

# SECURITIES MARKETS

Community measures adopted or proposed



COMMISSION  
OF THE EUROPEAN  
COMMUNITIES

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Commission of the European Communities

**SECURITIES MARKETS**

**COMMUNITY MEASURES ADOPTED OR PROPOSED**

(situation as at June 1989)

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Chapter 2 : Right of establishment (Art. 52-58)

Chapter 3 : Services (Art. 59-66)

Chapter 4 : Capital (Art. 67-73)



CHAPTER 2  
RIGHT OF ESTABLISHMENT

Article 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 53

Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States, save as otherwise provided in this Treaty.

Article 54

1. Before the end of the first stage, the Council shall, acting unanimously from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of the existing restrictions on freedom of establishment within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained.

2. In order to implement this general programme of, in the absence of such programme, in order to achieve a stage in attaining freedom of establishment as regards a particular activity, the Council shall, acting on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee, issue directives, acting unanimously until the end of the first stage and by a qualified majority thereafter.
3. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular :
  - (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
  - (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;
  - (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
  - (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39(2);
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (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 58 with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

#### Article 55

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities.

Article 56

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. Before the end of the transitional period, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, issue directives for the coordination of the aforementioned provisions laid down by law, regulation or administrative action. After the end of the second stage, however, the Council shall, acting by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.

Article 57

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and in cooperation with the European Parliament, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the European Parliament, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by a qualified majority, in cooperation with the European Parliament.



3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

#### Article 58

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purpose of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

"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.

### CHAPTER 3 SERVICES

#### Article 59

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the persons for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Article 60

Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include :

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 61

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.
2. The liberalization of banking and insurance services connected with movements of capital shall be effected in step with the progressive liberalization of movement of capital.

Article 62

Save as otherwise provided in this Treaty, Member States shall not introduce any new restrictions on the freedom to provide services which have in fact been attained at the date of the entry into force of this Treaty.

Article 63

1. Before the end of the first stage, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of existing restrictions on freedom to provide services within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which and the stages by which each type of service is to be liberalized.

2. In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in the liberalization of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting unanimously until the end of the first stage and by a qualified majority thereafter.
3. As regards the proposals and decisions referred to in paragraphs 1 and 2, priority shall as a general rule be given to those services which directly affect production costs or the liberalization of which helps to promote trade in goods.

Article 64

The Member States declare their readiness to undertake the liberalization of services beyond the extent required by the directives issued pursuant to Article 63(2), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 65

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 59.

Article 66

The provisions of Articles 55 to 58 shall apply to the matters covered by this Chapter.

CHAPTER 4  
CAPITAL

Article 67

1. During the transitional period and to the extent necessary to ensure the proper functioning of the common market, Member States shall progressively abolish between themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.
  
2. Current payments connected with the movement of capital between Member States shall be freed from all restrictions by the end of the first stage at the latest.

Article 68

1. Member States shall, as regards the matters dealt with in this Chapter, be as liberal as possible in granting such exchange authorizations as are still necessary after the entry into force of this Treaty.
2. Where a Member State applies to the movements of capital liberalized in accordance with the provisions of this Chapter the domestic rules governing the capital market and the credit system, it shall do so in a non-discriminatory manner.
3. Loans for the direct or indirect financing of a Member State or its regional or local authorities shall not be issued or placed in other Member States unless the States concerned have reached agreement thereon. This provision shall not preclude the application of Article 22 of the Protocol on the Statute of the European Investment Bank.

Article 69

The Council shall, on a proposal from the Commission, which for this purpose shall consult the Monetary Committee provided for in Article 105, issue the necessary directives for the progressive implementation of the provisions of Article 67, acting unanimously during the first two stages and by a qualified majority thereafter.

Article 70

1. The Commission shall propose to the Council measures for the progressive coordination of the exchange policies of Member States in respect of the movement of capital between those States and third countries. For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.

2. Where the measures taken in accordance with paragraph 1 do not permit the elimination of differences between the exchange rules of Member States and where such differences could lead persons resident in one of the Member States to use the freer transfer facilities within the Community which are provided for in Article 67 in order to evade the rules of one of the Member States concerning the movement of capital to or from third countries, that State may, after consulting the other Member States and the Commission, take appropriate measures to overcome these difficulties.

Should the Council find that these measures are restricting the free movement of capital within the Community to a greater extent than is required for the purpose of overcoming the difficulties, it may, acting by a qualified majority on a proposal from the Commission, decide that the State concerned shall amend or abolish these measures.

#### Article 71

Member States shall endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and current payments connected with such movements, and shall endeavour not to make existing rules more restrictive.

They declare their readiness to go beyond the degree of liberalization of capital movements provided for in the preceding Articles in so far as their economic situation, in particular the situation of their balance of payments, so permits.

The Commission may, after consulting the Monetary Committee, make recommendations to Member States on this subject.

#### Article 72

Member States shall keep the Commission informed of any movements of capital to and from third countries which come to their knowledge. The Commission may deliver to Member States any opinions which it considers appropriate on this subject.

Article 73

1. If movements of capital lead to disturbances in the functioning of the capital market in any Member State, the Commission shall, after consulting the Monetary Committee, authorize that State to take protective measures in the field of capital movements, the conditions and details of which the Commission shall determine.

The Council may, acting by a qualified majority, revoke this authorization or amend the conditions or details thereof.

2. A Member State which is in difficulties may, however, on grounds of secrecy or urgency, take the measures mentioned above, where this proves necessary, on its own initiative. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. In this event the Commission may, after consulting the Monetary Committee, decide that the State concerned shall amend or abolish the measures.





2. Proposal for a Council Directive on **investment services** in the **securities** field (COM(88)778 SYN 176)  
(OJ No C 43, 22.02.1989, p. 7-14)

Title I : Definitions and scope (Art. 1-3)

Title II : Harmonization of authorization conditions (Art. 4-6)

Titel III : Harmonization of conditions relating to the pursuit of the business of investment firms (Art. 7-9)

Title IV : Provisions relating to freedom of establishment and freedom to provide services (Art. 10-13)

Title V : Provisions concerning the authorities responsible for authorization and supervision (Art. 14-19)

Title VI : Final provisions (Art. 20-23)

Annex : Investment activities coming within the scope of this Directive

Section A : Activities

Section B : Instruments



## II

*(Preparatory Acts)*

## COMMISSION

Proposal for a Council Directive on investment services in the securities field

COM(88) 778 — SYN 176

*(Submitted by the Commission on 3 January 1989)*

(89/C 43/10)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas this Directive is to constitute an instrument which is essential for achieving the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view of both the freedom of establishment and the freedom to provide financial services, in the field of investment firms;

Whereas the approach which has been adopted is to achieve only the essential harmonization necessary and sufficient to secure mutual recognition of authorization and of supervisory systems, thus enabling the application of the principle of home country control and the granting of a single authorization recognized throughout the Community;

Whereas it is necessary, for reasons of fair competition, to ensure that non-bank investment firms have similar freedoms to create branches and provide services across frontiers as those envisaged by the proposal for a second Council Directive in the field of credit institutions;

Whereas it is also necessary and appropriate to liberalize access to membership of stock exchange and financial futures and options markets in host Member States for investment firms authorized to carry out the relevant services in their home Member States;

Whereas responsibility for the financial soundness of an investment firm will rest with the competent authorities of its home Member State; whereas to permit this responsibility fully to be assumed by such competent authorities a further directive will be necessary to coordinate rules in the area of market risk;

Whereas it is essential for the creation of the internal market for the home country supervisors to monitor all aspects of the investment firm's activities in host Member States whether such activities are carried on by the provision of services or the creation of branches there;

Whereas the Member States should ensure that there are no obstacles to the activities coming within the scope of this Directive being undertaken using the financial techniques of the home Member State, so long as the latter are not in violation of the legal provisions governing the public good in the host Member State;

Whereas requests for authorization of a subsidiary whose parent is governed by the laws of a third country or the acquisition of a participation by such a parent are subject to a procedure intended to ensure that Community investment firms are granted reciprocal treatment in the third countries in question;

Whereas the smooth running of the internal market in financial services will require, in addition to common legislative standards, close and regular cooperation between the competent authorities of the Member States;

Whereas in the case of problems concerning investment firms a contact committee is the appropriate forum for discussion and consultation;

Whereas it is necessary, in order to facilitate the achievement of the objectives of this Directive and to take account of the rapid development of national and international financial markets, to introduce a procedure for the adaptation of certain technical features; whereas, because of the important and sensitive nature of that

adaptation, procedure III, type (a), as defined in Article 2 of Council Decision 87/373/EEC<sup>(1)</sup>, is the most appropriate,

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I

##### Definitions and scope

###### Article 1

For the purposes of this Directive:

- '*credit institution*' is defined in accordance with the first indent of Article 1 of Council Directive 77/780/EEC<sup>(2)</sup>,
- '*investment firm*' means any natural or legal person whose business it is to engage in one or more of the activities set out in the Annex to this Directive,
- '*home Member State*' means:
  - where the investment firm is a natural person, the Member State where that person has his residence,
  - where the investment firm is a legal person, the Member State where its registered office is situated or if it has no registered office then the Member State where its head office is situated,
- '*host Member State*' means the Member State where an investment firm has a branch or into which it supplies services,
- '*branch*' means a place of business which forms a legally dependent part of an investment firm and which provides an investment service for which the investment firm has been authorized,
- '*qualified participation*' means a holding, direct or indirect, in an investment firm which represents 10 % or more of the capital or of the voting rights or which enables the exercise of a significant influence over it within the meaning of Article 33 of Council Directive 83/349/EEC<sup>(3)</sup>,
- '*parent undertaking*' is defined in accordance with Articles 1 and 2 of Directive 83/349/EEC,
- '*subsidiary*' means a subsidiary undertaking in accordance with Articles 1 and 2 of Directive 83/349/EEC.

###### Article 2

This Directive shall apply to all investment firms. However, only Articles 3, 4, 5, 8, 9, 10 and 21 shall apply to investment firms that are credit institutions.

###### Article 3

Member States must require that investment firms which are legal persons shall have their head office in the same Member State as their registered office.

#### TITLE II

##### Harmonization of authorization conditions

###### Article 4

1. Investment firms wishing to engage in one or more of the activities referred to in the Annex within one or more Member States shall obtain authorization in their home Member State before commencing such activities. Such authorization shall be granted by the home Member State's competent authorities designated in accordance with Article 14. Following the granting of authorization the investment activity in question may be engaged in forthwith by the investment firm together with any activities that are ancillary thereto.

2. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorization unless:

- the investment firm has sufficient initial financial resources having regard to the nature of the activity in question,
- the persons who effectively direct the business of the investment firm are of sufficiently good repute and experience,
- holders of qualified participations in it are suitable persons.

3. Member States shall also require applications for authorization to be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the investment firm.

4. The applicant shall be notified within three months of submission of a complete application whether or not authorization is granted. Reasons shall be given whenever an authorization is refused. If no decision is notified within six months of submission of the complete application this shall be deemed to be a refusal.

<sup>(1)</sup> OJ No L 197, 18. 7. 1987, p. 33.

<sup>(2)</sup> OJ No L 322, 17. 12. 1977, p. 30.

<sup>(3)</sup> OJ No L 193, 18. 7. 1983, p. 1.

5. The authorization referred to in paragraph 1 shall not be required where the investment firm is a credit institution whose authorization as a credit institution by the competent authorities specified in Article 3 of Directive 77/780/EEC includes authorization of the investment activity concerned.

6. The competent authorities may withdraw the authorization issued to an investment firm subject to this Directive only where the investment firm:

- (a) does not make use of the authorization within 12 months, expressly renounces the authorization or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorization to lapse in such cases;
- (b) has obtained the authorization through false statements or any other irregular means;
- (c) no longer fulfils the conditions under which authorization was granted;
- (d) no longer possesses sufficient financial resources or can no longer be relied upon to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;
- (e) falls within one of the other cases where national law provides for withdrawal of authorization.

#### *Article 5*

Member States shall not apply to branches of investment firms having their registered office outside the Community, when commencing or carrying on their business, provisions that result in more favourable treatment than that accorded to branches of investment firms having their registered office in a Member State.

#### *Article 6*

1. Requests for authorization of a subsidiary whose parent undertaking is governed by the laws of a third country or the acquisition of a participation as provided for in paragraph 3 shall be subject to the procedure laid down in this Article.
2. The competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission of the request for authorization.
3. In the same manner, when informed, according to the provisions of Article 7, that an undertaking governed by the laws of a third country is considering the acquisition of a participation in a Community investment firm such that the latter would become its subsidiary, the competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission.

4. The competent authorities of the Member State concerned must suspend their decision regarding requests as referred to in paragraphs 1 and 3 until the procedure provided for in paragraphs 5 and 6 is completed.

5. The Commission shall, within three months of receiving the information provided for in paragraphs 2 and 3, examine whether all Community investment firms enjoy reciprocal treatment, in particular regarding the establishment of subsidiaries or the acquisition of participations in investment firms in the third country in question.

6. If the Commission finds that reciprocity is not ensured it may extend suspension of the decision referred to in paragraph 4, using the procedure provided for in Article 20.

7. The Commission shall present suitable proposals to the Council with a view to achieving reciprocity with the third country in question.

### TITLE III

#### **Harmonization of conditions relating to the pursuit of the business of investment firms**

##### *Article 7*

1. Member States shall require any natural or legal person who is considering the acquisition of a qualified participation in an investment firm to first inform the competent authorities, telling them of the size of the intended participation. The abovementioned persons must similarly inform the competent authorities if they propose to increase their qualified participation such that the investment firm would become a subsidiary. The competent authorities shall assess the suitability of the abovementioned persons.
2. Investment firms shall each year furnish the competent authorities of the home Member State with the names of major shareholders and members as referred to in paragraph 1 and the size of their qualified participations, in accordance with the names registered at the annual general meeting of shareholders and members or in accordance with information received as a result of compliance with the regulations relating to companies quoted on stock exchanges.
3. Member States shall require that in cases where the persons referred to in paragraph 1 exercise their influence in a way which is likely to be to the detriment of the prudent and sound management of the activities of the investment firm, the competent authorities shall take appropriate measures to bring such a situation to an end. Such measures may consist in particular in injunctions, sanctions against directors and managers or the suspension of voting rights in respect of the shares held by the shareholders or members in question.

*Article 8*

1. The competent authorities of the home Member State shall require continuing compliance by an investment firm authorized by them with the conditions referred to in Article 4 (2). In appropriate circumstances, the competent authorities may allow an investment firm a certain limited period to restore its financial resources to the agreed initial minimum. The competent authorities of the home Member State shall also require that investment firms authorized by them make sufficient provision against market risk in accordance with rules to be prescribed in a further coordinating directive.

2. The supervision of compliance with the conditions referred to in Article 4 (2) shall be within the exclusive regulatory competence of the home Member State's competent authorities irrespective of whether or not the investment firm establishes a branch or provides services in another Member State.

*Article 9*

1. Member States shall draw up prudential rules to be observed on a continuing basis by investment firms authorized by their competent authorities. Supervision of such prudential rules shall be within the exclusive competence of the home Member State's competent authorities irrespective of whether or not the investment firm establishes a branch or provides services in another Member State. Such rules shall require that the investment firm:

- has sound administrative and accounting procedures and internal control mechanisms,
- arranges for securities belonging to investors to be kept separately from its own securities and for money belonging to investors to be placed in an account or in accounts which are separate and distinct from the firm's own account,
- is either a member of a general compensation scheme designed to protect investors who are prevented from having claims satisfied because of the bankruptcy or default of the investment firm or makes individual arrangements which provide investors with equivalent protection. Pending further harmonization of compensation schemes branches of investment firms shall be subject to the compensation scheme in force in the host Member State provided that payment or contribution to such a compensation scheme shall be calculated by reference to their income in respect of investment activity carried out in that State,
- provides the competent authorities of the home Member State with such information on request and at such intervals as they may determine (but not less than quarterly) in order that they may assess its financial soundness, including the adequacy of its provision in respect of market risk,

- arranges for adequate records to be kept relating to executed transactions which shall be at least sufficient to enable the home Member State's authorities to monitor compliance with prudential rules which they are responsible for applying including rules relating to market risk. Such records shall be retained for periods to be laid down by the competent authorities,

- is organized in such a way that conflicts of interest between the firm and its clients or between one of its clients and another are reduced to a minimum.

2. If the rules contained in paragraph 1 are not appropriate to the nature of the investment service in question, Member States may adapt them or provide that they shall not apply.

3. Member States may provide that the rules set out in the second and third indents of paragraph 1 shall not apply where the service is provided to business or professional investors.

## TITLE IV

**Provisions relating to freedom of establishment and freedom to provide services***Article 10*

1. Host Member States shall ensure that at least the activities set out in the list in the Annex and any activities which are ancillary thereto may be pursued in their territories, in accordance with the provisions of Articles 11, 12 and 13, either by the establishment of a branch or by way of the provision of services, by an investment firm authorized to engage in such activities under this Directive by the competent authorities of its home Member State.

2. Host Member States may not make the establishment of a branch or the provision of services under paragraph 1 subject to an authorization requirement or to a requirement to provide endowment capital or any measure having equivalent effect.

3. Host Member States shall ensure that investment firms which are authorized to provide broking, dealing or market-making services in their home Member States can enjoy the full range of trading privileges normally reserved to members of the stock exchanges and organized securities markets of host Member States where similar services are provided.

4. In order to meet their obligation set out in paragraph 3, host Member States shall ensure that the investment firms referred to in that paragraph have the option to become members of host Member States' stock exchanges or organized securities markets by setting up either a branch or a subsidiary in the host Member State which complies with rules governing the structure and organization of the relevant host stock exchange or organized securities market or by the acquisition of an existing member firm.

5. Pending further harmonization, host Member States which do not accept credit institutions as members of their stock exchanges or organized securities market are not required to accept, as members, branches of those investment firms referred to in paragraph 3 which are credit institutions.

6. Host Member States shall likewise ensure that investment firms which are authorized to deal in financial futures and options in their home Member State can enjoy the full range of trading facilities on financial futures and options exchanges in the host Member State under the same conditions as are set out in paragraphs 3, 4 and 5.

#### Article 11

1. An investment firm wishing to establish a branch in the territory of another Member State shall give notification thereof to the competent authorities of the home Member State and relevant host Member State. At the same time it must send the latter authorities:

- (a) an attestation by the competent authorities of the home Member State to the effect that the investment firm is duly authorized there in respect of the investment service proposed to be provided and that it otherwise fulfils the conditions imposed by this Directive;
- (b) a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the branch;
- (c) the names of the managers of the branch;
- (d) the address in the host Member State from which documents can be obtained.

2. An investment firm may establish a branch in the other Member State one month after the notification referred to in paragraph 1.

3. An investment firm wishing to change any of the matters notified pursuant to paragraph 1 shall give written notice of the proposed change to the competent authorities in the host Member State at least one month before making the change. If necessary those authorities may decide whether it will not be possible, in the interest of the public good, for the investment firm to engage in

any additional activities which it may envisage which are not precluded under the conditions of authorization in its home Member State and which are not contained on the list in the Annex.

#### Article 12

1. Any investment firm wishing to exercise the freedom to supply services in the territory of another Member State for the first time shall notify the competent authorities of the home and host Member States of the activities included in the list in the Annex which it intends to undertake.

2. The investment firm may begin to provide such services and any activities which are ancillary thereto in the host Member State one month after notification.

#### Article 13

1. If the competent authorities of the host Member State ascertain that an investment firm having a branch or providing services in the territory of that Member State is not complying with the legal provisions in force therein which are justified on the grounds of the public good, those authorities shall request the investment firm concerned to put an end to the irregular situation.

2. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the Member State accordingly. The authorities of the home Member State shall take, in the shortest time possible, all appropriate measures to ensure that the investment firm concerned puts an end to the irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

3. If, despite the measures taken by the home Member State pursuant to paragraph 2, or because such measures prove inadequate or are not taken by the Member State in question, the investment firm persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent further irregularities including, in so far as is necessary, the prevention of the initiation of further transactions by that investment firm within its territory. Member States shall ensure that within their territory it is possible to serve the legal documents necessary for those measures on investment firms.

4. Any measures adopted pursuant to paragraphs 1, 2 and 3 involving penalties or restrictions on the provision of services must be properly justified and communicated to the investment firm concerned. Every such measure shall be subject to a right to apply to the courts in the Member State whose authorities adopted it.

5. Before following the procedure set out in paragraphs 1, 2 and 3 the competent authorities of the host Member State may, in exceptional circumstances, take measures necessary to protect the interests of investors and others to whom services are provided. The Commission and the other Member States shall be informed of such measures in the shortest possible time. In this event the Commission may, after consulting the Member States concerned, decide that the Member State in question shall amend or abolish the measures.

6. In the event of withdrawal of authorization the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from undertaking further transactions in the territory of that Member State.

7. Member States shall inform the Commission of the number and type of cases in each Member State in which measures have been taken in accordance with the provisions of paragraph 3. Every two years, the Commission shall submit a report summarizing such cases to the committee set up under Article 20.

#### TITLE V

#### Provisions concerning the authorities responsible for authorization and supervision

##### Article 14

1. The Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.
2. The authorities referred to in paragraph 1 must be public authorities or bodies appointed by public authorities.
3. The authorities concerned must be granted all the powers necessary to carry out their task.

##### Article 15

1. Where there are several competent authorities in the same Member State they shall collaborate closely in order to supervise the activities of investment firms operating there.
2. Member States shall also permit such collaboration to take place between such competent authorities and public authorities responsible for the supervision of credit and other financial institutions and insurance companies as regards the respective entities supervised by them.
3. Where investment services are provided on a services basis across frontiers or by the establishment of branches in one or more Member States other than the home Member State the competent authorities of the Member States concerned shall collaborate closely in

order to supervise the activities of the investment firms concerned. They shall supply one another on request with all information concerning the management and ownership of such investment firms that is likely to facilitate their supervision and the examination of the conditions for their authorization and all information likely to facilitate the monitoring of such firms.

##### Article 16

1. Host Member States shall ensure that, where an investment firm authorized in another Member State conducts its business there through a branch, the competent authorities of the home Member State are able, after having first informed the competent authorities of the host Member State, to carry out themselves on-the-spot verification of the information referred to in Article 15 (3).
2. This Article shall not affect the right of the competent authorities of the host Member State to carry out on-the-spot verification of branches established in their territory in the discharge of their responsibilities under this Directive.

##### Article 17

1. Member States shall ensure that all persons now or in the past employed by the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy. This means that any confidential information which they may receive in the course of their duties may not be divulged to any person or authority, without prejudice to cases covered by criminal law.
2. Notwithstanding paragraph 1, the competent authorities of the various Member States and the public authorities responsible for the supervision of credit and other financial institutions shall be authorized to exchange information in accordance with the provisions of this Directive where appropriate for the efficient discharge of their respective responsibilities. This information shall be subject to the same conditions of professional secrecy as those indicated in paragraph 1.
3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information communicated is subject to guarantees of professional secrecy equivalent to those referred to in this Article.
4. The authorities receiving information under paragraphs 1 or 2 shall use it only:
  - to examine the conditions for the taking-up of the business of the entities supervised by them and to facilitate monitoring of the pursuit of such business, the administrative and accounting procedures and mechanisms of internal control, or



— when the decisions of the authorities are the subject of an administrative appeal, or

— in court proceedings initiated pursuant to Article 18.

5. Paragraphs 1 and 4 shall not preclude within a Member State or between Member States the exchange of information between the competent authorities and persons responsible for carrying out statutory audits of the accounts of investment firms.

The authorities and institutions to which such information is sent shall use it only in the discharge of their supervisory functions. The information received shall fall within the professional secrecy rules by which those authorities and institutions are bound.

6. Notwithstanding paragraph 1, Member States may authorize, by virtue of provisions laid down by law, the disclosure, when it is necessary for reasons of prudential control, of certain information to other departments of their central government administration. Member States shall ensure that information received in accordance with paragraph 2 is not disclosed in such cases, except where there is the explicit consent of the authorities which have communicated the information.

7. Member States shall ensure that the professional secrecy provisions laid down by this Article shall apply to information given by the competent authorities to persons responsible for carrying out statutory audits of the accounts of investment firms.

#### *Article 18*

Member States shall ensure that decisions taken in respect of an investment firm in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply where an application for authorization is deemed to be refused in accordance with Article 4 (4).

#### *Article 19*

Member States shall ensure that their respective competent authorities may adopt, as against investment firms or those who effectively control the business of such firms which breach legislative, regulatory or administrative provisions concerning the control of their businesses or the pursuit of their activities, penalties or measures aimed specifically at ending observed breaches or the causes of such breaches. Those penalties shall include procedures for the suspension or withdrawal of authorizations.

## TITLE VI

### Final provisions

#### *Article 20*

1. Technical amendments to this Directive in the following areas:

— extension of the activities on the list set out in the Annex,

— the fields in which the competent authorities must exchange information, as enumerated in Article 15,

shall be made according to the procedure set out in paragraph 2.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the day of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

#### *Article 21*

1. Investment firms already authorized to provide investment services in their home Member State before the entry into force of the provisions adopted in implementation of this Directive shall be deemed to be authorized for the purposes of this Directive provided that the authorization was given under equivalent conditions to those set out in Article 4 (2).

2. Branches which have commenced their activities, in accordance with the provisions in force in the host Member State, before the entry into force of the provisions adopted in implementation of this Directive are presumed to have been subject to the procedures envisaged in Article 11 (1), (2) and (3). They shall be governed, from the date of entry into force of the provisions adopted in implementation of this Directive, by the provisions of Articles 10, 11 (3) and 13.

3. Article 12 shall not adversely affect rights acquired before the entry into force of the provisions adopted in implementation of this Directive by investment firms operating through the supply of services.

#### Article 22

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1993. They shall forthwith inform the Commission thereof.

2. 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 23

This Directive is addressed to the Member States.

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### ANNEX

#### INVESTMENT ACTIVITIES COMING WITHIN THE SCOPE OF THIS DIRECTIVE

##### SECTION A

###### Activities

1. Brokerage, i.e. the acceptance of investors' orders relating to any or all of the instruments referred to in Section B below and/or the execution of such orders on an exchange or market on an agency basis against payment of commission.
2. Dealing as principal, i.e. the purchase and sale of any or all of the instruments referred to in Section B below for own account and at own risk with a view to profiting from the margin between bid and offer prices.
3. Market making, i.e. maintenance of a market in any or all of the instruments referred to in Section B below by dealing in such instruments.
4. Portfolio management, i.e. the management against payment of portfolios composed of any or all of the instruments referred to in Section B below undertaken for investors otherwise than on a collective basis.
5. Arranging or offering underwriting services in respect of issues of the instruments referred to in point 1 of Section B below and distribution of such issues to the public.
6. Professional investment advice given to investors on an individual basis or on the basis of private subscription in connection with any or all of the instruments referred to in Section B below.
7. Safekeeping and administration of any of the instruments referred to in Section B below otherwise than in connection with the management of a clearing system.

##### SECTION B

###### Instruments

1. Transferable securities including units in undertakings for collective investment in transferable securities.
  2. Money market instruments (including certificates of deposit and Eurocommercial paper).
  3. Financial futures and options.
  4. Exchange rate and interest rate instruments.
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## 3.a) 79/279/EEC

Council Directive of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing  
(OJ No L 66, 16.03.1979, p. 21-32)

Modified by Directive 82/148/EEC (modification Art. 22(1))  
(OJ No L 62, 05.03.1982, p. 22-23)

Section I : General provisions (Art. 1-8)

Section II : Authorities competent to admit securities to official listing (Art. 9-16)

Section III : Publication of the information to be made available to the public (Art. 17)

Section IV : Cooperation between Member States (Art. 18-19)

Section V : Contact Committee (Art. 20-21)

Section VI : Final provisions (Art. 22-23)

## Annex :

Schedule A : Conditions for the admission of shares to official listing on a stock exchange

Schedule B : Conditions for the admission of debt securities to official listing on a stock exchange

Schedule C : Obligations of companies whose shares are admitted to official listing on a stock exchange

Schedule D : Obligations of issuers whose debt securities are admitted to official listing on a stock exchange



## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 5 March 1979

coordinating the conditions for the admission of securities to official stock exchange listing

(79/279/EEC)

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<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas the coordination of the conditions for the admission of securities to official listing on stock exchanges situated or operating in the Member States is likely to provide equivalent protection for investors at Community level, because of the more uniform guarantees offered to investors in the various Member States; whereas it will facilitate both the admission to official stock exchange listing, in each such State, of securities from other Member States and the listing of any given security on a number of stock exchanges in the Community; whereas it will accordingly make for greater interpenetration of national securities markets and therefore contribute to the prospect of establishing a European capital market;

Whereas such coordination must therefore apply to securities, independently of the legal status of their issuers, and must therefore also apply to securities

issued by non-member States or their regional or local authorities or international public bodies; whereas this Directive therefore covers entities not covered by the second paragraph of Article 58 of the Treaty and goes beyond the scope of Article 54 (3) (g) while directly affecting the establishment and functioning of the common market within the meaning of Article 100;

Whereas there should be the possibility of a right to apply to the courts against decisions by the competent national authorities in respect of the application of this Directive, although such right to apply must not be allowed to restrict the discretion of these authorities;

Whereas, initially, this coordination should be sufficiently flexible to enable account to be taken of present differences in the structures of securities markets in the Member States and to enable the Member States to take account of any specific situations with which they may be confronted;

Whereas, for this reason, coordination should first be limited to the establishment of minimum conditions for the admission of securities to official listing on stock exchanges situated or operating in the Member States, without however giving issuers any right to listing;

Whereas, this partial coordination of the conditions for admission to official listing constitutes a first step towards subsequent closer alignment of the rules of Member States in this field,

<sup>(1)</sup> OJ No C 56, 10. 3. 1976, p. 3.

<sup>(2)</sup> OJ No C 238, 11. 10. 1976, p. 38.

<sup>(3)</sup> OJ No C 204, 30. 8. 1976, p. 5.

HAS ADOPTED THIS DIRECTIVE :

## SECTION I

### General provisions

#### Article 1

1. This Directive concerns securities which are admitted to official listing or are the subject of an application for admission to official listing on a stock exchange situated or operating within a Member State.

2. Member States may decide not to apply this Directive to :

- units issued by collective investment undertakings other than the closed-end type,
- securities issued by a Member State or its regional or local authorities.

#### Article 2

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 request of holders, repurchased 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 its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption ;

(b) units shall mean securities issued by collective investment undertakings as representing the rights of participants in the assets of such undertakings ;

(c) European unit of account shall mean the unit of account as defined in Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1).

#### Article 3

Member States shall ensure that :

- securities may not be admitted to official listing on any stock exchange situated or operating within their territory unless the conditions laid down by this Directive are satisfied, and that

(1) OJ No L 356, 31. 12. 1977, p. 1.

- issuers of securities admitted to such official listing, whether admission takes place before or after the date on which this Directive is implemented, are subject to the obligations provided for by this Directive.

#### Article 4

1. The admission of securities to official listing shall be subject to the conditions set out in Schedules A and B to this Directive, relating to shares and debt securities respectively.

2. The issuers of securities admitted to official listing must fulfil the obligations set out in Schedules C and D to this Directive, relating to shares and debt securities respectively.

3. Certificates representing shares may be admitted to official listing only if the issuer of the shares represented fulfils the conditions set out in I (1) to I (3) of Schedule A and the obligations set out in Schedule C and if the certificates fulfil the conditions set out in II (1) to II (6) of Schedule A.

#### Article 5

1. Subject to the prohibitions provided for in Article 6 and in Schedules A and B, the Member States may make the admission of securities to official listing subject to more stringent conditions than those set out in Schedules A and B or to additional conditions, provided that these more stringent and additional conditions apply generally for all issuers or for individual classes of issuer and that they have been published before application for admission of such securities is made.

2. Member States may make the issuers of securities admitted to official listing subject to more stringent obligations than those set out in Schedules C and D or to additional obligations, provided that these more stringent and additional obligations apply generally for all issuers or for individual classes of issuer.

3. Member States may, under the same conditions as those laid down in Article 7, authorize derogations from the additional or more stringent conditions and obligations referred to in paragraphs 1 and 2 hereof.

4. Member States may, in accordance with the applicable national rules require issuers of securities admitted to official listing to inform the public on a regular basis of their financial position and the general course of their business.

*Article 6*

Member States may not make the admission to official listing of securities issued by companies or other legal persons which are nationals of another Member State subject to the condition that the securities must already have been admitted to official listing on a stock exchange situated or operating in one of the Member States.

*Article 7*

Any derogations from the conditions for the admission of securities to official listing which may be authorized in accordance with Schedules A and B must apply generally for all issuers where the circumstances justifying them are similar.

*Article 8*

Member States may decide not to apply the conditions set out in Schedule B and the obligations set out in A (4) (a) and (c) of Schedule D in respect of applications for admission to official listing of debt securities issued by companies and other legal persons which are nationals of a Member State and which are set up by, governed by or managed pursuant to a special law where repayments and interest payments in respect of those securities are guaranteed by a Member State or one of its federal states.

## SECTION II

**Authorities competent to admit securities to official listing***Article 9*

1. Member States shall designate the national authority or authorities competent to decide on the admission of securities to official listing on a stock exchange situated or operating within their territories and shall ensure that this Directive is applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.
2. Member States shall ensure that the competent authorities have such powers as may be necessary for the exercise of their duties.
3. Without prejudice to the other powers conferred upon them, the competent authorities may reject an application for the admission of a security to official listing if, in their opinion, the issuer's situation is such that admission would be detrimental to investors' interests.

*Article 10*

By way of derogation from Article 5, Member States may, solely in the interests of protecting the investors,

give the competent authorities power to make the admission of a security to official listing subject to any special condition which the competent authorities consider appropriate and of which they have explicitly informed the applicant.

*Article 11*

The competent authorities may refuse to admit to official listing a security already officially listed in another Member State where the issuer fails to comply with the obligations resulting from admission in that Member State.

*Article 12*

Without prejudice to any other action or penalties which they may contemplate in the event of failure on the part of the issuer to comply with the obligations resulting from admission to official listing, the competent authorities may make public the fact that an issuer is failing to comply with those obligations.

*Article 13*

1. An issuer whose securities are admitted to official listing shall provide the competent authorities with all the information which the latter consider appropriate in order to protect investors or ensure the smooth operation of the market.
2. Where protection of investors or the smooth operation of the market so requires, an issuer may be required by the competent authorities to publish such information in such a form and within such time limits as they consider appropriate. Should the issuer fail to comply with such requirement, the competent authorities may themselves publish such information after having heard the issuer.

*Article 14*

1. The competent authorities may decide to suspend the listing of a security where the smooth operation of the market is, or may be, temporarily jeopardized or where protection of investors so requires.
2. The competent authorities may decide that the listing of the security be discontinued where they are satisfied that, owing to special circumstances, normal regular dealings in a security are no longer possible.

*Article 15*

1. Member States shall ensure decisions of the competent authorities refusing the admission of a security to official listing or discontinuing such a listing shall be subject to the right to apply to the courts.

2. An applicant shall be notified of a decision regarding his application for admission to official listing within six months of receipt of the application or, should the competent authority require any further information within that period, within six months of the applicant's supplying such information.

3. Failure to give a decision within the time limit specified in paragraph 2 shall be deemed a rejection of the application. Such rejection shall give rise to the right to apply to the courts provided for in paragraph 1.

#### *Article 16*

Where an application for admission to official listing relates to certificates representing shares, the application shall be considered only if the competent authorities are of the opinion that the issuer of the certificates is offering adequate safeguards for the protection of investors.

### SECTION III

#### Publication of the information to be made available to the public

#### *Article 17*

1. The information which issuers of a security admitted to official listing in a Member State are required to make available to the public in accordance with the requirements of Schedules C and D shall be published in one or more newspapers distributed throughout the Member State or distributed widely therein or shall be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout the Member State or widely distributed therein or by other equivalent means approved by the competent authorities. The issuers must simultaneously send such information to the competent authorities.

2. The information referred to in paragraph 1 shall be published in the official language or languages, or in one of the official languages or in another language provided that in the Member State in question the official language or languages or such other language is or are customary in the sphere of finance and accepted by the competent authorities.

### SECTION IV

#### Cooperation between Member States

#### *Article 18*

1. The competent authorities shall cooperate wherever necessary for the purpose of carrying out

their duties and shall exchange any information required for that purpose.

2. Where applications are to be made simultaneously or within short intervals of one another for admission of the same securities to official listing on stock exchanges situated or operating in more than one Member State, or where an application for admission is made in respect of a security already listed on a stock exchange in another Member State, the competent authorities shall communicate with each other and make such arrangements as may be necessary to expedite the procedure and simplify as far as possible the formalities and any additional conditions required for admission of the security concerned.

3. In order to facilitate the work of the competent authorities, any application for the admission of a security to official listing on a stock exchange situated or operating in a Member State must state whether a similar application is being or has been made in another Member State, or will be made in the near future.

#### *Article 19*

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 20*

1. A Contact Committee (hereinafter called 'the Committee') shall be set up alongside the Commission. Its function shall be:

- (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 and on which exchanges of view are deemed useful;



- (b) to facilitate the establishment of a concerted attitude between the Member States on the more stringent or additional conditions and obligations which, pursuant to Article 5 of this Directive, they may lay down at national level;
- (c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments to be made in accordance with Article 21.
2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.
3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The chairman shall be a representative of the Commission. Secretarial services shall be provided by the Commission.
4. Meetings of the Committee shall be convened by its chairman, either on his own initiative or at the request of one Member State delegation. The Committee shall draw up its rules of procedure.

#### *Article 21*

1. For the purpose of adjusting, in the light of the requirements of the economic situation, the minimum amount of the foreseeable market capitalization laid down in the first paragraph of I (2) of Schedule 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 deliv-

ered 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 22*

1. Member States shall take the measures necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

This period shall be extended by one year in the case of Member States simultaneously introducing this Directive and the proposed Council Directive on the particulars to be published when securities issued by companies within the meaning of the second paragraph of Article 58 of the Treaty are admitted to official stock-exchange listing.

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 23*

This Directive is addressed to the Member States.

Done at Brussels, 5 March 1979.

*For the Council*

*The President*

J. FRANÇOIS-PONCET

## ANNEX

## SCHEDULE A

## CONDITIONS FOR THE ADMISSION OF SHARES TO OFFICIAL LISTING ON A STOCK EXCHANGE

**I. Conditions relating to companies for the shares of which admission to official listing is sought****1. *Legal position of the company***

The legal position of the company must be in conformity with the laws and regulations to which it is subject, as regards both its formation and its operation under its statutes.

**2. *Minimum size of the company***

The foreseeable market capitalization of the shares for which admission to official listing is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss, from the last financial year, must be at least one million European units of account.

However, Member States may provide for admission to official listing, even when this condition is not fulfilled, provided that the competent authorities are satisfied that there will be an adequate market for the shares concerned.

A higher foreseeable market capitalization or higher capital and reserves may be required by a Member State for admission to official listing only if another regulated, regularly operating, recognized open market exists in that State and the requirements for it are equal to or less than those referred to in the first paragraph.

The condition set out in the first paragraph shall not be applicable for the admission to official listing of a further block of shares of the same class as those already admitted.

The equivalent in national currency of one million European units of account shall initially be that applicable on the date on which the Directive is adopted.

If, as a result of adjustment of the equivalent of the European unit of account in national currency, the market capitalization expressed in national currency remains for a period of one year at least 10 % more or less than the value of one million European units of account the Member State must, within the 12 months following the expiry of that period, adjust its laws, regulations or administrative provisions to comply with the first paragraph.

**3. *A company's period of existence***

A company must have published or filed its annual accounts in accordance with national law for the three financial years preceding the application for official listing. By way of exception, the competent authorities may derogate from this condition where such derogation is desirable in the interests of the company or of investors and where the competent authorities are satisfied that investors have the necessary information available to be able to arrive at an informed judgment on the company and the shares for which admission to official listing is sought.

**II. Conditions relating to the shares for which admission to official listing is sought****1. *Legal position of the shares***

The legal position of the shares must be in conformity with the laws and regulations to which they are subject.

**2. *Negotiability of the shares***

The shares must be freely negotiable.

The competent authorities may treat shares which are not fully paid up as freely negotiable, if arrangements have been made to ensure that the negotiability of such shares is not restricted and that dealing is made open and proper by providing the public with all appropriate information.

The competent authorities may, in the case of the admission to official listing of shares which may be acquired only subject to approval, derogate from the first paragraph only if the use of the approval clause does not disturb the market.

### 3. *Public issue preceding admission to official listing*

Where public issue precedes admission to official listing, the first listing may be made only after the end of the period during which subscription applications may be submitted.

### 4. *Distribution of shares*

A sufficient number of shares must be distributed to the public in one or more Member States not later than the time of admission.

This condition shall not apply where shares are to be distributed to the public through the stock exchange. In that event, admission to official listing may be granted only if the competent authorities are satisfied that a sufficient number of shares will be distributed through the stock exchange within a short period.

Where admission to official listing is sought for a further block of shares of the same class, the competent authorities may assess whether a sufficient number of shares has been distributed to the public in relation to all the shares issued and not only in relation to this further block.

However, by way of derogation from the first paragraph, if the shares are admitted to official listing in one or more non-Member States, the competent authorities may provide for their admission to official listing if a sufficient number of shares is distributed to the public in the non-Member State or States where they are listed.

A sufficient number of shares shall be deemed to have been distributed either when the shares in respect of which application for admission has been made are in the hands of the public to the extent of a least 25 % of the subscribed capital represented by the class of shares concerned or when, in view of the large number of shares of the same class and the extent of their distribution to the public, the market will operate properly with a lower percentage.

### 5. *Listing of shares of the same class*

The application for admission to official listing must cover all the shares of the same class already issued.

However, Member States may provide that this condition shall not apply to applications for admission not covering all the shares of the same class already issued where the shares of that class for which admission is not sought belong to blocks serving to maintain control of the company or are not negotiable for a certain time under agreements, provided that the public is informed of such situations and that there is no danger of such situations prejudicing the interests of the holders of the shares for which admission to official listing is sought.

### 6. *Physical form of shares*

For the admission to official listing of shares issued by companies which are nationals of another Member State and which shares have a physical form it is necessary and sufficient that their physical form comply with the standards laid down in that other Member State. Where the physical form does not conform to the standards in force in the Member State in which admission to official listing is applied for, the competent authorities of that State shall make that fact known to the public.

The physical form of shares issued by companies which are nationals of a non-member State must afford sufficient safeguard for the protection of the investors.

7. *Shares issued by companies from a non-member State*

If the shares issued by a company which is a national of a non-member State are not listed in either the country of origin or in the country in which the major proportion of the shares is held; they may not be admitted to official listing unless the competent authorities are satisfied that the absence of a listing in the country of origin or in the country in which the major proportion is held is not due to the need to protect investors.

SCHEDULE B

CONDITIONS FOR THE ADMISSION OF DEBT SECURITIES TO OFFICIAL LISTING ON A STOCK EXCHANGE

A. ADMISSION TO OFFICIAL LISTING OF DEBT SECURITIES ISSUED BY AN UNDERTAKING

I. Conditions relating to undertakings for the debt securities of which admission to official listing is sought

*Legal position of the undertaking*

The legal position of the undertaking must be in conformity with the laws and regulations to which it is subject, as regards both its formation and its operation under its statutes.

II. Conditions relating to the debt securities for which admission to official listing is sought

1. *Legal position of the debt securities*

The legal position of the debt securities must be in conformity with the laws and regulations to which they are subject.

2. *Negotiability of the debt securities*

The debt securities must be freely negotiable.

The competent authorities may treat debt securities which are not fully paid up as freely negotiable if arrangements have been made to ensure that the negotiability of these debt securities is not restricted and that dealing is made open and proper by providing the public with all appropriate information.

3. *Public issue preceding admission to official listing*

Where public issue precedes admission to official listing, the first listing may be made only after the end of the period during which subscription applications may be submitted. This provision shall not apply in the case of tap issues of debt securities when the closing date for subscription is not fixed.

4. *Listing of debt securities ranking pari passu*

The application for admission to official listing must cover all debt securities ranking *pari passu*.

5. *Physical form of debt securities*

For the admission to official listing of debt securities issued by undertakings which are nationals of another Member State and which debt securities have a physical form, it is necessary and sufficient that their physical form comply with the standards laid down in that other Member State. Where the physical form does not conform to the standards in force in the Member State in which admission to official listing is applied for, the competent authorities of that State shall make that fact known to the public.

However, the physical form of debt securities issued in a single Member State must conform to the standards in force in that State.

The physical form of debt securities issued by undertakings which are nationals of a non-member State must afford sufficient safeguard for the protection of the investors.

### III. Other conditions

#### 1. *Minimum amount of the loan*

The amount of the loan may not be less than 200 000 European units of account. This provision shall not be applicable in the case of tap issues where the amount of the loan is not fixed.

Member States may, however, provide for admission to official listing even when this condition is not fulfilled, where the competent authorities are satisfied that there will be a sufficient market for the debt securities concerned.

The equivalent in national currency of 200 000 European units of account shall initially be that applicable on the date on which this Directive is adopted.

If as a result of adjustment of the equivalent of the European unit of account in national currency the minimum amount of the loan expressed in national currency remains, for a period of one year, at least 10 % less than the value of 200 000 European units of account the Member State must, within the 12 months following the expiry of that period, amend its laws, regulations and administrative provisions to comply with the first paragraph.

#### 2. *Convertible or exchangeable debentures, and debentures with warrants*

Convertible or exchangeable debentures and debentures with warrants may be admitted to official listing only if the related shares are already listed on the same stock exchange or on another regulated, regularly operating, recognized open market or are so admitted simultaneously.

However, Member States may, by way of derogation from the first paragraph, provide for the admission to official listing of convertible or exchangeable debentures or debentures with warrants, if the competent authorities are satisfied that holders have at their disposal all the information necessary to form an opinion concerning the value of the shares to which these debt securities relate.

### B. ADMISSION TO OFFICIAL LISTING OF DEBT SECURITIES ISSUED BY A STATE, ITS REGIONAL OR LOCAL AUTHORITIES OR A PUBLIC INTERNATIONAL BODY

#### 1. *Negotiability of the debt securities*

The debt securities must be freely negotiable.

#### 2. *Public issue preceding admission to official listing*

Where public issue precedes admission to official listing, the first listing may be made only after the end of the period during which subscription applications may be submitted. This provision shall not apply where the closing date for subscription is not fixed.

#### 3. *Listing of debt securities ranking pari passu*

The application for admission to official listing must cover all the securities ranking *pari passu*.

#### 4. *Physical form of debt securities*

For the admission to official listing of debt securities which are issued by a Member State or its regional or local authorities in a physical form, it is necessary and sufficient that such physical form comply with the standards in force in that Member State. Where the physical form does not comply with the standards in force in the Member State where admission to official listing is applied for, the competent authorities of that State shall bring this situation to the attention of the public.

The physical form of debt securities issued by non-member States or their regional or local authorities or by public international bodies must afford sufficient safeguard for the protection of the investors.

## SCHEDULE C

## OBLIGATIONS OF COMPANIES WHOSE SHARES ARE ADMITTED TO OFFICIAL LISTING ON A STOCK EXCHANGE

*1. Listing of newly issued shares of the same class*

Without prejudice to the second paragraph of II (5) of Schedule A, in the case of a new public issue of shares of the same class as those already officially listed, the company shall be required, where the new shares are not automatically admitted, to apply for their admission to the same listing, either not more than a year after their issue or when they become freely negotiable.

*2. Treatment of shareholders*

- (a) The company shall ensure equal treatment for all shareholders who are in the same position.
- (b) The company must ensure, at least in each Member State in which its shares are listed, that all the necessary facilities and information are available to enable shareholders to exercise their rights. In particular, it must:
- inform shareholders of the holding of meetings and enable them to exercise their right to vote,
  - publish notices or distribute circulars concerning the allocation and payment of dividends, the issue of new shares including allotment, subscription, renunciation and conversion arrangements,
  - designate as its agent a financial institution through which shareholders may exercise their financial rights, unless the company itself provides financial services.

*3. Amendment of the instrument of incorporation or the statutes*

- (a) A company planning an amendment to its instrument of incorporation or its statutes must communicate a draft thereof to the competent authorities of the Member States in which its shares are listed.
- (b) That draft must be communicated to the competent authorities no later than the calling of the general meeting which is to decide on the proposed amendment.

*4. Annual accounts and annual report*

- (a) The company must make available to the public, as soon as possible, its most recent annual accounts and its last annual report.
- (b) If the company prepares both annual own and annual consolidated accounts, it must make them available to the public. In that event the competent authorities may authorize the company only to make available to the public either the own or the consolidated accounts, provided that the accounts which are not made available to the public do not contain any significant additional information.
- (c) If the annual accounts and reports do not comply with the provisions of Council Directives concerning companies' accounts and if they do not give a true and fair view of the company's assets and liabilities, financial position and profit or loss, more detailed and/or additional information must be provided.

*5. Additional information*

- (a) The company must inform the public as soon as possible of any major new developments in its sphere of activity which are not public knowledge and which may, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, lead to substantial movements in the prices of its shares.

The competent authorities may, however, exempt the company from this requirement, if the disclosure of particular information is such as to prejudice the legitimate interests of the company.

- (b) The company must inform the public without delay of any changes in the rights attaching to the various classes of shares.
- (c) The company must inform the public of any changes in the structure (shareholders and breakdown of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

#### 6. *Equivalence of information*

- (a) A company whose shares are officially listed on stock exchanges situated or operating in different Member States must ensure that equivalent information is made available to the market at each of these exchanges.
- (b) A company whose shares are officially listed on stock exchanges situated or operating in one or more Member States and in one or more non-member States must make available to the markets of the Member State or States in which its shares are listed information which is at least equivalent to that which it makes available to the markets of the non-member State or States in question, if such information may be of importance for the evaluation of the shares.

### SCHEDULE D

#### OBLIGATIONS OF ISSUERS WHOSE DEBT SECURITIES ARE ADMITTED TO OFFICIAL LISTING ON A STOCK EXCHANGE

##### A. DEBT SECURITIES ISSUED BY AN UNDERTAKING

###### 1. *Treatment of holders of debt securities*

- (a) The undertaking must ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

Provided they are made in accordance with national law, this condition shall not prevent offers of early repayment of certain debt securities being made to holders by an undertaking in derogation from the conditions of issue and in particular in accordance with social priorities.

- (b) The undertaking must ensure that at least in each Member State where its debt securities are officially listed all the facilities and information necessary to enable holders to exercise their rights are available. In particular, it must :
  - publish notices or distribute circulars concerning the holding of meetings of holders of debt securities, the payment of interest, the exercise of any conversion, exchange, subscription or renunciation rights, and repayment,
  - designate as its agent a financial institution through which holders of debt securities may exercise their financial rights, unless the undertaking itself provides financial services.

###### 2. *Amendment of the instrument of incorporation or the statutes*

- (a) An undertaking planning an amendment to its instrument of incorporation or its statutes affecting the rights of holders of debt securities must forward a draft thereof to the competent authorities of the Member States in which its debt securities are listed.
- (b) That draft must be communicated to the competent authorities no later than the calling of the meeting of the body which is to decide on the proposed amendment.

###### 3. *Annual accounts and annual report*

- (a) The undertaking must make available to the public as soon as possible its most recent annual accounts and its last annual report the publication of which is required by national law.
- (b) If the undertaking prepares both annual own and annual consolidated accounts, it must make them available to the public. In that event, however, the competent authority may authorize the undertaking only to make available to the public either the own accounts or the consolidated accounts, provided that the accounts which are not made available do not contain any significant additional information.
- (c) If the accounts and reports do not comply with the provisions of Council Directives concerning undertakings' accounts and if they do not give a true and fair view of the undertaking's assets and liabilities, financial position and results, more detailed and/or additional information must be provided.

###### 4. *Additional information*

- (a) The undertaking must inform the public as soon as possible of any major new developments in its sphere of activity which are not public knowledge and which may significantly affect its ability to meet its commitments.

The competent authorities may, however, exempt the undertaking from this obligation at its request if the disclosure of particular information would be such as to prejudice the legitimate interests of the undertaking.

- (b) The undertaking must inform the public without delay of any change in the rights of holders of debt securities resulting in particular from a change in loan terms or in interest rates.
- (c) The undertaking must inform the public without delay of new loan issues and in particular of any guarantee or security in respect thereof.
- (d) Where the debt securities officially listed are convertible or exchangeable debentures, or debentures with warrants, the undertaking must inform the public without delay of any changes in the rights attaching to the various classes of shares to which they relate.

#### 5. *Equivalence of information*

- (a) An undertaking the debt securities of which are officially listed on stock exchanges situated or operating in different Member States must ensure that equivalent information is made available to the market at each of these exchanges.
- (b) An undertaking the debt securities of which are officially listed on stock exchanges situated or operating in one or more Member States and in one or more non-member States must make available to the markets of the Member State or Member States in which its debt securities are listed information which is at least equivalent to that which it makes available to the markets of the non-member State or States in question, if such information may be of importance for the evaluation of the debt securities.

### B. DEBT SECURITIES ISSUED BY A STATE OR ITS REGIONAL OR LOCAL AUTHORITIES OR BY A PUBLIC INTERNATIONAL BODY

#### 1. *Treatment of holders of debt securities*

- (a) States, their regional or local authorities and public international bodies must ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

Provided they are made in accordance with national law, this condition shall not prevent offers of early repayment of certain debt securities being made to holders by an issuer in derogation from the conditions of issue and in particular in accordance with social priorities.

- (b) States, their regional or local authorities and public international bodies must ensure that at least in each Member State in which their debt securities are officially listed all the facilities and information necessary to enable holders of debt securities to exercise their rights are available. In particular, they must :
  - publish notices or distribute circulars concerning the holding of meetings of holders of debt securities, the payment of interest and redemption,
  - designate as their agents financial institutions through which holders of debt securities may exercise their financial rights.

#### 2. *Equivalence of information*

- (a) States, their regional or local authorities and public international bodies the debt securities of which are officially listed on stock exchanges situated or operating in different Member States must ensure that equivalent information is made available to the market at each of these exchanges.
- (b) States, their regional or local authorities and public international bodies the debt securities of which are officially listed on stock exchanges situated or operating in one or more Member States and in one or more non-member States must make available to the markets of the Member State or Member States in which their debt securities are listed information which is at least equivalent to that which they make available to the markets of the non-member State or States in question, if such information may be of importance for the evaluation of the debt securities.



## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 3 March 1982

amending Directive 79/279/EEC coordinating the conditions for the admission of securities to official stock exchange listing and Directive 80/390/EEC 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

(82/148/EEC)

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<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas Member States must comply with Directive 79/279/EEC<sup>(3)</sup> within two years of its notification; whereas such notification took place on 8 March 1979; whereas the period therefore expired on 8 March 1981; whereas, however, the period was extended by one year in the case of Member States simultaneously introducing Directives 79/279/EEC and 80/390/EEC<sup>(4)</sup>; whereas such period expires, in these circumstances, on 8 March 1982;

Whereas Member States must comply with Directive 80/390/EEC within 30 months of its notification;

whereas such notification took place on 19 March 1980; whereas the period therefore expires on 19 September 1982; whereas, however, the period will expire on the earlier date of 8 March 1982 in the case of Member States simultaneously introducing Directives 79/279/EEC and 80/390/EEC;

Whereas Member States must comply by 30 June 1983 at the latest with Council Directive 82/121/EEC of 15 February 1982 on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing<sup>(5)</sup>;

Whereas there is a close link between these three Directives, not only because the purpose of all three is to coordinate a number of rules relating to securities which have been admitted to official stock exchange listing or whose admission to such official listing is requested, but above all because the three Directives aim to establish at Community level a coordinated information policy on the securities in question;

Whereas Member States should therefore be given the possibility of implementing the three Directives simultaneously so that they do not have to initiate several legislative or rule-making procedures in one and the same area at very short intervals, which might constitute an unacceptable extra burden for national parliaments or national stock exchange authorities;

<sup>(1)</sup> Opinion delivered on 19 February 1982 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion delivered on 25 February 1982 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 66, 16. 3. 1979, p. 21.

<sup>(4)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(5)</sup> OJ No L 48, 20. 2. 1982, p. 26.

Whereas Directives 79/279/EEC and 80/390/EEC should therefore be amended to allow Member States to implement them on the same date as Directive 82/121/EEC, namely by 30 June 1983 at the latest,

'This period shall be extended to 30 June 1983 in the case of Member States simultaneously introducing this Directive and Directives 79/279/EEC and 82/121/EEC'.

HAS ADOPTED THIS DIRECTIVE :

*Article 1*

The following subparagraph shall be added to Article 22 (1) of Directive 79/279/EEC :

'However, this period shall be extended to 30 June 1983 in the case of Member States simultaneously introducing this Directive and Directives 80/390/EEC and 82/121/EEC.'

*Article 2*

The following subparagraph shall be added to Article 27 (1) of Directive 80/390/EEC :

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 1982.

*For the Council*

*The President*

L. TINDEMANS

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## 3.b) 80/390/EEC

Council Directive 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  
(OJ No L 100, 17.04.1980, P. 1-26)

Modified by Directives 82/148/EEC (modification Art. 27) (OJ No L 62, 05.03.1982, p. 22-23)  
and 87/345/EEC (OJ No L 185, 04.07.1987, p. 81-83)

- Section I : General provisions (Art. 1-7)
- Section II : Contents of the listing particulars in certain specific cases (Art. 8-17)
- Section III : Arrangements for the scrutiny and publication of listing particulars (Art. 18-23)
- Section IV : Cooperation between the Member States (Art. 24-25)
- Section V : Contact Committee (Art. 26)
- Section VI : Final provisions (Art. 27-28)

## Annex :

Schedule A : Layout for listing particulars for the admission of shares to official stock exchange listing

Chapter 1 : Information concerning those responsible for listing particulars and the auditing of accounts

Chapter 2 : Information concerning admission to official listing and the shares for the admission of which application is being made

Chapter 3 : General information about the issuer and its capital

Chapter 4 : Information concerning the issuer's activities

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

Chapter 6 : Information concerning administration, management and supervision

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

Schedule B : Layout for listing particulars for the admission of debt securities to official stock exchange listing

Chapter 1 : Information concerning those responsible for listing particulars and the auditing of accounts

Chapter 2 : Information concerning loans and the admission of debt securities to official listing

Chapter 3 : General information about the issuer and its capital

Chapter 4 : Information concerning the issuer's activities

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

Chapter 6 : Information concerning administration, management and supervision

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

Schedule C : Layout for listing particulars for the admission of certificates representing  
shares to official stock exchange listing

Chapter 1 : General information about the issuer

Chapter 2 : Information on the certificates themselves

Proposal for a Council Directive amending Directive 80/390/EEC in respect of mutual recognition  
of stock exchange listing particulars (COM(89)133 (SYN 191))

(OJ No C 101, 22.04.1989, p. 13)

Art. 1-3

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

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**

(80/390/EEC)

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the market in which undertakings operate has been enlarged to embrace the whole Community and this enlargement involves a corresponding increase in their financial requirements and extension of the capital markets on which they must call to satisfy them; whereas admission to official listing on stock exchanges of Member States of securities issued by undertakings constitutes an important means of access to these capital markets; whereas furthermore exchange restrictions on the purchase of securities traded on the stock exchanges of another Member State have been eliminated as part of the liberalization of capital movements;

Whereas safeguards for the protection of the interests of actual and potential investors are required in

most Member States of undertakings offering their securities to the public, either at the time of their offer or of their admission to official stock exchange listing; whereas such safeguards require the provision of information which is sufficient and as objective as possible concerning the financial circumstances of the issuer and particulars of the securities for which admission to official listing is requested; whereas the form under which this information is required usually consists of the publication of listing particulars;

Whereas the safeguards required differ from Member State to Member State, both as regards the contents and the layout of the listing particulars and the efficacy, methods and timing of the check on the information given therein; whereas the effect of these differences is not only to make it more difficult for undertakings to obtain admission of securities to official listing on stock exchanges of several Member States but also to hinder the acquisition by investors residing in one Member State of securities listed on stock exchanges of other Member States and thus to inhibit the financing of the undertakings and investment throughout the Community;

Whereas these differences should be eliminated by coordinating the rules and regulations without necessarily making them completely uniform, in order to achieve an adequate degree of equivalence in the safeguards required in each Member State to ensure the provision of information which is sufficient and as objective as possible for actual or potential security holders; whereas at the same time, taking into account the present degree of liberalization of capital movements in the Community and

<sup>(1)</sup> OJ No C 131, 13. 12. 1972, p. 61.

<sup>(2)</sup> OJ No C 11, 7. 2. 1974, p. 24.

<sup>(3)</sup> OJ No C 125, 16. 10. 1974, p. 1.

the fact that a mechanism for checking at the time the securities are offered does not yet exist in all Member States, it would appear sufficient at present to limit the coordination to the admission of securities to official stock exchange listing;

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 the subject of an application for admission to official listing on a stock exchange situated or operating within a Member State.

2. This Directive shall not apply to:

- units issued by collective investment undertakings other than the closed-end type,
- securities issued by a State or by its regional or local authorities.

#### Article 2

For 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, repurchased 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 its 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 undertaking whose securities are the subject of an application for admission to official listing on a stock exchange;

(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 directly linked 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 interest' 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 3

Member States shall ensure that the admission of securities to official listing on a stock exchange situated or operating within their territories is conditional upon the publication of an information sheet, hereinafter referred to as listing particulars.

#### Article 4

1. The listing particulars shall contain the information which, according to the particular nature of the issuer and of the securities for the admission of which application is being made, 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 such securities.

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

#### Article 5

1. Without prejudice to the obligation referred to in Article 4, Member States shall ensure that, subject to the possibilities for exemptions provided for in Articles 6 and 7, listing particulars 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 8 to 17 the listing particulars are to be drawn up in accordance with the specifications given in those Articles, subject to the possibilities for exemptions provided for in Articles 6 and 7.

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

#### Article 6

Member States may allow the authorities responsible for checking the listing particulars 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 listing particulars in the following cases:

1. where the securities for which admission to official listing is applied for are:

- (a) securities which have been the subject of a public issue;
- (b) securities issued in connection with a takeover offer;
- (c) securities issued in connection with a merger involving the acquisition of another company or the formation of a new company, the division of a 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;

and where, not more than 12 months before the admission of the securities to official listing, a document, regarded by the competent authorities as containing information equivalent to that of the listing particulars provided for by this Directive, has been published in the same Member State. Particulars shall also be published of any material changes which have occurred since such document was prepared. The document must be made available to the public at the registered office of the issuer and at the offices of the financial organizations retained to act as the latter's paying agents, and any particulars of material changes shall be published in accordance with Articles 20 (1) and 21 (1).

2. where the securities for which admission to official listing is applied for are:

- (a) shares allotted free of charge to holders of shares already listed on the same stock exchange; or
- (b) shares resulting from the conversion of convertible debt securities or shares created after an exchange for exchangeable debt securities, if shares of the company whose shares are offered by way of conversion or exchange are already listed on the same stock exchange; or
- (c) shares resulting from the exercise of the rights conferred by warrants, if shares of the company whose shares are offered to holders of the warrants are already listed on the same stock exchange; or
- (d) shares issued in substitution for shares already listed on the same stock exchange if the issuing of such new shares does not involve any increase in the company's issued share capital;

and, where appropriate, the information provided for in Chapter 2 of Schedule A is published in accordance with Articles 20 (1) and 21 (1).

3. where the securities for which admission to official listing is applied for are:

- (a) shares of which either the number or the estimated market value 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 already listed on the same stock exchange; or
- (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
- were set up by special law, and
  - whose activities 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 by national law as debt securities issued or guaranteed by the State; or
- (d) shares allotted to employees, if shares of the same class have already been admitted to official listing on the same stock exchange; shares which differ from each other solely as to the date of first entitlement to dividends shall not be considered as being of different classes; or
- (e) securities already admitted to official listing on another stock exchange in the same Member State; or
- (f) shares issued in consideration for the partial or total renunciation by the management of a limited partnership with a share capital of its statutory rights over the profits, if shares of the same class have already been admitted to official listing on the same stock exchange; shares which differ from each other solely as to the date of first entitlement to dividends shall not be considered as being of different classes; or
- (g) 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 capital, and provided that certificates representing such shares are already listed on the same stock exchange, and where:

- in the case of (a), the issuer has complied with the stock exchange publicity requirements imposed by the national authorities and has produced annual accounts and annual and interim reports which these authorities have considered adequate,
- in the case of (e), listing particulars complying with this Directive have already been published, and
- in all the cases referred to in points (a) to (g), information concerning the number and type of securities to be admitted to official listing and the circumstances in which such securities have been issued has been published in accordance with Articles 20 (1) and 21 (1).

#### Article 7

The competent authorities may authorize omission from the listing particulars 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.

## SECTION II

### Contents of the listing particulars in certain specific cases

#### Article 8

1. Where the application for admission to official listing relates to shares offered to shareholders of the issuer on a pre-emptive basis and shares of the latter are already listed on the same stock exchange, the competent authorities may provide that the listing particulars 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 listing particulars shall contain, at least, subject to Article 16 (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 application for admission to official listing relates to convertible debt securities, exchangeable debt securities or debt securities with warrants which are offered on a pre-emptive basis to the shareholders of the issuer and where the latter's shares are already listed on the same stock exchange, the competent authorities may provide that the listing particulars 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. When published in accordance with Article 20, listing particulars as referred to in paragraphs 1 and 2 shall be accompanied by the annual accounts for the latest financial year.

4. Where the issuer prepares both own and consolidated annual accounts, both sets of accounts shall accompany the listing particulars. However, the competent authorities may allow the issuer to attach

to the listing particulars either the own or the consolidated accounts alone, provided that the accounts not attached to the listing particulars furnish no material additional information.

#### Article 9

1. Where the application for admission to official listing relates to debt securities which are neither convertible, exchangeable, nor accompanied by warrants and are issued by an undertaking which has securities already listed on the same stock exchange, the competent authorities may provide that the listing particulars 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. When published in accordance with Article 20, listing particulars as referred to in paragraph 1 shall be accompanied by the annual accounts for the latest financial year.

3. Where the issuer prepares both own and consolidated annual accounts, both sets of accounts must accompany the listing particulars. However, the competent authorities may allow the issuer to attach to the listing particulars either the own or the consolidated accounts alone, provided that the accounts not attached to the listing particulars furnish no material additional information.

#### Article 10

Where the application for admission to official listing relates to debt securities nearly all of which, because of their nature, are normally bought and traded in by a limited number of investors who are particularly knowledgeable in investment matters, the competent authorities may allow the omission from the listing particulars of certain information provided for by Schedule B or allow its inclusion in summary form, on condition that such information is not material from the point of view of the investors concerned.

*Article 11*

1. For the admission of securities, issued by financial institutions, to official listing, the listing particulars 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 down 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 the first indent of Article 1 (2),
- 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*

Where the application for admission to official listing concerns 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 listing particulars 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 of-

ices or at those of the financial organizations retained to act as the latter's paying agents.

*Article 13*

1. For the admission to official listing of debt securities guaranteed by a legal person, listing particulars 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 listing particulars relating to that financial institution shall be drawn up in accordance with Article 11, without prejudice to the first subparagraph of this paragraph.

2. When the issuer of the guaranteed debt securities is a finance company within the meaning of Article 11 (3), the listing particulars 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 listing particulars.

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 application for admission to official listing relates to convertible debt securities, exchangeable debt securities or debt securities with warrants, the listing particulars 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, listing particulars 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), listing particulars 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 application for admission to official listing relates to securities issued in connection with a merger involving the acquisition of another company or the formation of a new company, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, a takeover offer or as consideration for the transfer of assets other than cash, the documents describing the terms and conditions of such operations, as well as, where appropriate, any opening balance sheet, whether or not pro forma, if the issuer has not yet prepared its annual accounts, must, without prejudice to the requirement to publish the listing particulars, be made available for inspection by the public at the offices of the issuer of the securities and at those of the financial organizations retained to act as the latter's paying agents.

2. Where the transaction referred to in paragraph 1 took place more than two years previously, the com-

petent authorities may dispense with the requirement imposed in that paragraph.

#### Article 16

1. When the application for admission to official listing relates to certificates representing shares, the listing particulars 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 I of Schedule C.

#### Article 17

1. Where debt securities for which admission to official listing is applied for 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 listing particulars***Article 18*

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 listing particulars may be published until they have been approved by the competent authorities.

3. The competent authorities shall approve the publication of listing particulars only if they are of the opinion that they satisfy 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 19*

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 20*

1. Listing particulars must be published either:
  - by insertion in one or more newspapers circulated throughout the Member State in which the admission to official listing of securities is sought, or widely circulated therein, or
  - in the form of a brochure to be made available, free of charge, to the public at the offices of the stock exchange or stock exchanges on which the securities are being admitted to official listing, at the registered office of the issuer and at the

offices of the financial organizations retained to act as the latter's paying agents in the Member State in which the admission of securities to official listing is sought.

2. In addition, either the complete listing particulars or a notice stating where the listing particulars have been published and where they may be obtained by the public must be inserted in a publication designated by the Member State in which the admission of securities to official listing is sought.

*Article 21*

1. Listing particulars must be published within a reasonable period, to be laid down in national legislation or by the competent authorities before the date on which official listing becomes effective.

Moreover, where the admission of securities to official listing is preceded by trading of the pre-emptive subscription rights giving rise to dealings recorded in the official list, the listing particulars 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 listing particulars until after:

- the date on which official listing becomes effective, in the case of securities of a class already listed on the same stock exchange issued in consideration of transfers of assets other than cash,
- the date of the opening of trading in pre-emptive subscription rights.

3. If the admission of debt securities to official listing coincides with their public issue and if some of the terms of the issue are not finalized until the last moment, the competent authorities may merely require the publication, within a reasonable period, of listing particulars omitting information as to these terms but indicating how it will be given. Such information must be published before the date on which official listing starts, except where debt securities are issued on a continuous basis at varying prices.

*Article 22*

Where listing particulars are, or will be, published in accordance with Articles 1 and 3 for the admission of securities to official listing, the notices, bills, posters and documents announcing this operation and indicating the essential characteristics of these

securities, and all other documents relating to their admission and intended for publication by the issuer or on his behalf, must first be communicated to the competent authorities. The latter shall decide whether they should be submitted to scrutiny before publication.

The abovementioned documents must state that listing particulars exist and indicate where they are being, or will be, published in accordance with Article 20.

#### *Article 23*

Every significant new factor capable of affecting assessment of the securities which arises between the time when the listing particulars are adopted and the time when stock exchange dealings begin shall be covered by a supplement to the listing particulars, 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 24*

1. Where applications for admission of the same securities to official listing on stock exchanges situated or operating within several Member States are made simultaneously, or within short intervals of one another, the competent authorities shall exchange information and use their best endeavours to achieve maximum coordination of their requirements concerning listing particulars, 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 application for admission to official listing is made for securities which have been listed in another Member State less than six months previously, the competent authorities to whom application is made shall contact the competent authorities which have already admitted the securities to official listing and shall, as far as possible, exempt the issuer of those securities from the preparation of new listing particulars, subject to any need for updating, translation or the issue of supplements in accordance with the individual requirements of the Member State concerned.

#### *Article 25*

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 26*

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<sup>(1)</sup> 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 listing particulars 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.

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.

<sup>(1)</sup> OJ No L 66, 16. 3. 1979, p. 21

**SECTION VI****Final provisions***Article 27*

1. Member States shall take the measures necessary to comply with this Directive within 30 months of its notification. 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.

Done at Brussels, 17 March 1980.

*For the Council*  
*The President*  
J. SANTER

**ANNEX:****SCHEDULE A****LAYOUT FOR LISTING PARTICULARS FOR THE ADMISSION OF SHARES TO OFFICIAL STOCK EXCHANGE LISTING****CHAPTER 1****Information concerning those responsible for listing particulars and the auditing of accounts**

- 1.1. Name and function of natural persons and name and registered office of legal persons responsible for the listing particulars or, as the case may be, for certain parts of them, with, in the latter case, an 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 listing particulars for which they are responsible is in accordance with the facts and contains no omissions likely to affect the import of the listing particulars.
- 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 listing particulars which has been audited by the auditors.

**CHAPTER 2****Information concerning admission to official listing and the shares for the admission of which application is being made**

- 2.1. Indication that the admission applied for is admission to official listing of shares already marketed or admission to listing with a view to stock exchange marketing.
- 2.2. Information concerning the shares in respect of which application for official listing is being made:
  - 2.2.0. 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 and/or issued, if predetermined.
  - 2.2.1. In the case of shares issued in connection with a merger, the division of a company, the transfer of all or part of an undertaking's assets and liabilities, a takeover offer, or as consideration for the transfer of assets other than cash, indication of where the documents describing the terms and conditions of such operations are available for inspection by the public.
  - 2.2.2. 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.
  - 2.2.3. Tax on the income from the shares withheld at source in the country of origin and/or the country of listing.

Indication as to whether the issuer assumes responsibility for the withholding of tax at source.

- 2.2.4. Arrangements for transfer of the shares and any restrictions on their free negotiability (e.g. clause establishing approval requirement).
- 2.2.5. Date on which entitlement to dividends arises.
- 2.2.6. The stock exchanges where admission to official listing is or will be sought.
- 2.2.7. The financial organizations which, at the time of admission of shares to official listing, are the paying agents of the issuer in the Member States where admission has taken place.
- 2.3. In so far as is relevant, information concerning issue and placing, public or private, of the shares in respect of which the application for admission to official listing is made where such issue or placing has been effected within the 12 months preceding admission:
- 2.3.0. Indication of the exercise of the right of pre-emption 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 pre-emption is intended to benefit specific persons.
- 2.3.1. The total amount of the public or private issue or placing and the number of shares offered, where applicable by category.
- 2.3.2. If the public or private issue or placing were or are 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.
- 2.3.3. 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.
- 2.3.4. The procedure for the exercise of any right of pre-emption; the negotiability of subscription rights; the treatment of subscription rights not exercised.
- 2.3.5. Period of the opening of the issue or offer of shares, and names of the financial organizations responsible for receiving the public's subscriptions.
- 2.3.6. Methods of and time limits for delivery of the shares, possible creation or provisional certificates.
- 2.3.7. Names, addresses and descriptions 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.
- 2.3.8. 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.
- 2.3.9. 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.
- 2.4. Information concerning admission of shares to official listing:
- 2.4.0. Description of the shares for which admission to official listing is applied, 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.



- 2.4.1. If the shares are to be marketed on the stock exchange and no such shares have previously been sold to the public, a statement of the number of shares made available to the market and of their nominal value, or, in the absence of nominal value, of their accounting par value, or a statement of the total nominal value and, where applicable, a statement of the minimum offer price.
- 2.4.2. If known, the dates on which the new shares will be listed and dealt in.
- 2.4.3. If shares of the same class are already listed on one or more stock exchanges, indication of these stock exchanges.
- 2.4.4. If shares of the same class have not yet 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.
- 2.4.5. 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.
- 2.5. If, simultaneously or almost simultaneously with the creation of shares for which admission to official listing is being sought, 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 listing particulars 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. In so far 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 in so far 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 in so far 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 listing particulars 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 listing particulars 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 listing particulars 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 last three financial years, where the company includes its own annual accounts in the listing particulars.

Where the issuer includes only consolidated annual accounts in the listing particulars, it shall indicate the consolidated profit or loss per share, for the financial year, for the last 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 listing particulars.

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 last 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 listing particulars or appended to them. 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 listing particulars 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 obliged to publish listing particulars 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 4 of this Directive:

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

5.4. When the listing particulars comprise 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 in which the stock exchange on which admission to official listing is requested is situated or operates;
- (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 LISTING PARTICULARS FOR THE ADMISSION OF DEBT SECURITIES  
TO OFFICIAL STOCK EXCHANGE LISTING

## CHAPTER I

**Information concerning those responsible for listing particulars and the auditing of accounts**

- 1.1. Names and addresses of the natural or legal persons responsible for the listing particulars or, as the case may be, for certain parts of them 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 listing particulars for which they are responsible is in accordance with the facts and contains no omissions likely to affect the import of the listing particulars.
- 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 listing particulars which has been audited by the auditors.

## CHAPTER 2

**Information concerning loans and the admission of debt securities to official listing**

- 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 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 of listing.  
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, at the time of admission to official listing are the paying agents of the issuer in the Member State of admission.
  - 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 admission of the debt securities to official listing.
- 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, a statement of the portion not covered.
- 2.3.2. If the public or private issue or placing were or are 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.
- 2.3.3. If debt securities of the same class are already listed on one or more stock exchanges, indication of these stock exchanges.
- 2.3.4. If debt securities of the same class have not yet been admitted to official listing but are dealt in one or more other markets which are subject to regulation, are in regular operation and are recognized and open, indication of such markets.
- 2.4. Information concerning the issue of it is concomitant with official admission or if it took place within the three months preceding such admission.
- 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 financial 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 listing particulars 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, in so far 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 in so far 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 listing particulars 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 listing particulars 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 listing particulars 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 listing particulars or appended to them. 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 listing particulars.

- 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 relevant, 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 listing particulars comprise 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 in which the stock exchange on which admission to official listing is requested is situated or operates;
- (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 LISTING PARTICULARS FOR THE ADMISSION OF CERTIFICATES REPRESENTING SHARES TO OFFICIAL STOCK EXCHANGE LISTING**

## CHAPTER I

**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 listing particulars or appended to them. 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 listing particulars 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,
      - the 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. Supplementary information for admission to official listing:
    - (a) If the certificates are to be placed on a stock exchange the number of certificates made available to the market and/or the total nominal value; the minimum sale price, if such a price is fixed;
    - (b) Date on which the new certificates will be listed, if known.
  - 2.5. 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.
  - 2.6. 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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## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 3 March 1982

amending Directive 79/279/EEC coordinating the conditions for the admission of securities to official stock exchange listing and Directive 80/390/EEC 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

(82/148/EEC)

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<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas Member States must comply with Directive 79/279/EEC<sup>(3)</sup> within two years of its notification; whereas such notification took place on 8 March 1979; whereas the period therefore expired on 8 March 1981; whereas, however, the period was extended by one year in the case of Member States simultaneously introducing Directives 79/279/EEC and 80/390/EEC<sup>(4)</sup>; whereas such period expires, in these circumstances, on 8 March 1982;

Whereas Member States must comply with Directive 80/390/EEC within 30 months of its notification;

whereas such notification took place on 19 March 1980; whereas the period therefore expires on 19 September 1982; whereas, however, the period will expire on the earlier date of 8 March 1982 in the case of Member States simultaneously introducing Directives 79/279/EEC and 80/390/EEC;

Whereas Member States must comply by 30 June 1983 at the latest with Council Directive 82/121/EEC of 15 February 1982 on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing<sup>(5)</sup>;

Whereas there is a close link between these three Directives, not only because the purpose of all three is to coordinate a number of rules relating to securities which have been admitted to official stock exchange listing or whose admission to such official listing is requested, but above all because the three Directives aim to establish at Community level a coordinated information policy on the securities in question;

Whereas Member States should therefore be given the possibility of implementing the three Directives simultaneously so that they do not have to initiate several legislative or rule-making procedures in one and the same area at very short intervals, which might constitute an unacceptable extra burden for national parliaments or national stock exchange authorities;

<sup>(1)</sup> Opinion delivered on 19 February 1982 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion delivered on 25 February 1982 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 66, 16. 3. 1979, p. 21.

<sup>(4)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(5)</sup> OJ No L 48, 20. 2. 1982, p. 26.

Whereas Directives 79/279/EEC and 80/390/EEC should therefore be amended to allow Member States to implement them on the same date as Directive 82/121/EEC, namely by 30 June 1983 at the latest,

'This period shall be extended to 30 June 1983 in the case of Member States simultaneously introducing this Directive and Directives 79/279/EEC and 82/121/EEC.'

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The following subparagraph shall be added to Article 22 (1) of Directive 79/279/EEC:

'However, this period shall be extended to 30 June 1983 in the case of Member States simultaneously introducing this Directive and Directives 80/390/EEC and 82/121/EEC.'

*Article 2*

The following subparagraph shall be added to Article 27 (1) of Directive 80/390/EEC:

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 3 March 1982.

*For the Council*

*The President*

L. TINDEMANS

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**COUNCIL DIRECTIVE**

of 22 June 1987

**amending Directive 80/390/EEC 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**

(87/345/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas, on 17 November 1986, the Council adopted Directive 86/566/EEC amending the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty<sup>(3)</sup>; whereas, as a consequence, the number of cross-border applications for admission to listing is likely to increase;

Whereas Article 24 of Directive 80/390/EEC<sup>(4)</sup>, as amended by Directive 82/148/EEC<sup>(5)</sup>, provides that, where securities are to be admitted to official listing on stock exchanges in two or more Member States, the competent authorities of such Member States are to cooperate and endeavour to agree a single text for the listing particulars for use in all the Member States concerned;

Whereas that provision does not result in the full mutual recognition of listing particulars and it is therefore appropriate to amend Directive 80/390/EEC so as to achieve that recognition;

Whereas mutual recognition represents an important step forward in the creation of the Community's internal market;

Whereas, in this connection, it is necessary to specify which authorities are competent to check and approve listing particulars in the event of simultaneous applications for admission to official listing in two or more Member States;

Whereas mutual recognition can be effective only in so far as Directive 80/390/EEC and the Directives to which it refers have been incorporated in the national legislation of the Member State the competent authorities of which approve the listing particulars;

Whereas the mutual recognition of listing particulars does not in itself confer a right to admission;

Whereas it is advisable to provide for the extension, by means of agreements to be concluded by the Community with non-member countries, of the recognition of listing particulars from those countries on a reciprocal basis;

Whereas provision should be made for a transitional period for the Kingdom of Spain and the Portuguese Republic to take account of the periods accorded to those Member States under Article 2 (2) of Directive 86/566/EEC,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Section IV of Directive 80/390/EEC is replaced by the following Sections and Sections V and VI shall become Sections VIII and IX, respectively:

SECTION IV

**Determination of the competent authority**

*Article 24*

Where, for the same securities, applications for admission to official listing on stock exchanges situated or operating in two or more Member States, including the Member State in which the issuer's registered office is situated, are made simultaneously or within a short interval, listing particulars shall be drawn up in accordance with the rules laid down in this Directive in the Member State in which the issuer has its registered office and approved by the competent authorities of that State; if the issuer's registered office is not situated in one of those Member States, the issuer must choose one of those States under the legislation of which the listing particulars will be drawn up and approved.

SECTION V

**Mutual recognition**

*Article 24a*

1. Once approved in accordance with Article 24, listing particulars must, subject to any translation, be recognized by the other Member States in which

<sup>(1)</sup> OJ No C 125, 11. 5. 1987, p. 173.

<sup>(2)</sup> OJ No C 150, 9. 6. 1987, p. 18.

<sup>(3)</sup> OJ No L 332, 26. 11. 1986, p. 22.

<sup>(4)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(5)</sup> OJ No L 62, 5. 3. 1982, p. 22.

admission to official listing has been applied for, without its being necessary to obtain the approval of the competent authorities of those States and without their being able to require that additional information be included in the listing particulars. The competent authorities may, however, require that listing particulars include information specific to the market of the country of admission concerning in particular the income tax system, the financial organizations retained to act as paying agents for the issuer in that country, and the way in which notices to investors are published.

2. Listing particulars approved by the competent authorities within the meaning of Article 24 must be recognized in another Member State in which application for admission to official listing is made, even if partial exemption or partial derogation has been granted pursuant to this Directive, provided that :

- (a) the partial exemption or partial derogation in question is of a type that is recognized in the rules of the other Member State concerned, and
- (b) the conditions that justify the partial exemption or partial derogation also exist in the other Member State concerned and that there are no other conditions concerning such exemption or derogation which might lead the competent authority in that Member State to refuse them.

Even if the conditions laid down in (a) and (b) are not fulfilled, the Member State concerned may allow its competent authorities to recognize the listing particulars approved by the competent authorities within the meaning of Article 24.

3. When approving listing particulars, the competent authorities within the meaning of Article 24 shall provide the competent authorities of the other Member States in which application for official listing is made with a certificate of approval. If partial exemption or partial derogation has been granted pursuant to this Directive, the certificate shall state that fact and the reasons for it.

4. When application for admission to official listing is made, the issuer shall communicate to the competent authorities in each of the other Member States in which it is applying for admission the draft listing particulars which it intends to use in that State.

5. Member States may restrict the application of this Article to listing particulars of issuers having their registered office in a Member State.

#### *Article 24b*

1. Where the securities for which applications for admission to official listing on stock exchanges situated in two or more Member States have been made simultaneously or within a short interval have been the subject of a prospectus drawn up and approved in accordance with this Directive, at the time of the

public offer, by the competent authorities within the meaning of Article 24 in the three months preceding the application for admission in that State, that prospectus must, subject to any translation, be recognized as listing particulars in the other Member States in which application for admission to official listing is made, without its being necessary to obtain the approval of the competent authorities of those Member States and without their being able to require that additional information be included in the listing particulars. The competent authorities may, however, require that listing particulars include information specific to the market of the country of admission concerning, in particular, the income tax system, the financial organizations retained to act as paying agents for the issuer in the country of admission and the ways in which notices to investors are published.

2. Article 24a (2), (3), (4) and (5) shall apply in the eventuality referred to in paragraph 1 of this Article.

3. Article 23 shall apply to all changes occurring between the time when the content of the prospectus referred to in paragraph 1 of this Article is adopted and the time when stock exchange dealings begin.

## SECTION VI

### Cooperation

#### *Article 24c*

1. The competent authorities shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

2. Where an application for admission to official listing concerning securities giving a right to participate in company capital, either immediately or at the end of the maturity period, is made in one or more Member States other than that in which the registered office of the issuer of the shares to which those securities give entitlement is situated, while that issuer's shares have already been admitted to official listing in that Member State, the competent authorities of the Member State of admission may act only after having consulted the competent authorities of the Member State in which the registered office of the issuer of the shares in question is situated.

3. Where an application for admission to official listing is made for securities which have been listed in another Member State less than six months previously, the competent authorities to whom application is made shall contact the competent authorities which have already admitted the securities to official listing and shall, as far as possible, exempt the issuer of those securities from the preparation of new listing particulars, subject to any need for updating, translation or the issue of supplements in accordance with the individual requirements of the Member State concerned.

*Article 25*

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.

3. Without prejudice to cases covered by criminal law, the competent authorities receiving information pursuant to Article 24c (1) may use it only for the performance of their duties or in the context of administrative appeals or legal proceedings relating to such performance.

## SECTION VII

## Negotiations with non-member countries

*Article 25a*

The Community may, by means of agreements concluded with one or more non-member countries

pursuant to the Treaty, recognize listing particulars drawn up and checked, in accordance with the rules of the non-member country or countries, as meeting the requirements of this Directive, subject to reciprocity, provided that the rules concerned give investors protection equivalent to that afforded by this Directive, even if those rules differ from the provisions of this Directive.'

*Article 2*

1. Member States shall take the measures necessary for them to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof. However, for the Kingdom of Spain the date 1 January 1990 shall be replaced by 1 January 1991 and for the Portuguese Republic by 1 January 1992.

2. 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 3*

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1987.

*For the Council*

*The President*

L. TINDEMANS



Proposal for a Council Directive amending Directive 80/390/EEC in respect of mutual recognition of stock exchange listing particulars

COM(89) 133 final — SYN 191

(Submitted by the Commission on 30 March 1989)

(89/C 101/05)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas Article 21 Council Directive 89.../EEC provides that where public offers are made simultaneously or within a short interval of one another in two or more Member States a public offer prospectus drawn up and approved in accordance with Articles 7, 8 or 12 of that Directive shall be recognized as a public offer prospectus in the other Member States concerned on the basis of mutual recognition;

Whereas it is also desirable to provide for recognition of such a public offer prospectus as listing particulars where admission to official stock exchange listing is requested within a short period of the public offer;

Whereas, therefore, it is appropriate to amend Article 24b of Council Directive 80/390/CEE<sup>(1)</sup>, as amended by Directive 87/345/EEC<sup>(2)</sup>,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Paragraph 1 of Article 24b of Directive 80/390/EEC is hereby replaced by the following:

'1. Where application for admission to official listing on a stock exchange situated in a Member State is made and the securities have been the subject

of a public offer prospectus drawn up and approved in that or any other Member State in accordance with Articles 7, 8 or 12 of Council Directive 89.../EEC<sup>(1)</sup> in the three months preceding the application for admission, the public offer prospectus must, subject to any translation, be recognized as listing particulars in the Member State in which application for official listing is made, without it being necessary to obtain the approval of the competent authorities of that Member State and without their being able to require that additional information be included in the prospectus. The competent authorities may, however, require that the prospectus include information specific to the market of the country of admission, concerning, in particular, the income tax system, the financial organizations retained to act as paying agents for the issuer in the country of admission and the ways in which notices to investors are published.

<sup>(1)</sup> OJ No L ...

*Article 2*

1. Member States shall take the measures necessary to comply with this Directive by the same dates as are laid down in Article 2 of Directive 87/345/EEC. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

This Directive is addressed to the Member States.

<sup>(1)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(2)</sup> OJ No L 185, 4. 7. 1987, p. 81.



3.c) 82/121/EEC

Council Directive of 15 February 1982 on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing (OJ No L 48, 20.02.1982, p. 26-29)

Section I : General provisions and scope (Art. 1-3)

Section II : Publication and contents of the half-yearly report (Art. 4-8)

Section III : Powers of the competent authorities (Art. 9)

Section IV : Cooperation between Member States (Art. 10)

Section V : Contact Committee (Art. 11)

Section VI : Final provisions (Art. 12-13)





## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 15 February 1982

on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing

(82/121/EEC)

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas 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 <sup>(4)</sup> seeks to ensure improved protection of investors and a greater degree of equivalence in the protection provided, by coordinating requirements as to the information to be published at the time of admission;

Whereas, in the case of securities admitted to official stock-exchange listing, the protection of investors requires that the latter be supplied with appropriate regular information throughout the entire period during which the securities are listed; whereas coordi-

nation of requirements for this regular information has similar objectives to those envisaged for the listing particulars, namely to improve such protection and to make it more equivalent, to facilitate the listing of these securities on more than one stock exchange in the Community, and in so doing to contribute toward the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets;

Whereas, under Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing <sup>(5)</sup>, listed companies must as soon as possible make available to investors their annual accounts and report giving information on the company for the whole of the financial year; whereas the fourth Directive 78/660/EEC <sup>(6)</sup> has coordinated the laws, regulations and administrative provisions of the Member States concerning the annual accounts of certain types of companies;

Whereas companies should also, at least once during each financial year, make available to investors reports on their activities; whereas this Directive can, consequently, be confined to coordinating the content and distribution of a single report covering the first six months of the financial year;

Whereas, however, in the case of ordinary debentures, because of the rights they confer on their holders, the protection of investors by means of the publication of a half-yearly report is not essential; whereas, by virtue

<sup>(1)</sup> OJ No C 29, 1. 2. 1979, p. 5 and OJ No C 210, 16. 8. 1980, p. 5.

<sup>(2)</sup> OJ No C 85, 8. 4. 1980, p. 69.

<sup>(3)</sup> OJ No C 53, 3. 3. 1980, p. 54.

<sup>(4)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(5)</sup> OJ No L 66, 16. 3. 1979, p. 21.

<sup>(6)</sup> OJ No L 222, 14. 8. 1978, p. 11.

of Directive 79/279/EEC, convertible or exchangeable debentures and debentures with warrants may be admitted to official listing only if the related shares are already listed on the same stock exchange or on another regulated, regularly operating, recognized open market or are so admitted simultaneously; whereas the Member States may derogate from this principle only if their competent authorities are satisfied that holders have at their disposal all the information necessary to form an opinion concerning the value of the shares to which these debentures relate; whereas, consequently, regular information needs to be coordinated only for companies whose shares are admitted to official stock-exchange listing;

Whereas the half-yearly report must enable investors to make an informed appraisal of the general development of the company's activities during the period covered by the report; whereas, however, this report need contain only the essential details on the financial position and general progress of the business of the company in question;

Whereas, in order to take account of difficulties resulting from the current state of laws in certain Member States, companies may be allowed a longer period to implement the provisions of this Directive than that laid down for the adaptation of national laws;

Whereas, so as to ensure the effective protection of investors and the proper operation of stock exchanges, the rules relating to regular information to be published by companies, the shares of which are admitted to official stock-exchange listing within the Community, should apply not only to companies from Member States, but also to companies from non-member countries

HAS ADOPTED THIS DIRECTIVE:

#### SECTION I

##### General provisions and scope

###### *Article 1*

1. This Directive shall apply to companies the shares of which are admitted to official listing on a stock exchange situated or operating in a Member State, whether the admission is of the shares themselves or of certificates representing them and whether such admission precedes or follows the date on which this Directive enters into force.

2. This Directive shall not, however, apply to investment companies other than those of the closed-end type.

For the purposes of this Directive 'investment companies other than those of the closed-end type' shall mean 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 shares of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of those companies' assets. Action taken by such companies to ensure that the stock-exchange value of their shares does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.
3. The Member States may exclude central banks from the scope of this Directive.

###### *Article 2*

The Member States shall ensure that the companies publish half-yearly reports on their activities and profits and losses during the first six months of each financial year.

###### *Article 3*

The Member States may subject companies to obligations more stringent than those provided for by this Directive or to additional obligations, provided that they apply generally to all companies or to all companies of a given class.

#### SECTION II

##### Publication and contents of the half-yearly report

###### *Article 4*

1. The half-yearly report shall be published within four months of the end of the relevant six-month period.
2. In exceptional, duly substantiated cases, the competent authorities shall be permitted to extend the time limit for publication.

###### *Article 5*

1. The half-yearly report shall consist of figures and an explanatory statement relating to the company's activities and profits and losses during the relevant six-month period.

2. The figures, presented in table form, shall indicate at least:

- the net turnover, and
- the profit or loss before or after deduction of tax.

These terms shall have the same meanings as in the Council Directives on company accounts.

3. The Member States may allow the competent authorities to authorize companies, exceptionally and on a case-by-case basis, to supply estimated figures for profits and losses, provided that the shares of each such company are listed officially in only one Member

State. The use of this procedure must be indicated by the company in its report and must not mislead investors.

4. Where the company has paid or proposes to pay an interim dividend, the figures must indicate the profit or loss after tax for the six-month period and the interim dividend paid or proposed.

5. Against each figure there must be shown the figure for the corresponding period in the preceding financial year.

6. The explanatory statement must include any significant information enabling investors to make an informed assessment of the trend of the company's activities and profits or losses together with an indication of any special factor which has influenced those activities and those profits or losses during the period in question, and enable a comparison to be made with the corresponding period of the preceding financial year.

It must also, as far as possible, refer to the company's likely future development in the current financial year.

7. Where the figures provided for in paragraph 2 are unsuited to the company's activities, the competent authorities shall ensure that appropriate adjustments are made.

#### *Article 6*

Where a company publishes consolidated accounts it may publish its half-yearly report in either consolidated or unconsolidated form. However, the Member States may allow the competent authorities, where the latter consider that the form not adopted would have contained additional material information, to require the company to publish such information.

#### *Article 7*

1. The half-yearly report must be published in the Member State or Member States where the shares are admitted to official listing by insertion in one or more newspapers distributed throughout the State or widely distributed therein or in the national gazette, or shall be made available to the public either in writing in places indicated by announcement to be published in one or more newspapers distributed throughout the State or widely distributed therein, or by other equivalent means approved by the competent authorities.

2. A half-yearly report must be drawn up in the official language or languages or in one of the official languages or in another language, provided that, in the Member State concerned, such official language or languages or such other language are customary in the

sphere of finance and are accepted by the competent authorities.

3. The company shall send a copy of its half-yearly report simultaneously to the competent authorities of each Member State in which its shares are admitted to official listing. It shall do so not later than the time when the half-yearly report is published for the first time in a Member State.

#### *Article 8*

Where the accounting information has been audited by the official auditor of the company's accounts, that auditor's report and any qualifications he may have shall be reproduced in full.

### SECTION III

#### Powers of the competent authorities

#### *Article 9*

1. Member States shall appoint one or more competent authorities and shall notify the Commission of the appointment of such authorities, giving details of any division of powers among them. Member States shall also ensure that this Directive is applied.

2. The Member States shall ensure that the competent authorities have the necessary powers to carry out their task.

3. Where particular requirements of this Directive are unsuited to a company's activities or circumstances, the competent authorities shall ensure that suitable adaptations are made to such requirements.

4. The competent authorities may authorize the omission from the half-yearly report of certain information provided for in this Directive if they consider that disclosure of such information would be contrary to the public interest or seriously detrimental to the company, 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 shares in question.

The company or its representatives shall be responsible for the correctness and relevance of the facts on which any application for such exemption is based.

5. Paragraphs 3 and 4 shall also apply to the more stringent or additional obligations imposed pursuant to Article 3.

6. If a company governed by the law of a non-member country publishes a half-yearly report in a non-member country, the competent authorities may authorize it to publish that report instead of the half-yearly report provided for in this Directive, provided

that the information given is equivalent to that which would result from the application of this Directive.

7. This Directive shall not affect the competent authorities' liability, which shall continue to be governed solely by national law.

#### SECTION IV

##### Cooperation between Member States

###### *Article 10*

1. The competent authorities shall cooperate whenever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

2. Where a half-yearly report has to be published in more than one Member State, the competent authorities of these Member States shall, by way of derogation from Article 3, use their best endeavours to accept as a single text the text which meets the requirements of the Member State in which the company's shares were admitted to official listing for the first time or the text which most closely approximates to that text. In cases of simultaneous admission to official listing on two or more stock exchanges situated or operating in different Member States, the competent authorities of the Member States concerned shall use their best endeavours to accept as a single text the text of the report which meets the requirements of the Member State in which the company's head office is situated; if the company's head office is situated in a non-member country, the competent authorities of the Member States concerned shall use their best endeavours to accept a single version of the report.

#### SECTION V

##### Contact Committee

###### *Article 11*

1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:

- (a) without prejudice to Articles 169 and 170 of the 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 more stringent or additional obligations which they may impose pursuant to Article 3 with a view to the ultimate convergence of obligations imposed in all Member States, in accordance with Article 54 (3) (g) of the Treaty;

(c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive; in particular, the Committee shall consider the possible modification of Articles 3 and 5 in the light of progress towards the convergence of obligations referred to in (b) above.

2. Within five years of notification of this Directive, the Commission shall, after consulting the Contact Committee, submit to the Council a report on the application of Articles 3 and 5 and on such modifications as it would be possible to make thereto.

#### SECTION VI

##### Final provisions

###### *Article 12*

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 30 June 1983. They shall forthwith inform the Commission thereof.

2. Member States may postpone application of the measures referred to in paragraph 1 until 36 months from the date on which they bring such measures into force.

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

###### *Article 13*

This Directive is addressed to the Member States.

Done at Brussels, 15 February 1982.

*For the Council*

*The President*

P. de KEERSMAEKER

## 3.d) 89/298/EEC

Council Directive of 17 April 1989 coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public (OJ No L 124, 05.05.1989, p. 8-15)

- Section I : General provisions (Art. 1-6)
- Section II : Contents and arrangements for the scrutiny and distribution of the prospectus for transferable securities for which admission to official stock exchange listing is sought (Art. 7-10)
- Section III : Contents and arrangements for the distribution of the prospectus for transferable securities for which admission to official stock-exchange listing is not sought (Art. 11-18)
- Section IV : Cooperation between Member States (Art. 19-20)
- Section V : Mutual recognition (Art. 21)
- Section VI : Cooperation (Art. 22-23)
- Section VII : Negotiations with non-member countries (Art. 24)
- Section VIII : Contact Committee (Art. 25)
- Section IX : Final provisions (Art. 26-27)



## COUNCIL DIRECTIVE

of 17 April 1989

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

(89/298/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas investment in transferable securities, like any other form of investment, involves risks; whereas 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 full, appropriate information concerning transferable securities and the issuers of such securities promotes the protection of investors;

Whereas, moreover, such information is an effective means of increasing confidence in transferable securities and thus contributes to the proper functioning and development of transferable securities markets;

Whereas a genuine Community information policy relating to transferable securities should therefore be introduced; whereas, by virtue of the safeguards that it offers investors and its impact on the proper functioning of transferable securities markets, such an information policy is capable of promoting the interpenetration of national transferable securities markets and thus encouraging the creation of a genuine European capital market;

Whereas 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 <sup>(4)</sup>, as last amended by Directive 87/345/EEC <sup>(5)</sup>, represents an important step in the implementation of such a

Community information policy; whereas that Directive coordinates the information to be published when securities are admitted to stock exchange listing concerning the nature of the securities offered and the issuers of such securities, so as to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of issuers and of the rights attaching to such securities;

Whereas such an information policy also requires that when transferable securities are offered to the public for the first time in a Member State, whether by, or on behalf of the issuer or a third party, whether or not they are subsequently listed, a prospectus containing information of this nature must be made available to investors; whereas it is also necessary to coordinate the contents of that prospectus in order to achieve equivalence of the minimum safeguards afforded to investors in the various Member States;

Whereas, so far, it has proved impossible to furnish a common definition of the term 'public offer' and all its constituent parts;

Whereas, in cases where a public offer is of transferable securities which are to be admitted to official listing on a stock exchange, information similar to that required by Directive 80/390/EEC, whilst being adapted to the circumstances of the public offer, must be supplied; whereas, for public offers of transferable securities that are not to be admitted to official stock exchange listing, less detailed information can be required so as not to burden small and medium-sized issuers unduly; whereas, for public offers of transferable securities that are to be admitted to official stock exchange listing, the degree of coordination achieved is such that a prospectus approved by the competent authorities of a Member State can be used for public offers of the same securities in another Member State on the basis of mutual recognition; whereas mutual recognition should also apply where public offer prospectuses comply with the basic standards laid down in Directive 80/390/EEC and are approved by the competent authorities even in the absence of a request for admission to official stock exchange listing;

Whereas in order to ensure that the purposes of this Directive will be fully realized it is necessary to include within the scope of this Directive transferable securities issued by companies or firms governed by the laws of third countries;

<sup>(1)</sup> OJ No C 226, 31. 8. 1982, p. 4.

<sup>(2)</sup> OJ No C 125, 17. 5. 1982, p. 176 and OJ No C 69, 20. 3. 1989.

<sup>(3)</sup> OJ No C 310, 30. 11. 1981, p. 50.

<sup>(4)</sup> OJ No L 100, 17. 4. 1980, p. 1.

<sup>(5)</sup> OJ No L 185, 4. 7. 1987, p. 81.

Whereas it is advisable to provide for the extension, by means of agreements to be concluded by the Community with third countries, of the recognition of prospectuses from those countries on a reciprocal basis:

HAS ADOPTED THIS DIRECTIVE:

## SECTION I

### General provisions

#### Article 1

1. This Directive shall apply to transferable securities which are offered to the public for the first time in a Member State provided that these securities are not already listed on a stock exchange situated or operating in that Member State.

2. Where an offer to the public is for part only of the transferable securities from a single issue, the Member States need not require that another prospectus be published if the other part is subsequently offered to the public.

#### Article 2

This Directive shall not apply:

1. to the following types of offer:
  - (a) where transferable securities are offered to persons in the context of their trades, professions or occupations, and/or
  - (b) where transferable securities are offered to a restricted circle of persons, and/or
  - (c) where the selling price of all the transferable securities offered does not exceed ECU 40 000, and/or
  - (d) where the transferable securities offered can be acquired only for a consideration of at least ECU 40 000 per investor;
2. to transferable securities of the following types:
  - (a) to transferable securities offered in individual denominations of at least ECU 40 000;
  - (b) to units issued by collective investment undertakings other than of the closed-end type;
  - (c) to transferable securities issued by a State or by one of a State's regional or local authorities or by public international bodies of which one or more Member States are members;
  - (d) to transferable securities offered in connection with a take-over bid;
  - (e) to transferable securities offered in connection with a merger;

- (f) to shares allotted free of charge to the holders of shares;
- (g) to shares or transferable securities equivalent to shares offered in exchange for shares in the same company if the offer of such new securities does not involve any overall increase in the company's issued shares capital;
- (h) to transferable securities offered by their employer or by an affiliated undertaking to or for the benefit of serving or former employees;
- (i) to transferable securities resulting from the conversion of convertible debt securities or from the exercise of the rights conferred by warrants or to shares offered in exchange for exchangeable debt securities, provided that a public offer prospectus or listing particulars relating to those convertible or exchangeable debt securities or those warrants were published in the same Member State;
- (j) to transferable securities issued, with a view to their obtaining the means necessary to achieve their disinterested objectives, by associations with legal status or non-profit-making bodies, recognized by the State;
- (k) to shares or transferable securities equivalent to shares, ownership of which entitles the holder to avail himself of the services rendered by bodies such as 'building societies', 'Crédits populaires', 'Genossenschaftsbanken', or 'Industrial and Provident Societies', or to become a member of such a body;
- (l) to Euro-securities which are not the subject of a generalized campaign of advertising or canvassing.

#### Article 3

For the purposes of this Directive:

- (a) 'collective investment undertakings other than of 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, repurchased or redeemed, directly or indirectly, out of the assets of those 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 transferable securities issued by a collective investment undertaking representing the rights of the participants in such an undertaking over its assets;



- (c) 'issuers' shall mean companies and other legal persons and any undertakings the transferable securities of which are offered to the public;
- (d) 'credit institution' shall mean an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account, including credit institutions such as referred to in Article 2 of Directive 77/780/EEC <sup>(1)</sup>, as last amended by Directive 86/524/EEC <sup>(2)</sup>;
- (e) 'transferable securities' shall mean shares in companies and other transferable securities equivalent to shares in companies, debt securities having a maturity of at least one year and other transferable securities equivalent to debt securities, and any other transferable security giving the right to acquire any such transferable securities by subscription or exchange;
- (f) 'Euro-securities' shall mean transferable securities which:
- are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different States, and
  - are offered on a significant scale in one or more States other than that of the issuer's registered office, and
  - may be subscribed for or initially acquired only through a credit institution or other financial institution.
- 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 regional or local authorities;
- (c) debt securities issued by legal persons, other than companies, which are nationals of a Member State, and
- were set up by special law, and
  - whose activities 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/or acquiring a holding in such production, and
  - the debt securities of which are, for the purposes of admission to official listing, considered by national law as debt securities issued or guaranteed by the State.

#### Article 4

Member States shall ensure that any offer of transferable securities to the public within their territories is subject to the publication of a prospectus by the person making the offer.

#### Article 5

Member States may provide for partial or complete exemption from the obligation to publish a prospectus where the transferable securities being offered to the public are:

- (a) debt securities or other transferable securities equivalent to debt securities issued in a continuous or repeated manner by credit institutions or other financial institutions equivalent to 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 intended to protect savings;
- (b) debt securities or other transferable securities equivalent to debt securities issued by companies and other legal persons which are nationals of a Member State and which:

#### Article 6

If a full prospectus has been published in a Member State within the previous 12 months, the following prospectus drawn up by the same issuer in the same State, but relating to different transferable securities, may indicate only those changes likely to influence the value of the securities which have occurred since publication of the full prospectus.

However, that prospectus may be made available only accompanied by the full prospectus to which it relates or by a reference thereto.

## SECTION II

Contents and arrangements for the scrutiny and distribution of the prospectus for transferable securities for which admission to official stock exchange listing is sought

#### Article 7

Where a public offer relates to transferable securities which at the time of the offer are the subject of an application for admission to official listing on a stock exchange situated or operating within the same Member State, the contents of the prospectus and the procedures for scrutinizing and distributing it shall, subject to adaptations appropriate to the circumstances of a public offer, be determined in accordance with Directive 80/390/EEC.

<sup>(1)</sup> OJ No L 322, 17. 12. 1977, p. 30.

<sup>(2)</sup> OJ No L 309, 4. 11. 1986, p. 15.

*Article 8*

1. Where a public offer is made in one Member State and admission is sought to official listing on a stock exchange situated in another Member State, the person making the public offer shall have the possibility in the Member State in which the public offer is to be made of drawing up a prospectus the contents and procedures for scrutiny and distribution of which shall, subject to adaptations appropriate to the circumstances of a public offer, be determined in accordance with Directive 80/390/EEC.

2. Paragraph 1 shall apply only in those Member States which in general provide for the prior scrutiny of public offer prospectuses.

*Article 9*

A prospectus must be published or made available to the public not later than the time when an offer is made to the public.

*Article 10*

1. Where a prospectus in accordance with Article 7 or 8 is or is to be published, the advertisements, notices, posters and documents announcing the public offer must be communicated in advance to the competent authorities. The aforementioned documents must mention that there is a prospectus and state where the prospectus is published.

2. If the Member States authorize the distribution of the documents referred to in paragraph 1 before the prospectus is available, those documents must state that a prospectus will be published and indicate where members of the public will be able to obtain it.

3. The prospectus must be published either:

- by insertion in one or more newspapers circulated throughout the Member State in which the public offer is made, or
- in the form of a brochure to be made available, free of charge, to the public in the Member State in which the public offer is made and at the registered office of the person making the public offer and at the offices of the financial organizations retained to act as paying agents of the latter in the Member State where the offer is made.

4. In addition, either the complete prospectus or a notice stating where the prospectus has been published and where it may be obtained by the public must be inserted in a publication designated by the Member State in which the public offer is made.

## SECTION III

Contents and arrangements for the distribution of the prospectus for transferable securities for which admission to official stock-exchange listing is not sought

*Article 11*

1. Where a public offer relates to transferable securities other than those referred to in Articles 7 and 8, the prospectus must contain the information which, according to the particular nature of the issuer and of the transferable securities offered to the public, is necessary to enable 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 the transferable securities.

2. In order to fulfil the obligation referred to in paragraph 1, the prospectus shall, subject to the possibilities for exemption provided for in Articles 5 and 13, contain in as easily analysable and comprehensible a form as possible, at least the information listed below:

- (a) those responsible for the prospectus (names, functions and declarations by them that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import);
- (b) the offer to the public and the transferable securities being offered (nature of the securities being offered, the amount and purpose of the issue, the number of securities issued and the rights attaching to them; the income tax withheld at source; the period during which the offer is open; the date on which entitlement to dividends or interest arises; the persons underwriting or guaranteeing the offer; any restrictions on the free transferability of the securities being offered and the markets on which they may be traded; the establishments serving as paying agents; if known, the price at which the securities are offered, or else, if national rules so provide, the procedure and timetable for fixing the price if it is not known when the prospectus is being drawn up; methods of payment; the procedure for the exercise of any right of pre-emption and the methods of and time-limits for delivery of the securities);
- (c) the issuer (name, registered office; its date of incorporation, the legislation applicable to the issuer and the issuer's legal form, its objects, indication of the register and of the entry number therein) and its capital (amount of the subscribed capital, the number and main particulars of the securities of which the capital consists and any part of the capital still to be paid up; the amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants and the procedures for conversion, exchange or subscription; where appropriate, the group of undertakings to which the issuer belongs; in the case of shares, the following additional information must be supplied: any shares not representing capital, the amount of the authorized capital and the duration of the authorization; in so far as

- they are known, indication of the shareholders who directly or indirectly exercise or could exercise a determining role in the management of the issuer);
- (d) the issuer's principal activities (description of its principal activities, and, where appropriate, any exceptional factors which have influenced its activities; any dependence on patents, licences or contracts if these are of fundamental importance; information regarding investments in progress where they are significant; any legal proceedings having an important effect on the issuer's financial position);
- (e) the issuer's assets and liabilities, financial position and profits and losses (own accounts and, where appropriate, consolidated accounts; if the issuer prepares consolidated annual accounts only, it shall include those accounts in the prospectus; if the issuer prepares both own and consolidated accounts, it shall include both types of account in the prospectus; however, the issuer may include only one of the two, provided that the accounts which are not included do not provide any significant additional information); interim accounts if any have been published since the end of the previous financial year; the name of the person responsible for auditing the accounts; if that person has qualified them or refused an audit report, the fact must be stated and the reasons given;
- (f) the issuer's administration, management and supervision (names, addresses, functions; in the case of an offer to the public of shares in a limited-liability company, remuneration of the members of the issuer's administrative, management and supervisory bodies);
- (g) to the extent that such information would have a significant impact on any assessment that might be made of the issuer, recent developments in its business and prospects (the most significant recent trends concerning the development of the issuer's business since the end of the preceding financial year, information on the issuer's prospects for at least the current financial year).
3. Where a public offer relates to debt securities guaranteed by one or more legal persons, the information specified in paragraph 2 (c) to (g) must also be given with respect to the guarantor or guarantors.
4. Where a public offer relates to convertible debt securities, exchangeable debt securities or debt securities with warrants or to the warrants themselves, information must also be given with regard to the nature of the shares or debt securities to which they confer entitlement and the conditions of and procedures for conversion, exchange or subscription. Where the issuer of the shares or debt securities is not the issuer of the debt securities or warrants the information specified in paragraph 2 (c) to (g) must also be given with respect to the issuer of the shares or debt securities.
5. If the period of existence of the issuer is less than any period mentioned in paragraph 2, the information need be provided only for the period of the issuer's existence.
6. Where certain information specified in paragraph 2 is found to be inappropriate to the issuer's sphere of activity or its legal form or to the transferable securities being offered, a prospectus giving equivalent information must be drawn up.
7. Where shares are offered on a pre-emptive basis to shareholders of the issuer on the occasion of their admission to dealing on a stock exchange market, the Member States or bodies designated by them may allow some of the information specified in paragraph 2 (d), (e) and (f) to be omitted, provided that investors already possess up-to-date information about the issuer equivalent to that required by Section III as a result of stock exchange disclosure requirements.
8. Where a class of shares has been admitted to dealing on a stock exchange market, the Member States or bodies designated by them may allow a partial or complete exemption from the obligation to publish a prospectus if the number or estimated market value or the nominal value or, in the absence of a nominal value, the accounting par value of the shares offered amounts to less than 10 % of the number or of the corresponding value of shares of the same class already admitted to dealing, provided that investors already possess up-to-date information about the issuer equivalent to that required by Section III as a result of stock exchange disclosure requirements.

#### Article 12

1. However, the Member States may provide that the person making a public offer shall have the possibility of drawing up a prospectus the contents of which shall, subject to adaptations appropriate to the circumstances of a public offer, be determined in accordance with Directive 80/390/EEC.
2. The prior scrutiny of the prospectus referred to in paragraph 1 must be carried out by the bodies designated by the Member States even in the absence of a request for admission to official stock-exchange listing.

#### Article 13

1. The Member States or the bodies designated by them may authorize the omission from the prospectus referred to in Article 11 of certain information prescribed by this Directive:
- (a) if that information is of minor importance only and is not likely of influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects; or
- (b) if disclosure of that information would be contrary to the public interest or seriously detrimental to the issuer,

provided that, in the latter case; omission would not be likely to mislead the public with regard to facts and circumstances essential for assessment of the transferable securities.

2. Where the initiator of an offer is neither the issuer nor a third party acting on the issuer's behalf, the Member States or the bodies designated by them may authorize omission from the prospectus of certain information which would not normally be in the initiator's possession.

3. The Member States or the bodies designated by them may provide for partial or complete exemption from the obligation to publish a prospectus where the information which those making the offer are required to supply by law, regulation or rules made by bodies enabled to do so by national laws is available to investors not later than the time when the prospectus must be or should have been published or made available to the public, in accordance with this Directive, in the form of documents giving information at least equivalent to that required by Section III.

#### *Article 14*

A prospectus must be communicated, before its publication, to the bodies designated for that purpose in each Member State in which the transferable securities are offered to the public for the first time.

#### *Article 15*

A prospectus must be published or made available to the public in the Member State in which an offer to the public is made in accordance with the procedures laid down by that Member State.

#### *Article 16*

A prospectus must be published or made available to the public not later than the time when an offer is made to the public.

#### *Article 17*

1. When a prospectus complying with Article 11 or 12 is or must be published, the advertisements, notices, posters and documents announcing the public offer distributed or made available to members of the public by the person making the public offer, must be communicated in advance to the bodies designated in accordance with Article 14, if such bodies carry out prior scrutiny of public offer prospectuses. In such a case, the latter shall determine whether the documents concerned should be checked before publication. Such documents must state that a prospectus exists and indicate where it is published.

2. If Member States authorize the dissemination of the documents referred to in paragraph 1 before the prospectus is available, those documents must state that a prospectus will be published and indicate where members of the public will be able to obtain it.

#### *Article 18*

Any significant new factor or significant inaccuracy in a prospectus capable of affecting assessment of the transferable securities which arises or is noted between the publication of the prospectus and the definitive closure of a public offer must be mentioned or rectified in a supplement to the prospectus, to be published or made available to the public in accordance with at least the same arrangements as were applied when the original prospectus was disseminated or in accordance with procedures laid down by the Member States or by the bodies designated by them.

### SECTION IV

#### Cooperation between Member States

#### *Article 19*

The Member States shall designate the bodies, which may be the same as those referred to in Article 14, which shall cooperate with each other for the purposes of the proper application of this Directive and shall use their best endeavours, within the framework of their responsibilities, to exchange all the information necessary to that end. Member States shall inform the Commission of the bodies thus designated. The Commission shall communicate that information to the other Member States.

Member States shall ensure that the bodies designated have the powers required for the accomplishment of their task.

#### *Article 20*

1. Where, for the same transferable securities, public offers are made simultaneously or within a short interval of one another in two or more Member States and where a public offer prospectus is drawn up in accordance with Article 7, 8 or 12, the authority competent for the approval of the prospectus shall be that of the Member State in which the issuer has its registered office if the public offer or any application for admission to official listing on a stock exchange is made in that Member State.

2. However, if the Member State referred to in paragraph 1 does not provide in general for the prior scrutiny of public offer prospectuses and if only the public offer or an application for admission to listing is made in that Member State, as well as in all other cases, the person making the public offer must choose the supervisory authority from

those in the Member States in which the public offer is made and which provide in general for the prior scrutiny of public offer prospectuses.

## SECTION V

### Mutual recognition

#### Article 21

1. If approved in accordance with Article 20, a prospectus must, subject to translation if required, be recognized as complying or be deemed to comply with the laws of the other Member States in which the same transferable securities are offered to the public simultaneously or within a short interval of one another, without being subject to any form of approval there and without those States being able to require that additional information be included in the prospectus. Those Member States may, however, require that the prospectus include information specific to the market of the country in which the public offer is made concerning in particular the income tax system, the financial organizations retained to act as paying agents for the issuer in that country, and the way in which notices to investors are published.

2. A prospectus approved by the competent authorities within the meaning of Article 24a of Directive 80/390/EEC must be recognized as complying or be deemed to comply with the laws of another Member State in which the public offer is made, even if partial exemption or partial derogation has been granted pursuant to this Directive, provided, however, that:

- (a) the partial exemption or partial derogation in question is of a type that is recognized in the rules of the other Member State concerned; and
- (b) the circumstances that justify the partial exemption or partial derogation also exist in the other Member State concerned.

Even if the conditions laid down in (a) and (b) of the first subparagraph are not fulfilled, the Member State concerned may deem a prospectus approved by the competent authorities within the meaning of Article 20 to comply with its laws.

3. The person making the public offer shall communicate to the bodies designated by the other Member States in which the public offer is to be made the prospectus that it intends to use in that State. That prospectus must be the same as the prospectus approved by the authority referred to in Article 20.

4. The Member States may restrict the application of this Article to prospectuses concerning transferable securities of issuers who have their registered office in a Member State.

## SECTION VI

### Cooperation

#### Article 22

1. The competent authorities shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

2. Where a public offer concerning transferable securities giving a right to participate in company capital, either immediately or at the end of a maturity period, is made in one or more Member States other than that in which the registered office of the issuer of the shares to which those securities give entitlement is situated, while that issuer's shares have already been admitted to official listing in that Member State, the competent authorities of the Member State of the offer may act only after having consulted the competent authorities of the Member State in which the registered office of the issuer of the shares in question is situated in cases where the public offer prospectus is scrutinized.

#### Article 23

1. Member States shall provide that all persons then or previously employed by the authorities referred to in Article 20 shall be bound by the obligation of professional secrecy. This shall mean that they may not divulge any confidential information received in the course of their duties to any person or authority whatsoever, except by virtue of provisions laid down by law.

2. Paragraph 1 shall not prevent the various Member State authorities referred to in Article 20 from forwarding information as provided for in this Directive. The information thus exchanged shall be covered by the obligation of professional secrecy applying the persons employed then or previously by the authority receiving such information.

3. Without prejudice to cases covered by criminal law, the authorities referred to in Article 20 receiving information pursuant to Article 21 may use it only to carry out their functions or in the context of an administrative appeal or in court proceedings relating to the carrying out of those functions.

## SECTION VII

### Negotiations with non-member countries

#### Article 24

The Community may, by means of agreements with one or more non-member countries concluded pursuant to the Treaty, recognize public offer prospectuses drawn up and scrutinized in accordance with the rules of the non-member

country or countries concerned as meeting the requirements of this Directive, subject to reciprocity, provided that the rules concerned give investors protections equivalent to that afforded by this Directive, even if those rules differ from the provisions of this Directive.

#### SECTION VIII

##### 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 transferable securities to official stock-exchange listing <sup>(1)</sup>, as last amended by Directive 82/148/EEC <sup>(2)</sup>, shall also have as its function:

- (a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, 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 prospectuses which they 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.

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

#### SECTION IX

##### Final provisions

###### *Article 26*

1. Member States shall take the measures necessary for them to comply with this Directive by 17 April 1989. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

###### *Article 27*

This Directive is addressed to the Member States.

Done at Luxembourg, 17 April 1989.

*For the Council*  
*The President*  
C. SOLCHAGA CATALAN

<sup>(1)</sup> OJ No L 66, 16. 3. 1979, p. 1.

<sup>(2)</sup> OJ No L 62, 5. 3. 1982, p. 22.

3.e) 88/627/EEC

Council Directive of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of  
(OJ No L 348, 17.12.1988, p. 62-65)

Art. 1-18





## COUNCIL DIRECTIVE

of 12 December 1988

on the information to be published when a major holding in a listed company is acquired or disposed of

(88/627/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas a policy of adequate information of investors in the field of transferable securities is likely to improve investor protection, to increase investors' confidence in securities markets and thus to ensure that securities markets function correctly;

Whereas, by making such protection more equivalent, coordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market;

Whereas to that end investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community;

Whereas coordinated rules should be laid down concerning the detailed content and the procedure for applying that requirement;

Whereas companies, the shares of which are officially listed on a Community stock exchange, can inform the public of changes in major holdings only if they have been informed of such changes by the holders of those holdings;

Whereas most Member States do not subject holders to such a requirement and where such a requirement exists there are appreciable differences in the procedures for

applying it; whereas coordinated rules should therefore be adopted at Community level in this field,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.
2. Where the acquisition or disposal of a major holding such as referred to in paragraph 1 is effected by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.
3. This Directive shall not apply to the acquisition or disposal of major holdings in collective investment undertakings.
4. Paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing <sup>(4)</sup>, as last amended by Directive 82/148/EEC <sup>(5)</sup>, is hereby replaced by the following:

'(c) The company must inform the public of any changes in the structure (shareholders and breakdowns of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of <sup>(6)</sup> must inform the public within nine calendar days whenever it comes to its notice that a person or entity has acquired or disposed of a number of shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.

<sup>(1)</sup> OJ No C 351, 31. 12. 1985, p. 35, and

OJ No C 255, 25. 9. 1987, p. 6.

<sup>(2)</sup> OJ No C 125, 11. 5. 1987, p. 144, and

OJ No C 309, 5. 12. 1988.

<sup>(3)</sup> OJ No C 263, 20. 10. 1986, p. 1.

<sup>(4)</sup> OJ No L 348, 17. 12. 1988, p. 62.

<sup>(5)</sup> OJ No L 66, 16. 3. 1979, p. 21.

<sup>(6)</sup> OJ No L 62, 5. 3. 1982, p. 22.

*Article 2*

For the purposes of Directive, 'acquiring a holding' shall mean not only purchasing a holding, but also acquisition by any other means whatsoever, including acquisition in one of the situations referred to in Article 7.

*Article 3*

Member States may subject the natural persons, legal entities and companies referred to in Article 1 (1) to requirements stricter than those provided for in this Directive or to additional requirements, provided that such requirements apply generally to all those acquiring or disposing of holdings and all companies or to all those falling within a particular category acquiring or disposing of holdings or of companies.

*Article 4*

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %,  $\frac{1}{3}$ , 50 % and  $\frac{2}{3}$ , he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

- the thresholds of 20 % and  $\frac{1}{3}$ , where they apply a single threshold of 25 %,
- the threshold of  $\frac{2}{3}$ , where they apply the threshold of 75 %.

The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

2. Member States shall, if necessary, establish in their national law, and determine in accordance with it, the manner in which the voting rights to be taken into account for the purposes of applying paragraph 1 are to be brought to the notice of the natural persons and legal entities referred to in Article 1 (1).

*Article 5*

Member States shall provide that at the first annual general meeting of a company referred to in Article 1 (1) to take place more than three months after this Directive has been transposed into national law, any natural person

or legal entity as referred to in Article 1 (1) must notify the company concerned and at the same time the competent authority or authorities where he holds 10 % or more of its voting rights, specifying the proportion of voting rights actually held unless that person or entity has already made a declaration in accordance with Article 4.

Within one month of that general meeting, the public shall be informed of all holdings of 10 % or more in accordance with Article 10.

*Article 6*

If the person or entity acquiring or disposing of a major holding as defined in Article 4 is a member of a group of undertakings required under Directive 83/349/EEC<sup>(1)</sup> to draw up consolidated accounts, that person or entity shall be exempt from the obligation to make the declaration provided for in Article 4 (1) and in Article 5 if it is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.

*Article 7*

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) is required to make a declaration as provided for in Article 4 (1) and in Article 5, the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,
- voting rights attaching to shares of which that person or entity has the life interest,

<sup>(1)</sup> OJ No L 193, 18. 7. 1983, p. 1.

- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

#### Article 8

1. For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:

- (a) has a majority of the shareholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

#### Article 9

1. The competent authorities may exempt from the declaration provided for in Article 4 (1) the acquisition or disposal of a major holding, as defined in Article 4, by a professional dealer in securities, in so far as that acquisition or disposal is effected in his capacity as a professional dealer in securities and in so far as the acquisition is not used by the dealer to intervene in the management of the company concerned.

2. The competent authorities shall require the professional dealers in securities referred to in paragraph 1 to be members of a stock exchange situated or operating within a Member State or to be approved or supervised by a competent authority such as referred to in Article 12.

#### Article 10

1. A company which has received a declaration referred to in the first subparagraph of Article 4 (1) must in turn disclose it to the public in each of the Member States in which its shares are officially listed on a stock exchange as soon as possible but not more than nine calendar days after the receipt of that declaration.

A Member State may provide for the disclosure to the public, referred to in the first subparagraph, to be made not by the company concerned but by the competent authority, possibly in cooperation with that company.

2. The disclosure referred to in paragraph 1 must be made by publication in one or more newspapers distributed throughout or widely in the Member State or States concerned or be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout or widely in the Member State or States concerned or by other equivalent means approved by the competent authorities.

The said disclosure must be made by publication in the official language or languages, or in one of the official languages or in another language, provided that in the Member State in question the official language or languages or such other language is or are customary in the sphere of finance and accepted by the competent authorities.

#### Article 11

The competent authorities may, exceptionally, exempt the companies referred to in Article 1 (1) from the obligation to notify the public set out in Article 10 where those authorities consider that the disclosure of such information would be contrary to the public interest or seriously detrimental to the companies concerned, provides that, in the latter case, such omission would not be likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the transferable securities in question.

#### Article 12

1. Member States shall designate the competent authority or authorities for the purposes of this Directive and shall inform the Commission accordingly, specifying, where appropriate, and division of duties between those authorities.

2. Member States shall ensure that the competent authorities have such powers as may be necessary for the performance of their duties.

3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of performing their duties and shall exchange any information useful for that purpose.

#### Article 13

For the purpose of this Directive, the competent authorities shall be those of the Member State the law of which governs the companies referred to in Article 1 (1).

*Article 14*

1. Member States shall provide that every person who carries on or has carried on an activity in the employment of a competent authority shall be bound by professional secrecy. This means that no confidential information received in the course of their duties may 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 persons employed or previously employed by the competent authorities receiving the information are subject.

3. A competent authority which receives confidential information pursuant to paragraph 2 may use it solely for the performance of its duties.

*Article 15*

Member States shall provide for appropriate sanctions in cases where the natural persons or legal entities and the companies referred to in Article 1 (1) do not comply with the provisions of this Directive.

*Article 16*

1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:

- (a) to permit regular consultations on any practical problems which arise from the application of this Directive and on which exchanges of view are deemed useful;
- (b) to facilitate consultations between the Member States on the stricter or additional requirements which they may lay down in accordance with Article 3, so that the requirements imposed in all the Member States may be brought into line, in accordance with Article 54 (3) (g) of the Treaty;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

*Article 17*

1. Member States shall take the measures necessary for them to comply with this Directive before 1 January 1991. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

*Article 18*

This Directive is addressed to the Member States.

Done at Brussels, 12 December 1988.

*For the Council*

*The President*

P. ROUMELIOTIS

## 4.a) 85/611/EEC

Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31.12.1985, p. 3-18)

- Section I : General provisions and scope (Art. 1-3)
- Section II : Authorization of UCITS (Art. 4)
- Section III : Obligations regarding the structure of unit trusts (Art. 5-11)
- Section IV : Obligations regarding the structure of investment companies and their depositaries (Art. 12-18)
- Section V : Obligations concerning the investment policies of UCITS (Art. 19-26)
- Section VI : Obligations concerning information to be supplied to unit-holders
  - A. Publication of a prospectus and periodical reports (Art. 27-33)
  - B. Publication of other information (Art. 34-35)
- Section VII : The general obligations of UCITS (Art. 36-43)
- Section VIII : Special provisions applicable to UCITS which market their units in Member States other than those in which they are situated (Art. 44-48)
- Section IX : Provisions concerning the authorities responsible for authorization and supervision (Art. 49-52)
- Section X : Contact Committee (Art. 53)
- Section XI : Transitional provisions, derogations and final provisions (Art. 54-59)

Annex (to Art. 28) :

- Schedule A : Information concerning the unit trust
  - Information concerning the management company
  - Information concerning the investment company
- Schedule B : Information to be included in the periodic reports

## 4.b) 85/612/EEC

Council Recommendation of 20 December 1985 concerning the second subparagraph of Article 25(1) of Directive 85/611/EEC (OJ No L 375, 31.12.1985, p. 19)

## 4.c) 88/220/EEC

Council Directive of 22 March 1988 amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) (OJ No L 100, 19.04.1988, p. 31-32)



## COUNCIL DIRECTIVE

of 20 December 1985

on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

(85/611/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the laws of the Member States relating to collective investment undertakings differ appreciably from one state to another, particularly as regards the obligations and controls which are imposed on those undertakings; whereas those differences distort the conditions of competition between those undertakings and do not ensure equivalent protection for unit-holders;

Whereas national laws governing collective investment undertakings should be coordinated with a view to approximating the conditions of competition between those undertakings at Community level, while at the same time ensuring more effective and more uniform protection for unit-holders; whereas such coordination will make it easier for a collective investment undertaking situated in one Member State to market its units in other Member States;

Whereas the attainment of these objectives will facilitate the removal of the restrictions on the free circulation of the units of collective investment undertakings in the Community, and such coordination will help to bring about a European capital market;

Whereas, having regard to these objectives, it is desirable that common basic rules be established for the authorization, supervision, structure and activities of collective investment undertakings situated in the Member States and the information they must publish;

Whereas the application of these common rules is a sufficient guarantee to permit collective investment undertakings situated in Member States, subject to the applicable provisions relating to capital movements, to market their units in other Member States without those Member States' being able to subject those undertakings or their units to any provision whatsoever other than provisions which, in those states, do not fall within the field covered by this Directive; whereas, nevertheless, if a collective investment undertaking situated in one Member State markets its units in a different Member State it must take all necessary steps to ensure that unit-holders in that other Member State can exercise their financial rights there with ease and are provided with the necessary information,

Whereas the coordination of the laws of the Member States should be confined initially to collective investment undertakings other than of the closed-ended type which promote the sale of their units to the public in the Community and the sole object of which is investment in transferable securities (which are essentially transferable securities officially listed on stock exchanges or similar regulated markets); whereas regulation of the collective investment undertakings not covered by the Directive poses a variety of problems which must be dealt with by means of other provisions, and such undertakings will accordingly be the subject of coordination at a later stage; whereas pending such coordination any Member State may, *inter alia*, prescribe those categories of undertakings for collective investment in transferable securities (UCITS) excluded from this Directive's scope on account of their investment and borrowing policies and lay down those specific rules to which such UCITS are subject in carrying on their business within its territory;

Whereas the free marketing of the units issued by UCITS authorized to invest up to 100 % of their assets in transferable securities issued by the same body (State, local authority, etc.) may not have the direct or indirect effect of disturbing the functioning of the capital market or the financing of the Member States or of creating economic situations similar to those which Article 68 (3) of the Treaty seeks to prevent;

Whereas account should be taken of the special situations of the Hellenic Republic's and Portuguese Republic's

<sup>(1)</sup> OJ No C 171, 26. 7. 1976, p. 1.

<sup>(2)</sup> OJ No C 57, 7. 3. 1977, p. 31.

<sup>(3)</sup> OJ No C 75, 26. 3. 1977, p. 10.

financial markets by allowing those countries and additional period in which to implement this Directive,

that they are of general application and do not conflict with the provisions of this Directive.

HAS ADOPTED THIS DIRECTIVE:

#### Section I

### General provisions and scope

#### Article 1

1. The Member States shall apply this Directive to undertakings for collective investment in transferable securities (hereinafter referred to as UCITS) situated within their territories.

2. For the purposes of this Directive, and subject to Article 2, UCITS shall be undertakings:

- the sole object of which is the collective investment in transferable securities of capital raised from the public and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, re-purchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such re-purchase or redemption.

3. Such undertakings may be constituted according to law, either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of this Directive 'common funds' shall also include unit trusts.

4. Investment companies the assets of which are invested through the intermediary of subsidiary companies mainly otherwise than in transferable securities shall not, however, be subject to this Directive.

5. The Member States shall prohibit UCITS which are subject to this Directive from transforming themselves into collective investment undertakings which are not covered by this Directive.

6. Subject to the provisions governing capital movements and to Articles 44, 45 and 52 (2) no Member State may apply any other provisions whatsoever in the field covered by this Directive to UCITS situated in another Member State or to the units issued by such UCITS, where they market their units within its territory.

7. Without prejudice to paragraph 6, a Member State may apply to UCITS situated within its territory requirements which are stricter than or additional to those laid down in Article 4 *et seq.* of this Directive, provided

#### Article 2

1. The following shall not be UCITS subject to this Directive:

- UCITS of the closed-ended type;
- UCITS which raise capital without promoting the sale of their units to the public within the Community or any part of it;
- UCITS the units of which, under the fund rules or the investment company's instruments of incorporation, may be sold only to the public in non-member countries;
- categories of UCITS prescribed by the regulations of the Member States in which such UCITS are situated, for which the rules laid down in Section V and Article 36 are inappropriate in view of their investment and borrowing policies.

2. Five years after the implementation of this Directive the Commission shall submit to the Council a report on the implementation of paragraph 1 and, in particular, of its fourth indent. If necessary, it shall propose suitable measures to extend the scope.

#### Article 3

For the purposes of this Directive, a UCITS shall be deemed to be situated in the Member State in which the investment company or the management company of the unit trust has its registered office; the Member States must require that the head office be situated in the same Member State as the registered office.

### SECTION II

#### Authorization of UCITS

#### Article 4

1. No UCITS shall carry on activities as such unless it has been authorized by the competent authorities of the Member State in which it is situated, hereinafter referred to as 'the competent authorities'.

Such authorization shall be valid for all Member States.

2. A unit trust shall be authorized only if the competent authorities have approved the management company, the fund rules and the choice of depositary. An investment company shall be authorized only if the competent authorities have approved both its instruments of incorporation and the choice of depositary.

3. The competent authorities may not authorize a UCITS if the directors of the management company, of the



investment company or of the depositary are not of sufficiently good repute or lack the experience required for the performance of their duties. To that end, the names of the directors of the management company, of the investment company and of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities.

'Directors' shall mean those persons who, under the law or the instruments of incorporation, represent the management company, the investment company or the depositary, or who effectively determine the policy of the management company, the investment company or the depositary.

4. Neither the management company nor the depositary may be replaced, nor may the fund rules or the investment company's instruments of incorporation be amended, without the approval of the competent authorities.

### SECTION III

#### Obligations regarding the structure of unit trusts

##### Article 5

A management company must have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.

##### Article 6

No management company may engage in activities other than the management of unit trusts and of investment companies.

##### Article 7

1. A unit trust's assets must be entrusted to a depositary for safe-keeping.

2. A depositary's liability as referred to in Article 9 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

3. A depositary must, moreover:

(a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected on behalf of a unit trust or by a management company are carried out in accordance with the law and the fund rules;

(b) ensure that the value of units is calculated in accordance with the law and the fund rules;

(c) carry out the instructions of the management company, unless they conflict with the law or the fund rules;

(d) ensure that in transactions involving a unit trust's assets any consideration is remitted to it within the usual time limits;

(e) ensure that a unit trust's income is applied in accordance with the law and the fund rules.

##### Article 8

1. A depositary must either have its registered office in the same Member State as that of the management company or be established in that Member State if its registered office is in another Member State.

2. A depositary must be an institution which is subject to public control. It must also furnish sufficient financial and professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.

3. The Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

##### Article 9

A depositary shall, in accordance with the national law of the State in which the management company's registered office is situated, be liable to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them. Liability to unit-holders may be invoked either directly or indirectly through the management company, depending on the legal nature of the relationship between the depositary, the management company and the unit-holders.

##### Article 10

1. No single company shall act as both management company and depositary.

2. In the context of their respective roles the management company and the depositary must act independently and solely in the interest of the unit-holders.

##### Article 11

The law or the fund rules shall lay down the conditions for the replacement of the management company and the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

## SECTION IV

## Obligations regarding the structure of investment companies and their depositaries

*Article 12*

The Member States shall determine the legal form which an investment company must take. It must have sufficient paid-up capital to enable it to conduct its business effectively and meet its liabilities.

*Article 13*

No investment company may engage in activities other than those referred to in Article 1 (2).

*Article 14*

1. An investment company's assets must be entrusted to a depositary for safe-keeping.
2. A depositary's liability as referred to in Article 16 shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.
3. A depositary must, moreover:
  - (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units effected by or on behalf of a company are carried out in accordance with the law and with the company's instruments of incorporation;
  - (b) ensure that in transactions involving a company's assets any consideration is remitted to it within the usual time limits;
  - (c) ensure that a company's income is applied in accordance with the law and its instruments of incorporation.
4. A Member State may decide that investment companies situated within its territory which market their units exclusively through one or more stock exchanges on which their units are admitted to official listing shall not be required to have depositaries within the meaning of this Directive.

Articles 34, 37 and 38 shall not apply to such companies. However, the rules for the valuation of such companies' assets must be stated in law or in their instruments of incorporation.

5. A Member State may decide that investment companies situated within its territory which market at least 80% of their units through one or more stock exchanges designated in their instruments of incorporation shall not be required

to have depositaries within the meaning of this Directive provided that their units are admitted to official listing on the stock exchanges of those Member States within the territories of which the units are marketed, and that any transactions which such a company may effect outwith stock exchanges are effected at stock exchange prices only. A company's instruments of incorporation must specify the stock exchange in the country of marketing the prices on which shall determine the prices at which that company will effect any transactions outwith stock exchanges in that country.

A Member State shall avail itself of the option provided for in the preceding subparagraph only if it considers that unit-holders have protection equivalent to that of unit-holders in UCITS which have depositaries within the meaning of this Directive.

In particular, such companies and the companies referred to in paragraph 4, must:

- (a) in the absence of provision in law, state in their instruments of incorporation the methods of calculation of the net asset values of their units;
- (b) intervene on the market to prevent the stock exchange values of their units from deviating by more than 5% from their net asset values;
- (c) establish the net asset values of their units, communicate them to the competent authorities at least twice a week and publish them twice a month.

At least twice a month, an independent auditor must ensure that the calculation of the value of units is effected in accordance with the law and the company's instruments of incorporation. On such occasions, the auditor must make sure that the company's assets are invested in accordance with the rules laid down by law and the company's instruments of incorporation.

6. The Member States shall inform the Commission of the identities of the companies benefiting from the derogations provided for in paragraphs 4 and 5.

The Commission shall report to the Contact Committee on the application of paragraphs 4 and 5 within five years of the implementation of this Directive. After obtaining the Contact Committee's opinion, the Commission shall, if need be, propose appropriate measures.

*Article 15*

1. A depositary must either have its registered office in the same Member State as that of the investment company or be established in that Member State if its registered office is in another Member State.
2. A depositary must be an institution which is subject to public control. It must also furnish sufficient financial and

professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.

3. The Member States shall determine which of the categories of institutions referred to in paragraph 2 shall be eligible to be depositaries.

#### Article 16

A depositary shall, in accordance with the national law of the State in which the investment company's registered office is situated, be liable to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.

#### Article 17

1. No single company shall act as both investment company and depositary.

2. In carrying out its role as depositary, the depositary must act solely in the interests of the unit-holders.

#### Article 18

The law or the investment company's instruments of incorporation shall lay down the conditions for the replacement of the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

### SECTION V

#### Obligations concerning the investment policies of UCITS

#### Article 19

1. The investments of a unit trust or of an investment company must consist solely of:

- (a) transferable securities admitted to official listing on a stock exchange in a Member State and/or;
- (b) transferable securities dealt in on another regulated market in a Member State which operates regularly and is recognized and open to the public and/or;
- (c) transferable securities admitted to official listing on a stock exchange in a non-member State or dealt in on another regulated market in a non-member State which operates regularly and is recognized and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment company's instruments of incorporation and/or;

(d) recently issued transferable securities, provided that:

- the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognized and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the investment company's instruments of incorporation;
- such admission is secured within a year of issue.

2. However:

- (a) a UCITS may invest no more than 10% of its assets in transferable securities other than those referred to in paragraph 1;
- (b) a Member State may provide that a UCITS may invest no more than 10% of its assets in debt instruments which, for purposes of this Directive, shall be treated, because of their characteristics, as equivalent to transferable securities and which are, *inter alia*, transferable, liquid and have a value which can be accurately determined at any time or at least with the frequency stipulated in Article 34;
- (c) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;
- (d) a UCITS may not acquire either precious metals or certificates representing them.

3. The total of the investments referred to in paragraph 2 (a) and (b) may not under any circumstances amount to more than 10% of the assets of a UCITS.

4. Unit trusts and investment companies may hold ancillary liquid assets.

#### Article 20

1. The Member States shall send to the Commission:

- (a) no later than date of implementation of this Directive, lists of the debt instruments which, in accordance with Article 19 (2) (b), they plan to treat as equivalent to transferable securities, stating the characteristics of those instruments and the reasons for so doing;
- (b) details of any amendments which they contemplate making to the lists of instruments referred to in (a) or any further instruments which they contemplate treating as equivalent to transferable securities, together with their reasons for so doing.

2. The Commission shall immediately forward that information to the other Member States together with any comments which it considers appropriate. Such communications may be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53 (4).

*Article 21*

1. The Member States may authorize UCITS to employ techniques and instruments relating to transferable securities under the conditions and within the limits which they lay down provided that such techniques and instruments are used for the purpose of efficient portfolio management.

2. The Member States may also authorize UCITS to employ techniques and instruments intended to provide protection against exchange risks in the context of the management of their assets and liabilities.

*Article 22*

1. A UCITS may invest no more than 5 % of its assets in transferable securities issued by the same body.

2. The Member States may raise the limit laid down in paragraph 1 to a maximum of 10 %. However, the total value of the transferable securities held by a UCITS in the issuing bodies in each of which it invests more than 5 % of its assets must not then exceed 40 % of the value of its assets.

3. The Member States may raise the limit laid down in paragraph 1 to a maximum of 35 % if the transferable securities are issued or guaranteed by a Member State, by its local authorities, by a non-member State or by public international bodies of which one or more Member States are members.

*Article 23*

1. By way of derogation from Article 22 and without prejudice to Article 68 (3) of the Treaty, the Member States may authorize UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities issued or guaranteed by any Member State, its local authorities, a non-member State or public international bodies of which one or more Member States are members.

The competent authorities shall grant such a derogation only if they consider that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 22.

Such a UCITS must hold securities from at least six different issues, but securities from any one issue may not account for more than 30 % of its total assets.

2. The UCITS referred to in paragraph 1 must make express mention in the fund rules or in the investment company's instruments of incorporation of the States, local

authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets; such fund rules or instruments of incorporation must be approved by the competent authorities.

3. In addition each such UCITS referred to in paragraph 1 must include a prominent statement in its prospectus and any promotional literature drawing attention to such authorization and indicating the States, local authorities and/or public international bodies in the securities of which it intends to invest or has invested more than 35 % of its assets.

*Article 24*

1. A UCITS may not acquire the units of other collective investment undertakings of the open-ended type unless they are collective investment undertakings within the meaning of the first and second indents of Article 1 (2).

2. A UCITS may invest no more than 5 % of its assets in the units of such collective investment undertakings.

3. Investment in the units of a unit trust managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, shall be permitted only in the case of a trust which, in accordance with its rules, has specialized in investment in a specific geographical area or economic sector, and provided that such investment is authorized by the competent authorities. Authorization shall be granted only if the trust has announced its intention of making use of that option and that option has been expressly stated in its rules.

A management company may not charge any fees or costs on account of transactions relating to a unit trust's units where some of a unit trust's assets are invested in the units of another unit trust managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding.

4. Paragraph 3 shall also apply where an investment company acquires units in another investment company to which it is linked within the meaning of paragraph 3.

Paragraph 3 shall also apply where an investment company acquires units of a unit trust to which it is linked, or where a unit trust acquires units of an investment company to which it is linked.

## Article 25

1. An investment company or a management company acting in connection with all of the unit trusts which it manages and which fall within the scope of this Directive may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

Pending further coordination, the Member States shall take account of existing rules defining the principle stated in the first subparagraph under other Member States' legislation.

2. Moreover, an investment company or unit trust may acquire no more than:

- 10 % of the non-voting shares of any single issuing body;
- 10 % of the debt securities of any single issuing body;
- 10 % of the units of any single collective investment undertaking within the meaning of the first and second indents of Article 1 (2).

The limits laid down in the second and third indents may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or the net amount of the securities in issue cannot be calculated.

3. A Member State may waive application of paragraphs 1 and 2 as regards:

- (a) transferable securities issued or guaranteed by a Member State or its local authorities;
- (b) transferable securities issued or guaranteed by a non-member State;
- (c) transferable securities issued by public international bodies of which one or more Member States are members;
- (d) shares held by a UCITS in the capital of a company incorporated in a non-member State investing its assets mainly in the securities of issuing bodies having their registered offices in that State, where under the legislation of that State such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the non-member State complies with the limits laid down in Articles 22, 24 and 25 (1) and (2). Where the limits set in Articles 22 and 24 are exceeded, Article 26 shall apply *mutatis mutandis*;
- (e) shares held by an investment company in the capital of subsidiary companies carrying on the business of management, advice or marketing exclusively on its behalf.

## Article 26

1. UCITS need not comply with the limits laid down in this Section when exercising subscription rights attaching to transferable securities which form part of their assets.

While ensuring observance of the principle of risk-spreading, the Member States may allow recently authorized UCITS to derogate from Articles 22 and 23 for six months following the date of their authorization.

2. If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS must adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

## SECTION VI

## Obligations concerning information to be supplied to unit-holders

## A. Publication of a prospectus and periodical reports

## Article 27

1. An investment company and, for each of the trusts it manages, a management company must publish:

- a prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.

2. The annual and half-yearly reports must be published within the following time limits, with effect from the ends of the periods to which they relate:

- four months in the case of the annual report,
- two months in the case of the half-yearly report.

## Article 28

1. A prospectus must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them. It shall contain at least the information provided for in Schedule A annexed to this Directive, insofar as that information does not already appear in the documents annexed to the prospectus in accordance with Article 29 (1).

2. The annual report must include a balance-sheet or a statement of assets and liabilities, a detailed income and

expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B annexed to this Directive, as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

3. The half-yearly report must include at least the information provided for in Chapters I to IV of Schedule B annexed to this Directive; where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

#### Article 29

1. The fund rules or an investment company's instruments of incorporation shall form an integral part of the prospectus and must be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the prospectus provided that the unit-holder is informed that on request he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are placed on the market, he or she may consult them.

#### Article 30

The essential elements of the prospectus must be kept up to date.

#### Article 31

The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the EEC Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents<sup>(1)</sup>. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

#### Article 32

A UCITS must send its prospectus and any amendments thereto, as well as its annual and half-yearly reports, to the competent authorities.

#### Article 33

1. The prospectus, the latest annual report and any subsequent half-yearly report published must be offered to subscribers free of charge before the conclusion of a contract.

2. In addition, the annual and half-yearly reports must be available to the public at the places specified in the prospectus.

3. The annual and half-yearly reports shall be supplied to unit-holders free of charge on request.

### B. Publication of other information

#### Article 34

A UCITS must make public in an appropriate manner the issue, sale, re-purchase or redemption price of its units each time it issues, sells, re-purchases or redeems them, and at least twice a month. The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such a derogation does not prejudice the interests of the unit-holders.

#### Article 35

All publicity comprising an invitation to purchase the units of a UCITS must indicate that a prospectus exists and the places where it may be obtained by the public.

## SECTION VII

### The general obligations of UCITS

#### Article 36

1. Neither:

- an investment company, nor
- a management company or depositary acting on behalf of a unit trust,

may borrow.

However, a UCITS may acquire foreign currency by means of a 'back-to-back' loan.

2. By way of derogation from paragraph 1, a Member State may authorize a UCITS to borrow:

(a) up to 10 %

- of its assets, in the case of an investment company, or
  - of the value of the fund, in the case of a unit trust,
- provided that the borrowing is on a temporary basis;

<sup>(1)</sup> OJ No L 126, 12. 5. 1984, p. 20.

(b) up to 10 % of its assets, in the case of an investment company, provided that the borrowing is to make possible the acquisition of immovable property essential for the direct pursuit of its business; in this case the borrowing and that referred to in subparagraph (a) may not in any case in total exceed 15 % of the borrower's assets.

#### Article 37

1. A UCITS must re-purchase or redeem its units at the request of any unit-holder.

2. By way of derogation from paragraph 1:

(a) a UCITS may, in the cases and according to the procedures provided for by law, the fund rules or the investment company's instruments of incorporation, temporarily suspend the re-purchase or redemption of its units. Suspension may be provided for only in exceptional cases where circumstances so require, and suspension is justified having regard to the interests of the unit-holders;

(b) the Member States may allow the competent authorities to require the suspension of the re-purchase or redemption of units in the interest of the unit-holders or of the public.

3. In the cases mentioned in paragraph 2 (a), a UCITS must without delay communicate its decision to the competent authorities and to the authorities of all Member States in which it markets its units.

#### Article 38

The rules for the valuation of assets and the rules for calculating the sale or issue price and the re-purchase or redemption price of the units of a UCITS must be laid down in the law, in the fund rules or in the investment company's instruments of incorporation.

#### Article 39

The distribution or reinvestment of the income of a unit trust or of an investment company shall be effected in accordance with the law and with the fund rules or the investment company's instruments of incorporation.

#### Article 40

A UCITS unit may not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This provision shall not preclude the distribution of bonus units.

#### Article 41

1. Without prejudice to the application of Articles 19 and 21, neither:

- an investment company, nor
- a management company or depository acting on behalf of a unit trust

may grant loans or act as a guarantor on behalf of third parties.

2. Paragraph 1 shall not prevent such undertakings from acquiring transferable securities which are not fully paid.

#### Article 42

Neither:

- an investment company, nor
- a management company or depository acting on behalf of a unit trust

may carry out uncovered sales of transferable securities.

#### Article 43

The law or the fund rules must prescribe the remuneration and the expenditure which a management company is empowered to charge to a unit trust and the method of calculation of such remuneration.

The law or an investment company's instruments of incorporation must prescribe the nature of the cost to be borne by the company.

### SECTION VIII

**Special provisions applicable to UCITS which market their units in Member States other than those in which they are situated**

#### Article 44

1. A UCITS which markets its units in another Member State must comply with the laws, regulations and administrative provisions in force in that State which do not fall within the field governed by this Directive.

2. Any UCITS may advertise its units in the Member State in which they are marketed. It must comply the provisions governing advertising in that State.

3. The provisions referred to in paragraphs 1 and 2 must be applied without discrimination.

*Article 45*

In the case referred to in Article 44, the UCITS must, *inter alia*, in accordance with the laws, regulations and administrative provisions in force in the Member State of marketing, take the measures necessary to ensure that facilities are available in that State for making payments to unit-holders, re-purchasing or redeeming units and making available the information which UCITS are obliged to provide.

*Article 46*

If a UCITS proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities and the authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

- an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this Directive,
- its fund rules or its instruments of incorporation,
- its prospectus,
- where appropriate, its latest annual report and any subsequent half-yearly report and
- details of the arrangements made for the marketing of its units in that other Member State.

A UCITS may begin to market its units in that other Member State two months after such communication unless the authorities of the Member State concerned establish, in a reasoned decision taken before the expiry of that period of two months, that the arrangements made for the marketing of units do not comply with the provisions referred to in Articles 44 (1) and 45.

*Article 47*

If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in at least one of that other Member State's official languages, the documents and information which must be published in the Member State in which it is situated, in accordance with the same procedures as those provided for in the latter State.

*Article 48*

For the purpose of carrying on its activities, a UCITS may use the same generic name (such as investment company or unit trust) in the Community as it uses in the Member State in which it is situated. In the event of any danger of confusion, the host Member State may, for the purpose of clarification, require that the name be accompanied by certain explanatory particulars.

## SECTION IX

## Provisions concerning the authorities responsible for authorization and supervision

*Article 49*

1. The Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.
2. The authorities referred to in paragraph 1 must be public authorities or bodies appointed by public authorities.
3. The authorities of the State in which a UCITS is situated shall be competent to supervise that UCITS. However, the authorities of the State in which a UCITS markets its units in accordance with Article 44 shall be competent to supervise compliance with Section VIII.
4. The authorities concerned must be granted all the powers necessary to carry out their task.

*Article 50*

1. The authorities of the Member States referred to in Article 49 shall collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required.
2. The Member States shall provide that all persons employed or formerly employed by the authorities referred to in Article 49 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.
3. Paragraph 2 shall not, however, preclude communications between the authorities of the various Member States referred to in Article 49, as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy on persons employed or formerly employed by the authorities receiving the information.
4. Without prejudice to cases covered by criminal law, an authority of the type referred to in Article 49 receiving such information may use it only for the performance of its duties or in the context of administrative appeals or legal proceedings relating to such performance.

*Article 51*

1. The authorities referred to in Article 49 must give reasons for any decision to refuse authorization, and any negative decision taken in implementation of the general



measures adopted in application of this Directive, and communicate them to applicants.

2. The Member States shall provide that decisions taken in respect of a UCITS pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply if no decision is taken within six months of its submission on an authorization application made by a UCITS which includes all the information required under the provisions in force.

#### Article 52

1. Only the authorities of the Member State in which a UCITS is situated shall have the power to take action against it if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the investment company's instruments of incorporation.

2. Nevertheless, the authorities of the Member State in which the units of a UCITS are marketed may take action against it if it infringes the provisions referred to in Section VIII.

3. Any decision to withdraw authorization, or any other serious measure taken against a UCITS, or any suspension of re-purchase or redemption imposed upon it, must be communicated without delay by the authorities of the Member State in which the UCITS in question is situated to the authorities of the other Member States in which its units are marketed.

### SECTION X

#### Contact Committee

#### Article 53

1. A Contact Committee, hereinafter referred to as 'the Committee', shall be set up alongside the Commission. Its function shall be:

- (a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, the harmonized implementation of this Directive through regular consultations on any practical problems arising from its application and on which exchanges of views are deemed useful;
- (b) to facilitate consultation between Member States either on more rigorous or additional requirements which they may adopt in accordance with Article 1 (7), or on the provisions which they may adopt in accordance with Articles 44 and 45;
- (c) to advise the Commission, if necessary, on additions or amendments to be made to this Directive.

2. It shall not be the function of the Committee to appraise the merits of decisions taken in individual cases by the authorities referred to in Article 49.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The Chairman shall be a representative of the Commission. Secretarial services shall be provided by the Commission.

4. Meetings of the Committee shall be convened by its chairman, either on his own initiative or at the request of a Member State delegation. The Committee shall draw up its rules of procedure.

### SECTION XI

#### Transitional provisions, derogations and final provisions

#### Article 54

Solely for the purpose of Danish UCITS, *pantebreve* issued in Denmark shall be treated as equivalent to the transferable securities referred to in Article 19 (1) (b).

#### Article 55

By way of derogation from Articles 7 (1) and 14 (1), the competent authorities may authorize those UCITS which, on the date of adoption of this Directive, had two or more depositaries in accordance with their national law to maintain that number of depositaries if those authorities have guarantees that the functions to be performed under Articles 7 (3) and 14 (3) will be performed in practice.

#### Article 56

1. By way of derogation from Article 6, the Member States may authorize management companies to issue bearer certificates representing the registered securities of other companies.

2. The Member States may authorize those management companies which, on the date of adoption of this Directive, also carry on activities other than those provided for in Article 6 to continue those other activities for five years after that date.

#### Article 57

1. The Member States shall bring into force no later than 1 October 1989 the measures necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

2. The Member States may grant UCITS existing on the date of implementation of this Directive a period of not

more than 12 months from that date in order to comply with the new national legislation.

3. The Hellenic Republic and the Portuguese Republic shall be authorized to postpone the implementation of this Directive until 1 April 1992 at the latest.

One year before that date the Commission shall report to the Council on progress in implementing the Directive and on any difficulties which the Hellenic Republic or the Portuguese Republic may encounter in implementing the Directive by the date referred to in the first subparagraph.

The Commission shall, if necessary, propose that the Council extend the postponement by up to four years.

*Article 58*

The Member States shall ensure that the Commission is informed of the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

*Article 59*

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1985.

*For the Council*

*The President*

R. KRIEPS

## ANNEX

## SCHEDULE A

1. Information concerning the unit trust	1. Information concerning the management company	1. Information concerning the investment company
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the unit trust. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration if limited.	1.2. Date of the incorporation of the company. Indication of duration, if limited.
1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.	1.3. If the company manages other unit trusts, indication of those other trusts.	1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the unit trust. Details of whether deductions are made at source from the income and capital gains paid by the trust to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.6. Accounting and distribution dates		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 31.		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 31.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company.
	1.9. Amount of the subscribed capital with an indication of the capital paid-up	1.9. Capital

1. Information concerning the unit trust (continued)	1. Information concerning the management company (continued)	1. Information concerning the investment company (continued)
<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>— the nature of the right (real, personal or other) represented by the unit,</li> <li>— original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>— characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> <li>— indication of unit-holders' voting rights if these exist,</li> <li>— circumstances in which winding-up of the unit trust can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</li> </ul>		<p>1.10. Details of the types and main characteristics of the units and in particular:</p> <ul style="list-style-type: none"> <li>— original securities or certificates providing evidence of title; entry in a register or in an account,</li> <li>— characteristics of the units: registered or bearer. Indication of any denominations which may be provided for,</li> <li>— indication of unit-holders' voting rights,</li> <li>— circumstances in which winding-up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.</li> </ul>
<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p>		<p>1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.</p>
<p>1.12. Procedures and conditions of issue and sale of units.</p>		<p>1.12. Procedures and conditions of issue and sale of units.</p>
<p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended.</p>		<p>1.13. Procedures and conditions for re-purchase or redemption of units, and circumstances in which re-purchase or redemption may be suspended</p>
<p>1.14. Description of rules for determining and applying income.</p>		<p>1.14. Description of rules for determining and applying income.</p>
<p>1.15. Description of the unit trust's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the unit trust.</p>		<p>1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialization in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.</p>
<p>1.16. Rules for the valuation of assets.</p>		<p>1.16. Rules for the valuation of assets.</p>

1. Information concerning the unit trust (continued)	1. Information concerning the management company (continued)	1. Information concerning the investment company (continued)
<p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> <li>— the method and frequency of the calculation of those prices,</li> <li>— information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>— the means, places and frequency of the publication of those prices.</li> </ul>		<p>1.17. Determination of the sale or issue price and the re-purchase or redemption price of units, in particular:</p> <ul style="list-style-type: none"> <li>— the method and frequency of the calculation of those prices,</li> <li>— information concerning the charges relating to the sale or issue and the re-purchase or redemption of units,</li> <li>— the means, places and frequency of the publication of those prices<sup>(1)</sup>.</li> </ul>
<p>1.18. Information concerning the manner, amount and calculation of remuneration payable by the unit trust to the management company, the depositary or third parties, and reimbursement of costs by the unit trust to the management company, to the depositary or to third parties.</p>		<p>1.18. Information concerning the manner, amount and calculation of remuneration paid by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.</p>

(<sup>1</sup>) Investment companies within the meaning of Article 14 (5) of the Directive shall also indicate:

- the method and frequency of calculation of the net asset value of units,
- the means, place and frequency of the publication of that value,
- the stock exchange in the country of marketing the price on which determines the price of transactions effected outwith stock exchanges in that country.

2. Information concerning the depositary:

2.1. Name or style, form in law, registered office and head office if different from the registered office;

2.2. Main activity.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. Name or style of the firm or name of the adviser;

3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;

3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, re-purchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in the Member State in which the UCITS is situated. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there.

**SCHEDULE B****Information to be included in the periodic reports**

- I. *Statement of assets and liabilities*
  - transferable securities,
  - debt instruments of the type referred to in Article 19 (2) (b),
  - bank balances,
  - other assets,
  - total assets,
  - liabilities,
  - net asset value.
- II. *Number of units in circulation*
- III. *Net asset value per unit*
- IV. *Portfolio, distinguishing between:*
  - (a) transferable securities admitted to official stock exchange listing;
  - (b) transferable securities dealt in on another regulated market;
  - (c) recently issued transferable securities of the type referred to in Article 19 (1) (d);
  - (d) other transferable securities of the type referred to in Article 19 (2) (a);
  - (e) debt instruments treated as equivalent in accordance with Article 19 (2) (b);

and analyzed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e. g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS should be stated.

Statement of changes in the composition of the portfolio during the reference period.
- V. *Statement of the developments concerning the assets of the UCITS during the reference period including the following:*
  - income from investments,
  - other income,
  - management charges,
  - depositary's charges,
  - other charges and taxes,
  - net income,
  - distributions and income reinvested,
  - changes in capital account,
  - appreciation or depreciation of investments,
  - any other changes affecting the assets and liabilities of the UCITS.
- VI. *A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:*
  - the total net asset value,
  - the net asset value per unit.
- VII. *Details, by category of transaction within the meaning of Article 21 carried out by the UCITS during the reference period, of the resulting amount of commitments.*

**COUNCIL RECOMMENDATION**  
**of 20 December 1985**  
**concerning the second subparagraph of Article 25 (1) of Directive 85/611/EEC**  
**(85/612/EEC)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

**1. HEREBY RECOMMENDS**

that each time the concept of 'significant influence' for the purposes of Article 25 (1) of Directive 85/611/EEC is represented in another Member State's legislation by a numerical limit, the Member State's competent authorities should ensure, if so requested by that other Member State, that such limits are observed by investment and management companies situated within its territory when they acquire shares carrying voting rights issued by a company established within the territory of a Member State where such limits apply. With a view to implementing this recommendation, the Member States in which such limits apply when that Directive is published should communicate them to the Commission, which in turn will inform the other Member States; the same applies to any subsequent relaxation of those limits.

**2. HEREBY INVITES**

the competent authorities to collaborate closely with each other, in accordance with Article 50 of that Directive, to implement this recommendation.

Done at Brussels, 20 December 1985.

*For the Council*

*The President*

**R. KRIEPS**

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## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 22 March 1988

amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS)

(88/220/EEC)

## THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the third sentence of Article 57 (2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Article 22 (1) and (2) of Directive 85/611/EEC <sup>(4)</sup> limits the investment of UCITS assets in transferable securities from the same issuer to 5 %, a limit which may, if required, be increased to 10 %;

Whereas that limit poses special problems for UCITS established in Denmark in cases where they wish to invest an appreciable proportion of their assets on the domestic bond market, since that market is dominated by mortgage credit bonds and the number of institutions issuing such bonds is very small;

Whereas those mortgage credit bonds are subject in Denmark to special rules and supervision designed to protect holders and are treated under Danish legislation as equivalent to bonds issued or guaranteed by the State;

Whereas Article 22 (3) of Directive 85/611/EEC derogates from paragraphs 1 and 2 of that Article in the case of bonds issued or guaranteed by a Member State and authorizes UCITS to invest in particular up to 35 % of their assets in such bonds;

Whereas a similar derogation, but of a more limited extent is justified with regard to private sector bonds which, even in the absence of a State guarantee, nevertheless offer special guarantees to the investor under the specific rules applicable thereto; whereas it is necessary therefore to extend such a derogation to the totality of such bonds which fulfil jointly fixed criteria, while leaving it to the Member States to draw up the list of bonds to which they intend, where appropriate, to grant a derogation, and providing for a procedure for informing the other Member States identical to that provided for in Article 20 of Directive 85/611/EEC,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

In Article 22 of Directive 85/611/EEC, the following paragraphs shall be added:

'4. Member States may raise the limit laid down in paragraph 1 to a maximum of 25 % in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of these bonds

<sup>(1)</sup> OJ No C 155, 21. 6. 1986, p. 4.

<sup>(2)</sup> Opinion published in OJ No C 125, 11. 5. 1987, p. 162 and Decision of 10 February 1988 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 333, 29. 12. 1986, p. 10.

<sup>(4)</sup> OJ No L 375, 31. 12. 1985, p. 3.

must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

When a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph and issued by one issuer, the total value of these investments may not exceed 80 % of the value of the assets of the UCITS.

As laid down in Article 20 (1), Member States shall send the Commission a list of the aforementioned categories of bonds together with the categories of issuers authorized, in accordance with the laws and supervisory arrangements mentioned in the first subparagraph, to issue bonds complying with the criteria set out above. A notice specifying the status of the guarantees offered shall be attached to these lists. The procedure laid down in Article 20 (2) shall apply.

5. The transferable securities referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40 % referred to in paragraph 2.

The limits provided for in paragraphs 1, 2, 3 and 4 may not be combined, and thus investments in

transferable securities issued by the same body carried out in accordance with paragraphs 1, 2, 3 and 4 shall under no circumstances exceed in total 35 % of the assets of an UCITS.

#### *Article 2*

The Member States shall bring into force the measures necessary to comply with this Directive by the same dates as those provided for in Directive 85/611/EEC. They shall forthwith inform the Commission thereof.

#### *Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 22 March 1988.

*For the Council*

*The President*

M. BANGEMANN

5. (Amended) proposal for a Council Directive coordinating regulations on insider trading (COM(87)111 (SYN 85), COM(88)549 (SYN 85))  
(OJ No C 277, 27.10.1988, p. 13-17)

Art. 1-13



## II

*(Preparatory Acts)*

## COMMISSION

Amendment to the proposal for a Council Directive coordinating regulations on insider trading <sup>(1)</sup>

COM(88) 549 final — SYN 85

*(Presented by the Commission pursuant to the third paragraph of Article 149 of the EEC Treaty on 4 October 1988)*

(88/C 277/18)

<sup>(1)</sup> OJ No C 153, 11. 6. 1987, p. 8.

## ORIGINAL PROPOSAL

## AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 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 Article 54 (3) (g) provides that the Council shall coordinate 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 58 with a view to making such safeguards equivalent throughout the Community;

Whereas the secondary market in transferable securities plays an important role in the financing of undertakings;

Whereas, for it to be able to play that role effectively, every possible measure should be taken to ensure that that market operates smoothly;

Whereas the smooth operation of the secondary market depends to a large extent on the confidence it inspires in investors;

Whereas one of the factors on which such confidence depends is the assurance afforded to investors that they are placed on an equal footing;

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 (a) thereof,

Unchanged

In cooperation with the European Parliament,

Unchanged

Whereas Article 100 (a) (1) states that the Council shall adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market;

Unchanged

Unchanged

Unchanged

Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas insider trading, by benefiting certain investors at the expense of others, is likely to undermine that confidence and may therefore prejudice the smooth operation of the secondary market in transferable securities;	Unchanged
Whereas it is therefore necessary to take all appropriate measures to combat insider trading;	Unchanged
Whereas in most Member States there are no rules or regulations prohibiting insider trading; whereas the rules or regulations that do exist differ appreciably between Member States;	Unchanged
Whereas it is therefore necessary to adopt coordinated Community rules in this field;	Unchanged
Whereas such coordinated rules also have the advantage of helping, through cooperation between the competent authorities, to combat transfrontier insider trading more effectively,	Unchanged
HAS ADOPTED THIS DIRECTIVE:	HAS ADOPTED THIS DIRECTIVE:
<i>Article 1</i>	<i>Article 1</i>
1. Member States shall prohibit any person who, in the exercise of his profession or duties, acquires inside information as defined in Article 6 from taking advantage of that information to buy or sell on their territory, either directly or through another person, transferable securities admitted to trading on their stock exchange markets.	1. Member States shall prohibit any person who, in the exercise of his employment, profession or duties, acquires inside information as defined in Article 6 from taking advantage of that information to buy or sell on their territory, either directly or indirectly, transferable securities admitted to trading on their stock exchange markets.
Where the purchase or sale of transferable securities is carried out on a stock exchange market, it shall be deemed to be carried out on the territory of the Member State in which the stock exchange in question is situated or operates.	Unchanged
Where the purchase or sale of transferable securities is carried out outside a stock exchange market, it shall be deemed to be carried out on the territory of the Member State in which the counterpart of the person referred to in the first subparagraph is resident.	Unchanged
2. The prohibition laid down in paragraph 1 shall not apply to transferable securities bought or sold outside a stock exchange market without the involvement of a professional intermediary.	2. Where the person referred to in paragraph 1 is a company or any other type of legal person, the prohibition laid down in that paragraph shall apply to its <i>de jure</i> or <i>de facto</i> directors.
3. Member States may provide that the prohibition laid down in paragraph 1 shall not apply to transferable securities bought or sold outside a stock exchange market without the involvement of a professional intermediary.	3. Member States may provide that the prohibition laid down in paragraph 1 shall not apply to transferable securities bought or sold outside a stock exchange market without the involvement of a professional intermediary.

## ORIGINAL PROPOSAL

## AMENDED PROPOSAL

*Article 2*

Member States shall prohibit any person who is resident on their territory and who acquires inside information in the exercise of his profession or duties from:

- disclosing that inside information to a third party unless such disclosure is made in the normal course of exercising his profession or duties;
- using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

*Article 3*

1. Member States shall impose the prohibition provided for in Article 1 in accordance with the terms referred to therein also on any person who has knowingly obtained inside information from a person who has acquired that information in the exercise of his profession or duties.

2. Member States shall prohibit any person referred to in paragraph 1:

- from disclosing the inside information to a third party;
- from using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

*Article 4*

Member States may lay down more stringent rules than those contained in this Directive provided that they are non-discriminatory.

*Article 5*

For the purposes of this Directive transferable securities shall include not only securities usually traded on the stock exchange market such as shares and debt securities but also traded options relating to such securities.

*Article 2*

4. This Directive shall not apply to transferable securities issued by a State or by its regional or local authorities.

Member States shall prohibit any person who is resident on their territory and who acquires inside information in the exercise of his employment, profession or duties from:

- (a) disclosing that inside information to a third party unless such disclosure is made in the normal course of exercising his employment, profession or duties;
- (b) using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

*Article 3*

1. Member States shall impose the prohibition provided for in Article 1 in accordance with the terms referred to therein also on any person who has knowingly obtained inside information from a person who acquired that information in the exercise of his employment, profession or duties.

2. Member States shall prohibit any person referred to in paragraph 1 who is resident on their territory from:

- (a) disclosing the inside information to a third party;
- (b) using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

*Article 4*

Unchanged

*Article 5*

Unchanged

## ORIGINAL PROPOSAL

## AMENDED PROPOSAL

*Article 6*

For the purposes of this Directive, inside information is information unknown to the public of a specific nature and relating to one or more issuers of transferable securities, or to one or more transferable securities, which, if it were published, would be likely to have a material effect on the price of the transferable security or transferable securities in question.

*Article 6*

For the purposes of this Directive, inside information is information **inaccessible or not available** to the public of a specific nature and relating to one or more issuers of transferable securities or to one or more transferable securities, which, if it were published, would have a material effect on the price of the transferable security or transferable securities in question.

*Article 7*

1. Issuers whose transferable securities are admitted to official listing in one or more Member States or are traded there on another stock exchange market shall immediately inform the public in that Member State or those Member States of any circumstance or decision which would be likely to have a material effect on the price of such transferable securities.

*Article 7*

Unchanged

2. Where an issuer is unable to inform the public immediately of a circumstance or decision as referred to in paragraph 1 because disclosure would prejudice its legitimate interests, it shall immediately inform the competent authorities thereof, who may relieve it of the obligation provided for in paragraph 1.

Unchanged

*Article 8*

1. Member States shall designate the authority or authorities competent to ensure that the provisions adopted pursuant to this Directive are applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.

*Article 8*

Unchanged

2. The competent authorities shall be given all such supervisory powers as may be necessary for the exercise of their duties.

2. The competent authorities shall be given all such supervisory **and investigatory** powers as may be necessary for the exercise of their duties.

3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

Unchanged

*Article 9*

1. Member States shall provide that all persons employed or formerly employed by the competent authorities referred to in Article 8 shall be bound by professional secrecy. Information covered by professional secrecy may not be divulged to any person or authority except by virtue of provisions laid down by law.

*Article 9*

Unchanged



ORIGINAL PROPOSAL	AMENDED PROPOSAL
<p>2. Paragraph 1 shall not, however, preclude exchanges of information between the various Member States by the authorities referred to in Article 8 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.</p>	Unchanged
<p>3. Without prejudice to cases falling under criminal law, the authorities referred to in Article 8 which receive information may use it only for the exercise of their duties and in connection with administrative or judicial proceedings specifically relating to the exercise of those duties.</p>	Unchanged
<i>Article 10</i>	<i>Article 10</i>
<p>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 (*) shall also have as its function:</p>	Unchanged
<p>(a) to facilitate the harmonized implementation of this Directive through regular consultations on any practical problems which arise from its application and on which exchanges of view are deemed useful;</p>	Unchanged
<p>(b) to advise the Commission on any amendments to be made to this Directive.</p>	Unchanged
<i>Article 11</i>	<i>Article 11</i>
<p>Member States shall determine the penalties to be applied for infringement of the measures taken pursuant to this Directive.</p>	<p>Member States shall determine the penalties to be applied for infringement of the measures taken pursuant to this Directive. The penalties shall be sufficiently dissuasive to ensure respect for those measures.</p>
<i>Article 12</i>	<i>Article 12</i>
<p>1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1990. They shall forthwith inform the Commission thereof.</p>	Unchanged
<p>2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.</p>	Unchanged
<i>Article 13</i>	<i>Article 13</i>
<p>This Directive is addressed to the Member States.</p>	Unchanged

(\*) OJ No L 66, 16. 3. 1979, p. 21.



6. 77/534/EEC

Commission Recommendation of 25 July 1977 concerning a European code of conduct relating to transactions in transferable securities  
(OJ No L 212, 20.08.1977, p. 37-43)

Explanatory memorandum

- I. The European code of conduct in the context of approximating the laws of the Member States
- II. Juridical scope of the Commission's recommendation
- III. The content of the code
- IV. Implementation of the European code of conduct

Annex : European code of conduct relating to transactions in transferable securities

- Fundamental objective
- Definitions
- General principles
- Supplementary principles



## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION RECOMMENDATION

of 25 July 1977

concerning a European code of conduct relating to transactions in transferable securities

(77/534/EEC)

## EXPLANATORY MEMORANDUM

## I. The European code of conduct in the context of approximating the laws of the Member States

1. The objectives set out in Article 2 of the Treaty of Rome, particularly the harmonious development of economic activities in the Community, can only be achieved if sufficient capital is available, and the sources of capital are sufficiently diversified to enable investments in the common market to be financed as rationally as possible.

The role of the securities markets is to permit a very free interplay at all times between supply and demand for capital. Consequently, the proper working and the interpenetration of these markets must be regarded as an essential aspect of the establishment of a 'common market' in capital.

2. Although the existing differences between the various financial markets in the nine Member States have not so far constituted an insuperable barrier to a number of international transactions, the lack of full information on the securities themselves and ignorance or misunderstanding of the rules governing the various markets have certainly helped to confine the investments of the great majority of savers to the markets of the countries in which they live or to a few well-known major international securities.

A reduction in these disparities would therefore tend to encourage the interpenetration of the member countries' markets, particularly if this is accompanied by improving the safeguards available to savers.

3. On the basis of a Decision adopted in 1968 on the provision of information to the public on securities and conditions governing transactions in them, the Commission has already carried out a certain amount of harmonization work in this sector, covering various specific aspects such as 'the content, checking and distribution of the prospectus to be published when securities issued by companies ... are admitted to official stock exchange quotation' <sup>(1)</sup> and coordination of 'the conditions for the admission of securities to official stock exchange quotation' <sup>(2)</sup>.

4. In parallel with the work of harmonization by Directives, and without prejudice to this method which is the only one capable of attaining the objective of true European integration, the Commission is of the opinion that it could recommend to the Member States — in a document covering a range of problems connected with dealing in securities — that they should ensure the observation of certain basic principles. These principles are already widely recognized in all the countries of Europe, but restating and applying them will help to create a common set of professional ethics in an ever-changing field; this, in its turn, will considerably facilitate the process of harmonization through Directives by making clear in advance the approach the Commission will be adopting.

<sup>(1)</sup> OJ No C 131, 13. 12. 1972.

<sup>(2)</sup> OJ No C 56, 10. 3. 1976.

5. This code of conduct, to be issued in the form of a Commission recommendation, must be seen separately from the Commission's other harmonization work in this sector:

- because the ethical approach has been given priority over the legislative approach;
- because the Commission is anxious to take full account of the dynamics of the financial market and of business life, and consciously to adopt a positive attitude which seeks to improve the machinery of the market and the effectiveness of those operating on it;
- because some of the topics dealt with in a very general way in the code may be, and in some cases already are, the subject of proposals for Directives where a strict legal framework will be appropriate.

## II. Jurisdictional scope of the Commission's recommendation

6. The purpose of the present recommendation to the Member States is that they should ensure that those who are in a position to influence the workings of securities markets comply with the principles of the code of conduct; the Commission has consulted those involved and has ascertained that there is already broad support for the principles of the code.

7. Although most States are now conscious of the need to supervise financial markets, it is only too obvious that methods of supervision still differ widely.

The recommendation allows for these differences; it does not require the Member States to create special supervisory authorities, but merely to coordinate at national level the action of the various associations and bodies concerned.

8. It must, however, be stressed that the introduction of a code of conduct for securities transactions by means of a recommendation can in no way be an obstacle to the subsequent adoption of Directives or Regulations in one or other of the fields covered by it. A number of such instruments are in fact already under preparation.

9. In the same light, it is not impossible that certain States may feel legislation on some or all of the subjects covered by the code is necessary in order to comply with the recommendation.

## III. The content of the code

10. The code sets out a fundamental objective, certain general principles and a number of supplementary principles.

11. *The general principles* are the key provisions of the code and are of overriding importance.

They take priority over and go well beyond the detailed principles which follow them, and which are merely illustrations of them.

It is the general principles which will enable the fundamental objective of the code to be complied with; the content of the code must be understood and interpreted in the light of the general principles and not only by reference to the letter of the various supplementary principles.

A. *The first general principle* emphasizes the importance of this aspect of the interpretation of the code. It recalls that any transaction on the securities market must be carried out in compliance with the rules and practices in each State designed to ensure the proper working of the markets, the principles of the present code supplementing or strengthening such rules and practices.

B. *The second general principle* is that information provided to savers must be complete and accurate, since lack of knowledge is a source of imperfection in any market.

If the information is not provided, or if it is incomprehensible or wrongly interpreted by those for whom it is intended, or if it is deliberately slanted or distorted, the prices quoted may well become completely artificial and the market may cease to fulfil its role. Consequently, a large number of principles, in the second part, have been worked out to cover this problem (supplementary principles 7 to 15).

The need for properly distributed information covers a wide range of situations, as different as the issue or the negotiation of securities. Proposals for Directives have also been made in this connection (including a proposal concerning rules for admission to quotation).

C. *The third general principle* relates to equality of treatment for shareholders. Despite some criticism, the Commission has taken the view that the principle of equality of treatment should be retained, illustrating its application by two supplementary principles, with the accent mainly on a specific obligation to disclose information.

Supplementary principle 17 mentions equality of treatment for other shareholders where a controlling holding is transferred, but accepts that the protection of such shareholders could be achieved by other means; this takes account of the

existence in Germany of a law limiting the powers of the dominant shareholder. It is important to realize that the fundamental principle of the equality of shareholders goes well beyond the scope of the code. It is not confined, even in the code, to the transfer of blocks of shares or to the few supplementary principles in the second part which may refer to this principle, such as the use of undisclosed information to the detriment of those not having access to it or the compartmentation of markets making it possible to give advantages to certain purchasers or sellers of securities over others.

Obviously, only a few of the situations in which such a principle might be relevant can be mentioned; any attempt to give a more detailed list of the cases in which the principle would involve the risk of leaving loopholes which would probably soon be exploited. This principle lays down an approach and a spirit in which certain transactions must be carried out.

- D. *The fourth, fifth and sixth general principles* are more particularly concerned with certain categories of persons the importance of whose role in the realization of the code's objectives is beyond doubt, namely the members of companies' supervisory boards, company directors and company managers (principle 4), financial intermediaries and persons concerned professionally in transactions in securities (principles 5 and 6).

*The fourth general principle* recalls first that the code applies in particular to the members of companies' supervisory boards, company directors and company managers and then mentions more particularly their duty to refrain from any action liable to hamper the proper working of the market in their security or to harm the other shareholders.

Objectionable action on the market in the securities of a company by directors or managers is a term to be interpreted in the broad sense, since there may well be instances of failure to act which are just as reprehensible, or more reprehensible, than positive action.

*The fifth general principle* recommends that persons professionally engaged in stock exchange transactions, or at least all 'persons dealing regularly on the securities markets', avoid jeopardizing, by seeking immediate and unfair profit, the credibility and the effectiveness of the market which it is in their own interest to foster.

Conflicts of interest liable to arise, e.g. in the various departments of a bank, because of the

diversity of the roles which a banker has to play for his various customers, led to the enunciation of the *sixth general principle*.

While conceding that it is very difficult to lay down precise limits as far as discretion is concerned, it should be emphasized that ways and means must be sought of avoiding conflicts of this nature. An example will illustrate how difficult it is to define the scope of this rule: should confidential information be kept so secret in a financial establishment that it would be wrong to advise against an investment (through without saying why the investment would be a bad one) when the aim would be not to achieve a gain but to avoid a loss? In such a case, the banker should be free to give such informed advice to the customer, and this does indeed seem to be a reasonable solution; however, only practice will show whether this interpretation of supplementary principle 8 can become the source of impropriety, and whether the Commission's recommendation will have to be strengthened on this specific point.

## 12. *The supplementary principles*

As their name suggests, their purpose is to supplement the general principles by making them clearer and illustrating them. They are not exhaustive; they can be supplemented through the meetings of the liaison committee responsible for applying the code, in the light of actual situations encountered on the various European markets. The supplementary principles can be divided into two parts.

- A. *The first supplementary principles* indicate a number of aspects of what the expression 'fair behaviour' by financial intermediaries is to be taken to mean.

In addition to compliance with laws, regulations and current practice, supplementary principles 1 to 6 describe a number of rules of conduct specific to intermediaries.

The main rule concerns, of course, the recommendation to carry out orders on an organized market and the limits set to acting as counterparty and to offsetting orders. The Commission's recommendation does not advise formally against these operations, but it is felt that they should be brought under the supervision of the supervisory authorities where these authorities can in fact assume responsibility for them.

B. *The following supplementary principles* from rule 7 onwards until the end refer to the need for information.

It is clear that many improprieties would be avoided if accurate information were disclosed very quickly and the time during which important information was kept secret were thus cut to a minimum.

The principles relating to information can themselves be divided into several parts depending on whether they refer :

- (a) to the creation of an artificial market (principle 7);
- (b) to the improper use of price-sensitive information (principles 8 to 10);
- (c) to information to be provided to the public by the market authorities and companies (principles 11 to 14);
- (d) to equality of information to which all investors must be entitled (principles 15 and 16); and lastly,
- (e) to information to be provided where there is acquisition or, where appropriate, sale of a holding conferring *de jure* or *de facto* control of a company (principles 17 and 18).

#### IV. Implementation of the European code of conduct

13. In recommending the European code of conduct to the Member States, the Commission is of course well aware that a recommendation does not bind the States as to the results to be achieved; the successful implementation of the code will therefore depend to a great extent on the active cooperation of those affected by it, in particular on the authority of the body or bodies which are to supervise implementation.

14. An essential feature is that, on the basis of existing structures, there should be in each Member State at least one body (supervisory authority, professional association, etc.) responsible for supervising the implementation of the code at national level.

However, the choice of the appropriate body is a matter for the Member State concerned.

The code does not require that these supervisory bodies should have the power normally vested in

public authorities, since the code will not carry penal sanctions.

15. However, since the code should be complied with throughout the Community, it will be desirable that representatives of each of the supervisory bodies should come together in a liaison committee.

The committee could advise the Commission on the development of the code, in the light of the problems and practices encountered in its application.

For these reasons, under the provisions of the Treaty establishing the European Economic Community, and in particular Article 155 thereof, the Commission recommends the Member States, without prejudice to the Regulations or administrative provisions already in existence :

1. to ensure that those who operate on securities markets, or who are in a position to influence the working of these markets, respect the fundamental objective, the general principles and the supplementary provisions of the European code of conduct annexed hereto ;
2. to this end, to coordinate the action of the professional associations and the national authorities charged, in each State, with the supervision of the proper functioning of the market and the conduct of those who operate on it ;
3. to appoint one or more representatives from these associations or authorities who shall be responsible for informing the Commission each year, beginning one year after the transmission of this recommendation, of any measures adopted to implement it and of the experience in applying them, of any difficulties encountered and of any suggestions for additions or amendments to the European code of conduct ;
4. to take any other measures they may consider necessary to promote the principles of the code and to supervise their application.

Done at Brussels, 25 July 1977.

*For the Commission*

Christopher TUGENDHAT

*Member of the Commission*



## ANNEX

## EUROPEAN CODE OF CONDUCT RELATING TO TRANSACTIONS IN TRANSFERABLE SECURITIES

## Fundamental objective

This code of conduct is to be seen in the general context of the development and integration of securities markets within the European Community, and seeks to establish certain general principles, supported by supplementary guidelines.

The code's objective is to establish standards of ethical behaviour on a Community-wide basis, so as to promote the effective functioning of securities markets (i.e. by creating the best possible conditions for matching supply and demand for capital), and to safeguard the public interest.

## Definitions

In the code, the following expressions shall have the meanings ascribed to them below:

- '*transferable securities*' shall mean all securities which are or may be the subject of dealings on an organized market;
- '*financial intermediaries*' shall mean all persons professionally concerned in transactions in transferable securities;
- '*principals*' shall mean all persons occupying a strategic position with regard to a security and the market in it (e.g. company directors or managers, holders or acquirers of major shareholdings) and all those who are in a position to influence public opinion (e.g. financial analysts and journalists);
- '*securities markets*' shall mean the official stock exchange and all the markets organized by or under the supervision of the competent authorities and also all transactions in transferable securities as defined above including privately negotiated dealings between individuals in transferable securities — the word '*market*' (in the singular) being used only for the official stock exchange and the organized markets;
- '*competent authorities*' are those who have the tasks of ensuring the proper working of the market and the proper flow of information for the market at national level — principally the stock exchange authorities and supervisory agencies.

## General principles

1. The objective of this code and the general principles should be observed even in cases not expressly covered by supplementary principles. Every transaction carried out on the securities markets should be in conformity with not only the letter but also the spirit of the laws and regulations in force in each Member State, and also the principles of good

conduct already applying to these markets, or recommended by this code.

2. Information should be available to the public which is fair, accurate, clear, adequate and which is given in good time.

The information should be provided in such a way that its significance and intent can be easily understood. Any person, who by virtue of his profession or duties has the duty or the means of informing the public, is under a special obligation to ensure that it is kept properly informed, and that no particular class of persons attains a privileged position.

3. Equality of treatment should be guaranteed to all holders of securities of the same type issued by the same company; in particular, any act resulting directly or indirectly in the transfer of a holding conferring *de jure* or *de facto* control of a company whose securities are dealt in on the market, should have regard to the right of all shareholders to be treated in the same fashion.

4. When the securities of a company are dealt in on the market, the members of its supervisory board, its directors, managers, and persons exercising *de jure* or *de facto* control, should act in such manner as to ensure that the fundamental objective of this code of conduct is realized. They have a particular duty to avoid any action which would operate to the detriment of fair dealings in the securities concerned, or prejudice the rights of other shareholders.

5. Persons dealing regularly on the securities markets should act fairly in accordance with the code's objective, even if this could in certain cases result in their having to forgo short-term gains.

6. Financial intermediaries should endeavour to avoid all conflicts of interest, whether as between themselves and their clients or other persons with whom they have a fiduciary relationship, or as between these two last-mentioned categories of persons. If, however, such a conflict arises, they should not seek to gain a direct or indirect personal advantage from the situation, and should avoid any prejudice to their clients or other persons with whom they have a fiduciary relationship.

## Supplementary principles

1. All persons dealing regularly on the securities markets have a duty to promote investors' confidence in the fairness of the market by observance of the best standards of commercial probity and professional conduct.

2. Financial intermediaries have a special responsibility to observe the fundamental objective and the general principles of this code of conduct.

In particular, they should not connive at any breach by other persons of the provisions and principles referred to in the second paragraph of general principle 1, and they should not engage in manipulation which could distort the normal operation of the market.

3. No person should incite another person, whether or not an intermediary, to contravene the provisions and principles referred to in the second paragraph of general principle 1, nor exert pressure to obtain :

(1) information which is not public and which cannot be divulged without contravening rules relating to such information, or

(2) the carrying out of an irregular or dishonest transaction.

4. Financial intermediaries should seek out and recommend the best conditions for their clients for the execution of orders which are given to them, while observing the fundamental objective and general principles of the code.

They should execute the orders which they are given on an organized market, unless the principal has given express instructions to the contrary. However, if the circumstances of the transaction or the nature of the securities makes it difficult even impossible to execute orders on an organized market, financial intermediaries may act as counterparties to their clients or offset orders outside the market, provided that they ensure that this does not prejudice their clients' interests, and provided that they are in a position to reply to any request on the part of the competent authorities as regards the justification for, the number of, and the conditions applying to, transactions carried out in this manner.

5. Financial intermediaries should refrain from encouraging sales or purchases with the sole object of generating commission.

6. Financial intermediaries should not disclose the identity of their principals except in cases when this is required by national regulations or the control authorities (and also in the investigation of crimes or other serious misdeeds).

7. Any attempt or manipulation by persons acting separately or in concert with others, which aims at or results in the rise or fall in the price of securities by fraudulent means, is contrary to the fundamental objective of this code.

Fraudulent means are considered in particular to be the publication or diffusion of information which is false, exaggerated or tendentious, and also the use of other devices aimed at disrupting the markets' normal operation.

Financial intermediaries and members of the supervisory board, the directors and managers of companies whose securities are dealt in on the securities markets, who become aware of any such attempt or manipulation should endeavour to take the necessary steps to thwart it. They should inform the competent authorities and the companies concerned without delay.

8. Financial intermediaries should endeavour to keep secret, even as between different departments or services of

the same organization, information which they acquire in the course of carrying out their duties which is not yet public and which is price-sensitive.

In particular, financial intermediaries should not use such information in transactions which they carry out for their own account on the securities markets, nor in transactions upon which they advise their clients or carry out for their account.

9. Any person who comes into possession of information, in exercising his profession or carrying out his duties, which is not public and which relates to a company or to the market in its securities or to any event of general interest to the market, which is price-sensitive, should refrain from carrying out, directly or indirectly, any transaction in which such information is used, and should refrain from giving the information to another person so that he may profit from it before the information becomes public.

10. Securities markets should be sufficiently open to prevent their being fragmented, whereby the same security can be dealt in at the same time on different markets at different prices.

11. When a security is dealt in on the market the public should be informed not only of the different prices at which transactions take place, but also of the volume of dealings, unless the organization of the market makes it possible for the public to assess the liquidity of its investment by some other means.

12. Every company whose securities are dealt in on the market should publish periodically, and at least every six months, information which is clear, precise, complete and up-to-date concerning its business operations, results, and financial position. Any fact or important decision capable of having an appreciable effect on the price of securities should also be made public without delay.

13. When a fact or important decision, referred to in the preceding provision, cannot be made public without delay, for example because certain formalities have not yet been completed or because the company would be seriously prejudiced as a result, but the company nevertheless considers that there is a risk of leaks, the company should inform the competent authorities of the position. The latter should take the necessary steps to safeguard the market's proper operation until the relevant fact or decision can be made public. In particular they may, if this step appears unavoidable, suspend transactions for the necessary period.

14. It is desirable that a public issue of securities should be preceded by the publication of a prospectus. The existence of the prospectus and the place or places where it may be obtained should be indicated in any publicity concerning such issue.

15. No investor or group of investors should be given more favourable treatment as regards information than other investors or the public. All investors should have free access to information.

16. On the occasion of each issue of securities of the same type which are or may be dealt in on several markets at the same time, the issuer should endeavour not to give more favourable treatment to one market than to another.

17. Any transaction resulting in the transfer of a holding conferring control in the sense referred to in general principle 3 should not be carried out in a surreptitious fashion without informing the other shareholders and the market control authorities.

It is desirable that all the shareholders of the company whose control has changed hands should be offered the opportunity of disposing of their securities on identical conditions, unless they have the benefit of alternative safeguards which can be regarded as equivalent.

18. Any acquisition, or attempted acquisition on the market, separately or by concerted action, of a holding conferring control in the sense referred to in general principle 3, without informing the public, is against the objective of this code.

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## 7. 88/361/EEC

Council Directive of 24 June 1988 for the implementation of Article 67 of the Treaty  
(OJ No L 178, 08.07.1988, p. 5-18)

## Articles 1-10

Annex I : Nomenclature of the capital movements referred to in Article 1 of the Directive

- I. Direct investments
- II. Investments in real estate
- III. Operations in securities normally dealt in on the capital market
- IV. Operations in units of collective investment undertakings
- V. Operations in securities and other instruments normally dealt in on the money market
- VI. Operations in current and deposit accounts with financial institutions
- VII. Credits related to commercial transactions or to the provision of services in which a resident is participating
- VIII. Financial loans and credits
- IX. Sureties, other guarantees and rights of pledge
- X. Transfers in performance of insurance contracts
- XI. Personal capital movements
- XII. Physical import and export of financial assets
- XIII. Other capital movements

Explanatory notes

Annex II : List of operations referred to in Article 3 of the Directive

Annex III : Referred to in Article 5 of the Directive

Annex IV : Referred to in Article 6(2) of the Directive

Annex V



## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 24 June 1988

for the implementation of Article 67 of the Treaty

(88/361/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 69 and 70 (1) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured, without prejudice to the other provisions of the Treaty;

Whereas Member States should be able to take the requisite measures to regulate bank liquidity; whereas these measures should be restricted to this purpose;

Whereas Member States should, if necessary, be able to take measures to restrict, temporarily and within the framework of appropriate Community procedures, short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, might seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the arrangements laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations set out in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty <sup>(3)</sup>, as last amended by Directive 86/566/EEC <sup>(4)</sup>; whereas Directive 86/566/EEC also provides for transitional arrangements to be applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8c of the Treaty, to grant to those two Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive;

Whereas, since the full liberalization of capital movements could in some Member States, and especially in border areas, contribute to difficulties in the market for secondary residences; whereas existing national legislation regulating these purchases should not be affected by the entry into effect of this Directive;

<sup>(1)</sup> OJ No C 26, 1. 2. 1988, p. 1.

<sup>(2)</sup> Opinion delivered on 17 June 1988 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No 43, 12. 7. 1960, p. 921/60.

<sup>(4)</sup> OJ No L 332, 26. 11. 1986, p. 22.

Whereas advantage should be taken of the period adopted for bringing this Directive into effect in order to enable the Commission to submit proposals designed to eliminate or reduce risks of distortion, tax evasion and tax avoidance resulting from the diversity of national systems for taxation and to permit the Council to take a position on such proposals;

Whereas, in accordance with Article 70 (1) of the Treaty, the Community shall endeavour to attain the highest possible degree of liberalization in respect of the movement of capital between its residents and those of third countries;

Whereas large-scale short-term capital movements to or from third countries may seriously disturb the monetary or financial situation of Member States or cause serious stresses on the exchange markets; whereas such developments may prove harmful for the cohesion of the European Monetary System, for the smooth operation of the internal market and for the progressive achievement of economic and monetary union; whereas it is therefore appropriate to create the requisite conditions for concerted action by Member States should this prove necessary;

Whereas this Directive replaces Council Directive 72/156/EEC of 21 March 1972 on regulating international capital flows and neutralizing their undesirable effects on domestic liquidity<sup>(1)</sup>; whereas Directive 72/156/EEC should accordingly be repealed,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.

2. Transfers in respect of capital movements shall be made on the same exchange rate conditions as those governing payments relating to current transactions.

#### Article 2

Member States shall notify the Committee of Governors of the Central Banks, the Monetary Committee and the Commission, by the date of their entry into force at the latest, of measures to regulate bank liquidity which have a specific impact on capital transactions carried out by credit institutions with non-residents.

Such measures shall be confined to what is necessary for the purposes of domestic monetary regulation. The Monetary Committee and the Committee of Governors of the Central Banks shall provide the Commission with opinions on this subject.

<sup>(1)</sup> OJ No L 91, 18. 4. 1972, p. 13.

#### Article 3

1. Where short-term capital movements of exceptional magnitude impose severe strains on foreign-exchange markets and lead to serious disturbances in the conduct of a Member State's monetary and exchange rate policies, being reflected in particular in substantial variations in domestic liquidity, the Commission may, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, authorize that Member State to take, in respect of the capital movements listed in Annex II, protective measures the conditions and details of which the Commission shall determine.

2. The Member State concerned may itself take the protective measures referred to above, on grounds of urgency, should these measures be necessary. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Commission, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, shall decide whether the Member State concerned may continue to apply these measures or whether it should amend or abolish them.

3. The decisions taken by the Commission under paragraphs 1 and 2 may be revoked or amended by the Council acting by a qualified majority.

4. The period of application of protective measures taken pursuant to this Article shall not exceed six months.

5. Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after delivery of an opinion by the Monetary Committee and the Committee of Governors of the Central Banks, whether the provisions of this Article remain appropriate, as regards their principle and details, to the requirements which they were intended to satisfy.

#### Article 4

This Directive shall be without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia* in the field of taxation and prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information.

Application of those measures and procedures may not have the effect of impeding capital movements carried out in accordance with Community law.

#### Article 5

For the Kingdom of Spain and the Portuguese Republic, the scope, in accordance with the Nomenclature of capital movements contained in Annex I, of the provisions of the



1985 Act of Accession in the field of capital movements shall be as indicated in Annex III.

#### Article 6

1. Member States shall take the measures necessary to comply with this Directive no later than 1 July 1990. They shall forthwith inform the Commission thereof. They shall also make known, by the date of their entry into force at the latest, any new measure or any amendment made to the provisions governing the capital movements listed in Annex I.

2. The Kingdom of Spain and the Portuguese Republic, without prejudice for these two Member States to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, and the Hellenic Republic and Ireland may temporarily continue to apply restrictions to the capital movements listed in Annex IV, subject to the conditions and time limits laid down in that Annex.

If, before expiry of the time limit set for the liberalization of the capital movements referred to in Lists III and IV of Annex IV, the Portuguese Republic or the Hellenic Republic considers that it is unable to proceed with liberalization, in particular because of difficulties as regards its balance of payments or because the national financial system is insufficiently adapted, the Commission, at the request of one or other of these Member States, shall in collaboration with the Monetary Committee, review the economic and financial situation of the Member State concerned. On the basis of the outcome of this review, the Commission shall propose to the Council an extension of the time limit set for liberalization of all or part of the capital movements referred to. This extension may not exceed three years. The Council shall act in accordance with the procedure laid down in Article 69 of the Treaty.

3. The Kingdom of Belgium and the Grand Duchy of Luxembourg may temporarily continue to operate the dual exchange market under the conditions and for the periods laid down in Annex V.

4. Existing national legislation regulating purchases of secondary residences may be upheld until the Council adopts further provisions in this area in accordance with Article 69 of the Treaty. This provision does not affect the applicability of other provisions of Community law.

5. The Commission shall submit to the Council, by 31 December 1988, proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems.

The Council shall take a position on these Commission proposals by 30 June 1989. Any tax provisions of a Community nature shall, in accordance with the Treaty, be adopted unanimously.

#### Article 7

1. In their treatment of transfers in respect of movements of capital to or from third countries, the Member States shall endeavour to attain the same degree of liberalization as that which applies to operations with residents of other Member States, subject to the other provisions of this Directive.

The provisions of the preceding subparagraph shall not prejudice the application to third countries of domestic rules or Community law, particularly any reciprocal conditions, concerning operations involving establishment, the provisions of financial services and the admission of securities to capital markets.

2. Where large-scale short-term capital movements to or from third countries seriously disturb the domestic or external monetary or financial situation of the Member States, or of a number of them, or cause serious strains in exchange relations within the Community or between the Community and third countries, Member States shall consult with one another on any measure to be taken to counteract such difficulties. This consultation shall take place within the Committee of Governors of the Central Banks and the Monetary Committee on the initiative of the Commission or of any Member State.

#### Article 8

At least once a year the Monetary Committee shall examine the situation regarding free movement of capital as it results from the application of this Directive. The examination shall cover measures concerning the domestic regulation of credit and financial and monetary markets which could have a specific impact on international capital movements and on all other aspects of this Directive. The Committee shall report to the Commission on the outcome of this examination.

#### Article 9

The First Directive of 11 May 1960 and Directive 72/156/EEC shall be repealed with effect from 1 July 1990.

#### Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1988.

For the Council  
The President  
M. BANGEMANN

## ANNEX I

## NOMENCLATURE OF THE CAPITAL MOVEMENTS REFERRED TO IN ARTICLE 1 OF THE DIRECTIVE

In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

- all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),
- operations carried out by any natural or legal person<sup>(1)</sup>, including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68 (3) of the Treaty,
- access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,
- operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof<sup>(1)</sup> or immediate use of such proceeds within the limits of Community obligations,
- operations to repay credits or loans.

This Nomenclature is not an exhaustive list for the notion of capital movements — whence a heading XIII — F. 'Other capital movements — Miscellaneous'. It should not therefore be interpreted as restricting the scope of the principle of full liberalization of capital movements as referred to in Article 1 of the Directive.

I — DIRECT INVESTMENTS<sup>(1)</sup>

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.
2. Participation in new or existing undertaking with a view to establishing or maintaining lasting economic links.
3. Long-term loans with a view to establishing or maintaining lasting economic links.
4. Reinvestment of profits with a view to maintaining lasting economic links.

A — Direct investments on national territory by non-residents<sup>(1)</sup>

B — Direct investments abroad by residents<sup>(1)</sup>

II — INVESTMENTS IN REAL ESTATE  
(not included under I)<sup>(1)</sup>

A — Investments in real estate on national territory by non-residents

B — Investments in real estate abroad by residents

## III — OPERATIONS IN SECURITIES NORMALLY DEALT IN ON THE CAPITAL MARKET (not included under I, IV and V)

(a) *Shares and other securities of a participating nature*<sup>(1)</sup>.

(b) *Bonds*<sup>(1)</sup>.

<sup>(1)</sup> See Explanatory Notes below.

**A — Transactions in securities on the capital market**

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange <sup>(1)</sup>.
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange <sup>(1)</sup>.
4. Acquisition by residents of foreign securities not dealt in on a stock exchange.

**B — Admission of securities to the capital market <sup>(1)</sup>**

- (i) *Introduction on a stock exchange <sup>(1)</sup>.*
- (ii) *Issue and placing on a capital market <sup>(\*)</sup>.*
  1. Admission of domestic securities to a foreign capital market.
  2. Administration of foreign securities to the domestic capital market.

**IV — OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS <sup>(1)</sup>**

- (a) Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).
- (b) Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.
- (c) Units of undertakings for collective investment in other assets.

**A — Transactions in units of collective investment undertakings**

1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

**B — Administration of units of collective investment undertakings to the capital market**

- (i) *Introduction on a stock exchange.*
- (ii) *Issue and placing on a capital market.*
  1. Admission of units of national collective investment undertakings to a foreign capital market.
  2. Admission of units of foreign collective investment undertakings to the domestic capital market.

**V — OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS NORMALLY DEALT IN ON THE MONEY MARKET <sup>(1)</sup>****A — Transactions in securities and other instruments on the money market**

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

**B — Admission of securities and other instruments to the money market**

- (i) *Introduction on a recognized money market <sup>(\*)</sup>.*
- (ii) *Issue and placing on a recognized money market.*
  1. Admission of domestic securities and instruments to a foreign money market.
  2. Admission of foreign securities and instruments to the domestic money market.

<sup>(1)</sup> See Explanatory Notes below.

**VI — OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH FINANCIAL INSTITUTIONS (1)**

- A — Operations carried out by non-residents with domestic financial institutions
- B — Operations carried out by residents with foreign financial institutions

**VII — CREDITS RELATED TO COMMERCIAL TRANSACTIONS OR TO THE PROVISION OF SERVICES IN WHICH A RESIDENT IS PARTICIPATING (1)**

- 1. Short-term (less than one year).
- 2. Medium-term (from one to five years).
- 3. Long-term (five years or more).
- A — Credits granted by non-residents to residents
- B — Credits granted by residents to non-residents

**VIII — FINANCIAL LOANS AND CREDITS (not included under I, VII and XI) (1)**

- 1. Short-term (less than one year).
- 2. Medium-term (from one to five years).
- 3. Long-term (five years or more).
- A — Loans and credits granted by non-residents to residents
- B — Loans and credits granted by residents to non-residents

**IX — SURETIES, OTHER GUARANTEES AND RIGHTS OF PLEDGE**

- A — Granted by non-residents to residents
- B — Granted by residents to non-residents

**X — TRANSFERS IN PERFORMANCE OF INSURANCE CONTRACTS**

- A — Premiums and payments in respect of life assurance
  - 1. Contracts concluded between domestic life assurance companies and non-residents.
  - 2. Contracts concluded between foreign life assurance companies and residents.
- B — Premiums and payments in respect of credit insurance
  - 1. Contracts concluded between domestic credit insurance companies and non-residents.
  - 2. Contracts concluded between foreign credit insurance companies and residents.
- C — Other transfers of capital in respect of insurance contracts

**XI — PERSONAL CAPITAL MOVEMENTS**

- A — Loans
- B — Gifts and endowments
- C — Dowries
- D — Inheritances and legacies
- E — Settlement of debts by immigrants in their previous country of residence
- F — Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad
- G — Transfers, during their period of stay, of immigrants' savings to their previous country of residence

(1) See Explanatory Notes below.

## XII — PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS

- A — Securities
- B — Means of payment of every kind

## XIII — OTHER CAPITAL MOVEMENTS

- A — Death duties
- B — Damages (where these can be considered as capital)
- C — Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)
- D — Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)
- E — Transfers of the monies required for the provision of services (not included under VI)
- F — Miscellaneous

## EXPLANATORY NOTES

For the purposes of this Nomenclature and the Directive only, the following expressions have the meanings assigned to them respectively:

### Direct investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under I-1 of the Nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person of another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long-term loans of a participating nature, mentioned under I-3 of the Nomenclature, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

### Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

### Introduction on a stock exchange or on a recognized money market

Access — in accordance with a specified procedure — for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on an officially recognized stock exchange or in an officially recognized segment of the money market.

### Securities dealt in on a stock exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange — e.g. committees of banks (unquoted securities).

### Issue of securities and other negotiable instruments

Sale by way of an offer to the public.

### Placing of securities and other negotiable instruments

The direct sale of securities by the issuer or by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

**Domestic or foreign securities and other instruments**

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

**Shares and other securities of a participating nature**

Including rights to subscribe to new issues of shares.

**Bonds**

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue.

**Collective investment undertakings****Undertakings:**

- the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of the Directive, 'common funds' shall also include unit trusts.

**Securities and other instruments normally dealt in on the money market**

Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments.

**Credits related to commercial transactions or to the provision of services**

Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations.

**Financial loans and credits**

Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating.

This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

**Residents or non-residents**

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.

**Proceeds of liquidation (of investments, securities, etc.)**

Proceeds of sale including any capital appreciation, amount of repayments, proceeds of execution of judgements, etc.

**Natural or legal persons**

As defined by the national rules.

**Financial institutions**

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

**Credit institutions**

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit.

## ANNEX II

## LIST OF OPERATIONS REFERRED TO IN ARTICLE 3 OF THE DIRECTIVE

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings — undertakings for investment in securities or instruments normally dealt in on the money market	IV-A and B (c)
Financial loans and credits — short-term	VIII-A and B-1
Personal capital movements — loans	XI-A
Physical import and export of financial assets — securities normally dealt in on the money market — means of payment	XII
Other capital movements: Miscellaneous — short-term operations similar to those listed above	XIII-F

The restrictions which Member States may apply to the capital movements listed above must be defined and applied in such a way as to cause the least possible hindrance to the free movement of persons, goods and services.

## ANNEX III

## REFERRED TO IN ARTICLE 5 OF THE DIRECTIVE

Scope of the provisions of the 1985 Act of Accession relating to capital movements, in accordance with the Nomenclature of capital movements set out in Annex I to the Directive

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
<b>(a) Provisions concerning the Kingdom of Spain</b>		
Article 62 (31. 12. 1990)	Direct investments abroad by residents	I-B
Article 63 (31. 12. 1990)	Investments in real estate abroad by residents	II-B
Article 64 (31. 12. 1988)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange — excluding bonds issued on a foreign market and denominated in national currency	III-A-2
	Operations in units of collective investment undertakings — Acquisition by residents of units of collective investment undertakings dealt in on a stock exchange — excluding units of undertakings taking the form of common funds	IV-A-2
<b>(b) Provisions concerning the Portuguese Republic</b>		
Article 222 (31. 12. 1989)	Direct investments on national territory by non-residents	I-A
Article 224 (31. 12. 1992)	Direct investments abroad by residents	I-B
Articles 225 and 226 (31. 12. 1990)	Investments in real estate on national territory by non-residents	II-A
Article 227 (31. 12. 1992)	Investments in real estate abroad by residents	II-B
Article 228 (31. 12. 1990)	Personal capital movements	
	(i) for the purpose of applying the higher amounts specified in Article 228 (2): — Dowries — Inheritances and legacies — Transfers of assets built up by residents in case of emigration at the time of their installation or during their period of stay abroad	XI-C XI-D XI-F
	(ii) for the purpose of applying the lower amounts specified in Article 228 (2): — Gifts and endowments — Settlement of debts by immigrants in their previous country of residence — Transfers of immigrants' savings to their previous country of residence during their period of stay	XI-B XI-E XI-G





## ANNEX IV

## REFERRED TO IN ARTICLE 6 (2) OF THE DIRECTIVE

- I. The Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 restrictions existing on the date of notification of the Directive on capital movements given in List I below:

## LIST I

Nature of operation	Heading
Operations in units of collective investment undertakings	
— acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2 (a)
— undertakings subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents of units of foreign collective investment undertakings not dealt in on a stock exchange	IV-A-4 (a)
— undertakings subject to Directive 85/611/EEC (1)	

(1) Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985, p. 3).

- II. The Kingdom of Spain and the Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 and 31 December 1992 respectively, restrictions existing on the date of notification of the Directive on capital movements given in List II below:

## LIST II

Nature of operation	Heading
Operations in securities normally dealt in on the capital market	
— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2 (b)
— bonds issued on a foreign market and denominated in national currency	
— Acquisition by residents (non-residents) of foreign (domestic) securities not dealt in on a stock exchange	III-A-3 and 4
— Admission of securities to the capital market	III-B-1 and 2
— where they are dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2
— undertakings not subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents (non-residents) of units of foreign (domestic) collective investment undertakings not dealt in on a stock exchange	IV-A-3 and 4
— undertakings not subject to Directive 85/611/EEC (1) and the sole object of which is the acquisition of assets that have been liberalized	
— Admission to the capital market of units of collective investment of undertakings	IV-B-1 and 2 (a)
— undertakings subject to Directive 85/611/EEC (1)	
— Credits related to commercial transactions or to the provision of services in which a resident is participating	VII-A and B-3
— Long-term credits	

(1) See footnote to List I.

- III. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, continue to apply or reintroduce restrictions existing at the date of notification of the Directive on capital movements given in List III below:

## LIST III

Nature of operation	Heading
Operations in securities dealt in on the capital market	
— Admission of securities to the capital market	III-B-1 and 2
— where they are not dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Admission to the capital market of units of collective investment undertakings	IV-B-1 and 2
— undertakings not subject to Directive 85/611/EEC <sup>(1)</sup> and the sole object of which is the acquisition of assets that have been liberalized	
Financial loans and credits	VIII-A, B-2 and 3
— medium-term and long-term	

<sup>(1)</sup> See footnote to List I.

- IV. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, defer liberalization of the capital movements given in List IV below:

## LIST IV

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	IV-A and B (c)
— undertakings for investment in securities or instruments normally dealt in on the money market	
Financial loans and credits	VIII-A and B-1
— short term	
Personal capital movements	XI-A
— loans	
Physical import and export of financial assets	XII
— securities normally dealt in on the money market	
— means of payment	
Other capital movements: Miscellaneous	XIII-F

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**ANNEX V**

Since the dual exchange market system, as operated by the Kingdom of Belgium and the Grand Duchy of Luxembourg, has not had the effect of restricting capital movements but nevertheless constitutes an anomaly in the EMS and should therefore be brought to an end in the interests of effective implementation of the Directive and with a view to strengthening the European Monetary System, these two Member States undertake to abolish it by 31 December 1992. They also undertake to administer the system, until such time as it is abolished, on the basis of procedures which will still ensure the *de facto* free movement of capital on such conditions that the exchange rates ruling on the two markets show no appreciable and lasting differences.

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8. Amended proposal for a Council Directive relating to indirect taxes on transactions in securities  
(COM(87)139)  
(OJ No C 115, 30.04.1987, p. 9-10)

Art. 1-4



Amended proposal for a Council Directive relating to indirect taxes on transactions in securities <sup>(1)</sup>

*COM(87) 139 final*

*(Submitted by the Commission to the Council on the basis of the second paragraph of Article 149 on 14 April 1987)*

*(87/C 115/09)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Council Directive 86/566/EEC <sup>(4)</sup> has extended, with effect from 28 February 1987, the obligation to liberalize capital movements to include all operations involving the acquisition of securities and operations involving the admission to the capital market of negotiable securities and of those which are in the process of being introduced onto a stock exchange;

<sup>(1)</sup> OJ No C 133, 14. 6. 1976, p. 1.

<sup>(2)</sup> OJ No C 259, 4. 11. 1976, p. 43.

<sup>(3)</sup> OJ No. C 297, 16. 12. 1976, p. 9.

<sup>(4)</sup> OJ No C 332, 26. 11. 1986, p. 22.

Whereas the said movements of capital may be distorted by the existence, in the Member States, of differing provisions concerning indirect taxes on transactions in securities, which often give rise to double taxation and discrimination;

Whereas, to eliminate these distortions, the abolition of the taxes in question is the most appropriate solution as regards the proper functioning of the capital market; whereas this abolition should preferably occur on the date fixed for the liberalization of capital movements; whereas it is nevertheless suitable to allow the Member States, if they so wish, to phase the budgetary effects of the abolition over a period,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Member States which impose a tax on transactions in securities shall abolish it.

*Article 2*

1. Member States shall refrain from levying any tax on transactions in securities, whether or not levied at a flat rate, the base of which consists of the value of the security which is the object of the transaction.

2. Notwithstanding paragraph 1, Member States may levy:

- (a) capital duty, as defined by Council Directive 69/335/EEC (<sup>1</sup>),
- (b) transfer duties on immovable property where, as a result of transactions in shares in companies, funds, associations or other legal persons whose assets consist in whole or in part of immovable property situated in their territory, the purchaser acquires all assets of or a position by virtue of which he is able to exercise control over these companies, funds, associations or other legal persons. In this case, transfer duties shall apply only in respect of the value of the immovable property, such value being determined in accordance with national legislation,
- (c) value added tax applicable to interests or shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.

*Article 3*

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive not later than 1 January 1990.
2. Member States shall inform the Commission of the provisions which they adopt for the application of this Directive.

*Article 4*

This Directive is addressed to the Member States.

(<sup>1</sup>) OJ No L 249, 3. 10. 1969, p. 25.



9. Proposal for a Council Directive on a common system of **withholding tax on interest income**  
(COM(89)60/3)

Art. 1-12

Proposal for a Council Directive amending Directive 77/799/EEC concerning **mutual assistance** by the competent authorities of the Member States in the field of **direct taxation** and value added tax  
(COM(89)60/3)

Art. 1-3

(OJ No C 141, 07.06.1989, p. 5-8)



## II

*(Preparatory Acts)*

## COMMISSION

Proposal for a Council Directive on a common system of withholding tax on interest income

COM(89) 60 final/3

*(Submitted by the Commission on 10 February 1989)*

(89/C 141/06)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 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 Council Directive 88/361/EEC<sup>(1)</sup> provides that Member States shall abolish not later than 1 July 1990 restrictions on movements of capital taking place between persons resident in Member States;

Whereas the complete liberalization of capital movements in the Community entails risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems; whereas in consequence the approximation of these regimes is necessary to ensure that competition in the common market is not distorted;

Whereas the application of a common system of withholding tax meets this objective while at the same time ensuring a minimum taxation of interest paid by a debtor which is resident in a Member State; whereas the institutions of the Communities and the European Investment Bank are not residents of a Member State;

Whereas it is necessary to allow Member States not to levy a withholding tax in cases where the risk of fraud is remote;

Whereas provision must be made to ensure that from the interest collected by an undertaking for collective investment in transferable securities a withholding tax could be levied;

Whereas the withholding tax should be simply a payment on account of the final tax liability of the recipient of interest except if it discharges residents from further tax liability; whereas in order to avoid complicated formalities, any possible excess of tax ought to be repaid by the State in which the recipient is resident; whereas Member States must nevertheless be allowed to conclude bilateral agreements on the sharing of budgetary costs resulting from these provisions;

Whereas a withholding tax should be introduced not later than 1 July 1990, at which moment the complete liberalization of capital movements will be achieved,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Member States shall apply, in accordance with the provisions of this Directive, a common system of withholding tax to interest paid by a Member State or a political subdivision, local authority or a resident of a Member State.

*Article 2*

For the purposes of this Directive, interest means income from claims of any kind, including premiums and prizes linked to public debt securities and bond loans. Penalties for late payment shall not be regarded as interest for the purposes of this Directive.

In the case of securities producing income made up exclusively or partly of gain, interest means the difference between the issue price and the redemption price.

*Article 3*

1. The payer of interest (or paying agent) shall deduct from the amount of interest due a withholding tax, the rate of which shall be fixed by the Member State in which he is resident. He shall pay over the sums withheld to the tax authorities of that Member State in accordance with the conditions laid down by that State.

<sup>(1)</sup> OJ No L 178, 8. 7. 1988, p. 5.

2. Where payment of the interest is effected by a permanent establishment of the payer located in a Member State other than that of the payer, the withholding tax shall be deducted by the permanent establishment, in as much as this interest is a deductible charge for it, and shall be paid over to the tax authorities of the Member State in which this permanent establishment is situated.

#### Article 4

1. The rate of the withholding tax may not be less than 15 %.

2. Member States shall be free to apply a higher withholding tax rate for interest paid to their own residents than for interest paid to non-residents.

3. Paragraph 1 shall not preclude application of agreements concluded between Member States or between Member States and non-member countries providing lower rates of withholding tax when the income is declared.

#### Article 5

Member States shall be free not to levy withholding tax on interest where:

- (a) the recipient is one of their own residents and his name and address and the amount of interest paid are automatically notified to the tax authorities;
- (b) the recipient is one of their own residents and does not fall within the scope of the income or profits tax;
- (c) the recipient is one of their own residents and the interest is not subject to income or profits tax;
- (d) the interest is not subject to income or profits tax following incentives in favour of small savings;
- (e) the payer of interest is a private individual;
- (f) the interest is made up of commercial and industrial income of the recipient;
- (g) the interest is payable on an international loan (Eurobond), which is defined for the purposes of this Directive as a transferable security in the form of a bond, which:
  - is to be underwritten and distributed by a syndicate, at least two of the members of which have their registered offices in different States,
  - is offered on a significant scale in one or more States other than that of the issuer's registered office and

— may be subscribed for or initially acquired only through a credit institution, as defined in Article 2 of Council Directive 77/780/EEC (<sup>(1)</sup>), or other financial institution;

(h) the recipient is a resident of a non-member country.

#### Article 6

Where interest redistributed by an undertaking for collective investment in transferable securities within the meaning of Council Directive 86/566/EEC (<sup>(2)</sup>) has not been charged withholding tax in the hands of that undertaking or where withholding tax has been refunded to it, that interest shall be subject to withholding tax if such tax would have been chargeable if the interest had been paid directly by the payer.

In the contrary case, such interest shall be exempt from withholding tax.

However, withholding tax charged on interest in the hands of an undertaking for collective investment in transferable securities shall be allowable against the amount of income or profits tax payable by the unit holder. It shall be refunded to him in the cases referred to in the second paragraph of Article 7.

#### Article 7

Withholding tax on interest shall be allowed as a credit against the amount of income or profits tax payable by the recipient in respect of such interest.

It shall be refunded to the recipient by the Member State which levies the tax referred to in the preceding paragraph if it exceeds the amount of that tax or if the recipient is not taxable.

#### Article 8

1. Where the withholding tax levied by a Member State is allowed as a credit or refunded in another Member State, the Member State which levied the withholding tax shall refund it to the other Member State.

2. Notwithstanding paragraph 1, Member States may divide the amount of the withholding tax between each other on the basis of a bilateral agreement, provided that that agreement in no way affects the rights of the recipients of the interest as established by this Directive.

#### Article 9

The Community shall enter into negotiations with its main commercial partners either on a bilateral or on a multilateral basis, in order to enlarge the scope of the withholding at source to an international level.

(<sup>(1)</sup>) OJ No L 322, 17. 12. 1977, p. 30.

(<sup>(2)</sup>) OJ No L 332, 26. 11. 1986, p. 22.

*Article 10*

The Commission shall present to the Council before 1 July 1992 a report on the functioning of the common system of withholding tax at source.

*Article 11*

1. Member States shall bring into force, not later than 1 July 1990, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field governed by the Directive.

*Article 12*

This Directive is addressed to the Member States.

**Proposal for a Council Directive amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and value added tax**

COM(89) 60 final/3

(Submitted by the Commission on 10 February 1989)

(89/C 141/07)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 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 Council Directive 88/361/EEC (\*) stipulates that restrictions on capital movements between persons resident in the Member States must be abolished no later than 1 July 1990;

Whereas that Directive requires the Commission to submit to the Council proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems,

Whereas under Council Directive 77/799/EEC (\*), as last amended by Directive 79/1070/EEC (\*), Member States are required to provide mutual assistance to

combat tax evasion and tax avoidance in respect of taxes on income and on capital; whereas under Article 8 of that Directive, however, a Member State is not obliged to provide information following a request from another Member State if its laws or administrative practices prevent it from collecting this information for its own purposes;

Whereas the restriction on the exchange of information arising from administrative practices should be abolished in cases where the Member State making the request has specific grounds for supposing that one of its residents has transferred significant funds to another Member State without declaring the corresponding income,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The following subparagraph is added to Article 8 (1) of Directive 77/799/EEC:

'However, where the appropriate authority of the Member State making the request shows specific grounds for supposing that one of its residents has transferred, either directly or through another country, significant funds to the Member State to which the request is made without declaring the corresponding income, the appropriate authority of the Member State to which the request is addressed may not rely on the fact that its administrative practices do not permit it to carry out these enquiries or to collect or use this information for the purpose of correctly establishing the taxes due by its own residents.'

(\*) OJ No L 178, 8. 7. 1988, p. 5.

(\*) OJ No L 336, 27. 12. 1988, p. 15.

(\*) OJ No L 331, 27. 12. 1979, p. 8.

*Article 2*

Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive not later than 1 July 1990. They shall communicate them forthwith to the Commission.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

*Article 3*

This Directive is addressed to the Member States.

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