

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE

coordinating the requirements for the drawing up, scrutiny and
distribution of the prospectus to be published when
securities are offered for subscription or sale to the public

(presented by the Commission to the Council)

Com 898

Proposal for a Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public

Explanatory Memorandum

Investment in securities involves risk, like any other form of investment. The Commission considers that the best way of ensuring an adequate degree of investor protection in the face of such risk is to require appropriate information to be given to investors concerning securities and the issuers of securities. In this way, investors can be put in a position to take investment decisions in full knowledge of the facts, and can themselves make an accurate assessment of the risks involved.

Further, the provision of adequate and timely information is likely to increase investor confidence in securities markets, and the smooth and efficient functioning of such markets will be encouraged as a result.

An important step in the Community's information policy was taken with the adoption by the Council of Ministers on 17 March 1980 of Directive 80/390/EEC (1) coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing ("the Listing Particulars Directive"). In addition, the Directive coordinating conditions of admission to official stock exchange listing (79/279/EEC) (2) contains provisions relating to information to be published by issuers whose securities are admitted to official listing, in particular on the happening of exceptional events likely to have a significant effect on stock exchange prices. A further Directive is at present being discussed in a Working Party in the Council of Ministers, relating to information to be published on a regular basis by companies whose shares are admitted to official listing (3).

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- (1) O.J. N° L100 of 17/4/1980
(2) O.J. N° L 66 of 16/3/1979
(3) O.J. N° C 29 of 1/2/1979

The Commission considers, however, that an adequate information policy should not be limited to securities which are admitted to official listing. The effective protection of investors requires that information be given concerning securities and their issuers at the moment when the securities are first offered for subscription or sale to the public, whether or not the securities are subsequently admitted to official stock exchange listing. This is the aim of the present proposal.

Even in those Member States in which the market provided by the official stock exchange is the central market, a number of public offers take place outside the stock exchange, and investors do not therefore have the benefit of the safeguards which are associated with admission to official stock exchange listing. The present proposal for a Directive is designed to provide that equivalent information be given to them in such circumstances. This need is all the greater in those countries where the stock exchange is not the central market, and in which a substantial number or even the majority of public offers take place outside the stock exchange.

The interpenetration of national securities markets within the Community is an essential prerequisite for the creation of a common capital market. For such interpenetration to take place, such markets must all function properly, and provide equivalent safeguards for investors. At the present time, however, standards of investor protection on the occasion of a public offer of securities are not equivalent throughout the Community. Only five Member States (France, Belgium, Luxembourg, the United Kingdom and Ireland) require a prospectus to be published on the occasion of an offer of securities to the public and the information required to be given is of course different. In coordinating requirements in the Member States relating to the drawing up, scrutiny and distribution of the prospectus, the Directive will make safeguards available to investors equivalent throughout the Community. This in turn will contribute to the proper functioning of securities markets, and therefore to the process of interpenetration.

Interpenetration will be further encouraged by the Directive insofar as issuers will be more likely to offer their securities to the public in more than one Member State once the content of the information to be contained in the prospectus has been coordinated on a Community-wide basis. Offers of securities on a cross-border basis within the Community would be impeded by widely differing prospectus requirements from one Member State to the next. The Directive should therefore have a positive effect on the volume of such offers.

If Community rules relating to investor protection and information have to be observed only by issuers whose securities are admitted to official listing, a position of discrimination would arise as between issuers whose securities were listed on the one hand and not listed on the other. This could result in many issuers preferring not to apply for their securities to be admitted to listing. Such a development would be contrary to the Commission's policy of encouraging issuers to apply for the admission of their securities to the market provided by the official stock exchange, which represents the best safeguard for the interests of investors.

On the contrary, the coordination of the public offer prospectus should make it easier for issuers to apply for stock exchange listing for their securities. This is in view of the fact that under the provisions of the Listing Particulars Directive, the public offer prospectus can be used for the purpose of admission to the stock exchange, if it contains equivalent information to that required by that Directive, and providing that admission takes place within the twelve months following the public offer. The present proposal for a Directive will therefore make it easier for an issuer which has offered its securities to the public to apply for their admission to official stock exchange listing.

As regards the scope of the proposal for a Directive, only non-listed securities are to be covered, as the prospectus to be published concerning listed securities is dealt with by the Listing Particulars Directive. The present proposal for a Directive imposes the obligation to publish a prospectus not only on the "classical" occasion of an issuer offering its securities for subscription to the public, whether directly or by means of a financial intermediary acting on its behalf, but also where offers of sale are made by shareholders (Article 1 (1)). The scope is therefore wide, but the Directive

authorizes the competent authorities to exercise a certain power of discretion to take account of individual cases. Thus, Article 7 (1) allows the competent authorities to give partial or complete dispensations from the obligation to publish a prospectus where offers for sale are made by third parties (other than financial intermediaries) who are independent of the issuer (the most likely case would be an offer made by a major shareholder).

The Directive provides for no precise definition of a "public offer", but states that there shall in any event be considered to be a public offer where the offer is "not addressed exclusively to a restricted circle of persons", (Article 1 (2) first paragraph). The Member States are required to define "restricted circle of persons" in accordance with certain non-limitative criteria (Article 1 (2) second paragraph).

The detailed content of the information to be published is contained in the three Schedules, which relate respectively to shares, debt securities, and certificates representing shares. Such information is analogous to that contained in the Listing Particulars Directive, with suitable adaptation being made to take account of the difference in circumstances.

As the information required under the Schedules is very detailed in nature, only the issuer of the securities or a person acting on his behalf would in general be in a position to provide it. Accordingly, Article 8 (2) provides for the possibility of exemption from publishing certain information where a public offer for sale is made by e.g. a financial intermediary acting independently of the company, or by a shareholder, and where the person in question would not normally be in a position to give such information.

Articles 9 to 16 contain various possibilities of adaptation according to the particular nature of the public offer or of the issuer in question, and reflect similar provisions in the Listing Particulars Directive.

Articles 17 to 22 set out rules for the scrutiny and publication of the prospectus. In Article 17 (2) it is stated that no prospectus may be published unless it has first been approved by the competent authorities.

There is provision for cooperation between the competent authorities in the case of public offers affecting more than one Member State (Article 23), with a view to establishing, as far as possible, a common text for the prospectus to be published in each such Member State.

Finally, Article 25 provides that the Contact Committee set up under Directive 79/279/EEC shall also be the Contact Committee for the purposes of the present Directive and that it shall have similar functions.

Proposal for a Council Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public

(Submitted to the Council by the Commission on 13 January 1981)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54 (3) (g) and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas investment in securities, like any other form of investment, involves risks, and the protection of investors requires that they be put in a position to make a correct assessment of such risks so as to be able to take investment decisions in full knowledge of the facts;

Whereas the provision of adequate and complete information concerning securities and the issuers of

securities promotes the protection of investors by allowing the latter to evaluate the risks undertaken and to take decisions on their own responsibility;

Whereas, moreover, such information represents an effective means of reinforcing confidence in securities and thus contributes to the correct functioning of securities markets and to encouraging their development;

Whereas it is accordingly appropriate to establish an information policy relating to securities at Community level, and whereas such an information policy, by virtue of the safeguards that it provides to investors and its impact on the correct functioning of securities markets, is of such a nature as to promote the interpenetration of national securities markets and thus to contribute to the creation of a genuine European capital market;

Whereas the Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of

securities to official stock exchange listing⁽¹⁾ represents an important step in the implementation of such an information policy at Community level; whereas that Directive coordinates the information to be published when securities are admitted to stock exchange listing concerning the securities offered and the issuers of such securities, so as to allow investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and of the rights attaching to such securities;

Whereas such an information policy also requires that when securities are offered for subscription or sale to the public, whether or not they are subsequently admitted to stock exchange listing, similar information should be made available to investors in the form of a prospectus; whereas a coordination of the content of this prospectus is also required in order to achieve equivalence with safeguards available to investors in the various Member States and to encourage the interpenetration of national securities markets; whereas such coordination is all the more necessary in view of the fact that the public offer prospectus can also be used, in accordance with the conditions laid down by Council Directive 80/390/EEC, as stock exchange listing particulars if it contains equivalent information to that required by that Directive; whereas it is therefore appropriate to simplify the task of issuers which subsequently apply for the admission of their securities to a Community stock exchange, and to ensure that the content of the public offer prospectus should be equivalent to that of the listing particulars in all the Member States;

Whereas such coordination must apply to securities independently of the legal status of the issuing undertaking, and accordingly, in so far as this Directive applies to entities to which no reference is made in the second paragraph of Article 58 of the Treaty and goes beyond the scope of Article 54 (3) (g), it must be based also on Article 100;

HAS ADOPTED THIS DIRECTIVE:

SECTION I

General provisions

Article 1

1. This Directive shall apply to securities which are offered for subscription or sale to the public within a

⁽¹⁾ OJ No L 100, 17. 4. 1980, p. 1.

Member State provided that the securities are not admitted to official listing on a stock exchange situated or operating in that Member State.

2. For the purposes of applying this Directive, securities shall be considered to be offered for subscription or sale to the public where the offer is not addressed exclusively to a restricted circle of persons.

The Member States shall determine what is meant by 'restricted circle of persons' having regard to the number of persons to whom the offer is addressed and, if appropriate, having regard also to their nature, to the amount of the offer, and to the means of publicity used for making the offer.

Article 2

This Directive shall not apply to:

- (a) units issued by collective investment undertakings other than the closed-end type; or
- (b) securities issued by a State or by its regional or local authorities; or
- (c) securities issued in connection with a takeover offer; or
- (d) securities issued in connection with a merger involving the acquisition of another company or the formation of a new company, the division of company, the transfer of all or part of an undertaking's assets and liabilities or as consideration for the transfer of assets other than cash; or
- (e) shares allotted free of charge to holders of shares; or
- (f) shares issued in substitution for shares if the issuing of such new shares does not involve any increase in the company's issued share capital; or
- (g) shares allotted directly or indirectly to employees or to Trustees holding them on behalf of employees.

Article 3

For the purposes of applying this Directive:

- (a) 'collective investment undertakings other than the closed-end type' shall mean unit trusts and investment companies;

- the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and
 - the units of which are, at the holders' request, purchased or redeemed, directly or indirectly, out of the assets of these undertakings. Action taken by such undertakings to ensure that the stock exchange value of their units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption;
- (b) 'units of a collective investment undertaking' shall mean securities issued by a collective investment undertaking as representing the rights of participants in the assets of such an undertaking;
- (c) 'issuers' shall mean companies and other legal persons and any undertakings whose securities are offered for subscription or sale to the public;
- (d) 'net turnover' shall comprise the amounts derived from the sale of products and the provision of services falling within the undertaking's ordinary activities, after deduction of sales rebates and of value added tax and other taxes linked directly to the turnover;
- (e) 'credit institution' shall mean an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;
- (f) 'participating interests' shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds these rights;
- (g) 'annual accounts' shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

Article 4

Member States shall ensure that an offer for subscription or sale of securities to the public within their territories is conditional upon the publication of a prospectus.

The obligation to publish is incumbent upon the person making the public offer or on whose behalf the public offer is made.

Article 5

1. The prospectus shall contain the information which, according to the particular nature of the issuer of securities offered for subscription or sale to the public, and particulars of these securities, is necessary to enable investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of the rights attaching to the securities.

2. Member States shall ensure that the obligation to supply the information referred to in paragraph 1 is incumbent upon the persons responsible for the prospectus as provided for in heading 1.1 of Schedules A and B annexed hereto.

Article 6

1. Without prejudice to the obligation referred to in Article 5, Member States shall ensure that, subject to the possibilities for exemptions provided for in Articles 7 and 8, prospectuses contain, in as easily analysable and comprehensible a form as possible, at least the items of information provided for in Schedules A, B or C, depending on whether shares, debt securities or certificates representing shares are involved.

2. In the specific cases covered by Articles 9 to 16 the prospectus is to be drawn up in accordance with the specifications given in those Articles, subject to the possibilities for exemptions provided for in Articles 7 and 8.

3. Where certain headings in Schedules A, B and C appear inappropriate to the issuer's sphere of activity or legal form, a prospectus giving equivalent information shall be drawn up by adapting these headings.

Article 7

Member States may allow the authorities responsible for checking the prospectus within the meaning of this Directive (hereinafter referred to as 'the competent authorities') to provide for partial or complete exemption from the obligation to publish a prospectus in the following cases:

1. where the securities are not offered by the issuer or by financial intermediaries;
2. where the securities offered are:

- (a) shares resulting from the conversion of convertible debt securities or shares created after an exchange for exchangeable debt securities; or
- (b) shares resulting from the exercise of the rights conferred by warrants;

and, where appropriate, the information provided for in Chapter 2 of Schedule A is published in accordance with Article 19 and Article 20 (1);

3. where the securities offered are:

- (a) shares of which either the number or the nominal value or, in the absence of a nominal value, the accounting par value, amounts to less than 10 % of the number or of the corresponding value of shares of the same class as have already been offered to the public in the Member State where the offer is made, and of which the nominal value, or in the absence of a nominal value, the accounting par value, is in any event less than 25 000 UA;
- (b) debt securities issued by companies and other legal persons which are nationals of a Member State and which
 - in carrying on their business, benefit from State monopolies, and
 - are set up or governed by a special law or pursuant to such a law or whose borrowings are unconditionally and irrevocably guaranteed by a Member State or one of a Member State's federated States; or
- (c) debt securities issued by legal persons, other than companies, which are nationals of a Member State and
 - are set up by special law, and
 - the activities of which are governed by that law and consist solely in:
 - (i) raising funds under State control through the issue of debt securities, and
 - (ii) financing production by means of the resources which they have raised and resources provided by a Member State, and
 - the debt securities of which are, for the purposes of admission to official listing, considered as debt securities issued or guaranteed by the State; or
- (d) supplementary certificates representing shares issued in exchange for the original securities, where the issuing of such new certificates has not brought about any increase in the company's issued share capital, provided that a document which the competent authorities consider to contain equivalent information to that contained in the prospectus required by this Directive and relating to the certificates representing such shares has already been published in the same Member State as that in which the offer to the public is made;

and where

- in all the cases referred to in the points mentioned above information concerning the number and type of securities to be offered and the circumstances in which such securities have been issued has been published in accordance with Article 19 and Article 20 (1).

Article 8

1. The competent authorities may authorize omission from the prospectus of certain information provided for by this Directive if they consider that:

- (a) such information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer; or
- (b) disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer, provided that, in the latter case, such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

2. Where the person making the offer is a person other than the issuer or a person acting on his behalf, the competent authorities may authorize omission from the prospectus of certain information which would not normally be in his possession.

SECTION II

Contents of the prospectus in certain specific cases

Article 9

1. Where the offer relates to shares offered to shareholders of the issuer on a preemptive basis, the

competent authorities may provide that the prospectus shall contain only the information provided for by Schedule A:

- in Chapter 1;
- in Chapter 2;
- in Chapter 3, headings 3.1.0, 3.1.5, 3.2.0, 3.2.1, 3.2.6, 3.2.7, 3.2.8, and 3.2.9;
- in Chapter 4, headings 4.2, 4.4, 4.5, 4.7.1, and 4.7.2;
- in Chapter 5, headings 5.1.4, 5.1.5, and 5.5;
- in Chapter 6, headings 6.1, 6.2.0, 6.2.1, 6.2.2, 6.2.3; and
- in Chapter 7.

Where the shares referred to in the first subparagraph are represented by certificates, the prospectus shall contain, at least, subject to Article 15 (2) and (3), in addition to the information mentioned in that subparagraph, that provided for in Schedule C:

- in Chapter 1, headings 1.1, 1.3, 1.4, 1.6, and 1.8; and
- in Chapter 2.

2. Where the offer relates to convertible debt securities, exchangeable debt securities or debt securities with warrants which are offered on a preemptive basis to the shareholders of the issuer, the competent authorities may provide that the prospectus shall contain only:

- information concerning the nature of the shares offered by way of conversion, exchange or subscription and the rights attaching thereto;
- the information provided for in Schedule A and mentioned above in the first subparagraph of paragraph 1, except for that provided for in Chapter 2 of that Schedule;
- the information provided for in Chapter 2 of Schedule B; and
- the conditions of and procedures for conversion, exchange and subscription and the situations in which they may be amended.

3. The annual accounts for the latest financial year must be published and be made permanently available to the public in the same way as the prospectus referred to in paragraphs 1 and 2.

4. Where the issuer prepares both own and consolidated annual accounts, both sets of accounts must be published and be made permanently available to the public. However, the competent authorities may allow the issuer to publish and make

permanently available to the public either the own or the consolidated accounts alone, provided that the accounts not published and made permanently available to the public furnish to material additional information.

Article 10

1. Where the offer relates to debt securities which are neither convertible, exchangeable, nor accompanied by warrants and are issued by an undertaking which has securities listed on a stock exchange situated or operating in the Member State where the offer is made, the competent authorities may provide that the prospectus shall contain only the information provided for by Schedule B:

- in Chapter 1;
- in Chapter 2;
- in Chapter 3, headings 3.1.0, 3.1.5, 3.2.0, and 3.2.2;
- in Chapter 4, heading 4.3;
- in Chapter 5, headings 5.1.2, 5.1.3, 5.1.4 and 5.4;
- in Chapter 6; and
- in Chapter 7.

2. The annual accounts for the latest financial year must be published and be made permanently available to the public in the same way as the prospectus referred to in paragraph 1.

3. Where the issuer prepares both own and consolidated annual accounts, both sets of accounts must be published and be made permanently available to the public. However, the competent authorities may allow the issuer to publish and make permanently available to the public either the own or the consolidated accounts alone, provided that the accounts not published and made permanently available to the public furnish no material additional information.

Article 11

1. Where the offer relates to securities issued by financial institutions, the prospectus must contain:

- at least the information specified in Chapters 1, 2, 3, 5 and 6 of Schedules A or B, according to whether the issue is of shares or debt securities, and
- information adapted, in accordance with the rules laid for that purpose by national law or by the

competent authorities, to the particular nature of the issuer of the securities in question and at least equivalent to that specified in Chapters 4 and 7 of Schedules A or B.

2. Member States shall determine the financial institutions to be covered by this Article.

3. The arrangements laid down by this Article may be extended to:

- collective investment undertakings whose units are not excluded from the scope of this Directive by Article 2 (a),
- finance companies engaging in no activity other than raising capital to make it available to their parent company or to undertakings affiliated to that company; and
- companies holding portfolios of securities, licences or patents and engaging in no activity other than the management of such portfolios.

Article 12

1. Where the offer relates to debt securities issued in a continuous or repeated manner by credit institutions which regularly publish their annual accounts and which, within the Community, are set up or governed by a special law, or pursuant to such a law, or are subject to public supervision designed to protect savings, the Member States may provide that the prospectus shall contain only:

- the information provided for in heading 1.1 and Chapter 2 of Schedule B; and
- information concerning any events of importance for the assessment of the securities in question which have occurred since the end of the financial year in respect of which the last annual accounts were published. Such accounts must be made available to the public at the issuer's offices and at those of the financial organizations retained to act as the latter's paying agents.

2. Where the debt securities referred to in paragraph 1 are issued at very short intervals, the Member States may provide that the prospectus shall only contain information on the characteristics of such debt securities.

Article 13

1. Where the offer relates to debt securities guaranteed by a legal person, the prospectus must include:

- with respect to the issuer, the information provided for in Schedule B; and
- with respect to the guarantor, the information provided for in heading 1.3 and Chapters 3 to 7 of that Schedule.

Where the issuer or guarantor is a financial institution, the part of the prospectus relating to that financial institution shall be drawn up in accordance with Article 11.

2. When the issuer of the guaranteed debt securities is a finance company within the meaning of Article 11 (3), the prospectus must include:

- with respect to the issuer, the information provided for in Chapters 1, 2 and 3 and in headings 5.1.0 to 5.1.5 and 6.1 of Schedule B; and
- with respect to the guarantor, that provided for in heading 1.3 and Chapters 3 to 7 of that Schedule.

3. Where there is more than one guarantor, the information specified shall be required of each one; however, the competent authorities may allow abridgement of this information with a view to achieving greater comprehensibility of the prospectus.

4. The guarantee contract must, in the cases referred to in paragraphs 1, 2 and 3, be made available for inspection by the public at the offices of the issuer and at those of the financial organizations retained to act as the latter's paying agents. Copies of the contract shall be provided to any person concerned on request.

Article 14

1. Where the offer relates to convertible debt securities, exchangeable debt securities or debt securities with warrants, the prospectus must include:

- information concerning the nature of the shares offered by way of conversion, exchange or subscription, and the rights attaching thereto;
- the information provided for in heading 1.3 and Chapters 3 to 7 of Schedule A,
- the information provided for in Chapter 2 of Schedule B; and
- the conditions of and procedures for conversion, exchange or subscription and details of the situations in which they may be amended.

2. When the issuer of the convertible debt securities, the exchangeable debt securities or the debt securities with warrants is not the issuer of the shares, the prospectus must include:

information concerning the nature of the shares offered by way of conversion, exchange or subscription and the rights attaching thereto; and

- in respect of the issuer of the securities, the information provided for in Schedule B;
- in respect of the issuer of the shares, that provided for in heading 1.3 and Chapters 3 to 7 of Schedule A; and
- the conditions of and procedures for conversion, exchange or subscription and details of the situations in which they may be amended.

However, where the issuer of the debt securities is a finance company within the meaning of Article 11 (3), the prospectus need contain, in relation to that company, only the information provided for in Chapters 1, 2 and 3 and headings 5.1.0 to 5.1.5 and 6.1 of Schedule B.

Article 15

1. Where the offer relates to certificates representing shares, the prospectus must contain the information, as regards certificates, provided for in Schedule C and the information, as regards the shares represented, provided for in Schedule A.
2. However, the competent authorities may relieve the issuer of the certificates of the requirement to publish details of its own financial position, when the issuer is:
 - a credit institution which is a national of a Member State and is set up or governed by a special law or pursuant to such law or is subject to public supervision designed to protect savings; or
 - a subsidiary 95 % or more of which is owned by a credit institution within the meaning of the preceding indent, the commitments of which towards the holders of certificates are unconditionally guaranteed by that credit institution and which is subject, *de jure* or *de facto*, to the same supervision; or
 - an 'Administratiekantoor' in the Netherlands governed, for the safe custody of the original securities, by special regulations laid down by the competent authorities.
3. In the case of certificates issued by a securities transfer organization or by an auxiliary institution set up by such organization, the competent authorities may dispense with the publication of the information provided for in Chapter 1 of Schedule C.

Article 16

1. Where the offer relates to debt securities which benefit, as regards both repayment of the loan and the payment of interest, from the unconditional and irrevocable guarantee of a State or of one of a State's federated States, national legislation or the competent authorities may authorize the abridgement of the information provided for in Chapters 3 and 5 of Schedule B.

2. The possibility of abridgement provided for in paragraph 1 may also be applied to companies set up or governed by a special law or pursuant to such law which have the power to levy charges on their consumers.

SECTION III

Arrangements for the scrutiny and publication of the prospectus

Article 17

1. Member States shall appoint one or more competent authorities and shall notify the Commission of the appointments of such authorities, giving details of any division of powers among them. Member States shall also ensure that this Directive is applied.
2. No prospectus may be published until it has been approved by the competent authorities.
3. The competent authorities shall approve the publication of the prospectus only if they are of the opinion that it satisfies all the requirements set out in this Directive.

Member States shall ensure that the competent authorities have the powers necessary for them to carry out their task.
4. This Directive shall not affect the competent authorities' liability, which shall continue to be governed solely by the national law.

Article 18

The competent authorities shall decide whether to accept the audit report of the official auditor provided for in heading 1.3 of Schedules A and B or, if necessary, to require an additional report.

The requirement for the additional report must be the outcome of an examination of each case on its merits. At the request of the official auditor and/or of the issuer, the competent authorities must disclose to them the reasons justifying this requirement.

Article 19

The prospectus must be published and be made permanently available to the public in accordance with conditions laid down by the Member State in which the offer to the public is made.

Article 20

1. The prospectus must be published no later than the time of opening of the offer.

Moreover, where the offer is preceded by trading of the preemptive subscription rights, the prospectus must be published within a reasonable period, to be laid down by the competent authorities, before such trading starts.

2. In exceptional, properly justified cases, the competent authorities may allow the postponement of the publication of the prospectus until after the date of the opening of trading in preemptive subscription rights.

Article 21

Where a prospectus is, or will be, published in accordance with Articles 1 and 4, the notices, bills, posters and documents announcing the offer and indicating the essential characteristics of the securities, and all other documents relating to the offer and intended for publication by or on behalf of the person responsible for the prospectus, must first be communicated to the competent authorities. The latter shall decide whether they should be submitted to scrutiny before publication.

The abovementioned documents and also the application form must state that the prospectus exists and indicate where it is being, or will be published in accordance with Article 19.

Article 22

Every significant new factor capable of affecting assessment of the securities which arises between the time when the prospectus is adopted and the time

when the offer is closed shall be covered by a supplement to the prospectus, scrutinized in the same way as the latter and published in accordance with procedures to be laid down by the competent authorities.

SECTION IV

Cooperation between the Member States

Article 23

1. Where offers of the same securities are made simultaneously, or within short intervals of one another within several Member States, the competent authorities shall exchange information and use their best endeavours to achieve maximum coordination of their requirements concerning the prospectus, to avoid a multiplicity of formalities and to agree to a single text requiring at the most translation, where appropriate, and the issue of supplements as necessary to meet the individual requirements of each Member State concerned.

2. Where an offer is made in a Member State of securities which have been offered in another Member State less than six months previously, the competent authorities of the former Member State shall contact the competent authorities of the latter and shall, as far as possible, exempt the issuer of those securities from the preparation of a new prospectus, subject to any need for updating, translation or the issue of supplements in accordance with the individual requirements of the Member State concerned.

Article 24

1. Member States shall provide that all persons employed or formerly employed by the competent authorities shall be bound by professional secrecy. This means that any confidential information received in the course of their duties may not be divulged to any person or authority except by virtue of provisions laid down by law.

2. Paragraph 1 shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

SECTION V

Contact Committee

Article 25

1. The Contact Committee set up by Article 20 of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (⁽¹⁾), shall also have as its function:

- (a) without prejudice to Articles 169 and 170 of the EEC Treaty to facilitate the harmonized implementation of this Directive through regular consultations on any practical-problems arising from its application on which exchanges of views are deemed useful;
- (b) to facilitate consultation between the Member States on the supplements and improvements to the prospectus which the competent authorities are entitled to require or recommend at national level;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive or on any adaptation to be made in accordance with Article 26.

2. It shall not be the function of the Contact Committee to appraise the merits of decisions taken by the competent authorities in individual cases.

Article 26

1. For the purpose of adjusting, in the light of economic requirements, the amount referred to in Article 7 (3) (a), the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion within the period laid down by its chairman. Its decisions shall require

41 votes in favour, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty.

2. When the Committee has delivered an opinion in favour of the draft of the measures envisaged by the Commission the latter shall adopt them.

Where the opinion of the Committee is not in accordance with the draft of the measures envisaged by the Commission or where the Committee has not delivered an opinion within the required period, the Commission shall without delay lay before the Council, which shall act by qualified majority, a proposal concerning the measures to be taken.

Where the Council fails to act on the proposal within three months of its receipt, the measures proposed shall be adopted by the Commission.

SECTION VI

Final provisions

Article 27

1. Member States shall take the measures necessary to comply with this Directive on or before They shall forthwith inform the Commission thereof.

2. As from the notification of this Directive, the Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 28

This Directive is addressed to the Member States.

(¹) OJ No L 66, 16. 3. 1979, p. 21.

ANNEX

SCHEDULE A

LAYOUT FOR THE PROSPECTUS FOR AN OFFER FOR SUBSCRIPTION OR SALE TO THE PUBLIC OF SHARES*Chapter 1***Information concerning those responsible for the prospectus and the auditing of accounts**

- 1.1. Name and function of natural persons and name and registered office of legal persons responsible for the prospectus or, as the case may be, for certain parts of it, with, in the latter case, and indication of those parts.
- 1.2. Declaration by those responsible referred to in heading 1.1 that, to the best of their knowledge, the information given in that part of the prospectus for which they are responsible is in accordance with the facts and contains no omissions likely to affect the import of the prospectus.

- 1.3. Names, addresses and qualifications of the official auditors who have audited the company's annual accounts for the preceding three financial years in accordance with national law.

Statement that the annual accounts have been audited. If audit reports on the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications shall be reproduced in full and the reasons given.

Indication of other information in the prospectus which has been audited by the auditors.

*Chapter 2***Information concerning the offer for subscription or sale to the public and the shares being offered**

- 2.1. Information concerning the shares being offered for subscription or sale to the public:
 - 2.1.0. Indication of the resolutions, authorizations and approvals by virtue of which the shares have been or will be created and/or issued.

Nature of the issue and amount thereof.

Number of shares which have been or will be created/or issued, if predetermined.
 - 2.1.1. A concise description of the rights attaching to the shares, and in particular the extent of the voting rights, entitlement to share in the profits and to share in any surplus in the event of liquidation and any privileges.

Time-limit after which dividend entitlement lapses and indication of the party in whose favour this entitlement operates.
 - 2.1.2. Tax on the income from the shares withheld at source in the country of origin and/or the country where the offer is made.

Indication as to whether the issue assumes responsibility for the withholding of tax at source.
 - 2.1.3. Arrangements for transfer of the shares and any restrictions on their free negotiability (e.g. clause establishing approval requirement).
 - 2.1.4. Date on which entitlement to dividends arises.
 - 2.1.5. The stock exchanges where admission to official listing is or will be sought.

- 2.1.6. The financial organizations which are the paying agents of the issuer in the Member State where the offer takes place.
- 2.2. Information concerning the issue of the shares being offered to the public:
 - 2.2.0. Indication of the exercise of the right of preemption of shareholders or of the restriction or withdrawal of such right.

Indication, where applicable, of the reasons for restriction or withdrawal of such right; in such cases, justification of the issue price, where an issue is for cash; indication of the beneficiaries if the restriction or withdrawal of the right of preemption is intended to benefit specific persons.
 - 2.2.1. The total amount of the issue and the number of shares offered, where applicable by category.
 - 2.2.2. If the issue was or is being made simultaneously on the markets of two or more States and if a tranche has been or is being reserved for certain of these, indication of any such tranche.
 - 2.2.3. The issue price or the offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalized; the issue premium and the amount of any expenses specifically charged to the subscriber or purchaser.

The methods of payment of the price, particularly as regards the paying-up of shares which are not fully paid.
 - 2.2.4. The procedure for the exercise of any right of pre-emption; the negotiability of subscription rights; the treatment of subscription rights not exercised.
 - 2.2.5. Period of the opening of the subscription for shares, and names of the organizations responsible for receiving the public's subscriptions.
 - 2.2.6. Methods of and time-limits for delivery of the shares, possible creation of provisional certificates.
 - 2.2.7. Names, addresses and description of the natural or legal persons underwriting or guaranteeing the issue for the issuer. Where not all of the issue is underwritten or guaranteed, a statement of the portion not covered.
 - 2.2.8. Indication or estimate of the overall amount and/or of the amount per share of the charges relating to the issue operation, stating the total remuneration of the financial intermediaries, including the underwriting commission or margin, guarantee commission, placing commission or selling agent's commission.
 - 2.2.9. Net proceeds accruing to the issuer from the issue and intended application of such proceeds, e.g., to finance the investment programme or to strengthen the issuer's financial position.
- 2.3. Information concerning the offer for subscription or sale to the public:
 - 2.3.0. Description of the shares being offered, and in particular the number of shares and nominal value per share, or, in the absence of nominal value, the accounting par value or the total nominal value, the exact designation or class, and coupons attached.
 - 2.3.1. If shares of the same class are already listed on one or more stock exchanges, indication of these stock exchanges.
 - 2.3.2. If shares of the same class have not been admitted to official listing but are dealt in on one or more other markets which are subject to regulation, are in regular operation and are recognized and open, indication of such markets.
 - 2.3.3. Indication of any of the following which have occurred during the last financial year and the current financial year:
 - public takeover offers by third parties in respect of the issuer's shares
 - public takeover offers by the issuer in respect of other companies' shares.

The price or exchange terms attaching to such offers and the outcome thereof are to be stated.
- 2.4. If, simultaneously or almost simultaneously with the creation of the shares being offered, shares of the same class are subscribed for or placed privately or if shares of other classes are

created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the shares to which they relate.

Chapter 3

General information about the issuer and its capital

- 3.1. General information about the issuer:
 - 3.1.0. Name, registered office and principal administrative establishment if different from the registered office.
 - 3.1.1. Date of incorporation and the length of life of the issuer, except where indefinite.
 - 3.1.2. Legislation under which the issuer operates and legal form which it has adopted under that legislation.
 - 3.1.3. Indication of the issuer's objects and reference to the clause of the memorandum of association in which they are described.
 - 3.1.4. Indication of the register and of the entry number therein.
 - 3.1.5. Indication of where the documents concerning the issuer which are referred to in the prospectus may be inspected.
 - 3.2. General information about the capital:
 - 3.2.0. The amount of the issued capital, the number and classes of the shares of which it is composed with details of their principal characteristics; the part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the shares not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
 - 3.2.1. Where there is authorized but unissued capital or an undertaking to increase the capital, *inter alia* in connection with convertible loans issued or subscription options granted, indication of:
 - the amount of such authorized capital or capital increase and, where appropriate, the duration of the authorization;
 - the categories of persons having preferential subscription rights for such additional portions of capital;
 - the terms and arrangements for the share issue corresponding to such portions.
 - 3.2.2. If there are shares not representing capital, the number and main characteristics of such shares are to be stated.
 - 3.2.3. The amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
 - 3.2.4. Conditions imposed by the memorandum and articles of association governing changes in the capital and in the respective rights of the various classes of shares, where such conditions are more stringent than is required by law.
 - 3.2.5. Summary description of the operations during the three preceding years which have changed the amount of the issued capital and/or the number and classes of shares of which it is composed.
 - 3.2.6. As far as they are known to the issuer, indication of the natural or legal persons who, directly or indirectly, severally or jointly, exercise or could exercise control over the issuer, and particulars of the proportion of the capital held giving a right to vote.

Joint control shall mean control exercised by more than one company or by more than one person having concluded an agreement which may lead to their adopting a common policy in respect of the issuer.
- 3.2.7. Insofar as they are known to the issuer, indication of the shareholders who, directly or indirectly, hold a proportion of the issuer's capital which the Member States may not fix at more than 20 %.

- 3.2.8. If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.
- 3.2.9. Number, book value and nominal value or, in the absence of a nominal value, the accounting par value of any of its own shares which the issuer or another company in which it has a direct or indirect holding of more than 50 % has acquired and is holding, if such securities do not appear as a separate item on the balance sheet.

Chapter 4

Information concerning the issuer's activities

- 4.1. The issuer's principal activities:
- 4.1.0. Description of the issuer's principal activities, stating the main categories of products sold and/or services performed.
- Indication of any significant new products and/or activities.
- 4.1.1. Breakdown of net turnover during the past three financial years by categories of activity and into geographical markets insofar as, taking account of the manner in which the sale of products and the provision of services falling within the issuer's ordinary activities are organized, these categories and markets differ substantially from one another.
- 4.1.2. Location and size of the issuer's principal establishments and summary information about real estate owned. Any establishment which accounts for more than 10 % of turnover or production shall be considered a principal establishment.
- 4.1.3. For mining, extraction of hydrocarbons, quarrying and similar activities insofar as significant, description of deposits, estimate of economically exploitable reserves and expected period of working.
- Indication of the periods and main terms of concessions and the economic conditions for working them.
- Indication of the progress of actual working.
- 4.1.4. Where the information given pursuant to headings 4.1.0 to 4.1.3 has been influenced by exceptional factors, that fact should be mentioned.
- 4.2. Summary information regarding the extent to which the issuer is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the issuer's business or profitability.
- 4.3. Information concerning policy on the research and development of new products and processes over the past three financial years, where significant.
- 4.4. Information on any legal or arbitration proceedings which may have or have had a significant effect on the issuer's financial position in the recent past.
- 4.5. Information on any interruptions in the issuer's business which may have or have had a significant effect on the issuer's financial position in the recent past.
- 4.6. Average numbers employed and changes therein over the past three financial years, if such changes are material, with, if possible, a breakdown of persons employed by main categories of activity.
- 4.7. Investment policy:
- 4.7.0. Description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings over the past three financial years and the months already elapsed of the current financial year.

- 4.7.1. Information concerning the principal investments being made with the exception of interests being acquired in other undertakings.
- Distribution of these investments geographically (home and abroad).
- Method of financing (internal or external).
- 4.7.2. Information concerning the issuer's principal future investments, with the exception of interests to be acquired in other undertakings on which its management bodies have already made firm commitments.

Chapter 5

Information concerning the issuer's assets and liabilities, financial position and profits and losses

- 5.1. Accounts of the issuer:
- 5.1.0. The last three balance sheets and profit and loss accounts drawn up by the company set out as a comparative table. The notes on the annual accounts for the last financial year.
- The draft prospectus must be filed with the competent authorities not more than 18 months after the end of the financial year to which the last annual accounts published relate. The competent authorities may extend that period in exceptional cases.
- 5.1.1. If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus in accordance with heading 5.1.0.
- If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the prospectus in accordance with heading 5.1.0. However, the competent authorities may allow the issuer to include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.
- 5.1.2. The profit or loss per share of the issuing company, for the financial year, arising out of the company's ordinary activities, after tax, for the latest three financial years, where the company includes its own annual accounts in the prospectus.
- Where the issuer includes only consolidated annual accounts in the prospectus, it shall indicate the consolidated profit or loss per share, for the financial year, for the latest three financial years. This information shall appear in addition to that provided in accordance with the preceding subparagraph where the issuer also includes its own annual accounts in the prospectus.
- If in the course of the abovementioned period of three financial years the number of shares in the issuing company has changed as a result, for example, of an increase or decrease in capital or the rearrangement or splitting of shares, the profit or loss per share referred to in the first and second paragraph above shall be adjusted to make them comparable; in that event the adjustment formulae used shall be disclosed.
- 5.1.3. The amount of the dividend per share for the latest three financial years, adjusted, if necessary, to make it comparable in accordance with the third subparagraph of heading 5.1.2.
- 5.1.4. Where more than nine months have elapsed since the end of the financial year to which the last published own annual and/or consolidated annual accounts relate, an interim financial statement covering at least the first six months shall be included in the prospectus or appended to it. If such an interim financial statement is unaudited, that fact must be stated.
- Where the issuer prepares consolidated annual accounts, the competent authorities shall decide whether the interim financial statement to be submitted must be consolidated or not.
- Any significant change which has occurred since the end of the last financial year or the preparation of the interim financial statement must be described in a note inserted in the prospectus or appended thereto.
- 5.1.5. If the own or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do not give a true and fair view of the issuer's assets and liabilities, financial position and profits and losses, more detailed and/or additional information must be given.

5.1.6. A table showing the sources and application of funds over the past three financial years.

5.2. Individual details listed below relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

The items of information listed below must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 10 % of the capital and reserves or accounts for at least 10 % of the net profit or loss of the issuer or, in the case of a group, if the book value of that participating interest represents at least 10 % of the consolidated net assets or accounts for at least 10 % of the consolidated net profit or loss of the group.

The items of information listed below need not be given provided that the issuer proves that its holding is of a purely provisional nature.

Similarly, the information required under points (e) and (f) may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts.

Pending subsequent coordination of provisions relating to consolidated annual accounts, the Member States may authorize the competent authorities to permit the omission of the information prescribed in points (d) to (j) if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that, in the opinion of the competent authorities, the omission of that information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the security in question.

The information provided for under points (g) and (j) may be omitted if in the opinion of the competent authorities, such omission does not mislead investors.

- (a) Name and registered office of the undertaking.
- (b) Field of activity.
- (c) Proportion of capital held.
- (d) Issued capital.
- (e) Reserves.
- (f) Profit or loss arising out of ordinary activities, after tax, for the last financial year.
- (g) Value at which the issuer is obliged to publish the prospectus shows shares held in its accounts.
- (h) Amount still to be paid up on shares held.
- (i) Amount of dividends received in the course of the last financial year in respect of shares held.
- (j) Amount of the debts owed to and by the issuer with regard to the undertaking.

5.3. Individual details relating to the undertakings not referred to in heading 5.2 in which the issuer holds at least 10 % of the capital. These details may be omitted when they are of negligible importance for the purpose of the objective set in Article 5 of this Directive:

- (a) name and registered office of the undertaking.
- (b) proportion of capital held.

5.4. Where the prospectus comprises consolidated annual accounts, disclosure:

- (a) of the consolidation principles applied. These shall be described explicitly where the Member State has no laws governing the consolidation of annual accounts or where such principles are not in conformity with such laws or with a generally accepted method in use in the Member State where the offer is made;
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, the financial position and the profits and losses of the issuer. It is sufficient to distinguish them by a sign in the list of undertakings of which details are required in heading 5.2;

- (c) for each of the undertakings referred to in (b):
- the total proportion of third-party interests, if annual accounts are consolidated globally;
 - the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a *pro rata* basis.
- 5.5. Where the issuer is a dominant undertaking forming a group with one or more dependent undertakings, the details provided for in Chapters 4 and 7 shall be given for that issuer and group.
- The competent authorities may permit the provision of that information for the issuer alone or for the group alone, provided that the details which are not provided are not material.
- 5.6. If certain information provided for under Schedule A is given in the annual accounts provided in accordance with this Chapter, it need not be repeated.

Chapter 6

Information concerning administration, management and supervision

- 6.1. Names, addresses and functions in the issuing company of the following persons and an indication of the principal activities performed by them outside that company where these are significant with respect to that company:
- (a) members of the administrative, management or supervisory bodies;
 - (b) partners with unlimited liability, in the case of a limited partnership with a share capital;
 - (c) founders, if the company has been established for fewer than five years.
- 6.2. Interests of the members of the administrative, management and supervisory bodies in the issuing company:
- 6.2.0. Remuneration paid and benefits in kind granted, during the last completed financial year under any heading whatsoever, and charged to overheads or the profit appropriation account, to members of the administrative, management and supervisory bodies, these being total amounts for each category of body.
- The total remuneration paid and benefits in kind granted to all members of the administrative, management and supervisory bodies of the issuer by all the dependent undertakings with which it forms a group must be indicated.
- 6.2.1. Total number of shares in the issuing company held by the members of its administrative, management and supervisory bodies and options granted to them on the company's shares.
- 6.2.2. Information about the nature and extent of the interests of members of the administrative, management and supervisory bodies in transactions effected by the issuer which are unusual in their nature or conditions (such as purchases outside normal activity, acquisition or disposal of fixed asset items) during the preceding financial year and the current financial year. Where such unusual transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given.
- 6.2.3. Total of all the outstanding loans granted by the issuer to the persons referred to in heading 6.1 (a) and also of any guarantees provided by the issuer for their benefit.
- 6.3. Schemes for involving the staff in the capital of the issuer.

*Chapter 7***Information concerning the recent development and prospects of the issuer**

- 7.1. Except in the event of a derogation granted by the competent authorities, general information on the trend of the issuer's business since the end of the financial year to which the last published annual accounts relate, in particular:
- the most significant recent trends in production, sales and stocks and the state of the order book, and
 - recent trends in costs and selling prices.
- 7.2. Except in the event of a derogation granted by the competent authorities, information on the issuer's prospects for at least the current financial year.

SCHEDULE B

LAYOUT FOR THE PROSPECTUS FOR AN OFFER FOR SUBSCRIPTION OR SALE TO THE PUBLIC OF DEBT SECURITIES*Chapter 1***Information concerning those responsible for the prospectus and the auditing of accounts**

- 1.1. Names and addresses of the natural or legal persons responsible for the prospectus or, as the case may be, for certain parts of it with, in the latter case, an indication of those parts.
- 1.2. Declaration by those responsible, as referred to in heading 1.1, that, to the best of their knowledge, the information given in that part of the prospectus for which they are responsible is in accordance with the facts and contains no omissions likely to affect the import of the prospectus.
- 1.3. Names, addresses and qualifications of the official auditors who have audited the annual accounts for the preceding three financial years in accordance with national law.
- Statement that the annual accounts have been audited. If audit reports on the annual accounts have been refused by the official auditors or if they contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given.
- Indication of other information in the prospectus which has been audited by the auditors.

*Chapter 2***Information concerning loans and the offer for subscription or sale to the public of debt securities**

- 2.1. Conditions of the loan:
- 2.1.0. The nominal amount of the loan; if this amount is not fixed, a statement to this effect must be made.
- The nature, number and numbering of the debt securities and the denominations.

- 2.1.1. Except in the case of continuous issues, the issue and redemption prices and the nominal interest rate; if several interest rates are provided for, an indication of the conditions for changes in the rate.
 - 2.1.2. Procedures for the allocation of any other advantages; the method of calculating such advantages.
 - 2.1.3. Tax on the income from the debt securities withheld at source in the country of origin and/or the country where the offer is made.
Indication as to whether the issuer assumes responsibility for the withholding of tax at source.
 - 2.1.4. Arrangements for the amortization of the loan, including the repayment procedures.
 - 2.1.5. The financial organizations which are the paying agents of the issuer in the Member State where the offer takes place.
 - 2.1.6. Currency of the loan; if the loan is denominated in units of account, the contractual status of these; currency option.
 - 2.1.7. Time limits:
 - (a) period of the loan and any interim due dates;
 - (b) the date from which interest becomes payable and the due dates for interest;
 - (c) the time limit on the validity of claims to interest and repayment of principal;
 - (d) procedures and time limits for delivery of the debt securities, possible creation of provisional certificates.
 - 2.1.8. Except in the case of continuous issues, an indication of yield. The method whereby that yield is calculated shall be described in summary form.
- 2.2. Legal information:
 - 2.2.0. Indication of the resolutions, authorizations and approvals by virtue of which the debt securities have been or will be created and/or issued.
Type of operation and amount thereof.
Number of debt securities which have been or will be created and/or issued, if predetermined.
 - 2.2.1. Nature and scope of the guarantees, sureties and commitments intended to ensure that the loan will be duly serviced as regards both the repayment of the debt securities and the payment of interest.
Indication of the places where the public may have access to the texts of the contracts relating to these guarantees, sureties and commitments.
 - 2.2.2. Organization of trustees or of any other representation for the body of debt security holders.
Name and function and description and head office of the representative of the debt security holders, the main conditions of such representation and in particular the conditions under which the representative may be replaced.
Indication of where the public may have access to the contracts relating to these forms of representation.
 - 2.2.3. Mention of clauses subordinating the loan to other debts of the issuer already contracted or to be contracted.
 - 2.2.4. Indication of the legislation under which the debt securities have been created and of the courts competent in the event of litigation.
 - 2.2.5. Indication as to whether the debt securities are registered or bearer.
 - 2.2.6. Any restrictions on the free transferability of the debt securities.
 - 2.3. Information concerning the offer for subscription or sale to the public:
 - 2.3.0. The stock exchanges where admission to official listing is or will be sought.

- 2.3.1. Names, addresses and description of the natural or legal persons underwriting or guaranteeing the issue for the issuer. Where not all of the issue is underwritten or guaranteed, statement of the portion not covered.
- 2.3.2. If the issue was or is being made simultaneously on the markets of two or more States and if a tranche has been or is being reserved for certain of these, indication of any such tranche.
- 2.4. Information concerning the issue of the debt securities being offered to the public:
 - 2.4.0. The procedure for the exercise of any right of pre-emption; the negotiability of subscription rights; the treatment of subscription rights not exercised.
 - 2.4.1. Method of payment of the issue or offer price.
 - 2.4.2. Except in the case of continuous debt security issues, period of the opening of the issue or offer and any possibilities of early closure.
 - 2.4.3. Indication of the organizations responsible for receiving the public's subscriptions.
 - 2.4.4. Reference, where necessary, to the fact that the subscriptions may be reduced.
 - 2.4.5. Except in the case of continuous debt security issues, indication of the net proceeds of the loan.
 - 2.4.6. Purpose of the issue and intended application of its proceeds.

Chapter 3

General information about the issuer and its capital

- 3.1. General information about the issuer:
 - 3.1.0. Name, registered office and principal administrative establishment if different from the registered office.
 - 3.1.1. Date of incorporation and the length of life of the issuer, except where indefinite.
 - 3.1.2. Legislation under which the issuer operates and legal form which it has adopted under that legislation.
 - 3.1.3. Indication of the issuer's objects and reference to the clause in the memorandum of association in which they are described.
 - 3.1.4. Indication of the register and of the entry number therein.
 - 3.1.5. Indication of where the documents concerning the issuer which are referred to in the prospectus may be inspected.
 - 3.2. General information about capital:
 - 3.2.0. The amount of the issued capital and the number and classes of the securities of which it is composed with details of their principal characteristics.

The part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of securities not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
 - 3.2.1. The amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.
 - 3.2.2. If the issuer belongs to a group of undertakings, a brief description of the group and of the issuer's position within it.
 - 3.2.3. Number, book value and nominal value or, in the absence of a nominal value, the accounting par value of any of its own shares which the issuer or another company in which the issuer has a direct or indirect holding of more than 50 % has acquired and is holding, if such securities do not appear as a separate item on the balance sheet, insofar as they represent a significant part of the issued capital.

*Chapter 4***Information concerning the issuer's activities**

- 4.1. The issuer's principal activities:
- 4.1.0. Description of the issuer's principal activities, stating the main categories of products sold and/or services performed.
Indication of any significant new products and/or activities.
- 4.1.1. Net turnover during the past two financial years.
- 4.1.2. Location and size of the issuer's principal establishments and summary information about real estate owned. Any establishment which accounts for more than 10 % of turnover or production shall be considered a principal establishment.
- 4.1.3. For mining, extraction of hydrocarbons, quarrying and similar activities insofar as significant, description of deposits, estimate of economically exploitable reserves and expected period of working.
Indication of the periods and main terms of concessions and the economic conditions for working them.
Indication of the progress of actual working.
- 4.1.4. Where the information given pursuant to headings 4.1.0 to 4.1.3 has been influenced by exceptional factors, that fact should be mentioned.
- 4.2. Summary information regarding the extent to which the issuer is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes, where such factors are of fundamental importance to the issuer's business or profitability.
- 4.3. Information on any legal or arbitration proceedings which may have or have had a significant effect on the issuer's financial position in the recent past.
- 4.4. Investment policy:
- 4.4.0. Description, with figures, of the main investments made, including interests such as shares, debt securities, etc., in other undertakings, over the past three financial years and the months already elapsed of the current financial year.
- 4.4.1. Information concerning the principal investments being made with the exception of interests being acquired in other undertakings.
Distribution of these investments geographically (home and abroad).
Method of financing (internal or external).
- 4.4.2. Information concerning the issuer's principal future investments, with the exception of interests to be acquired in other undertakings, on which its management bodies have already made firm commitments.

*Chapter 5***Information concerning the issuer's assets and liabilities, financial position and profits and losses**

- 5.1. Accounts of the issuer:
- 5.1.0. The last two balance sheets and profit and loss accounts drawn up by the issuer set out as a comparative table. The notes on the annual accounts for the last financial year.
The draft prospectus must be filed with the competent authorities not more than 18 months after the end of the financial year to which the last annual accounts published relate. The competent authorities may extend that period in exceptional cases.

- 5.1.1. If the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus in accordance with heading 5.1.0.

If the issuer prepares both own and consolidated annual accounts, it shall include both sets of accounts in the prospectus in accordance with heading 5.1.0. However, the competent authorities may allow the issuer to include either the own or the consolidated annual accounts, on condition that the accounts which are not included do not provide any significant additional information.

- 5.1.2. Where more than nine months have elapsed since the end of the financial year to which the last published own annual and/or consolidated annual accounts relate, an interim financial statement covering at least the first six months shall be included in the prospectus or appended to it. If the interim financial statement is unaudited, that fact must be stated.

Where the issuer prepares consolidated annual accounts, the competent authorities shall decide whether the interim financial statement to be submitted must be consolidated or not.

Any significant change which has occurred since the end of the last financial year or the preparation of the aforementioned interim financial statement must be described in a note inserted in or appended to the prospectus.

- 5.1.3. If the own annual or consolidated annual accounts do not comply with the Council Directives on undertakings' annual accounts and do not give a true and fair view of the issuer's assets and liabilities, financial position and profits and losses, more detailed and/or additional information must be given.

- 5.1.4. Indication as at the most recent date possible (which must be stated) of the following, if material:

- the total amount of any loan capital outstanding, distinguishing between loans guaranteed (by the provision of security or otherwise, by the issuer or by third parties) and loans not guaranteed,
- the total amount of all other borrowings and indebtedness in the nature of borrowing, distinguishing between guaranteed and unguaranteed borrowings and debts,
- the total amount of any contingent liabilities.

An appropriate negative statement shall be given, where appropriate, in the absence of any such loan capital, borrowings and indebtedness and contingent liabilities.

If the issuer prepares consolidated annual accounts, the principles laid down in heading 5.1.1 shall apply.

As a general rule, no account should be taken of liabilities between undertakings within the same group, a statement to that effect being made if necessary.

- 5.1.5. A table showing the sources and application of funds over the past three financial years.

- 5.2. Individual details listed below relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.

The items of information listed below must be given in any event for every undertaking in which the issuer has a direct or indirect participating interest, if the book value of that participating interest represents at least 10 % of the capital and reserves or accounts for at least 10 % of the net profit or loss of the issuer, or in the case of a group, if the book value of that participating interest represents at least 10 % of the consolidated net assets or accounts for at least 10 % of the consolidated net profit or loss of the group.

The items of information listed below need not be given provided that the issuer proves that its holding is of a purely provisional nature.

Similarly, the information required under points (e) and (f) may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts.

Pending coordination of provisions relating to consolidated annual accounts, the Member States may authorize the competent authorities to permit the omission of the information prescribed in points (d) to (h) if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the competent authorities, the omission of that information is

not likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the security in question.

- (a) Name and registered office of the undertaking;
- (b) field of activity;
- (c) proportion of capital held;
- (d) issued capital;
- (e) reserves;
- (f) profit or loss arising out of ordinary activities, after tax, for the last financial year;
- (g) amount still to be paid up on shares held;
- (h) amount of dividends received in the course of the last financial year in respect of shares held.

5.3. When the prospectus comprises consolidated annual accounts, disclosure:

- (a) of the consolidation principles applied. These shall be described explicitly where the Member State has no laws governing the consolidation of annual accounts or where such principles are not in conformity with such laws or with a generally accepted method in use in the Member State where the offer is made;
- (b) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, the financial position and the profits and losses of the issuer. It is sufficient to distinguish them by a sign in the list of companies for which details are required in heading 5.2;
- (c) for each of the undertakings referred to in (b):
 - the total proportion of third-party interests, if annual accounts are consolidated globally;
 - the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a *pro rata* basis.

5.4. Where the issuer is a dominant undertaking forming a group with one or more dependent undertakings, the details provided for in Chapters 4 and 7 shall be given for that issuer and group.

The competent authorities may permit the provision of that information for the issuer alone or for the group alone, provided that the details which are not provided are not material.

5.5. If certain information provided for under Schedule B is given in the annual accounts provided in accordance with this Chapter, it need not be repeated.

Chapter 6

Information concerning administration, management and supervision

6.1. Names, addresses and functions in the issuing undertaking of the following persons, and an indication of the principal activities performed by them outside that undertaking where these are significant with respect to that undertaking:

- (a) members of the administrative, management or supervisory bodies;
- (b) partners with unlimited liability, in the case of a limited partnership with a share capital.

*Chapter 7***Information concerning the recent development and prospects of the issuer**

- 7.1. Except in the event of a derogation granted by the competent authorities, general information on the trend of the issuer's business since the end of the financial year to which the last published annual accounts relate, in particular:
- the most significant recent trends in production, sales and stocks and the state of the order book; and
 - recent trends in costs and selling prices.
- 7.2. Except in the event of a derogation granted by the competent authorities, information on the issuer's prospects for at least the current financial year.

SCHEDULE C

LAYOUT FOR THE PROSPECTUS FOR AN OFFER FOR SUBSCRIPTION OR SALE TO THE PUBLIC OF CERTIFICATES REPRESENTING SHARES*Chapter 1***General information about the issuer**

- 1.1. Name, registered office and principal administrative establishment if different from the registered office.
- 1.2. Date of incorporation and length of life of the issuer, except where indefinite.
- 1.3. Legislation under which the issuer operates and legal form which it has adopted under that legislation.
- 1.4. The amount of the issued capital and the number and classes of the securities of which it is composed with details of their principal characteristics.
- The part of the issued capital still to be paid up, with an indication of the number, or total nominal value, and the type of the securities not yet fully paid up, broken down where applicable according to the extent to which they have been paid up.
- 1.5. Indication of the principal holders of the capital.
- 1.6. Names, addresses and functions in the issuing body of the following persons, and an indication of the principal activities performed by them outside that body where these are significant with respect to that body, and also the functions held.
- (a) members of the administrative, management or supervisory bodies;
 - (b) partners with unlimited liability, in the case of a limited partnership with a share capital.
- 1.7. The company's objects. If the issue of certificates representing shares is not the sole object of the company, the nature of its other activities must be described, those of a purely trustee nature being dealt with separately.

- 1.8. A summary of the annual accounts relating to the last completed financial year.

Where more than nine months have elapsed since the end of the last financial year to which the last published own annual and/or consolidated annual accounts relate, an interim financial statement covering at least the first six months shall be included in the prospectus or appended to it. If the interim financial statement is unaudited, that fact must be stated.

Where the issuer prepares consolidated annual accounts, the competent authorities shall decide whether the interim financial statement to be submitted must be consolidated or not.

Any significant change which has occurred since the end of the last financial year or the preparation of the interim financial statement must be described in a note inserted in the prospectus or appended thereto.

Chapter 2

Information on the certificates themselves

- 2.1. Legal status:

Indication of the rules governing the issue of the certificates and mention of the date and place of their publication.

- 2.1.0. Exercise of and benefit from the rights attaching to the original securities, in particular voting rights — conditions on which the issuer of the certificates may exercise such rights, and measures envisaged to obtain the instructions of the certificate holders — and the right to share in profits and any liquidation surplus.

- 2.1.1. Bank or other guarantees attached to the certificates and intended to underwrite the issuer's obligations.
- 2.1.2. Possibility of obtaining the conversion of the certificates into original securities and procedure for such conversion.

- 2.2. The amount of the commissions and costs to be borne by the holder in connection with:

- the issue of the certificate;
- the payment of the coupons;
- the creation of additional certificates;
- exchange of the certificates for original securities.

- 2.3. Transferability of the certificates:

- (a) The stock exchanges where admission to official listing is, or will be, sought;
- (b) Any restrictions on the free transferability of the certificates.

- 2.4. Indication of the tax arrangements with regard to any taxes and charges to be borne by the holders and levied in the countries where the certificates are issued.

- 2.5. Indication of the legislation under which the certificates have been created and of the courts competent in the event of litigation.
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