prospectuses to be published for securities issued by public investment companies and 'open' investment trusts which are not covered by this directive;
 3. Signifies its agreement to the proposal for a Council recommendation making the initial quotation on a stock exchange of securities issued by States or their regional or local authorities conditional on the publication of a prospectus providing satisfactory information for investors in these securities;

¹ OJ No. C 131, 13 December 1972, p.61

4. Notes the reasons which prompted the Commission to propose that the issuer of securities should be required to provide information at the time of official quotation on a Stock Exchange and not at the time of issue;
5. Is convinced that the experience that will be gained in the provision of information for the public at the initial quotation stage will prepare the way for the implementation of the proposed directive on information at the issuing stage;
6. Invites the Commission to establish and comply with a timetable, to be notified to Parliament, for action required to coordinate the other provisions governing initial quotation on a Stock Exchange;
7. Welcomes the fact that the proposed directive allows the issuer to make the necessary adjustments, subject to approval by the supervising authorities, to certain headings of the prospectus when these do not apply to its activities, a situation covered by Article 3 (3);
8. Also considers it desirable to allow the issuer to ask the supervising authorities to exempt him from the requirement to publish in the prospectus certain information appearing in the outline plans in the special circumstances set out in Article 5 (1) and (2);
9. Draws the Commission's attention to the possible advantage of preparing special outline plans for prospectuses on securities issued by financial institutions;
10. Is of the opinion that the selection, pursuant to Article 6 (3), of the financial institutions required to have modified outline plans for prospectuses should be made at Community level;
11. Considers that the rules on the content of the prospectus are justified in the special cases set out in Articles 7 to 12;
12. Notes the advantage there would be in specifying the form to be taken by the information required by Article 9 (3) on the effects of any changes in parity rates when the convertible bond is issued in a currency different from that in which the shares are to be issued;
13. Considers that the definition in Article 10 (1) of the information requirements in the case of applications for an official quotation of securities issued on the occasion of a merger should be aligned with similar provisions in the proposed third directive on mergers of joint-stock companies;

14. Is of the opinion, on examining heading 13 of Outline Plans A and B, that information not contained in annual accounts and reports should be subject to control in the same way as the annual accounts so that the responsible authorities have available to them comprehensive and duly certified accounting and financial documentation enabling them to carry out their control task in a fully satisfactory manner;
15. Agrees with the rules in Article 13 to 17 on the procedures and time-tables for issuing the prospectus and on the publication of documents other than the prospectus, and with the requirement that the prospectus should be supplemented if important new factors should arise; it considers these rules fully adequate for the purposes of the directive;
16. Approves for the same reason the procedures set out in Article 18 for cooperation between Member States in operations concerning more than one of them;
17. Points out, however, that although satisfactory in the context of this directive, these arrangements do not alter the need to coordinate, in a future directive, all the conditions governing official quotation on a Stock Exchange for the first time, so that once securities meet the conditions for official quotation on a Stock Exchange in one Member State they cannot be prevented by any other legal requirement from being quoted on a Stock Exchange in the territory of another Member State;
18. Points out that the adoption of a directive on these lines is an essential condition for the attainment of a common capital market of a similar nature to a national market;
19. Approves the setting up of a Liaison Group pursuant to Article 19;
20. Again draws attention to the fact that the requirement for Member States to notify the Commission of the text of provisions of national law that they adopt in a sphere governed by a directive cannot be limited to essential provisions, since the use of the word 'essential' can lend itself to subjective and incorrect interpretations;
21. Consequently proposes that the term 'essential' should be deleted from Article 20 (2);

22. Approves in general the outline plans annexed to the proposed directive, subject to the amendments proposed below;
23. Invites the Commission to endorse the following amendments in accordance with the second paragraph of Article 149 of the Treaty establishing the EEC;
24. Instructs its President to forward this resolution and the report of its committee to the Council and to the Commission of the European Communities.

Text proposed by the Commission
of the European Communities¹

Amended text

Proposal for a sixth directive of the Council to coordinate the guarantees required in the Member States to protect the interests of members and others as regards

Preamble and recitals unchanged

Section I - Articles 1 - 4 unchanged

¹ This text is available only in Dutch, French, German and Italian. For the full text in those languages, see OJ No. C 131, 13 December 1972.

Text proposed by the Commission of
the European Communities

Amended text

Article 5

The authorities of Member States may, on their own initiative or at the issuer's request, exempt the latter from the requirement to publish certain information appearing in the outline plans when, in the special case of the issuer concerned:

1. unchanged

Text proposed by the Commission of
the European Communities

Amended text

2. unchanged

Section II

Articles 6 to 12 unchanged

Section III

Articles 13 to 17 unchanged

Text proposed by the Commission of
the European Communities .

Amended text

Section IV

Articles 18 and 19 unchanged

Section V

Article 20

1. unchanged
2. Delete the word "essential"

A N N E X E A¹

Headings 11 and 12 unchanged

Heading 13

Statement specifying which accounting documents and information of a financial nature have been checked by the official auditor of the company's accounts, in the case of an auditor from a Member State, or by an authorized official auditor in the case of an auditor from a third country.

(remainder unchanged; add new last sentence:)

The auditor's certificate shall appear in the prospectus.

¹ These amendments also apply to the headings of the same numbers in Outline Plan B, with the exception of the amendments to heading 326 of Outline Plan A, which corresponds to heading 323 of Outline Plan B.

Text proposed by the Commission of
the European Communities

Amended text

Headings 21 to 325 unchanged

Heading 326

Name of any individual or legal
person who directly or indirectly,
singly or jointly with other share-
holders, is in de facto control of
the company, together with the per-
centage held and every well-known
case or case known to the company
of a person holding 25% or more of
the subscribed capital, together
with the percentage of capital held.
(one sentence deleted)

Joint control (continue Commission
text).

Headings 327 to 413 unchanged

Heading 414

Information on the structure of sources of supply and markets for the products or services and if possible breakdown of the net amount of turnover for each main geographic or economic area (remainder deleted).

Heading 415

Location, relative size and progress of the company's main establishments, (15 words deleted) and information on land and buildings. (continue Commission text)

Heading 416 unchanged

Heading 42

Information on the possible effects on the company's activities and profits of:

- (a) ownership of industrial property rights (patents, designs and trade marks) or use of such rights held by it or conceded (by third parties or to third parties), particularly in the form of a licence, whether or not exclusive, or in the form of a contribution to third companies;
- (b) industrial, commercial and financial contracts;
- (c) existence of manufacturing techniques and branded products.

Text proposed by the Commission of
the European Communities

Amended text

If this is the case, there shall
only be (8 words deleted) a brief
description, without giving away
industrial secrets, of factors (1
word deleted) of special importance
(remainder deleted).

Heading 43

Details of the research and develop-
ment policy for new products and
techniques, amount of expenditure
under that heading over the last five
financial years and assessment of the
effects of this policy on the company's
activities and profits.

Headings 44 to 463 unchanged

Heading 511

Comparative summary table of the
annual accounts covering the last
five financial years showing the
main components, taking care however
that the rearrangement of the published
accounts does not affect their meaning.

The prospectus must explicitly indicate
any amendments made which may make
comparison of the entries in the
prospectus difficult.

Text proposed by the Commission of
the European Communities

Amended text

Heading 512

unchanged

Heading 513

Replace "sufficiently detailed and
precise view" by "faithful reflect-
ion". Remainder unchanged.

Text proposed by the Commission of
the European Communities

Amended text

Headings 514 to 633 unchanged

Heading 64

Delete from "for example ..." to end
of heading,

Headings 71 to 713 unchanged

Heading 714

General information on the state of
the order book

Headings 72 to 723 unchanged

Text proposed by the Commission of the
the European Communities

Amended text

A N N E X B

Amended text¹

A N N E X C

Text unchanged

DRAFT COUNCIL RECOMMENDATION

concerning the content of the prospectus to be published when securities issued
by States or their regional or local authorities are officially quoted on a
Stock Exchange for the first time

Text unchanged

¹ The amendments to Outline Plan B are identical to those proposed for
Outline Plan A .

EXPLANATORY STATEMENTI. INTRODUCTION

1. The immediate objective of the proposed directive is to ensure that in all the Member States of the Community sufficient and, as far as possible, objective information is available on the financial position of the issuing company and the nature of the securities issued, before they are officially quoted by a Stock Exchange in the territory of a Member State.

It will be noted that this immediate objective is an important factor in a more general plan designed to :

- protect the interests of members and others,
- facilitate the official quotation of transferable securities by Stock Exchanges in different Member States and the purchase of securities quoted on the Stock Exchanges of one Member State by investors resident in another Member State,
- expand the capital market which will thus be better placed to meet companies' capital requirements.

2. To achieve this objective, the intention is to make it mandatory to publish a prospectus, vetted by an authority appointed for the purpose, prior to introducing securities on the market.

3. The legal basis for the proposed directive is Article 54, paragraph 3 (g) of the EEC Treaty which reads as follows : 'The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular: g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58¹ with a view to making such safeguards equivalent throughout the Community'.

This is the proper legal basis; it will be remembered that five proposals for directives have already been submitted by the Commission on this same basis and that the titles themselves make reference to it: (first directive: joint-stock companies, limited liability companies and limited partnerships - publicity, validity of commitments, nullity; second directive: joint-stock companies - capital formation, maintenance and modification; third directive: Joint-stock companies - mergers; fourth directive: joint-stock companies, limited liability companies and limited partnerships - content and publication of annual accounts and manage-

¹Article 58, paragraph 2, reads as follows: "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making."

ment reports; fifth directive: structure of joint-stock companies).

It might be logical to call this proposal: 'Proposal for a sixth directive to coordinate the guarantees required in the Member States to protect the interests of members and others as regards the content, supervision and distribution of the prospectus to be published when securities issued by companies or firms within the meaning of the second paragraph of Article 58, of the Treaty are officially quoted on the Stock Market for the first time'.

The representative of the Commission of the European Communities agreed to this proposed amendment; your Committee wishes to stress that the 'numbering' of the said directives does not necessarily affect the order in which they will be adopted by the Council.

4. The text of the proposal contains, essentially, provisions which are designed to :

- make it obligatory to publish a prospectus, drawn up in accordance with the outline plans attached to the proposed directive, subject to the exceptions provided for in Articles 4 and 5;
- specify the content of the prospectus in certain particular cases;
- set out procedures for the supervision and distribution of the prospectus;
- lay down procedures for cooperation between Member States in the implementation of the directive.

These proposals will be considered systematically.

5. The aim of the appended outline plans is to specify the means of achieving the stated purpose of providing sufficient and objective information to members and other current, or prospective holders of transferable securities.

Since most of the headings in these outline plans do not call for any special comment, your Committee proposes to concentrate on those which in his view, give rise to certain reservations for reasons of either purport or drafting.

II. CONTENT OF THE PROPOSALS SUBMITTED FOR CONSIDERATION

A. THE DIRECTIVE

Section I - GENERAL RULES AND SCOPE

6. Article 1 requires the Member States to make it mandatory to publish or otherwise make public, before stocks are officially quoted on a Stock Exchange situated in their territory, a prospectus vetted by an authority appointed for this purpose.

This requirement applies to shares issued by companies and firms

'within the meaning of Article 58, paragraph 2 of the EEC Treaty'.¹
However, the following are outside the scope of the present directive:

a) shares issued by investment companies and 'open' investment trusts.

In its explanatory statement the Commission justifies this arrangement by arguing that these shares are distinctive in character and are frequently sold by canvassing; it also points out that special regulations governing the provision of information by these concerns are in preparation. Your Committee takes note of this but considers it desirable - in view of the need to afford subscribers equal protection - that the proposals for the regulations in question should be submitted to the Council in the near future.

As requested by the Committee on Economic and Monetary Affairs in its opinion, the Commission should let Parliament know at this stage when it intends to submit these proposals.

b) Securities issued by States and local public authorities. Given their distinctive features, and those of the issuing authorities, these securities fall outside the scope of the proposed directive, but it will be noted that the Commission has submitted a draft recommendation to the Council; if this is adopted the Council will recommend that Member States make the introduction of such securities on the market subject to the publication of a prospectus containing similar information to that listed in Chapters 1 and 2 of Outline Plan B 'Bonds'.

7. It must be emphasized that the aim of the proposed directive is to harmonize the requirements imposed on the issuer to furnish information not when shares are issued but when submitted for official quotation to a Stock Exchange; the merits of this case, which seems to be based on pragmatic considerations, call for further consideration :

- the Commission preferred to coordinate existing requirements under which, in most Member States, information must be provided at the quotation stage rather than to introduce what for companies in most Member States would be a new requirement to furnish this information at the issuing stage; the Commission also observes in its explanatory statement that this is a first step and your Committee considers it a reasonable solution. The experience gained in coordination when securities are placed on the market will be useful in drawing up the directive which will determine the question of coordination at the stage of issue;
- the Commission did not consider it opportune, given the variety of situations which exist as regards quotation on markets other than the

¹ Article 58, paragraph 2 reads as follows: "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making'.

official market, to propose Community regulations in this field; it did make the point, however, that Member States may introduce similar regulations governing quotation on these other markets thus virtually doubling the scope of the directive.

8. To the above considerations, however pertinent, a more general comment must be added: while its object is certainly to protect members and others, the proposed directive really looks ahead to the development of a common capital market; it should therefore be borne in mind that as it now stands, Community law allows the free movement of capital only for the purchase of quoted securities; the present proposal covers de facto situations where the problem is to protect investors who wish to purchase securities quoted on an official Stock Exchange situated in a Member State other than the one in which they reside.

9. Art. 2 lays down the standards for assessing whether the content of the prospectus fulfils its intended purpose; the quality of the prospectus should not be judged solely by the information required by the general public, but also in relation to the needs of professional consultants who should be able to advise the public, or make investment decisions on their behalf with full knowledge of the facts.

This view must be put to the test of experience, however, and the outline plans attached to the proposed directive will be discussed in the light of the principles on which it is based.

10. Art 3, para. 1 states that the outline plans constitute minimum requirements; as the Commission points out, some Member States request information beyond these requirements. The proposed harmonization will not be effected with reference to those standards which afford the greatest protection as in certain Member States, but is simply intended 'to make the guarantees sufficiently equivalent' (these are the terms used in paragraph 4 of the recitals) for the benefit of members and others.

The Commission's choice appears to have been dictated by the desire to present a proposal for a directive which Member States could implement without any need for those countries in which companies or firms are subject to few, if any, requirements to make what might be considered as unduly harsh changes in their national legislation.

11. It should be emphasized that the arrangement adopted by the Commission is acceptable only to the extent that the proposed directive under consideration should be regarded as a first step towards complete harmonization; disparities will subsist (though in a milder form) in the extent to which companies are required to furnish information, and this will continue to influence - less markedly no doubt - these companies in their choice of Stock Exchanges where they apply to have their shares quoted; likewise,

investors will continue to be influenced in their own choice by persisting disparities in the nature and quality of the information at their disposal.

This directive brings us closer to a common capital marked with features like an internal market - which is indeed the goal to which all efforts should be directed; however, it will be seen from the suggested outline plans that the level of information required by the proposed directive is already high and might cause some misgivings; the proposed directive is a satisfactory compromise between the ideal and what is at present merely reasonable.

Art. 3. para. 2 provides that in the particular cases covered by Articles 6 - 12, the prospectus should be drawn up according to the guidelines laid down in these articles.

12. Art. 3, para. 3 provides that certain headings of the prospectus, on the lines of Plan A, B or C, may be adjusted to the nature of the issuing company's business. As the explanatory statement points out, these plans have been drawn up with the most common case in mind - that of a joint-stock company carrying on an industrial or commercial activity - and some of the information required may not apply to the special economic activities of certain issuing companies or firms.

This text does not state whether the adjustment is to be made by the competent national authorities on the issuing company: the Commission's explanatory memorandum seems to suggest that it would be the national authorities; your Committee had therefore suggested re-wording Article 3, paragraph 3 as follows :

'Where certain headings in the appended outline plans appear incompatible with the nature of the issuing company's business, a prospectus containing equivalent information and incorporating the required heading adjustments should be drawn up by the issuing company, subject to approval of these adjustments by the responsible authorities.'

However, your rapporteur withdrew this proposal for an amendment, the representative of the Commission's legal department having stated that it must be made clear that - in practice - it was for the issuing company to propose any adjustments which it considered necessary when preparing the prospectus - with the relevant headings adjusted accordingly - would, in conformity with the general principle laid down in the directive, not be made available to the public until after it had been approved by the competent authority.

13. Art. 4 lists the cases in which it did not seem necessary to enforce publication of a prospectus on the lines of the appended outline plans. The reasons advanced by the Commission in its explanatory statement seem

satisfactory, at least with regard to the cases covered by a), b), c), d), e) and f); Article 4 paragraph 1 g) provides for exemption from the requirement to publish a prospectus when the number of shares for which quotation is requested is less than 5% of the number of shares of the same category already quoted on the same Stock Exchange, always provided that the total market value of these additional shares does not exceed a maximum of 500,000 units of account over a period of two years.

Your Committee wonders whether this last exemption is justified because:

- firstly, 5% of the total number of securities may in fact represent a large number of new securities.
- secondly previous issues of securities of the same type may go back several years and the company's activities, or even its legal statute, may have changed in the meantime.

However, your Committee endorsed the opinion of the Commission representatives who have rightly noted that simply to delete this text would create the following difficulty: small issues would incur prohibitive publicity costs, since the obligation to advertise entails relatively fixed costs irrespective of the total value of the securities issued.

14. Under Article 4, para. 2 the Member States who intend to claim exemption are required to inform the Commission to this effect within the time-limit laid down in Article 20 paragraph 1; in this way, the Commission will know the exact extent of the field covered by the directive.

15. Art. 5 provides for exemption from publication of certain information mentioned in the outline plans in two specific cases:

- negligible importance, without bearing on the investor's assessment;
- disclosure contrary to public interest or injurious to the issuing company.

Exemption from publication of certain information in the above categories is perfectly legitimate: nevertheless the issuing company should be given the right to ask for exemption from publishing such information, since it is perfectly able to judge whether certain information required by the outline plan comes under one or other of the headings referred to in Article 5(1) and (2).

Your Committee therefore suggests that Article 5 be reworded as follows:

'The authorities of Member States may, on their own initiative or at the issuer's request, exempt the latter from the requirement to publish certain information appearing in the outline plan when, in the special case of the issuer concerned:

1. unchanged
2. unchanged.'

Section II - CONTENT OF THE PROSPECTUS IN PARTICULAR CASES

16. The purpose of Articles 6 - 12 is to ensure that the public is adequately informed and yet allow for the distinctive features of certain issuing companies, or of certain securities; all in all, the provisions of this section seem to be satisfactory, subject to the following observations on Article 6 (financial institutions), Article 9 (convertible loans) and Article 10 (quotation of securities issued on the occasion of company mergers or divestitures, capital contributions or public trading offers).

17. Article 6, para. 2 stipulates that the prospectus drawn up prior to quotation of securities issued by financial institutions should contain information appropriate to the nature of the issuing company's business and equivalent to the items listed in Chapters 4 and 7 of Outline Plans A or B; the information listed in the other chapters should be as generally required by Plans A or B; the implementing rules are drawn up by the competent national authorities; furthermore, it is for the Member States to decide to which financial institutions the adjusted prospectus plans will apply (Article 6 paragraph 3).

The solution adopted in Article 6 is perhaps not fully satisfactory. Chapters 4 and 7 of the outline plans are essential, since they concern information on the current financial position and further prospects of the company; it may not perhaps be desirable to leave the national authorities to decide for themselves what information is required in these areas; they are allowed so much freedom of judgement that it may be wondered if their decision will really make for harmonization. There is all the more reason for concern on this score in that the area in question is vast, covering banks, credit institutions, investment companies and holding companies.

It is felt that the Committee should perhaps draw up separate outline plans for prospectuses relating to securities issued by those financial institutions for which it is already preparing special plans for the submission of annual accounts.

Perhaps it would also be advisable if the financial institutions to which adjusted prospectus plans are to apply were not selected by the Member States: selection at Community level is the only way to promote harmonization in this field, which is the whole purpose of the directive.

18. By virtue of Article 7 companies need not publish a complete prospectus each time that continuous issues or repeated loans (at least twice a year on average) by the institutions in question are quoted on the Stock Exchange. These institutions are sufficiently well known, and subscribers afforded adequate guarantees by the public nature of their statutes and existing public controls to protect savings.

Article 7 paragraph 2 stipulates that in such cases, only those items of information subject to variation need be published.

The provisions of Article 7 do not seem to call for any special comment.

19. Article 8 specifies what information the prospectus should provide in the case of guaranteed loans.¹

The article rightly makes it mandatory to append the guarantee contract to the prospectus, except when it is too bulky or too difficult for the public to understand; in this case a summary of the contract must be published in the prospectus, the full text being kept available for interested parties by financial intermediaries.

20. The purpose of Article 9 is to ensure that the public is adequately informed when the application for quotation refers to bonds convertible into shares of the issuing company or another company, or to bonds accompanied by warrants. The provisions of this article seem fully appropriate to its purpose.

It should be noted that the last paragraph of this article provides that the implications of any changes in currency or share exchange rates should be stated whenever the convertible bonds are not made out in the same currency as the shares; although such issues are extremely rare at present, it may be worthwhile to look into the matter now, in case such issues should become general practice, and to specify the form in which information should be provided on the effects of any parity changes.

21. Article 10 deals with market quotation of securities issued on the occasion of company mergers or divestitures, capital contributions, or public trading offers. In such instances the prospectus should contain, in addition to the information provided for in the 'Shares' plan or the 'Bonds' plan, a certain number of items which can be inserted or simply appended.

In the case of mergers, it might be hoped that the information required would be harmonized with the similar requirements laid down in the proposed third directive on mergers of joint-stock companies².

¹ Where a company guarantees, other than on a cash basis, a loan issued by another company; where loans issued by a finance company on behalf of its parent company are guaranteed by the latter and where loans are grouped.

² Published in OJ No. C 89, page 20, 14 July 1970.

22. In its explanatory statement the Commission lists the cases in which the share certificates referred to in Article 11 are accepted for quotation; this is the case when foreign securities which are not consistent in nature with market requirements or practices are accepted for quotation; as explained by the Commission, this is the case when:

- foreign securities are registered, and, according to law or practice, only bearer bonds can be quoted; bearer certificates must be issued in this instance;
- foreign securities are negotiable and only registered securities may be quoted or issued: registered certificates must be issued in this instance;
- delivery of the original securities takes too long, or the cost of delivery is too high, and when share certificates are in circulation;
- the unit value of the original securities is too low or too high, and certificates representing multiples or fractions thereof are quoted;

The first paragraph of Article 11 states that 'when the application for quotation refers to share certificates, the prospectus should contain the information called for in the 'Shares' plan, as well as in the 'Certificates' Plan.'

This dual requirement is fully justified by the fact that the information provided should cover not only the original securities, but also the issuer of the certificates and the conditions of quotation, so that shareholders can assess the issuer's solvency and financial standing.

It seems legitimate, as provided for in paragraph 2 of Article 11, to exempt the issuer of the certificates from making his own financial situation public when the certificates are issued by one of the bodies referred to in this paragraph, whose activities are subject to strict control, ensuring adequate guarantees for subscribers.

23. Article 12 makes shares in public enterprises subject to the general rules of the directive, the purpose being to prevent distortion of competition between these bodies and private companies engaged in the same activities, without prejudice to any adjustments required by the distinctive features of public enterprises. This possibility of adjustment is in keeping with the general rule laid down in paragraph 3 of Article 3.

Article 12 paragraph 2 allows the appropriate authority the option of simplifying the prospectus whenever public enterprises or the bonds they issue are backed by an unconditional and irrevocable guarantee on the part of a Member State; no objection can be made to this provision for the purpose of the directive - in conformity with the legal basis on which it is founded - is to protect the investor, and in this case protection is ensured by a Member State's guarantee.

Section III - PROCEDURES FOR THE SUPERVISION AND DISTRIBUTION OF THE PROSPECTUS

24. The quality of the guarantees extended to investors will depend primarily on the quality of prospectus content control; this will be the responsibility of the existing or appointed national authorities who should be assigned the full supervisory powers and authority necessary for the purpose; the directive leaves the Member States free to decide on the composition of the authorities appointed and their relations with the administration; the Member States will notify the Commission of the authorities appointed to implement the rules laid down in the directive.

Article 13, paragraph 2 stipulates that the prospectus cannot be published or otherwise made available to the public without the authorization of the competent authority; the Commission's explanatory statement states that the authorization procedure will be left to the discretion of the Member States.

Article 13 paragraph 3 lays down the criteria to be applied by the competent authority in deciding to authorize publication of the prospectus. It should be emphasized that the competent authority is not required to check the information published for material accuracy and completeness; the Commission's explanatory statement indicates that the competent authority may simply request proof of the inspections made by auditors, financial institutions or other trustworthy experts.

In considering an amendment proposed by Mr Héger, the Legal Affairs Committee wondered whether the official auditor¹ should not be required to express an opinion on the company's forecasts and future plans, on the understanding that the company's Board of Directors alone was responsible for these forecasts, the official auditor's task being confined to ascertaining that the forecasts were established and presented in line with the policy and assumptions set out in the prospectus regarding accounting practices and the methods of calculation used by the company.

Since, therefore, Outline Plans A and B provide two kinds of financial information (one which can be checked and certified, the other linked with forecasts), the Legal Affairs Committee wondered whether the official auditor should not issue two certificates, one in respect of information in Chapter 7 of Outline Plans A and B relating to the recent development and prospects of the company, the other in respect of information of a financial or accounting nature contained in the other chapters.

The Legal Affairs Committee nevertheless decided, with the agreement of the drafter of the amendment - which has since been withdrawn - that the text of Article 13, paragraph 3, should remain as it stood, having taken note of the Commission's statements that the official auditor must check all the data contained in the prospectus for consistency.

1See end of paragraph 37 of Explanatory Statement

Under the terms of Article 13 paragraph 4, the control body must be assigned the necessary full powers and authority; the Commission's explanatory statement points out that each Member State may make this assignment either in general or specific forms according to its constitutional rules and practices.

25. Article 14 paragraph 1 deals with the methods of distributing the prospectus; this should be done either by publication in the press or by means of a brochure; the Commission's explanatory statement specifies the conditions which these two methods of distribution have to fulfil in order to meet the requirement to furnish information.

Article 14 paragraph 2 specifies how the two distribution methods can be combined - or not combined - in accordance with regulations laid down by law or by the competent authority under its supervision.

Article 14 paragraph 3 stipulates that the prospectuses must be accessible to interested members of the public at all times.

26. The minimum time-limits for distribution of the prospectus are set out in Article 15, paragraphs 1 and 2; in conformity with current general practice, the proposed directive lays down the following time-limits;

- eight days before the opening of dealings as announced in the official quotation in the case of shares or convertible or warranted bonds, when the issue carries the right of the former shareholders to subscribe;
- three days in the case of bonds, or of convertible bonds or bonds with warrants not carrying the right to subscribe, or in the case of subscription rights when there is to be a market in these rights entailing dealings announced in the official quotation.

27. Article 15 paragraph 3 covers the possibility of publishing a provisional prospectus, as is the practice on the international market when bonds are quoted at the same time as they are publicly issued, and when certain conditions of issue are not finally decided until the last moment; the text lays down the terms and conditions under which the supplementary information should be made public, i.e. no later than the day before dealings commence.

The time-limits set and the terms and conditions laid down in this article for the distribution of the prospectus are a compromise between the occasionally conflicting requirements set out by the Commission in its explanatory statement. The time allowed should be long enough for the public to digest the information in the prospectus and short enough for professional consultants not to be tempted to create an unofficial market in the meantime. Your Committee considers that the time-limits proposed are acceptable.

28. The purpose of Article 16 is to give the prospectus special status as the principal information document and to promote general information to the public by recommending that the Member States should encourage publication of summary prospectuses subject to control by the competent authorities in the same way as all information documents published by the issuer (except those which simply announce an issue or a quotation and give essential particulars on the securities).

It prohibits companies or financial intermediaries from providing information which does not appear in the prospectus, which has not been vetted by the competent authorities and which might be used to the public detriment; this provision - which raises some doubts in the mind of your Committee as to its effectiveness, considering the hypothetical nature of proof of infringements of the rule - nevertheless seems worth retaining inasmuch as it stresses the paramount position of the prospectus as a means of informing the public; the point here is that the information shown in the prospectus and vetted by the competent authorities can alone afford adequate guarantee to the purchasers of securities.

29. Article 17 requires publication, under the control of the competent authorities, of any major new factors likely to influence public assessment of the securities concerned and calls for no comment.

Section IV - PROCEDURES FOR COOPERATION BETWEEN MEMBER STATES
IN THE IMPLEMENTATION OF THE DIRECTIVE

30. As already mentioned, the purpose of the directive is not only to provide investors with better information and protection at national level, but also to enable securities to be quoted on several Community Stock Exchanges. The more the formalities imposed on the issuer are simplified, the better this purpose will be served: thus Article 18, paragraphs 1 and 2, set out various procedures for the coordination of requirements for prospectuses drawn up in conformity with the rules laid down in the directive in cases of simultaneous quotations or quotations less than 6 months apart, on Stock Exchanges in different member countries.

Article 18 paragraph 3 recommends that the competent authorities in the Member States should cooperate to ensure that information provided in one Exchange which might influence assessment of the value of the securities should also be provided in the other countries where the security is quoted.

Provisions of this-kind should be approved.

31. The purpose of Article 19, which sets up a liaison group, is to:
- institutionalize cooperation between the competent authorities of the different States in order to promote the harmonious application of the directive and an agreement on the range of supplementary information required or recommended, now and in the future, at national level.
 - and to assist the Commission, if necessary, in drawing up new proposals to the Council to supplement or amend the directive.

This liaison group would therefore have both a coordination and a consultative function. It seems unlikely that the Commission's freedom of action would be impeded by the existence and activities of this liaison group, and your Committee therefore has no reservations as to its creation.

Section V - FINAL PROVISIONS

32. Under the terms of Article 20, paragraph 1, the directive comes into force within twelve months from the date of its notification to the Member States.

This seems sufficient time to enable Member States to comply with the provisions of the directive.

Article 20, paragraph 2 requires Member States to inform the Commission of essential national legislation they adopt in the area covered by this directive.

Your Committee would like once again to express its reservations with regard to the use of the term 'essential', considering that it might lend itself to subjective interpretations and abuse on the part of Member States, and therefore proposes that it be deleted.

B. OUTLINE PLANS OF PROSPECTUSES

33. The general structure of the outline plan of the prospectus for the admission of shares to stock exchange quotation (Annex A) and of the plan for the admission to the stock exchange of bonds issued by industrial or commercial enterprises (Annex B) are identical; each plan is divided into chapters, which in turn are sub-divided into headings and sub-headings. The chapters are as follows:

Chapter 1 - Persons assuming responsibility for the prospectus

Chapter 2 - Scheme A : Information on the admission to quotation of the securities concerned

Scheme B : Information on the operation

Chapter 3 - General information on the company or firm

Chapter 4 - Information on the activities of the company or firm

Chapter 5 - Information on the assets, financial position and results of the company or firm

Chapter 6 - Administration, management, supervision

Chapter 7 - Recent development and prospects of the company

The structure of the outline prospectus plan for admission to quotation of certificates representing shares (Annex C) is simpler: this plan contains only 2 chapters - Chapter 1 : Information on the body issuing the certificates, and Chapter 2: Information on the certificates themselves.

All the information required in each of the plans is intended to supply adequate and objective information to shareholders and other holders of securities; nevertheless, careful study of certain headings in plans A and B gives rise to serious reservations. Your Committee would like to call attention to these particular headings and propose certain modifications to them.

34. The details required under heading 13 of plans A and B do not seem sufficient to provide the public with the necessary guarantees; your Committee in fact feels that the public should know which accounting documents and what information of a financial nature have been checked by an official auditor, and that a corresponding certificate should be included in the prospectus.

It must also be pointed out that internal control - which is possible in certain Member States - cannot give the public guarantees equivalent to those provided by external control; moreover, it should be specified, as proposed by the Commission, what kind of statutory or external body has carried out the checks; however, your Committee wishes to stress that, after the transitional period, external control only should be accepted in all Member States.

35. It should be noted here that the auditing of the accounts of companies of non-member countries presents a problem, since these accounts will naturally be inspected by the legal auditors, who will usually be nationals of these non-member countries; however, the directive now being studied, on the professional qualifications of legal auditors, will not apply to these particular auditors. In these circumstances, will the certificate issued by the auditors for the companies of non-Member States be recognized by the national authorities or will the latter insist on another inspection being made by the auditors of the countries in which the stock exchange quotation has been applied for?

36. The present situation in the Member States of the Community varies widely. Some countries, such as France, require a certificate issued by an auditor of any nationality, but they have introduced the practice of a special and more thorough inspection in addition to the legal audit already carried out. Other countries, such as Great Britain, do not accept the certificate of a non-British auditor and require a second inspection by a qualified British auditor. Others again recognize the certificates issued by major multinational auditing companies.

Harmonization therefore appears desirable; it might be possible to consider providing for intervention of an official auditor authorized by the responsible authorities of the Member State where admission to Stock Exchange quotation is requested in cases where the company's official auditor is a national of a third country.

37. Your Committee therefore suggests that Heading 13 of Plans A and B be reworded as follows:

'Statement specifying which accounting documents and information of a financial nature have been checked by the official auditor of the company's accounts, in the case of an auditor from a Member State, or by an authorized auditor in the case of an auditor from a third country. (remainder unchanged; add new last sentence:)
The auditor's certificate shall appear in the prospectus.'

Your Committee's attention has been drawn to the fact that there are no official auditors in Italy at present (a law is being brought in establishing such auditors for companies whose securities are quoted on a Stock Exchange). However, in order to keep heading 13 as simple as possible, your Committee decided, in agreement with the representative of the Commission's legal department and the representative of the Commission, to retain the term 'official auditor', suggested by the rapporteur, stressing at the same time that, where there is strictly speaking no official auditor, this term refers to any other person qualified to audit company accounts.

38. Heading 326 of Annex A, and heading 323 of Annex B require shareholdings of at least 10% of the subscribed capital held directly or indirectly in the company by natural and legal persons to be reported as soon as such holdings are known.

Your Committee believes this information important to investors, but considers that its publication appears to be conditional on a subjective assessment of the nature of such holdings.

It will also be noted that the text of these headings seems to confuse possession of a fraction of the capital, (more specifically at least 25%) with the idea of 'control' of the issuing company, whereas the two ideas are quite distinct: from the economic standpoint 'control' in fact results from the conjunction of two characteristics: a tie involving dependence, and unity of decision. Moreover, we know that with the exception of the Federal Republic of Germany no Member State as yet has laws governing groups. The indication of control under these headings cannot, therefore, afford a guarantee, and the issuing company may avoid giving any information of this nature, without the national authority responsible for 'inspection' of the prospectus having the opportunity to check whether the absence of any information as to 'control' is correct.

39. Your Committee considers that pending presentation of the proposed directive now in preparation on groups of companies, the principles underlying Headings 326 of Annex A and 323 of Annex B are acceptable. He also wishes to stress that control of a company may in certain cases be ensured by holding a minimal percentage of the capital; he therefore suggests that the text of those headings be reworded as follows:

'Name of any individual or legal person who directly or indirectly, singly or jointly with other shareholders, is in de facto control of the company, together with the percentage held and every well-known case or case known to the company of a person holding 10% or more of the subscribed capital, together with the percentage of capital held.' (one sentence deleted)

Joint control (continue Commission text to end).

40. It would appear that the precise details of the information required under Headings 413, 414 and 415 of Outline Plans A and B might be of great use to competitors and prejudicial to the issuing company. Although this risk is multilateral and consequently smaller than might be feared, the damage which the issuing company might suffer could be very serious.

Of course, the exemption stipulated in Article 5(2) of the proposed directive might then be applied. But this would in fact happen in most cases, so is there any real point in requiring too detailed information, which would only very seldom be given?

PE 32.443/fin.

41. Under the terms of Heading 413, the prospectus must include a breakdown of the net amount of the turnover, an idea already put forward in the directive on annual accounts. A quantitative criterion is stipulated as regards so-called 'main branches of activity'; the threshold chosen (15%) will ensure that the breakdown is relatively homogenous; it is also worth noting that since this criterion imposes a maximum for the breakdown under six branches of activity (15% x 6 = 90%) it need not be regarded as an excessive requirement but rather as being likely to facilitate the task of the draftsman of the prospectus.

42. Clearly the breakdown of the net amount of the turnover for each main geographic or economic area is only of interest, and consequently would not be demanded by the responsible authorities, except insofar as this information is likely to affect the assessment of the funds, the financial position or the results; this will apply in particular when sources of supply and markets are located in sensitive areas. Furthermore the information given on the structure of the sources of supply and markets should be required to cover services as much as products.

Heading 414 could therefore be reworded as follows:

'Information on the structure of the sources of supply and markets for the products or services and if possible breakdown of the net amount of turnover for each main geographic or economic area.'

43. Heading 415 could also be reworded so as to provide subscribers with standard information without imposing on the issuers any obligations which they might regard as having damaging consequences; your Committee suggests that this heading be reworded as follows:

'Location, relative size and progress of the activities of the company's main establishments and information on land and buildings' (remainder, see Commission text).

44. Your Committee does not feel that the concept of the company's dependence in respect of the factors referred to under Heading 42 has any valid economic basis; he considers that the public would be better informed if this heading were reworded as follows:

'Heading 42

Information on the possible effects on the company's activities and profits of:

- (a) ownership of industrial property rights (patents, designs and trade marks) or use of such rights held by it or conceded (by third parties or to third parties), particularly in the form of a licence, whether or not exclusive or in the form of a contribution to third companies;
- (b) industrial commercial and financial contracts;
- (c) existence of manufacturing techniques and branded products.'

If this is accepted there will only be a brief description, without giving away industrial secrets, of factors of special importance.

As regards Heading 43, your Committee suggests that the text be made more precise so as to provide the public with details enabling it to assess the effects of the research and development policy on the activities and profits of the company; Heading 43 could therefore be reworded as follows:

'Heading 43

Details of the research and development policy for new products and techniques, amount of expenditure under that heading over the last five financial years and assessment of the effects of this policy on the company's activities and profits.

45. The wording of Heading 463 calls for some comment: reading this text might lead one to think that the issuing company's financial administration contains specific allocations of financial resources to specific investment operations.

This is certainly not the case. Although it is correct that a given loan may be contracted for a specific investment, it is none the less true that the proceeds of this loan go into the company's liquid assets, and that the investment in question is financed out of these but not from the proceeds of the loan itself - the more so, since many investments entail a corresponding increase in working capital.

The issuing company's liquid funds form an integral whole and it is out of resources as a whole that the uses to which they are put are financed. Consequently it must be clear that - as the Commission's representative has indicated - there is no requirement for the sources and utilization of funds to be made comparable, but merely to present a summary schedule of them; bearing this point in mind, your Committee feels that Heading 463 can remain unchanged.

46. As regards the comparative schedule of the annual accounts for the last 5 financial years, publication of which is required under Heading 511, your Committee would call attention to the fact that in some cases it may be necessary to make changes in this schedule, for instance when certain proceeds or charges have to be assigned to previous financial years mentioned in the prospectus.

In order to guarantee that the information appearing in this schedule is clear and accurate, your Committee thinks that the text of Heading 511 should be supplemented by the following:

'When changes occur which affect the comparability of the information contained in the prospectus, the prospectus shall make specific mention of such changes'.

47. Your rapporteur wondered whether the provision of Heading 512(2) was acceptable, namely that if more than nine months have elapsed since the end of the last financial year, the recent provisional statement which is then required need not necessarily be checked by professional accountants.

His attention was drawn to the fact that such checking might considerably increase the delays and costs of publishing the prospectus and that this is why the American Securities and Exchange Commission, known for its stringent requirements, does not require auditing of the recent accounts until at least 9 months after the last statement. He therefore considers that the wording of Heading 512 can remain unchanged.

48. As regards Heading 513, and in order to harmonize the text with that of Article 2, paragraph 3, of the fourth directive, it would be advisable, if the proposed modification requested by Parliament in its opinion on the said directive were accepted, to use the expression 'faithful picture' instead of 'a sufficiently detailed and precise view'.

49. Your Committee wondered, on considering Heading 514, whether the establishment of consolidated accounts ought not to be made compulsory; however, he thought such an obligation would be premature and that it might be more appropriate to wait until Community norms have been laid down specifying the plans and methods of assessment which must be respected when consolidated accounts are established; in this context your rapporteur urges the Commission to finish its current work on a proposed directive on this matter at an early date.

50. Your Committee would draw attention to the fact that the 10 per cent threshold referred to under Heading 52 corresponds to the one required for shareholdings which should appear in the annual accounts (Article 4, paragraph 2, of the fourth directive), which is a fully justifiable proposal.

51. With regard to Heading 53, your Committee considers that the provision of the information required there might be a source of difficulty for companies of modest size, and wonders if it might not be advisable to propose a version containing less stringent obligations.

52. In view of the fact that the proposed directive on the control of companies is supposed to define the persons competent to carry out the official audit of the accounts of limited companies, your Committee proposes to word Heading 64, Outline Plans A and B, as follows:

'Name, address, qualifications and profession of persons responsible for auditing the accounts'.

53. The information which should appear under the headings of Chapter 7 seems to extend to data the publication of which would tend to supply competitors with information to an extent intolerable to the undertaking issuing the prospectus.

However, your Committee thinks that the general rule in Heading 71 is acceptable, together with the special rules under Headings 711 and 712; he also thinks that Heading 713 can stand since the information required therein is common knowledge to competitors and necessary for providing the public with accurate information.

On the other hand, he feels that the wording of Heading 714 should be more flexible. It would not in fact be reasonable to require companies to make the state of their order books public; it would seem sufficient to require the companies to include in the prospectus:

Heading 714: 'General information on the state of the order book'.

54. The information required in the prospectus under Heading 72 should be given only insofar as it does not reveal information which might alert competitors to plans for penetrating new markets and does not prejudice the secret nature of certain information.

C. PROPOSAL FOR A RECOMMENDATION BY THE COUNCIL

55. It has already been noted (paragraph 6 above) that securities issued by States and their regional or local authorities are outside the scope of the directive (cf. Art. 1, para. 3).

The Commission, aware of the fact that the subscribers to these securities should be able to obtain the fullest possible information, has drawn up a proposal for a Council recommendation which would make the introduction of such securities onto the market subject to the publication of a prospectus containing information similar to that set out in Chapters 1 and 2 of Outline Plan B: 'Obligations'.

The Legal Affairs Committee approves this proposal and would like to stress the cohesion between these two proposals which should consequently be adopted jointly.

III CONCLUSION

56. In conclusion, your Committee would like to mention that since the planned regulations will enjoy the status of official law on market operation, and consequently be territorial in application, they should apply equally to requests for admission to quotation on a Community stock exchange of transferable securities issued by firms in third countries.

57. It should also be stressed that even when, after adoption of this directive, the Member States have taken the necessary steps to comply with the directive, companies whose shares are quoted on the stock exchange of a Member State - and which satisfy the obligations regarding publication of a prospectus prior to admission to quotation - will not be entitled to have these shares quoted on a stock exchange of another Member State.

In fact, although - as already mentioned - Article 18 lays down the provisions which the competent authorities should make in the event of simultaneous admission to quotation on stock exchanges of Member States, or of quotation on a stock exchange of a Member State of securities quoted in another Member State for less than six months, the only purpose of these provisions is to simplify operations relating to the compilation of the prospectus.

58. Of course the establishment of a common capital market resembling a national market presupposes that all the conditions covering the official quotation of securities have been coordinated, the obligation to publish a prospectus being only one condition.

It may be recalled here that in the light of the Werner Plan¹, the Council adopted a resolution of 22 March 1971², of which the following is an extract:

'In order to encourage the free circulation of capital, the Council, on a proposal from the Commission:

- has adopted a directive laying down, on the one hand, the procedures for progressive liberalization, according to which issues of transferable securities on the financial market are authorized without discrimination, and eliminating on the other hand any differential treatment as regards the introduction onto the market of transferable securities of which the issuer resides in other Member States'.

The Commission's representative told the Legal Affairs Committee that an adhoc working group had been set up to prepare such a proposal for a directive; the Legal Affairs Committee and the Committee for Economic and Monetary Affairs urge that this proposal be presented within a time-limit to be fixed by the Commission and notified to Parliament.

The Legal Affairs Committee stresses that the coordination of provisions governing official quotation of securities on a Stock Exchange for the first time cannot be considered entirely satisfactory unless it is guaranteed that, once securities meet these conditions for official quotation on a Stock Exchange in one Member State, no legal requirement can prevent them from being quoted officially on a Stock Exchange in the territory of another Member State.

59. It is therefore quite clear that although the present directive marks an important step towards the constitution of a common capital market, its essential purpose is the coordination of the guarantees required of companies in order to protect the interests of their members and others.

60. Subject to the observations set out above, the Legal Affairs Committee delivers a favourable opinion on the proposals submitted to it for consideration.

¹ Cf. OJ No. C 136, 11.11.70, particularly pages 9 and 10.

² Cf. OJ No. C 28, 27.3.71, page 3.

Opinion of the Committee on
Economic and Monetary Affairs

Draftsman: Mr. H. Kater

The Committee on Economic and Monetary Affairs appointed Mr Kater draftsman of the opinion in place of Mr Dubois on 23 March 1973.

It discussed the draft opinion at its meetings of 24/25 May and 14/15 June 1973, and adopted it unanimously at the latter meeting.

The following were present : Mr Lange, chairman; Mr Bos, vice-chairman; Sir Brandon Rhys Williams, vice-chairman; Mr Kater, draftsman; Mr Antoniozzi, Mr Artzinger, Mr Bersani, Mr Berthoin, Mr Burgbacher, Mr Creed, Mr Flämig, Mr Harmegnies, Mr Mitterdorfer, Mr Normanton, Mr Notenboom, Lord Reay, Mr Schwörer, Mr Springorum, Mr Yeats.

Since the Council issued the First Directive for the implementation of Article 67 of the Treaty¹ on 11 May 1960, followed by a second Directive 'adding to and amending the First Directive for the implementation of Article 67 of the Treaty'², there has been no further liberalisation of the movement of capital within the Community. On the contrary, recent years have seen the introduction of fresh restrictions.

The proposal for a directive and the proposal for a recommendation which form the subject of this opinion may bring us somewhat closer to a European capital market. They would do this firstly by making it easier, through a certain degree of uniformity in prospectuses, to compare the securities issued by bodies raising capital in the various countries. Furthermore the raiser of capital would, after the directive came into effect, need only to have his prospectus translated into the various languages, with exactly the same content. And lastly it would become difficult, if not impossible, for the bodies administering stock exchanges to maintain a discriminatory attitude towards securities from other Member States if the prospectus met the requirements of the directive.

The Commission's principal aim in putting forward these proposals, however, is not so much to bring about a certain liberalization of the capital market as to provide better protection of the interests of shareholders. The legal basis for the proposals is Article 54 and not Article 67 of the Treaty³.

The main task of the Committee on Economic and Monetary Affairs is to examine the former aspect, i.e. the extent to which integration of the capital markets will be facilitated by the directive.

The proposal prompts the following comments :

1) Under the first two directives for implementation of Article 67 of the Treaty, nationals of Member States of the Community may acquire securities quoted on a stock exchange in another Member State, without restriction. This makes it particularly important for the public to have access to full and accurate information about securities. In the absence of this information it would be a great deal more difficult to attract savings capital from other countries than it is inside a country, where investors usually have a better picture of the financial situation and prospects of the body raising the capital. Accurate information on the risks and advantages attached to the securities is thus a precondition for the establishment of a European capital market.

¹ OJ No. 43, 12 July 1960, p. 921

² OJ No. 9, 22 January 1963, p.62

³ An additional advantage of this is that only a qualified majority is required in the Council to adopt decisions based on Article 54.

The Commission rightly feels that information should be provided not only on the financial position, activities, assets and trading results of the undertaking, but also on any profit-sharing schemes for staff.

2) The directive sets out minimum requirements for the prospectus which must be published before securities can be officially quoted on an exchange. Member States may additionally impose more stringent requirements. This means that even after the directive has been adopted, a security quoted on an exchange in one Member State, and thus satisfying the requirements of the directive, would not automatically be accepted for quotation on the other exchanges in the Community¹, although it is precisely this that is so important for the development of a European capital market. The Commission does not want to go this far at present because :

- complete harmonisation of the requirements on prospectuses is not considered possible at this time, in view of the substantial differences that exist between the various countries;
- harmonisation of the other conditions affecting acceptance for quotation would become necessary at the same time² (such as a removal of discrimination on grounds of nationality when securities are admitted to quotation and harmonisation of the rules on the types of security - e.g. registered and bearer shares - that will be admitted).

Although the Committee on Economic and Monetary Affairs can accept these arguments to some extent, it feels that the directive could be given a slightly different objective that would bring us rather closer to the goal of integrating the capital markets of the Member States. To achieve this, the rules coming into force one year after the issuing of the directive would need to be supplemented by a series of other, more stringent provisions in the directive covering the prospectus, which would apply throughout the Community at a subsequent date (say, after three or five years) so as to achieve complete harmonisation or at least mutual recognition of the rules governing prospectuses. Securities quoted on an exchange in one Member State could then automatically be admitted to quotation on all other exchanges in the Community, provided that by then the other rules on admission to quotation had been brought into line.

¹ The Commission naturally felt this to be a drawback and hence proposes - in Article 18(2) of the directive - that in cases where admission to quotation is requested for securities admitted in another Member State less than 6 months previously, the greatest possible simplification of the formalities on publication of a prospectus should be aimed at. However, this provision in no way alters the fact that the requirements may for the time being still differ widely from one country to another.

² See also 3) below

3) In this proposal to the Council, the Commission has once again put forward a piecemeal proposal covering just one aspect of a subject that really forms an indivisible whole. It would not, of course, be practicable to present a package proposal dealing with the entire problem of creating free movement of capital, but the Commission ought to have tried to cover in its proposal the whole question of admission to quotation on an exchange; it could at least have indicated when it was thinking of making relevant proposals, and when a directive could be expected on the prospectus required to be published for securities issued by public investment companies and public investment funds (which are exempted from the scope of the directive by Article 1(2) of the proposal).

Discrimination against foreign securities is very seldom spelt out in the rules on admission to quotation. No foreign shares at all are quoted on Italian exchanges, although the rules governing these exchanges give no hint of discrimination. In Italy the Minister of Finance must give his permission before securities can be admitted to quotation. This rule applies both to Italian and foreign companies raising capital, but in practice admission is refused to the latter, at least insofar as shares are involved, without exception. This is an area where objective Community criteria need to be introduced as soon as possible.

So that the aim of automatic admission to quotation for securities quoted on an exchange in one Member State can be reached as soon as possible, The Committee on Economic and Monetary Affairs would also ask the Legal Affairs Committee, as the committee responsible, to invite, in its motion for a resolution, the Commission to present a detailed timetable fixing deadlines for the presentation of draft directives on harmonisation of the other rules on admission to quotation.

4) Quite apart from the fact that in a Community heading towards economic and monetary union there is some urgency in the matter of integrating capital markets, there is another special reason why the Commission should not in its proposal confine itself to setting out minimum requirements to be satisfied by a prospectus. The 'Resolution of the Council and Representatives of the Governments of the Member States of 22.3.1971 on the phased establishment of economic and monetary union in the Community'¹ includes a paragraph indicating that the Council was planning for this year a liberalization of the movement of capital going a good deal further than what the Commission is now proposing.

The Council decided, already in the initial stage, to issue a directive on facilitation of the free movement of capital, fixing details for phased liberalizations so that securities can be issued on the capital market

¹ OJ No. C 28, 27 March 1971, p. 1

without discrimination and ruling out any disparity in the admission to quotations of securities issued by companies or bodies registered in other Member States.¹ The Council also intended to define a procedure for the phased coordination of the capital market policy of the Member States.¹

5) The proposal for a directive was submitted before the accession of Denmark, Ireland and the United Kingdom. There is now, as the former Vice-President of the Commission, Mr Barre, said in a speech in Milan in March 1972, a sizeable 'information gap' between the United Kingdom and the United States on the one hand and continental Europe on the other. There is not always good reason to make substantial amendments to a proposal submitted prior to 1 January 1973, now that three new countries have joined the Community. But where stock exchange dealings are concerned, there is most certainly cause to study conditions in the United Kingdom more closely, for in the year 1970 the London stock exchange quoted more than 3,500 domestic and foreign shares as against about 1,400 in France, 700 in the Netherlands, 600 in the Federal Republic of Germany, 500 in Belgium, 150 in Italy and 75 in Luxembourg². This would not necessarily mean that changes must be made in the proposal. However, it would be possible - and certainly also desirable - to simplify in some measure the outline prospectus which is in certain respects excessively complicated.

6) So in the case of other directives, it must be realised in examining the present proposal that the quality of the controls exercised by the national authorities over observance of the provisions laid down in the directive will to a very great extent decide the practical value of these Community rules. These authorities differ from country to country; in some cases they are organizations constituted under public law, in others private bodies. The Commission does admittedly set out in its proposal for a directive the powers that these controlling authorities must have, but it is still uncertain whether comparable use will be made of these powers in all the Member States.

The Committee on Economic and Monetary Affairs asks the Legal Affairs Committee, as the committee responsible, to incorporate the above comments in its report.

¹ OJ No. C 28, 27 March 1971, p. 3, Section III,3

² Figures taken from the speech by Mr Barre mentioned above.