

Brussels, 18 June 1980

Amended proposal for a
COUNCIL DIRECTIVE

on information to be published on a regular
basis by companies whose shares are admitted
to official stock exchange listing

(submitted to the Council by the Commission,
pursuant to the second paragraph of article 149
of the EEC Treaty)

Original Proposal

New Version

Proposal for a Council Directive on information to be published on a regular basis by companies whose transferable securities are admitted to official stock exchange listing

Amended proposal for a Council Directive on information to be published on a regular basis by companies whose shares are admitted to official stock exchange listing

The Council of the European Communities,

unchanged

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

unchanged

Having regard to the proposal from the Commission,

unchanged

Having regard to the opinion of the European Parliament, (1)

unchanged

Having regard to the opinion of the Economic and Social Committee, (2)

unchanged

Whereas the Sixth Council Directive of concerning the content, checking and distribution of the prospectus 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 (3) seeks to ensure improved protection of investors and a greater degree of equivalence from country to country in the protection provided, by coordinating requirements as to the information to be published at the time of admission;

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(3) seeks to ensure improved protection of investors and a greater degree of equivalence from country to country in the protection provided, by coordinating requirements as to the information to be published at the time of admission;

(1) OJ N° C of
(2) OJ N° C 53 of 3 March 1980, p.
(3) OJ N° L 100 of 17 April 1980, p. 1

Whereas, in the case of securities admitted to official stock exchange listing, the protection of investors requires that these latter be supplied with appropriate regular information throughout the entire period during which the securities are listed; whereas coordination of this regular information has similar objectives to those envisaged for the prospectus, namely to improve such protection and to make it more equivalent, to make securities more attractive to investors, to facilitate the quotation of these securities on more than one stock exchange in the Community, and in so doing to contribute towards the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets;

Whereas, under Council Directive of coordinating the conditions for the admission of securities to official stock exchange listing (4), quoted companies must at the end of the financial year make available to investors their annual accounts and report giving information on the company for the whole of the financial year; whereas the Fourth Council Directive

unchanged
Whereas, under Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (4), quoted companies must at the end of the financial year make available to investors their annual accounts and report giving information on the company for the whole of the financial year. Whereas the Fourth Council Directive 78/660/EEC of

(4) OJ N° L 66 of 16 March 1979, p. 21

78/660/EEC of 25 July 1978 (5) has coordinated the laws, regulations and administrative provisions of the Member States concerning the annual accounts of certain types of companies;

Whereas the company should also, at least once during the financial year, make available to investors a report on the company's business; whereas the present 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 the bearer, the protection of investors by means of the publication of a half-yearly report is not essential, whereas consequently regular information needs to be coordinated only for companies whose shares, convertible debentures, exchangeable debentures, debentures with warrants attached or participating debentures are admitted to official stock exchange listing;

25 July 1978 (5) has coordinated the laws, regulations and administrative provisions of the Member States concerning the annual accounts of certain types of companies;

unchanged

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

securities 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 the investors to make an informed appraisal of the general development of the company's activity 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;

unchanged

Whereas coordination should be achieved by stages and should therefore be confined at present to the establishment of minimum rules;

unchanged

Whereas, in order to take account of difficulties resulting from the current state of legislation in certain Member States, a longer period may be provided for companies to adapt themselves to the provisions of the Directive than that provided for the adaptation of national legislation;

unchanged

Whereas, so as to ensure effective protection of investors and the proper operation of stock exchanges, the rules relating to regular information to be published by companies whose securities are admitted to official stock exchange listing within the Community should apply not only to companies from Member States referred to in the second paragraph of Article 58 of the Treaty, but also to companies from third countries;

HAS ADOPTED THIS DIRECTIVE :

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

unchanged

Section I : General provisions and field of application

Article 1

1. This Directive shall apply to companies whose shares, convertible debentures, exchangeable debentures, debentures carrying warrants or participating debentures are admitted to official listing on a stock exchange situated or operating within the territory of a Member State, whether such securities themselves or certificates representing them are admitted and whether such admission precedes or follows the date when this Directive enters into force.

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

For the purposes of this Directive, "investment companies other than of the closed-end type" shall mean investment companies:

- whose object is the collective investment of capital provided by the public, and which operate on the principle of risk spreading;
- and
- whose units are, at the request of holders, repurchased or redeemed, directly or indirectly, as a charge on the assets of these companies.

Article 1

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

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

For purposes of this Directive, "investment companies other than 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 units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of these companies.

Action taken by a company to ensure that the stock exchange value of its units does not significantly vary from the net asset value shall be regarded as equivalent to such repurchase or redemption.

Action taken by such companies 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.

Article 2

The companies referred to in Article 1 shall publish, each financial year, a half-yearly report relating to their activity during the first six months of their financial year.

Article 2

The Member States shall ensure that the companies referred to in Article 1 shall publish, each financial year, a half-yearly report relating to their activity during the first six months of their financial year.

Article 3

The Member States may make companies to which this Directive applies subject to more rigorous obligations than those contained in this Directive, or to additional obligations, provided that they are of general application for all companies or for individual classes of company.

Article 3

unchanged

Section II: Publication and contents of half-yearly report

Article 4

The half-yearly report shall be published within three months of the end of the relevant six-month period.

Article 4

unchanged

Article 5

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

Article 5

unchanged

2. The figures, presented in table form, shall show at least the following:

- net turnover;
- other operating income;
- operating charges;
- gross operating result;
- interim dividends (if any) paid or proposed.

unchanged

3. Against each of the above figures, the figure for the corresponding period in the preceding financial year shall also be shown.

unchanged

4. The explanatory statement shall enable investors to make an informed appraisal of the company's business during the relevant period and to make a comparison with the corresponding period of the previous financial year. The explanatory statement shall relate to the figures referred to in paragraph 2 and to at least the following items, giving supporting figures whenever appropriate:

- the number of persons employed;
- investment carried out and decisions taken as to future investment;
- state of the order book;
- the general situation regarding stocks of finished products;
- the degree of capacity utilization;
- any new products or activities which have had a significant effect on turnover.

4. The explanatory statement shall enable investors to make an informed assessment of the development of the company's business during the relevant period and to make a comparison with the corresponding period of the previous financial year. The explanatory statement shall relate to the figures referred to in paragraph 2 and, to at least the following items to the extent that they are significant giving supporting figures whenever appropriate:

- the number of persons employed;
- investments carried out and firm commitments made by the company's management bodies concerning principal future investments, with the exception of interests to be acquired in other undertakings;
- state of the order book;
- the general situation regarding stocks of finished products;
- the degree of capacity utilization;

- any new products or activities which have had a significant effect on turnover;
- the company's prospects for the current financial year.

Article 6

1. For the purposes of this Directive:

- net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover. Where the half-yearly report is drawn up on a consolidated basis, net turnover shall not comprise the sale of products and provision of services between companies forming part of the group;
- other operating income shall comprise items 2, 3 and 4 in Article 23 and their equivalents in Article 24, and item 6 of Article 25 and its equivalent in Article 26 of the Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies;

Article 6

1. For the purposes of this Directive:

- net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover;
- (second sentence deleted)

Fourth Council Directive 78/660/EEC on the annual accounts of certain types of companies;

- operating charges shall comprise items 5, 6, 7 and 8 in Article 23 and their equivalents in Articles 24 and items 2, 4 and 5 of Article 25 and their equivalents in Article 26 of the Fourth Directive referred to above; unchanged
- gross operating result is the difference between (a) the net turnover together with other operating income and (b) operating charges. unchanged

2. In respect of companies whose annual accounts do not have to be drawn up in accordance with the Fourth Directive referred to above, the information defined in the second and third indents of paragraph 1 above shall be established in an equivalent manner. unchanged

Article 7

Net turnover shall be broken down 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 company's ordinary activities are organized, these categories and markets differ substantially from one another.

Article 7

deleted

Article 8

1. If the company prepares consolidated annual accounts only, the half-yearly report shall be drawn up in consolidated form. unchanged

Article 8

2. If the company prepares both unconsolidated accounts and consolidated accounts, the half-yearly report shall be drawn up in both forms. In that event, however, the competent authority may authorize the company to draw up the half-yearly report either in unconsolidated or in consolidated form provided that the other form does not convey any significant supplementary information.
2. If the company prepares both unconsolidated annual accounts and consolidated annual accounts, the half-yearly report shall be drawn up in both forms. However, the competent authorities may authorize the company to draw up the half-yearly report either in unconsolidated form or in consolidated form, on condition that the other form does not provide any significant additional information.

Article 9

1. The half-yearly report shall be published in one or more newspapers distributed throughout the country or distributed widely, or in the national gazette, 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 country or widely distributed, or by other equivalent means approved by the competent authorities.

If the transferable securities are admitted to official listing in more than one Member State, the half-yearly report shall be published simultaneously in each such Member State.

Article 9

1. The half-yearly report shall 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 country or distributed widely, or in the national gazette, 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 country or widely distributed, or by other equivalent means approved by the competent authorities.

If the shares are admitted to official listing in more than one Member State, the half-yearly report shall be published simultaneously in each such Member State.

1a. In addition, the half-yearly report of companies referred to in Article 1 of Directive 68/151/EEC of 9 March 1968 (1) must be published in accordance with Article 3 of that Directive.

(1) OJ N° L 65 of 14.3.1968

2. The half-yearly report shall be unchanged published in the official language or languages or in one of the official languages or in another language, provided that, in the 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 the half-yearly report simultaneously, not later than the time of its publication, to the competent authorities of each Member State in which the transferable securities are admitted to official listing.

Article 10

The half-yearly report must state whether the financial information contained therein has or has not been checked by the official auditor of the company's accounts. If the auditor has made any qualifications, these must also be stated.

Section III: Powers of the competent authorities

Article 11

1. The Member States shall designate the national authority or authorities responsible for ensuring that the rules laid down in this Directive are applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.

3. The company shall send a copy of the half-yearly report simultaneously, not later than the time of its publication, to the competent authorities of each Member State in which the shares are admitted to official listing.

Article 10

The half-yearly report must state whether the accounting information contained therein has or has not been audited by the official auditor of the company's accounts. If such information has been audited, and if the audit report has been refused by the official auditor or if it contains qualifications, such refusal or such qualifications shall be reproduced in full and the reasons given.

Article 11

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 be responsible for seeing that Directive is applied.

2. The Member States shall ensure that the competent authorities are invested with such authority and such powers as may be necessary for carrying out their task.

3. In cases where particular requirements of this Directive are inappropriate to the company's sphere of activity, the competent authorities shall ensure that suitable adaptations are made to these requirements.

4. The competent authorities may exempt the company from publishing any information required by this Directive if they are satisfied that:

- such information is of minor importance only and is unlikely to influence assessment of the development of the company's business;
- disclosure of such information would be contrary to the public interest or seriously detrimental to the company, provided that, in the latter case, non-publication is not likely to mislead the public with regard to facts and circumstances essential for assessment of the company's transferable securities referred to in Article 1.

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

unchanged

4. The competent authorities may authorize omission from the half-yearly report of certain information provided for by 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.

5. The provisions of paragraphs 3 and 4 shall also apply to the more rigorous or additional obligations imposed pursuant to Article 3.

6. If a company which is governed by the law of a non-Member State publishes a half-yearly report in that State, the competent authorities may authorize it to publish such report instead of the half-yearly report drawn up in accordance with Article 5 of this Directive, provided that such report gives comparable information to that required by that Article.

6a. This Directive shall not affect the competent authorities' liability, which shall continue to be governed solely by national law.

Section III a : Cooperation between Member States

Article 11 a

Where a half-yearly report is required to be published in more than one Member State, the competent authorities of the Member States concerned shall exchange information and use their best endeavours to achieve maximum co-ordination of their requirements concerning the half-yearly report, with a view to avoiding a multiplicity of formalities and to agreeing 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.

Section IV : Contact Committee

Article 12

The Contact Committee established by the Council Directive of coordinating the conditions for the admission of securities to official stock exchange listing shall also have as its function:

- a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of the Directive through regular consultations on any practical problems arising from its application, on which exchanges of opinion are deemed useful;
- b) to facilitate the establishment of a concerted attitude between the Member States on the more rigorous or additional obligations which they may lay down at purely national level pursuant to Article 3;
- c) to advise the Commission, if necessary, on any supplements or amendments to be made to the Directive.

Article 12

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 rigorous or additional obligations which they may lay down at national level pursuant to Article 3;
- c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

Section V : Final provisions

Article 13

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

Article 13

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.

2. The Member States may stipulate unchanged that the measures referred to in paragraph 1 shall not apply until one year after the end of the period provided for in that paragraph.

3. With effect from the notification of this Directive, 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 14

This Directive is addressed to the Member States.

3. As from the notification of this Directive, 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 14

unchanged

Done at

For the Council

The President