

Proposed Directive and Draft
Council Recommendation on a

**PROSPECTUS TO BE PUBLISHED WHEN
SECURITIES ARE ADMITTED TO OFFICIAL
STOCK EXCHANGE QUOTATION**

COM (72) 835 final
26 September 1972

COMMISSION
of the European Communities

Proposal for a Council Directive

concerning the content, checking and distribution of the prospectus to be published when securities issued by companies within the meaning of Article 58 paragraph 2 of the Treaty are admitted to official stock exchange quotation

and

Draft Council Recommendation

concerning the contents of the prospectus to be published when securities issued by the States or their local authorities are admitted to official stock exchange quotation.

Brussels, September 1972

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PROPOSAL FOR A COUNCIL DIRECTIVE

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community and, in particular, Article 54.3 g. 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 the enlargement of the size of the market in which enterprises operate to the dimensions of the Community involves a parallel widening of their financial requirements and of the capital markets on which they must call to satisfy these, and whereas admission to the stock exchanges of several Member States of transferable securities issued by companies and other legal persons in public and private law constitutes an important method of access to these capital markets, and whereas furthermore exchange restrictions on the purchase of transferable securities negotiated 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 company members and third parties investing whose savings are sought are required in most of the Member States of enterprises which make public call on savings, sometimes immediately the securities are issued and in any case at the time of their admission to official stock exchange quotation, and whereas these safeguards rest on the requirement that information which is adequate and as objective as possible must be furnished concerning in particular the financial situation of the issuing enterprise and the features of the securities for which quotation is requested and whereas the form under which this information is required usually consists of the publication of a prospectus,

Whereas at the same time the safeguards thus required diverge from one member country to another, both as regards the contents and the layout of the prospectus and the efficacy, methods and timing of the check on the adequacy and sufficiency of the information given, and whereas the effect of these divergencies is not only to make it more difficult for enterprises to obtain admission to the stock exchanges of several Member States but also to hinder the acquisition by savers residing in a Member State of securities quoted on the stock exchanges of the other Member States and thus to inhibit the financing of the enterprises and investment by savers throughout the Community,

Whereas these divergencies 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 offered in each Member State to ensure sufficient and objective information for company members and third parties who are present or potential security holders, and

whereas at the same time, taking into account on the one hand the present degree of liberalization of capital movements in the Community and on the other the fact that a mechanism for checking at the time the securities are issued does not yet exist in all the Member States, it would appear sufficient at present to limit the necessary coordination to the conditions for admission of such securities to official stock exchange quotation,

Whereas the enterprises in the Member States which request the quotation of securities that they issue are all companies or other legal persons in public or private law within the meaning of Article 58(2) of the Treaty so that the coordination of the safeguards which are made compulsory for them in the field of this Directive comes under Article 54.3 g.; and whereas these safeguards, because of their objective character and their nature as rules for the protection of savings and for the proper functioning of the stock exchanges, must necessarily also apply to applications for admission to quotation on a stock exchange in the Community of the securities issued by enterprises of third countries, and whereas the provisions of this Directive must consequently also concern the information required of these undertakings in the form of prospectuses and the checking of this information,

Has *adopted* this Directive:

Section I: General rules and field of application

Article 1: Requirement of issuing a prospectus

1. Member States shall ensure that, before securities are admitted to or introduced for official quotation on a stock exchange situated within their territory, a prospectus checked by an authority appointed for this purpose is published or made available to the public.
2. Notwithstanding the foregoing, securities issued by open-end investment companies and unit trusts, i.e. organisations whose securities are issued in a continuous fashion or in closely spaced tranches and/or are bought back or redeemed directly or indirectly at the request of the holder out of their assets, shall be excluded from the field of application of this Directive.
3. The obligations of this Directive shall not apply either to securities issued by the States or their local authorities.

Article 2: Contents of the prospectus

The prospectus mentioned in Article 1 above must contain all information which, according to the particular nature of the issuer and the securities in

question, are necessary to enable investors and their investment advisers to form a well-founded opinion on the net worth, financial situation, results and prospects of the issuer and also on the rights pertaining to the securities for which application for admission is being made.

Article 3: Obligation to follow the schemes of presentation set out in the Schedules

1. In order to achieve the result envisaged in Article 2, Member States shall ensure that the admission prospectus contains, in as easily analysable and comprehensible a form as possible, at least those items of information that are listed in Schedules A, B or C annexed to the present Directive, depending on whether shares, debentures¹ or certificates representing shares are involved. The schemes of presentation in question are applicable in conjunction with the exception options provided for in Articles 4 and 5.
2. In the specific cases mentioned in Articles 6-12 the prospectus shall be drawn up in accordance with the indications laid down therein.
3. In cases where certain headings of the Schedules are inappropriate to the issuers' sphere of activity, a prospectus giving equivalent information shall be drawn up by adapting the headings in question.

Article 4: Right to waive publication of a prospectus or certain of its headings

1. Member States may, under conditions determined by them, waive publication of a prospectus drawn up in accordance with the annexed schemes of presentation, or may even provide for complete exemption from the requirement of issuing a prospectus when the application for admission is in respect of the securities detailed below:
 - (a) securities for which, within a maximum of six months prior to the application for admission, an issue prospectus was published in the same member country in connection with a public issue, provided that the prospectus was drawn up in conformity with the provisions of the present Directive and can be held to be equivalent to the European admission prospectus; in such a case, the up-dating of that prospectus may if necessary be called for;
 - (b) securities already admitted to official quotation on another stock exchange in the same member country, provided that a prospectus has already been published which complies with the present Directive;

¹ "Debenture" includes debenture stock, loan stock, bonds and any similar securities of a company whether constituting a charge on the assets of the company or not (Translator's note).

(c) shares (including shares having no capital value) allotted, consequent upon the capitalisation of reserves, issue premiums, revaluation surpluses or profits, to holders of shares of the same category already quoted on the same stock exchange;

(d) shares resulting from the conversion of convertible debentures when these convertible debentures and shares of the same category as those offered by way of conversion are already quoted on the same stock exchange;

(e) shares issued in connection with the exercise of warrants, when the debentures to which they were attached, as well as shares of the same category as those offered to holders of the warrants, are already quoted on the same stock exchange;

(f) supplementary certificates representing shares issued in exchange for original securities, where there is no increase of capital, when the certificates are already quoted on the same stock exchange.

(g) a number of securities amounting to less than 5% of the number of securities of the same category already admitted to quotation on the same stock exchange, provided that the aggregate market value of the additional securities does not exceed 500 000 units of account over a period of two years.

2. Where Member States intend to avail themselves of this exemption option, they must notify the Commission, at the latest by the expiry of the time-limit fixed in Article 20(1), of the cases in which they intend to keep this option available and, where appropriate, of the particular provisions they are establishing for the scheme of presentation. When, in these same cases, circumstances relating to the creation of extra securities call for special information the Member States must nevertheless prescribe the publication of the necessary information.

Article 5: Dispensation from the provisions of certain headings in the annexed Schedules

The authorities of Member States may dispense the issuer from publishing certain information laid down in the Schedules when, in the particular circumstances of the issuer concerned:

1. this information has no more than minimal importance and is not likely to influence assessment of the net worth, financial position, results and prospects of the issuer;

2. the disclosure of this information would be contrary to the public interest or would be seriously detrimental to the issuer, provided that non-publication is not likely to mislead the public with regard to the facts and circumstances essential for assessment of the securities in question.

Section II: Content of the prospectus in special cases

Article 6: Financial institutions

1. Upon admission to quotation for securities issued by financial institutions, the prospectus must contain at least the items of information specified in Chapters 1, 2, 3, 5 and 6 of Schedules A or B, according as shares or debentures are involved.
2. In addition, it must contain information adapted to the characteristics of the issuers in question and equivalent to that specified in Chapters 4 and 7 of Schedules A or B in accordance with the rules laid down for this purpose by the competent national authorities.
3. It shall be incumbent on Member States to define the financial institutions for which modified schemes for the presentation of prospectuses will be laid down.

The system provided for by this Article for financial institutions may be extended to investment companies and collective investment funds other than those covered in Article 1, to "pure" finance companies (i.e. those engaging in no other activities than assembling capital to make it available to a parent company or a company directly or indirectly affiliated with the parent company) and to "pure" holding companies (i.e. those that do not engage in any other activity than managing a portfolio of transferable securities, licences or patents).

Article 7: Continuous or repeated loan issues by financial institutions

1. In the case of banks, savings banks, credit institutions and mortgage companies which publish their accounts regularly, which within the Community are corporations of public-law status or are subject to public supervision designed to protect savings, and which make continuous or repeated issues, not less than an average of twice a year, of debentures for which admission to quotation is sought, the complete prospectus drawn up in accordance with the method laid down for financial institutions in Article 6 need only be published every three years. This system may be extended to cover Dutch mortgage companies.
2. Nevertheless, on the occasion of each admission, the publication is required of information concerning, at the least, the signatories of the prospectus, the terms of the loan and conditions of the transaction (Chapters 1 and 2 of the annexed debentures Schedule), together with information concerning any events of importance for assessing the security which have occurred since the date of the latest annual statement of accounts. With

regard to the latter, it may be made available to the public at the banks which are acting as paying agents.

In the case of debentures issued by the Italian banks' "special sections" with separate legal personality (*cartelle fondiarie* and other like securities), the annual accounts of the special sections must be published, and not those of the banks from which they stem.

Article 8: Guaranteed loans

1. In the case of loans covered by a third company's guarantee other than in the form of material security, the prospectus must carry information as specified in the debentures Schedule concerning both companies when the issuing company and the guarantor company are specifically engaged in industry and commerce.

When one of the two companies is a financial institution, that part of the full prospectus which relates to that company shall be drawn up in accordance with the provisions of Article 6.

2. In the case of loans issued by a "pure" finance company having no other business than that of the issuing of loans and the placing of such funds at the disposal of the parent company or other companies affiliated to it, the prospectus must include, for the guarantor companies, the information specified in the debentures Schedule except for Chapter 2 and, for the issuing company, that is to say the "pure" finance company, the information specified in Chapters 1, 2 and 3 and under items 51 and 61 of the debentures Schedule.

When there is more than one guarantor, the information specified in the Schedule is required from each, but the prospectus may be abridged for the sake of making it easier to read, pursuant to instructions given by the authorities.

3. For group loans, information concerning all the guarantor companies is required in the prospectus. When these are too numerous, however, the authorities shall have discretionary power to allow abridgement of the information required of each.

4. In all cases of guaranteed loans, the guarantee contract must be annexed to the prospectus unless it is too voluminous or difficult for the public to understand. In such a case, a résumé of the contract must be published which will allow an assessment to be made of the nature and scope of the guarantee, whilst the contract itself must be made available to the public at the premises of the financial intermediaries through whom the request for admission is made.

Article 9: Convertible loans or loans with warrants attached

1. When the request for admission relates to convertible debentures or to debentures carrying warrants, the prospectus must contain the information specified in the shares Schedule and in Chapter 2 of the debentures Schedule, i.e. information relating to the operation, as well as the subscription or conversion terms.

2. When the issuer of the debentures is a different Company from that which issues the shares, the prospectus must contain the information specified in the debentures Schedule for the first company and that specified in the shares Schedule for the second company.

However, in the event of the issuer of the debentures being a "pure" finance company, the prospectus need contain, in addition to the subscription or conversion terms, only the information specified in the debentures Schedule in the abridged form for the "pure" finance company, i.e. the information specified in Chapters 1, 2 and 3 and under items 51 and 61 of the debentures Schedule.

3. When the currency of the convertible debenture is different from that of the shares, the effects of any changes in currency parities upon the terms of conversion or upon the terms of subscription must be indicated.

Article 10: Admission to stock exchange quotation of securities issued in connection with the merging or splitting of companies, the transfer of assets or a public exchange offer

1. When the application for admission relates to securities issued in connection with an operation involving the merging or splitting of companies, the transfer of assets or a public exchange offer, and when the operation took place within the last three years, the prospectus shall include, in addition to the information specified in the shares Schedule or in the debentures Schedule as appropriate, the following material which may be inserted or simply annexed:

- (i) the documents presented to the general meeting, including the report of the merger, the valuation criteria and the justification for the exchange ratio;
- (ii) the opening balance sheet showing the effects of the operation in question;
- (iii) information relating to the financial background of each of the companies involved; this information may be brief for companies which are already quoted.

2. When less than six months before admission to stock exchange quotation equivalent and checked information has been published prior to an operation of the kind referred to in paragraph 1, the authorities of Member States may waive publication of a prospectus for admission to quotation, provided that this information is made available to the public.

Article 11: Certificates representing shares

1. When the application for admission relates to certificates representing shares, the prospectus must contain the information specified in the shares Schedule as regards the shares represented, and the information specified in the certificates Schedule.

2. Nevertheless, the authorities may allow the issuer of the certificates to dispense with the publication of details of its financial position provided for in the annexed Schedule, when the issuer is:

- (i) a bank, savings bank, credit institution or mortgage company which is quoted on a stock exchange, which publishes its accounts regularly and which within the Community is a corporation of public-law status or subject to public supervision aimed at safeguarding savings;
- (ii) or an interprofessional organisation for the transfer of securities;
- (iii) or a trustee institution subject to special regulations for the safe custody of original shares.

Article 12: Issuers in the public sector

1. In connection with the admission to stock exchange quotation of securities issued by corporate bodies under public law which are engaged in industrial, commercial or financial activities, the general rules laid down in this Directive shall apply with only such adaptations as the particularities of these enterprises may require.

2. When these issuers, or the debentures issued by them, are covered, both as to the redemption of the loan and interest payment, by the unconditional and irrevocable guarantee of a Member State, the competent authorities may simplify that part of the prospectus which refers to the issuer and the issuer's financial position, while, at the same time, endeavouring to insist upon the publication of this information in accordance with sound practice as adopted on the international market.

Section III: Arrangements for enforcing the prospectus requirements and for making it publicly available

Article 13: Enforcement of the prospectus requirements

1. Member States shall instruct one or more national authorities, public or private, to supervise the enforcement of the rules in the present Directive and shall notify the Commission of these authorities, giving details of any division of responsibilities among them.

2. The prospectus may not be published, nor may it be made available to the public, before it has been passed by the competent authority as referred to in paragraph 1.

3. The competent authority shall give authorisation for the prospectus to be published or made available to the public only if it is of the opinion that the prospectus satisfies all the requirements of the present Directive, and if it has good reason to believe that it contains no particulars or omissions likely to mislead the public.

4. In order to carry out their task, the authorities appointed shall be endowed with all the necessary competence and powers of supervision. In particular, they must have the power to require the issuer of the securities for which admission to quotation is sought to furnish all the information and to produce all the documents necessary for them to judge whether or not the draft prospectuses submitted to them conform to the requirements laid down in the Directive, as well as powers to require the prospectus to be presented in the manner best suited to the characteristics of the issuer and of the securities. They must also be provided with power to check whether an issuer complies with the conditions laid down in the Directive for a partial or total dispensation from some of its requirements.

Article 14: Methods of publishing the prospectus

1. The prospectus for admission to quotation must be published:

- (i) either by insertion in an official gazette and in one or more other journals,
- (ii) or by making available to the public, free of charge, copies in pamphlet form at the headquarters of the stock exchange or stock exchanges on which the securities are being admitted to quotation and at the offices of the issuer as well as over the counters of the banks and other intermediaries involved in the application for admission or in the placing of the securities.

2. These two methods may be combined. In countries where publication of a prospectus in the press is prescribed not all the information specified in the Schedules annexed to the Directive need be published in the press, subject to the following conditions:

- (i) the information prescribed in the annexed Schedules but not published in the press must be made available to the public in pamphlet form;
- (ii) this pamphlet must always be accompanied by a reprint of the document published in the press;
- (iii) the document published in the press must mention the pamphlet and must state where members of the public may obtain the information document in full.

Finally, the apportionment of the information between the two methods must be carried out in accordance with the standards fixed by law or by the competent authorities and under their control.

3. It must be made compulsory for the prospectuses to be lodged in places and according to procedures laid down by the Member States.

Article 15: Deadlines for publishing the prospectus

1. When shares are admitted to quotation the prospectus must be published or made available to the public as early as possible and at least eight days before the date on which the securities admitted to quotation can be the subject of dealings recorded in the official list. This same eight-day minimum requirement must be respected in the case of issues of convertible debentures or debentures with warrants attached carrying preferential subscription rights for current shareholders. Three days at least must be allowed in the case of issues of debentures, convertible debentures or debentures with warrants which do not carry preferential subscription rights for existing shareholders.

2. Moreover, where there is to be a market in subscription rights giving rise to dealings recorded in the official list, the prospectus must be published or made available to the public at least three days before this market opens.

3. In the event of the admission of debentures to quotation coinciding with the public issue, and when certain terms of the issue such as the issue price or the interest rate are only finalised at the last moment, the authorities may confine themselves to insisting upon the publication, at least three days before admission, of a provisional prospectus omitting this information but indicating how it will be made known. This information must be made known to the public not later than the day before dealings commence, by

putting out either a complete prospectus or an addendum sheet to the above-mentioned provisional prospectus, or alternatively by a notice in the press referring to the complete prospectus and indicating where it may be procured.

Article 16: Publication of documents other than the prospectus

1. As soon as a checked prospectus is published for securities in connection with their admission to quotation, the bills, posters and documents confined to the announcement of these operations and to an indication of the essential characteristics of the securities must refer to the prospectus and must state where and how the public may procure it.

2. Documents containing more detailed information that are published by or on behalf of the issuer, and in particular the partial or abbreviated prospectus in countries where its issue is allowed by the authorities, must, in the same manner as the complete prospectus, be submitted for checking by the competent authorities, in order that they may verify that these informatory documents, though abbreviated or incomplete, would not be liable to distort the public's assessment of the securities and in order that they may call for amendments to be made, if necessary.

Furthermore, these documents must refer to the complete prospectus and must indicate where and how it may be obtained by the public.

3. It is recommended that Member States should encourage the publication of abbreviated prospectuses which are clearly presented and easy for the public to understand and which, whilst including only the essential elements of the annexed Schedules, convey an objective impression of the issuer and of the rights attaching to the securities.

4. The company or the financial intermediaries concerned in the placing of the securities or their admission to quotation may not, in this connection, give any information that might affect assessment of the securities if it does not appear in the prospectus or is not common knowledge.

Article 17: New factors

Every important new factor arising between the time when the prospectus is finalised and when dealings commence in the stock market must be notified in a supplement to the prospectus, checked in the same way as the latter and made available by kindred procedures which will be decided by the competent authorities.

Section IV: Procedures for cooperation between Member States in the application of the Directive

Article 18: Operations affecting several Member States

1. In the case of simultaneous admission to quotation on the stock exchanges of several member countries of the Community, the authorities of the Member States concerned shall establish between themselves all the contacts necessary to coordinate to the maximum the requirements concerning prospectuses in order to avoid a multiplicity of formalities and to accept a single text for the greater part of the prospectus which would then only need a possible translation and supplement corresponding to the individual requirements of each Member State concerned.

2. In the event of admission to quotation being sought on a stock exchange in one or more Member States for securities which have been admitted to quotation in another Member State for less than six months, the authorities of the countries in which admission is being sought shall make contact with the authority which has already admitted the securities and shall, as far as is possible, exempt the issuer from drawing up a new prospectus subject to any need for updating, translation or the issue of a supplement in accordance with the individual requirements of each member country concerned.

3. In the case of a security which is quoted on the stock exchanges of several Member States, the authorities of the countries concerned must endeavour to get the issuer to arrange that information made available in one of these countries which might influence assessment of the merits of the security is also made available at the same time, or soon after, in the other countries in which the security is quoted.

Article 19: Contact Group

1. A Contact Group shall be set up in the Commission. Its function shall be:

(a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonised application of the Directive through regular contacts designed to concert approaches to the practical problems connected with its application, and, in particular, with the annexed Schedules, about which exchanges of views might be deemed useful;

(b) to facilitate a concerted approach as regards supplements and improvements to the prospectus which it is permissible for the authorities of Member States to require or recommend at purely national level;

(c) to aid the Commission, if necessary, in drawing up new proposals to the Council with a view to supplementing or amending the Directive.

2. The Contact Group shall be composed of representatives of the Member States and of the Commission. The Commission's services shall provide the Secretariat.

Section V: Final provisions

Article 20

1. Member States shall put into effect, within twelve months of notification to them of the present Directive, all measures necessary for complying with its provisions and shall inform the Commission immediately of such measures.

2. The Member States shall communicate to the Commission the texts of the essential provisions of national law which they adopt in the areas covered by the present Directive.

Article 21

The present Directive is addressed to the Member States.

SCHEDULE A

Scheme of presentation for prospectuses for the admission of shares to stock exchange quotation

Chapter 1. *Persons or bodies assuming responsibility for the prospectus*

11. Name and function of the natural persons, name and registered office of the bodies corporate assuming responsibility for the prospectus or, as the case may be, for certain parts of it. Should they assume responsibility for certain parts of the prospectus only, mention these parts.

12. Declaration by the signatories of the prospectus that, to the best of their knowledge, the data appearing in that part of the prospectus for which they assume responsibility are in accordance with the facts and that there are no omissions likely to affect the bearing of the information.

13. Statement specifying whether or not the accounts have been checked by internal or outside auditing/accounting experts (e.g. accountants, sindaci, Wirtschaftsprüfer, etc.). The capacity (organ established under the "Statutes"¹ or external body) in which the verifications were carried out should be specified, as well as possible reservations. The same rule shall apply to the consolidated accounts contained in the prospectus.

Chapter 2. *Information concerning admission to quotation and the securities for which application is being made*

21. Nature of the operation (e.g., admission to quotation of securities already marketed; admission to quotation with a view to stock exchange marketing).

22. Information concerning the securities to be admitted to quotation.

221. Indication of the resolutions, authorizations and approvals by virtue of which the securities were created: type of operation and amount thereof. Number of securities created, if predetermined.

222. Concise description of the rights attaching to the securities, inter alia extent of the voting rights, entitlement to share in the profits and to the liquidation surplus, any privileges. Time-limit after which dividends lapse and indication of the party in whose favour this provision operates.

¹ In the case of a U.K. company this term corresponds to the Memorandum and Articles of Association (Translator's note).

223. Arrangements for transfer of the securities and any restrictions on their free negotiability (e.g., clause establishing approval requirement).

224. Date from which dividends become payable.

225. The stock exchange or exchanges to which admission is or may be applied for.

226. The institutions which, at the time of admission, are the paying agents of the company in the country where the admission occurs.

23. Information concerning issue and placing of securities: should an issue prospectus not have been published and when the issue and the admission to quotation occur at the same time, or when the issue preceded admission to quotation by less than three months, the following items of information shall appear in the admission prospectus. The information provided for in point 23, so far as applicable, shall also be supplied for privately issued securities at the time of their admission to stock exchange quotation.

230. For the securities referred to in point 22, indication of any preferential rights or exclusion of preferential rights for existing shareholders. In the latter case, the reasons for the exclusion and, in the case of an issue for cash, for the choice of the issue price of the securities, with indication of the beneficiaries of the exclusion.

231. The total amount on offer to the public and the number of securities offered, where applicable by category.

232. If the public offer is being or has been made simultaneously on several markets and if a tranche is being or has been reserved for certain of these, indicate the tranches.

233. The issue or subscription price, distinguishing the par value or the amount placed to capital, the issue premium and the amount of any expenses explicitly charged to the purchaser or subscriber; the methods of payment of the price, *inter alia* as regards the paying-up of securities which are not fully paid-up.

234. The procedure for exercise of the preferential rights, the negotiability of subscription rights; what happens to unexercised rights.

235. Period during which the issue is or was open and indication of the financial institutions responsible for receiving the public's subscriptions.

236. Methods and time-limits for delivery of the securities, possible creation of scrip.

237. Indication of the persons underwriting or guaranteeing the issue for the issuing company. If the issue is being guaranteed privately by natural persons, this fact is to be indicated without mentioning them by name. Where not all of the issue is underwritten or guaranteed, the portion not covered is to be mentioned.

238. Estimate of the overall amount and/or amount per security of the charges relating to the issue operation, making a distinction at least between the legal and administrative expenses on the one hand, and the overall remuneration of the financial intermediaries on the other (including the underwriting commission or margin, guarantee commission, placing commission).

239. Net proceeds accruing to the company from the issue and planned appropriation of these proceeds (e.g., financing of the investment programme or reinforcement of the company's financial situation).

24. Information concerning admission to quotation.

241. Description of the securities the admission of which is applied for and, *inter alia*, number or overall par value, exact designation or category, serial numbers, coupons attached, etc.

242. If the securities are to be placed by introduction on the stock exchange, the number of securities made available to the market and/or the overall par value and, where applicable, the minimum sale price.

243. If known, the date on which the new securities will be listed.

244. If securities of the same category are already listed on one or more stock exchanges, mention is to be made of this or these stock exchanges and, in so far as the data mentioned below are available, for the last five financial years and for the current financial year as regards the principal stock exchange or stock exchanges:

2441. The number of securities listed or their overall par value.

2442. The volume of transactions by number of the securities and/or their market value.

2443. The adjusted highest and lowest prices, i.e., rendered comparable so as to take account of operations that have occurred in respect of the capital (increase, decrease, splitting, rearrangement). The adjustment formulae utilised are to be indicated.

2444. The adjusted profit per share and the adjusted dividend per share, i.e., rendered comparable so as to take account of operations that have occurred in respect of the capital (increase, decrease, splitting, rearrangement). The adjustment formulae utilised are to be indicated.

245. If securities of the same category are not yet admitted to quotation but are dealt in on markets other than that of official quotation, the most recent prices on those markets in so far as such publicity is permitted; the market on which these prices were recorded and the source from which they were taken. The data referred to above are given only if the market for the securities is sufficiently wide.

246. Public take-over bids or exchange offers involving the company's shares and public exchange offers which have been made by the company during the last financial year and the current financial year, mentioning the conditions of the offer and its result.

25. If, simultaneously or almost simultaneously with the creation of securities for which admission to quotation is being sought, securities of the same nature are subscribed or placed privately or if securities of other categories are created with a view to their public or private placing, details are to be given of the nature of these operations and of the number and characteristics of the securities to which they relate.

Chapter 3. *Information of a general character about the company*

31. Status of the company.

311. Name or style, registered office and, where appropriate, principal administrative establishment, if the latter is different from the registered office.

312. Date of incorporation and, if the life of the company is limited, the date of its expiration.

313. Legislation under which the company operates and legal form which it has adopted in the framework of this legislation.

314. Indication of the company's objects and reference to the Article of the "Statutes" in which they are described.

315. Indications of the places where it is possible to consult the coordinated "Statutes", balance sheets and reports, decisions concerning the appointment and dismissal of members of the company's organs, as well as any other document quoted in the prospectus and accessible to the public, and of the place where the dispatch of the latest company report may be applied for. Places where the prospectuses relating to the operations in respect of issue or admission to quotation performed by the company in the course of the past five years may be consulted by the public.

316. Time-limits for and ways of calling general meetings. Date and place of the next General Meeting, if these are known.

32. Capital.

321. The amount of the capital subscribed and its composition; the part of the subscribed capital still to be paid up, with indication of the number (or the overall par value) and nature of the securities not yet fully paid-up, broken down, where applicable, according to the degree to which they have been paid up.

322. When there is an authorised capital or authority for a contingent capital increase, *inter alia* in connection with convertible bonds issued or subscription options granted, indicate:

- (i) the amount of this authorised or “contingent” capital and, where appropriate, the duration of the authorisation;
- (ii) the categories having a preferential right of subscription for these additional portions of capital;
- (iii) the terms and arrangements for the share issue corresponding to these portions.

323. If there exist several categories of securities, whether representing the capital or not, mention their principal characteristics and the number of shares or “parts”¹ issued.

324. Conditions governing changes in the capital and in the respective rights of the various categories of securities, in so far as they depart from the general law.

325. Outline table of changes in the capital covering, in principle, at least the last five years, as well as the most important events prior to that period. Date and concise description of the successive operations changing the capital or its composition (mentioning premiums on issues or assets brought in).

326. Indication of any person who directly or indirectly, alone or jointly with other shareholders, controls the company, mentioning the amount of his participation and in any case, in so far as it is known to the company, any holding of 25% or more of the subscribed capital.

Mention must also be made of the portions of 10% or more held directly or indirectly in the company by other natural persons or bodies corporate, whenever this holding is common knowledge.

By joint control must be understood the control exercised by several companies or several persons when they have concluded among themselves an agreement which may lead them to adopt a common policy vis-à-vis the company in question.

327. If the prospectus-publishing company belongs to a group of enterprises, a description of the group and of the place it occupies therein.

328. Book value and par value (or accounting par value) of its own securities repurchased or held by the company if these securities are not isolated in the balance sheet; origin and object of this repurchase.

¹ “Parts” give profit-sharing rights but do not represent any capital value (Translator’s note).

Chapter 4. *Information concerning the company's activity*

41. Principal activities of the company.

In the sections where the description of the company's activity is required only for the current financial year and the last financial year and if it is considered that this period is too short to reflect meaningfully the company's development, it is advisable to add indications about the previous financial years. In so far as the company's development within the reference period has been influenced by exceptional events, e.g., an important merger, these events are to be indicated. If possible, the data should be presented in such a way as to enable a comparison to be made of the trend from one financial year to another.

411. Description of the company's principal activities, mentioning the main categories of products manufactured and sold and/or services performed. Indicate important new products and, as far as possible, the proportion of the turnover attributable to new products developed within the last five years.

412. The above description may contain indications concerning the development of the company's relative position in its principal branches of activities, if these indications can be based, as to their significance and comparability, on figures emanating from qualified institutions, and the source given.

413. Breakdown, by principal branches of activities, of the net amount of the turnover in the course of the past five financial years and, if these figures are significant, the production volumes of the principal products. Any relatively homogeneous activity which contributes more than 15% to the turnover is considered a branch of activity.

414. Information on the structure of markets and supplies for the last financial year and for the current financial year and their trend (with, if possible, breakdown of the net amount of the turnover by principal geographical or economic zones, in so far as this information may influence assessment of the net worth, financial position or results).

415. Location and importance of the company's principal establishments and, if necessary, their development in the course of recent financial years and the current financial year, and information about the real estate owned. Any establishment which accounts for more than 10% of turnover or production is considered to be a principal establishment.

416. For mining, extraction of hydrocarbons, quarrying, etc., description of the deposits, estimate of the economically exploitable reserves and expected period for which they will be exploited, indication of the period and principal conditions of the concessions and the economic conditions of their exploitation, indicating the state of progress of the actual exploitation.

42. Show clearly, if applicable, the company's dependence with respect to the grant, use or expiration of patents and licences, to the conclusion, maintenance or expiration of industrial, commercial and financial contracts, and to new manufacturing processes when these factors have great importance for the activity or profitability of the company.

If this is the case, all that will be required is to give indications about the degree of dependence, to describe concisely, and without divulging industrial secrets, the factors in question which have a particular importance, and to indicate, if they are significant in this respect, the dates of conclusion, obtaining or expiration of contracts, licences and patents.

43. Amount of the expenditure effected in the course of the past five financial years for research and development of new products.

44. Indications of lawsuits and factors interrupting activities (e.g.: strikes, accidents) which have had or might have a significant impact on the net worth, financial position or results of the company.

45. Average numbers employed and their trend in the course of the past five financial years (if this trend is significant) with, if possible, a breakdown of persons employed by principal branches.

46. Investments.

461. Description, with figures, of the principal investments, including trade investments acquired, in the course of the past five financial years.

462. General indications concerning the investment programme in course of implementation, including its overall cost, its methods of financing, the nature of the investments, in so far as these indications are necessary for assessing the use of the funds collected in relation to the programme as a whole. By investment programme in course of implementation is meant not only the projects whose execution has already started but, more widely, the whole body of investment projects which are inter-linked to an extent such that the commissioning or profitability of the investments already effected or in course of execution depends on the implementation of all the investment projects constituting the programme.

463. A table showing the sources and utilisation of funds must be supplied, relating to the past five financial years and the current financial year.

Chapter 5. *Information concerning the net worth, financial situation and results of the company*

51. General rules.

511. Comparative table summarising the annual accounts relating to the past five financial years so as to bring out the essential factors, ensuring however that the rearrangement of the published accounts does not affect their informative value.

512. The annual accounts relating to the last two completed financial years as approved by the general meeting of shareholders must be appended.

If more than nine months have elapsed since the date on which the last financial year was closed, a recent provisional financial statement (which may be submitted without having been checked by chartered accountants) must be inserted in the prospectus, or appended to it.

513. Should the annual accounts not be drawn up in conformity with the provisions of Council Directive No. ... of ...,¹ and should they not give a sufficiently detailed and precise view of the net worth, financial situation and results of the company, they must be accompanied by explanatory notes and comments; more detailed disclosure in the prospectus may be called for and explicit mention must be made of corrections and amendments in relation to the published accounts.

514. If the company draws up consolidated accounts, the information provided for in items 511, 512 and 513 shall, if possible, be given on the basis of the consolidated accounts as well.

52. Individual details relating to the enterprises in which the prospectus-publishing company holds at least 10% of the capital:

521. Name, registered office.

522. Proportion of capital held.

523. Capital subscribed.

524. Reserves.

525. Result of the last financial year.

These details shall be presented, if possible in the form of a synoptic table in the prospectus, unless they already appear in the annual accounts appended to it.

53. Individual details relating to the companies in which the prospectus-publishing company has a substantial holding likely to influence assessment of its net worth, financial situation or results.

¹ OJ C 7 of 28.1.1972.

These details must be given, *inter alia*, for the companies in which the prospectus-publishing company directly or indirectly holds at least 25% of the capital, or when the value of this holding represents at least 10% of the paid-up capital of the prospectus-publishing company, or when this holding accounts for at least 10% of the latter company's earnings.

However, for holdings in companies belonging to third countries, the details provided for in items 531 to 535 need not be given in an individual manner but may be amalgamated with the details provided for in item 54.

In addition to the details mentioned in items 521 to 525, the following indications must be given:

531. Field of activity.

532. Book value of the shares or "parts" held.

533. Amount still to be paid up on these shares or "parts" held.

534. Net turnover in the course of the last financial year.

535. Amount of dividends received in the course of the last financial year in respect of shares or "parts" held.

536. Amount of the prospectus-publishing company's claims on the company in which it has a substantial holding.

537. Amount of the prospectus-publishing company's debts to the company in which it has a substantial holding.

538. Amount for which the prospectus-publishing company guarantees, endorses or secures the commitments of the company in which it has a substantial holding.

54. Overall information relating to all the enterprises taken together in which the prospectus-publishing company holds at least 10% of the capital and which are not referred to in item 53:

Same details as those provided for in items 532 to 538 but presented in overall form and broken down as between companies of the country, companies of other member countries and companies of third countries.

55. When the prospectus comprises consolidated accounts, there shall be indicated in an annex:

551. The consolidation principles applied and, if applicable, any exceptions to and deviations from these principles.

The following details are to be indicated, *inter alia*:

(i) the selection criteria for the companies included in the consolidation;

- (ii) the method(s) of consolidation utilised: overall or proportional integration, placing on an equivalent footing;
- (iii) the rates of exchange used for the consolidation of the foreign companies;
- (iv) the methods of eliminating profits resulting from transactions among the companies of the group;
- (v) the way in which the stocks were integrated; in particular, explanations must be provided in the event of the non-elimination of the intra-group profit;
- (vi) if appropriate, the details relating to the underlying fiscal situation of the group, taking account of timing differences in the payment of corporation tax;
- (vii) the definition of the consolidated turnover;
- (viii) the scope of the consolidation of the results (total, partial or simplified consolidation);
- (ix) the changes which have occurred, in relation to the accounts published for the previous financial year, in the principles set forth above.

552. List of companies included in the consolidation, name and registered office. It may be sufficient to distinguish them by a sign in the list of companies for which details are provided for in item 52.

553. For each of the companies included in the consolidation, other than the prospectus-publishing company:

- (i) the proportion of third-party interests, if the accounts of this company are consolidated globally;
- (ii) the proportion of the consolidation calculated on the basis of the interests, if consolidation has been effected on a pro rata basis.

56. When the company performs a significant proportion of its activities through the intermediary of companies controlled by it and managed as a single unit, the details concerning the activity of the company (Chapter 4), its recent development and its prospects (Chapter 7) must be provided for the whole unit in addition to concise details for the prospectus-publishing company individually.

Chapter 6. *Administration, Management, Supervision*

61. Name, first name, place of residence and function in the company of the following persons, mentioning the principal activities performed by them outside the company when they are significant in relation to the

prospectus-publishing company (*inter alia*, the most significant directorships and important functions in other companies). The activities of significance for the company performed by these same persons in the course of the past five years if they joined the company less than five years ago.

611. Members of the administrative, directing or supervisory organs, as well as the other persons who assume the management of the company at the highest level.

612. General partners in the case of a partnership limited by shares.

613. Founders, if the company has been established for less than five years.

62. Interests of the directors, etc., in the company.

621. Remuneration paid for the last completed financial year under any heading whatsoever, as a charge to overheads or the profit appropriation account, to the administrative, directing or supervisory organs. Overall amount for each category of organ. In addition, the total remuneration paid to the members of these organs of the prospectus-publishing company by all the companies controlled by it and managed as a single unit must be indicated.

622. Options granted to the members of the administrative, directing or supervisory organs and to the other persons referred to in point 611, with respect to securities of the company: terms and conditions of these options.

623. Information about the nature and extent of the direct or indirect interests of the directors and managers or of the persons they represent in transactions which are unusual by their character or their conditions, effected by the company (such as purchases outside the normal activity, acquisition or disposal of fixed asset items, lease contracts with subsidiaries or persons mentioned above) in the course of the last financial year and during the current financial year. When such unusual transactions were concluded in the course of previous financial years and their effects are still being felt, information on these transactions must also be given.

624. Overall indication of all the loans granted by the company to the persons referred to in point 611, as well as of the guarantees constituted by the company in their favour.

63. Staff benefits.

631. Brief description of the policy followed with regard to staff benefits and more particularly with regard to profit-sharing contracts or supplementary retirement pension contracts; as regards the latter point, steps taken to ensure provision for them.

Description of the special benefits of a contractual character when the probable trend of the charge they represent is likely to exert a marked influence on this category of expenditure.

632. Options granted to the staff on shares in the company.

633. Overall indication of all the loans granted by the company to the staff and of the guarantees constituted in their favour.

64. Name, address, capacity and occupation of the persons responsible for checking the accounts (e.g.: commissaires aux comptes, réviseurs d'entreprises, Wirtschaftsprüfer, sindaci, etc.).

Chapter 7. *Recent development and prospects of the company*

71. General indications concerning the trend in the company's business since the end of the last financial year and comparison with the corresponding period of the previous financial year. When this information is already available in interim reports, it will suffice to append the said reports to the prospectus made available to the public. The following data are to be supplied, *inter alia*:

711. The net turnover since the beginning of the financial year.

712. A description of the most significant recent trends in production and stocks.

713. A description of recent trends in costs and selling prices.

714. The state of the order book.

72. Company prospects.

The prospectus must clearly bring out the fact that this part consists of estimates or intentions which might not materialise.

721. Brief indications on the projected investment programme in so far as the company has already made firm decisions on this or has prepared the ground by recent financial operations and where the programme is likely to exert an important influence on the company's future financial policy, particularly its self-financing policy.

722. An estimate concerning the company's commercial and financial prospects may be inserted in the prospectus, provided that it is backed by figures (concerning, for example, the trend of business conditions, of the markets and of the order book, the influence of capital spending by the company and its competitors) and by pointers that are highly likely to prove accurate.

723. If possible, general indications concerning the profit distribution and retention policies which the company contemplates following or proposing to the meeting of shareholders and particularly, if applicable, concerning the policy on the issue of securities in connection with capitalisation of all or part of the reserves or increases in value, and concerning the operation of any dividend equalisation reserve.

SCHEDULE B

Scheme of presentation for prospectuses for the admission to stock exchange quotation of debentures issued by industrial or commercial undertakings

Chapter 1. *Persons or bodies assuming responsibility for the prospectus*

11. Name and function of the natural persons, name and registered office of the bodies corporate assuming responsibility for the prospectus or, as the case may be, for certain parts of it. Should they assume responsibility for certain parts of the prospectus only, mention these parts.
12. Declaration by the signatories of the prospectus that, to the best of their knowledge, the data appearing in that part of the prospectus for which they assume responsibility are in accordance with the facts and that there are no omissions likely to affect the bearing of the information.
13. Statement specifying whether or not the accounts have been checked by internal or outside auditing/accounting experts (e.g. accountants, sindaci, Wirtschaftsprüfer, etc.). The capacity (organ established under the "Statutes"¹ or external body) in which the verifications were carried out should be specified, as well as possible reservations. The same rule shall apply to the consolidated accounts contained in the prospectus.

Chapter 2. *Information concerning the operation*

21. Conditions of the loan.
 211. The nominal amount of the loan; the nature and the amount of the denominations available and, where appropriate, their number and numbering.
 212. 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. In the event of the securities being issued continuously at a variable price following the trend of the markets, information is to be given concerning the limit issue prices applied.
 213. The procedures for allocation of any other financial advantages of which account cannot be taken in the yield, for example prizes, share in profits, indexing, etc. and, where applicable, the basis of calculation of the variable factors and the publicity given to these; the probable incidence on yield of a variation of the parameter.

¹ In the case of a U.K. company this term corresponds to the Memorandum and Articles of Association. (Translator's note).

214. Tax withheld at source on the income from securities in the country of origin and/or the country of quotation. Indication as to whether the issuing company assumes responsibility for the withholding of tax at source.

215. Amortization.

2151. The amortization plan for the loan with any possibilities of early redemption at the option of the issuer and/or subscriber and the way in which early redemptions or stock exchange or over-the-counter buying-in will affect the amortization plan; method of operation of any sinking fund.

2152. Amortization procedure: technique of drawing by lot and publicity therefor, repurchase on the stock exchange, repurchase by mutual agreement.

216. The financial institutions which, at the time of admission, are the paying agents of the company in the country where the admission takes place.

217. Currency of the loan. If the loan is denominated in units of account, the contractual status of these; currency option.

218. Time limits.

2181. Period of the loan and any interim due dates.

2182. The date from which interest becomes payable and the due dates for interest.

2183. The time limit on the validity of claims to interest and repayment of principal.

2184. The procedures and time limits for the delivery of the securities and the creation of scrip, where applicable.

219. Any other factor necessary for the calculation of the yield or for the assessment of the value of the securities. The method of calculating the yield is to be specified.

22. Legal information.

221. Reference to the resolutions, authorizations and approvals by virtue of which the securities were created or which constitute a prior condition for issue or admission to quotation.

222. Nature and scope of the guarantees, sureties and commitments intended to ensure that the loan will be duly serviced as regards both interest and capital repayment. The texts of the contracts relating to such guarantees, sureties and commitments should be accessible to the public. When there are no such sureties, guarantees or commitments this fact must be mentioned.

223. Organization of representation for the body of debenture holders or trusteeships; name or denomination and head office of the representative of the debenture holders, the main conditions of such representation and particularly the conditions under which the representative may be replaced. The texts of the contracts relating to these forms of representation must be accessible to the public.

224. Mention of clauses subordinating the loan to other debts of the company already contracted or to be contracted in the future.

225. The legislation applicable to the securities and the courts competent in the event of litigation.

226. Arrangements for transfer of the securities, registered or bearer, and any restrictions on their negotiability.

23. Information concerning admission of the debentures to quotation.

231. The stock exchange or exchanges on which quotation is or will be applied for.

232. Indication of the persons underwriting or guaranteeing the issue for the issuing company and the extent of their commitments. If the issue is being guaranteed privately by natural persons this fact is to be indicated without mentioning who they are. Where not all of the issue is underwritten or guaranteed, the portion not covered is to be mentioned.

233. The number or global nominal value of the securities for which quotation is sought.

234. If the public offer, issue or admission to quotation takes place simultaneously on the markets of several countries and a tranche is reserved for certain of these markets, an indication of these tranches.

235. If, simultaneously or almost simultaneously with the creation of the securities which are the subject of the public issue or of the admission to quotation, securities of the same nature are subscribed or placed privately or securities of other categories are created with a view to their public or private placing, mention is to be made of the nature of these operations and of the number and characteristics of the securities concerned.

236. If the same debentures are already quoted on one or several stock exchanges, the following must be mentioned:

2361. The stock exchange or exchanges on which they are quoted.

2362. The latest price known.

237. If the securities are not yet admitted to quotation, but are dealt in on markets other than that of official quotation, the most recent prices on those markets insofar as these prices are meaningful; the market on which these prices were recorded and the source from which they have become known.
24. Information concerning the issue, in the case of a prospectus published at the time of issue, or if the issue is concomitant with admission to quotation or if it has taken place within the three months preceding such admission:
- 241. Any preferential rights and the procedure for exercising them; the negotiability of the rights and what happens to rights not taken up.
 - 242. The amount of the subscription charges which are added to the purchase or subscription price and borne by the subscriber.
 - 243. The procedure for payment of the purchase or subscription price.
 - 244. The period during which the issue is or was open and an indication of any possibilities of early closure.
 - 245. An indication of the financial establishments instructed to receive subscriptions from the public and of the persons responsible for allotment, where applicable, of the loan.
 - 246. Indication of the net amount of the issue proceeds.
 - 247. Purpose of the issue and allocation of its proceeds.

Chapter 3. *Information of a general character about the company*

31. Status of the company.
- 311. Name or style, registered office and, where appropriate, principal administrative establishment, if the latter is different from the registered office.
 - 312. Date of incorporation and, if the life of the company is limited, the date of its expiration.
 - 313. Legislation under which the company operates and legal form which it has adopted in the framework of this legislation.
 - 314. Indication of the company's objects and reference to the Article of the "Statutes" in which they are described.
 - 315. Indications of the places where it is possible to consult the coordinated "Statutes", balance sheets and reports, decisions concerning the appointment and dismissal of members of the company's organs, as well as any other document quoted in the prospectus and accessible to the public, and of the place where the dispatch of the latest company

report may be applied for. Places where the prospectuses relating to the operations in respect of issue or admission to quotation performed by the company in the course of the past five years may be consulted by the public:

32. Capital.

321. The amount of the capital subscribed and its composition; the part of the subscribed capital still to be paid-up, with indication of the number (or the overall par value) and nature of the securities not yet fully paid-up, broken down, where applicable, according to the degree to which they have been paid-up.

322. In the case of a convertible loan or a loan with warrants attached and when there is an authorised capital or authority for a contingent capital increase, indicate:

- (i) the amount of this authorised or "contingent" capital and, where appropriate, the duration of the authorisation;
- (ii) the categories having a preferential right of subscription for these additional portions of capital;
- (iii) the terms and arrangements for the share issue corresponding to these portions.

323. Indication of any person who directly or indirectly, alone or jointly with other shareholders, controls the company, mentioning the amount of his participation and in any case, in so far as it is known to the company, any holding of 25% or more of the subscribed capital. Mention must also be made of the portions of 10% or more held directly or indirectly in the company by other natural persons or bodies corporate, whenever this holding is common knowledge.

By joint control must be understood the control exercised by several companies or several persons when they have concluded among themselves an agreement which may lead them to adopt a common policy vis-à-vis the company in question.

324. If the prospectus-publishing company belongs to a group of enterprises, a description of the group and of the place it occupies therein.

325. Book value and par value (or accounting par value) of its own securities repurchased or held by the company if these securities are not isolated in the balance sheet; origin and object of this repurchase.

Chapter 4. *Information concerning the company's activity*

41. Principal activities of the company.

In the sections where the description of the company's activity is required only for the current financial year and the last financial year and if it is considered that this period is too short to reflect meaningfully the company's development, it is advisable to add indications about the previous financial years. In so far as the company's development within the reference period has been influenced by exceptional events, e.g., an important merger, these events are to be indicated. If possible, the data should be presented in such a way as to enable a comparison to be made of the trend from one financial year to another.

411. Description of the company's principal activities, mentioning the main categories of products manufactured and sold and/or services performed. Indicate important new products and, as far as possible, the proportion of the turnover attributable to new products developed within the last five years.

412. The above description may contain indications concerning the development of the company's relative position in its principal branches of activities, if these indications can be based, as to their significance and comparability, on figures emanating from qualified institutions, and the source given.

413. Breakdown, by principal branches of activities, of the net amount of the turnover in the course of the past five financial years and, if these figures are significant, the production volumes of the principal products. Any relatively homogeneous activity which contributes more than 15% to the turnover is considered a branch of activity.

414. Information on the structure of markets and supplies for the last financial year and for the current financial year and their trend (with, if possible, breakdown of the net amount of the turnover by principal geographical or economic zones, in so far as this information may influence assessment of the net worth, financial position or results).

415. Location and importance of the company's principal establishments and, if necessary, their development in the course of recent financial years and the current financial year, and information about the real estate owned. Any establishment which accounts for more than 10% of turnover or production is considered to be a principal establishment.

416. For mining, extraction of hydrocarbons, quarrying, etc., description of the deposits, estimate of the economically exploitable reserves and expected period for which they will be exploited, indication of the period and principal conditions of the concessions and the economic conditions of their exploitation, indicating the state of progress of the actual exploitation.

42. Show clearly, if applicable, the company's dependence with respect to the grant, use or expiration of patents and licences, to the conclusion, maintenance or expiration of industrial, commercial and financial contracts, and to new manufacturing processes when these factors have great importance for the activity or profitability of the company.

If this is the case, all that will be required is to give indications about the degree of dependence, to describe concisely, and without divulging industrial secrets, the factors in question which have a particular importance, and to indicate, if they are significant in this respect, the dates of conclusion, obtaining or expiration of contracts, licences and patents.

43. Amount of the expenditure effected in the course of the past five financial years for research and development of new products.

44. Indications of lawsuits and factors interrupting activities (e.g.: strikes, accidents) which have had or might have a significant impact on the net worth, financial position or results of the company.

45. Average numbers employed and their trend in the course of the past five financial years (if this trend is significant) with, if possible, a breakdown of persons employed by principal branches.

46. Investments.

461. Description, with figures, of the principal investments, including trade investments acquired, in the course of the past five financial years.

462. General indications concerning the investment programme in course of implementation, including its overall cost, its methods of financing, the nature of the investments, in so far as these indications are necessary for assessing the use of the funds collected in relation to the programme as a whole. By investment programme in course of implementation is meant not only the projects whose execution has already started but, more widely, the whole body of investment projects which are inter-linked to an extent such that the commissioning or profitability of the investments already effected or in course of execution depends on the implementation of all the investment projects constituting the programme.

463. A table showing the sources and utilisation of funds must be supplied, relating to the past five financial years and the current financial year.

Chapter 5. Information concerning the net worth, financial situation and results of the company

51. General rules.

511. Comparative table summarising the annual accounts relating to the past five financial years so as to bring out the essential factors, ensuring however that the rearrangement of the published accounts does not affect their informative value.

512. The annual accounts relating to the last completed financial year as approved by the general meeting of shareholders must be appended.

If more than nine months have elapsed since the date on which the last financial year was closed, a recent provisional financial statement (which may be submitted without having been checked by chartered accountants) must be inserted in the prospectus, or appended to it.

513. Should the annual accounts not be drawn up in conformity with the provisions of Council Directive No. . . . of . . .,¹ and should they not give a sufficiently detailed and precise view of the net worth, financial situation and results of the company, they must be accompanied by explanatory notes and comments; more detailed disclosure in the prospectus may be called for and explicit mention must be made of corrections and amendments in relation to the published accounts.

514. If the company draws up consolidated accounts, the information provided for in items 511, 512 and 513 shall, if possible, be given on the basis of the consolidated accounts as well.

52. Individual details relating to the enterprises in which the prospectus-publishing company has a substantial holding likely to influence assessment of its net worth, financial situation or results.

These details must be given, *inter alia*, for enterprises in which the prospectus-publishing company directly or indirectly holds at least 25% of the capital, or when the value of this holding represents at least 10% of the paid-up capital of the prospectus-publishing company, or when this holding accounts for at least 10% of the latter company's earnings.

These details must be submitted if possible in the form of a synoptic table in the prospectus unless they already appear in the annual accounts annexed to it.

521. Name, registered office.

522. Portion of capital held.

523. Capital subscribed.

524. Reserves.

525. Result of the last financial year.

¹ OJ C 7 of 28.1.1972.

53. Additional individual details regarding subsidiaries and indirect subsidiaries. By subsidiary is meant an enterprise in which the prospectus-publishing company holds shares or "parts" which represent over half that enterprise's subscribed capital or to which is attached a voting power of over 50%. By indirect subsidiary is meant an enterprise in which the prospectus-publishing company holds directly or through one or more subsidiaries or indirect subsidiaries shares or "parts" which represent over half that enterprise's subscribed capital or to which is attached a voting power of over 50%. However, for subsidiaries and indirect subsidiaries located in third countries the details provided for in items 531 to 538 need not be given in an individual manner but may be amalgamated with the details provided for in item 54.

In addition to the details mentioned in items 521 to 525, the following indications are to be given:

- 531. Field of activity.
- 532. Book value of the shares or "parts" held.
- 533. Amount still to be paid-up on these shares or "parts" held.
- 534. Net turnover in the course of the last financial year.
- 535. Amount of dividends received in the course of the last financial year in respect of shares or "parts" held.
- 536. Amount of the prospectus-publishing company's claims on the subsidiary or indirect subsidiary.
- 537. Amount of the prospectus-publishing company's debts to the subsidiary or indirect subsidiary.
- 538. Amount for which the prospectus-publishing company guarantees, endorses or secures the commitments of the subsidiary or indirect subsidiary.

54. Overall information relating to all enterprises referred to in item 52 and not referred to in item 53:

Same details as those provided for in items 532 to 538 but presented in overall form and broken down as between companies of the country, companies of other member countries and companies of third countries.

55. When the prospectus comprises consolidated accounts, there shall be indicated in an annex:

- 551. The consolidation principles applied and, if applicable, any exceptions to and deviations from these principles.

The following details are to be indicated, *inter alia*:

- (i) the selection criteria for the companies included in the consolidation;
- (ii) the method(s) of consolidation utilised: overall or proportional integration, placing on an equivalent footing;
- (iii) the rates of exchange used for the consolidation of the foreign companies;
- (iv) the methods of eliminating profits resulting from transactions among the companies of the group;
- (v) the way in which the stocks were integrated; in particular, explanations must be provided in the event of the non-elimination of the intra-group profit;
- (vi) if appropriate, the details relating to the underlying fiscal situation of the group, taking account of timing differences in the payment of corporation tax;
- (vii) the definition of the consolidated turnover;
- (viii) the scope of the consolidation of the results (total, partial or simplified consolidation);
- (ix) the changes which have occurred, in relation to the accounts published for the previous financial year, in the principles set forth above.

552. List of companies included in the consolidation, name and registered office. It may be sufficient to distinguish them by a sign in the list of companies for which details are provided for in item 52.

553. For each of the companies included in the consolidation, other than the prospectus-publishing company:

- (i) the proportion of third party interests, if the accounts of this company are consolidated globally;
- (ii) the proportion of the consolidation calculated on the basis of the interests, if consolidation has been effected on a pro rata basis.

56. When the company performs a significant proportion of its activities through the intermediary of companies controlled by it and managed as a single unit, the details concerning the activity of the company (Chapter 4), its recent development and its prospects (Chapter 7) must be provided for the whole unit in addition to concise details for the prospectus-publishing company individually.

Chapter 6. *Administration, Management, Supervision*

61. Name, first name, place of residence and function in the company of the following persons, mentioning the principal activities performed by them

outside the company when they are significant in relation to the prospectus-publishing company (*inter alia*, the most significant directorships and important functions in other companies). The activities of significance for the company performed by these same persons in the course of the past five years if they joined the company less than five years ago.

611. Members of the administrative, directing or supervisory organs, as well as the other persons who assume the management of the company at the highest level.

612. General partners in the case of a partnership limited by shares.

613. Founders, if the company has been established for less than five years.

62. Interests of the directors, etc., in the company.

621. Remuneration paid for the last completed financial year under any heading whatsoever, as a charge to overheads or the profit appropriation account, to the administrative, directing or supervisory organs. Overall amount for each category of organ. In addition, the total remuneration paid to the members of these organs of the prospectus-publishing company by all the companies controlled by it and managed as a single unit must be indicated.

622. Information about the nature and extent of the direct or indirect interests of the directors and managers or of the persons they represent in transactions which are unusual by their character or their conditions, effected by the company (such as purchases outside the normal activity, acquisition or disposal of fixed asset items, lease contracts with subsidiaries or persons mentioned above) in the course of the last financial year and during the current financial year. When such unusual transactions were concluded in the course of previous financial years and their effects are still being felt, information on these transactions must also be given.

623. Overall indication of all the loans granted by the company to the persons referred to in point 611, as well as of the guarantees constituted by the company in their favour.

63. Staff benefits.

631. Brief description of the policy followed with regard to staff benefits and more particularly with regard to profit-sharing contracts or supplementary retirement pension contracts; as regards the latter point, steps taken to ensure provision for them.

Description of the special benefits of a contractual character when the probable trend of the charge they represent is likely to exert a marked influence on this category of expenditure.

632. Overall indication of all the loans granted by the company to the staff and of the guarantees constituted in their favour.

64. Name, address, capacity and occupation of the persons responsible for checking the accounts (e.g.: commissaires aux comptes, réviseurs d'entreprises, Wirtschaftsprüfer, sindaci, etc.).

Chapter 7. *Recent development and prospects of the company*

71. General indications concerning the trend in the company's business since the end of the last financial year and comparison with the corresponding period of the previous financial year. When this information is already available in interim reports, it will suffice to append the said reports to the prospectus made available to the public. The following data are to be supplied, *inter alia*:

711. The net turnover since the beginning of the financial year.

712. A description of the most significant recent trends in production and stocks.

713. A description of recent trends in costs and selling prices.

714. The state of the order book.

72. Company prospects.

The prospectus must clearly bring out the fact that this part consists of estimates or intentions which might not materialise.

721. Brief indications on the projected investment programme in so far as the company has already made firm decisions on this or has prepared the ground by recent financial operations and where the programme is likely to exert an important influence on the company's future financial policy, particularly its self-financing policy.

722. An estimate concerning the company's commercial and financial prospects may be inserted in the prospectus, provided that it is backed by figures (concerning, for example, the trend of business conditions, of the markets and of the order book, the influence of capital spending by the company and its competitors) and by pointers that are highly likely to prove accurate.

723. If possible, general indications concerning the profit distribution and retention policies which the company contemplates following or proposing to the meeting of shareholders and particularly, if applicable, concerning the policy on the issue of securities in connection with capitalisation of all or part of the reserves or increases in value, and concerning the operation of any dividend equalisation reserve.

SCHEDULE C

Scheme of presentation for prospectuses for the admission to stock exchange quotation of certificates representing shares

Chapter 1. *Information on the issuer of the certificates*

11. Name or style, registered office and, where appropriate, principal establishment if this is different from the registered office.

12. Date of incorporation and, if the life of the company is limited, date of its expiration.

13. Legislation under which the company operates and legal form which it has adopted in the framework of this legislation.

14. The amount of the authorized capital, if appropriate, and the amount of the capital subscribed and its composition; the part of the subscribed capital still to be paid-up with an indication of the number (or the overall par value) and nature of the securities not yet fully paid-up, broken down, where applicable, according to the degree to which they have been paid-up.

15. Indication of the chief holders of the capital.

16. Name, first name, place of residence and function in the company of the members of the administrative, directing or supervisory organs as well as of the other persons who assume the management of the company at the highest level and of the persons entrusted with checking the accounts.

17. Objects of the company. If the issue of certificates representing shares is not the only object of the company, the features of its other activities must be set out, those having a purely trustee character being dealt with separately.

18. Annual accounts for the last completed financial year. Commitment by the issuer to publish any information required by law, in particular any amendments to the "Statutes", the annual accounts and publications for the information of security holders, and the places where such publication will be made.

Chapter 2. *Information on the certificates themselves*

21. Legal status. The issue terms must be inserted in the prospectus, with mention of the date and place of their publication.

211. Exercise and benefit of the rights attaching to the original securities, particularly as regards voting rights—conditions on which the company issuing the certificates may exercise these rights, and measures envisaged to obtain the instructions of the certificate holders—and the right to share in the profit and liquidation surplus.
212. Bank or other guarantees attached to the certificates and intended to underwrite the issuer's obligations, possibility of obtaining the conversion of the certificates into original securities and procedure for such conversion.
22. The amount of the commission and costs to be borne by the holder of the securities in connection with:
- 221. the issue of the certificates or "parts",¹
 - 222. the payment of the coupons,
 - 223. the creation of additional certificates,
 - 224. the exchange of the certificates for original securities.
23. Negotiability of the securities:
- 231. Stock exchanges on which quotation is or will be applied for. If it is indicated that other markets will be organized, specify on whose initiative and responsibility.
 - 232. Any restrictions on the free negotiability of the securities.
24. Supplementary information for admission to quotation:
- 241. If the securities are to be placed by introduction on a stock exchange: the number of securities made available to the market and/or the overall par value; the minimum sale price, if such a price is fixed.
 - 242. Date on which the new securities will be quoted if this is known.
25. Indications of the tax arrangements with regard to any imposts and taxes to be borne by the holders and levied in the countries where the certificates are issued.
26. Competent courts in the event of litigation.

¹ "Parts" give profit-sharing rights but do not represent any capital value (Translator's note).

EXPLANATORY MEMORANDUM

Introduction

1. At present the requirements to provide information when securities are admitted to stock exchange quotation sometimes differ considerably in content and in legal basis from one Member State to another. Consequently, issuers provide information which varies markedly both in quality and quantity and the protection afforded to the investor in this respect is not everywhere the same.

The degree of freedom of movement for capital already achieved as a result of the first two Directives issued pursuant to Article 67 of the Treaty, which allows the acquisition of securities of all kinds quoted in another Member State, makes it necessary to re-examine forthwith, from a Community standpoint, the problems of informing and protecting the holders of securities.

It appears to be necessary to establish minimum requirements for the information to be provided at the time of a grant of quotation in order to avoid undermining the confidence of holders of various European securities by differing information and to provide effective protection for holders irrespective of where the security is quoted.

2. The incomplete and differing nature of the information which the public receives concerning securities constitutes a "second barrier" to the movement of capital between Member States and prevents full advantage being taken, in the operation of the capital markets, of the abolition of exchange restrictions which has already taken place.

(a) Improvement of the information available to the public concerning securities quoted on the stock exchanges of the Community could make them more attractive to the public and consequently affect both the supply of savings in these markets and the way in which they function. Indeed, the opacity of the markets is often seen as a basic reason for their narrowness and instability.

For lack of sufficient information on the operations and prospects of companies, investors, who are making increasing use of financial analysis, are cautious in their attitude to the markets of the Community, preferring to direct their investments towards leading international securities for which ample information is available.

For the same reasons they attach disproportionate importance to political and fiscal factors, which helps to explain the exaggerated nature of certain reactions on the markets and the unjustified price levels for certain securities.

(b) Improvement of the information available should also lead to an increase in the transactions in securities effected by non-residents in each of the Member States. It is certain that the difficulties in gathering the necessary information

to make investments in securities are considerably greater on foreign markets and especially within the Community. This situation helps to explain why investments by member countries in each other's market are less developed than their investments in the markets of certain non-member countries where information on securities is more extensive.

3. The fact that the requirements which face issuers applying for a grant of quotation are different in character and in their degree of stringency in the various Member States can:

- (i) distort their choice of stock exchanges to which they apply for a quotation of their securities,
- (ii) discourage them from applying for a grant of quotation on the stock exchanges of other Member States.

The requirement to publish the same minimum information will clearly not lead to complete harmonization of the rules governing information in the various markets but it will go some way towards bringing them more into line with one another, and in this way will reduce the difficulties mentioned above.

As a result of the Directive, European issuers will probably in some cases have to publish certain information which previously they were not obliged to disclose. However, on the whole, decidedly stricter information requirements apply to applications for admission to quotation on the stock exchanges in London or New York. Experience in these countries has shown that these issuers have suffered no ill effects from the need to publish extensive information but that, on the contrary, they have benefited from it as regards both sources of finance and their relations with the general public.

4. The draft Directive has its legal basis in Article 54 paragraph 3 (g) of the EEC Treaty, which establishes the obligation to coordinate the safeguards which, for the protection of the interests of members and outsiders, are required by Member States of companies or firms within the meaning of Article 58 with a view to making such safeguards equivalent throughout the Community.

The aim of the Directive is to coordinate the information published in the Member States by companies applying for the admission or introduction of securities for stock exchange quotation and to improve the general quality of this information in order that present or potential holders of securities, i.e. the company members and third parties who are invited to subscribe, may enjoy equivalent safeguards in all the Member States. The rules thus provided for, taking into account their nature as a code of market conduct of territorial application, will necessarily have to extend to enterprises in third countries. The Directive will also help to facilitate the simultaneous or consecutive admission of their securities to the stock exchanges of the Member States, to strengthen the capital markets of the Community and to reduce the obstacles in the way of interpenetration.

Section I: General rules and field of application

Article 1: Requirement of issuing a prospectus

1. A prospectus checked by an authority appointed for this purpose, must be published before securities are admitted to or introduced for official quotation on a stock exchange.

(a) The linking of this rule to an official listing on a stock exchange, rather than to the issue of securities, is based on the following considerations:

In order to ensure that satisfactory information and protection are afforded to subscribers and to improve the quality and attractiveness of the securities market, it would doubtless be desirable to impose requirements on issuers of securities to provide information at the time of issue, since in most of the Member States the issue and the offer to the public occur before admission to quotation. It would also be desirable not to impose stricter requirements on companies at the time of admission to quotation, since this could deter them from applying.

Nevertheless, the requirement to provide information at the time of issue exists at present only in Belgium, in France and in Luxembourg. In other Member States such information is not as yet obligatory, although in practice it is quite frequently provided. Thus:

- (i) in the Netherlands a public issue is nearly always accompanied by a grant of quotation, so that in practice the distinction is of no interest;
- (ii) in Germany the Committee of experts on stock exchange reform attached to the federal Ministry for the Economy and Finance has recommended to banks which are members of new issue syndicates that, at least where foreign debentures or an increase of capital are involved, they publish the admission prospectus at the time of issue and before offer to the public.

On the other hand, it is already obligatory in these five Member States to publish a prospectus at the time of admission to stock exchange quotation.

Initially at least it therefore seems preferable to harmonize the requirements in the Member States where they already exist rather than impose new ones in several States at one and the same time.

Furthermore, these five Member States already possess authorities which check the prospectuses drawn up in accordance with national rules and these authorities could, without major difficulties, do likewise for those drawn up in accordance with the rules laid down in the present Directive. Hence, it has seemed preferable to rely on the existing infrastructure in order to improve and harmonize the quality of the information in a shorter space of time than

would have been required to establish supervision at the time of issue in those countries where it does not yet exist.

(b) The requirements arising from the Directive are limited to admission to official quotation. Although it is realized that such limitation can cause problems, it was felt to be difficult at the present time to establish Community rules for admission to markets other than the official market, bearing in mind especially the very different circumstances in the various Member States. Nevertheless, it would be possible for Member States to impose similar regulations in the case of admission to these other markets.

The regulations governing information apply to every issuer of securities applying for a stock market quotation irrespective of the issuer's domicile and legal status and the nature of the securities, except, on the one hand, securities issued by open-end investment companies and unit trusts, and, on the other hand, securities issued by the States and local authorities.

2. It was felt preferable, in spite of the importance and urgent need for progress in this field, that the Directive should not apply to securities issued by open-end companies and unit trusts, i.e. organisations whose securities are issued continuously or in closely spaced tranches and/or are bought back or redeemed directly or indirectly at the request of the holder out of their assets.

Indeed, because of the continuous process of issuing and repurchasing the securities of these concerns and the frequent practice of placing by canvassing techniques, regulations governing the provision of information applicable only at the time of introducing such securities to the stock market would be unsuitable as a means of giving subscribers satisfactory information and protection. Moreover, information rules specifically for these concerns are at present under preparation.

On the other hand, securities issued by investment companies and collective investment funds other than of the open-end type are subject, at the time of their market introduction, to the same rules as securities issued by the financial institutions referred to in Article 6 of the present Directive.

3. Securities issued by the States or their local authorities are excluded from the field of application of this Directive. They are, however, being covered in a proposed Council Recommendation, taking account of the special characteristics of these securities and issuers.

Article 2: Contents of the prospectus

The general principles to which the prospectus must conform in order to achieve the objectives of the present Directive are stated in Article 2.

This establishes the standards to which the authorities of Member States must refer in judging the acceptability of a prospectus and the admissibility of certain exceptions.

In considering the information they require to be supplied, the authorities must take into account the special characteristics of the issuer. The prospectus must contain all the information likely to affect an evaluation of the security. The prospectus must not be limited to brief particulars designed solely to be understood by the general public. It must also provide such details as to allow professionals to have full knowledge of the facts when advising the public or taking investment decisions on its behalf.

Article 3: Obligation to follow the schemes of presentation set out in the Schedules

1. It was felt necessary not only to establish the general requirement to achieve the objectives as set out in the preceding Article but also to specify the means of achieving them by indicating in the appended Schedules the information which should be contained in the prospectus. Without such Schedules it is doubtful whether the requirements set by the various authorities could be harmonized to a satisfactory degree, let alone made equivalent. Such equivalence is essential if the public is to have equal confidence in prospectuses published in the various Member States.

However, certain Member States already require information which, in certain respects, goes beyond that specified in the Schedules. It was not felt desirable at this juncture to align the Community requirements immediately with the most stringent of the regulations obtaining in one or other of the Member States. Nor did it appear justifiable to restrict, for the sake of harmonization, the range of information required by the strictest of the rules obtaining in certain Member States.

2. The annexed Schedules set out the minimum information which it is required to publish. All the particulars mentioned in the Schedules must be published except in cases coming under Articles 4 and 5 of the present Directive.

3. On the other hand, the authorities of the Member States can, if necessary, supplement the requirements of the Schedules, since it was clearly impossible to make exhaustive and precise provision in these Schedules for the coverage of every factor which could affect evaluation of the securities.

4. The Schedules do not lay down one particular form of presentation for prospectuses. If the authorities consider it desirable, the presentation may be adapted in order to make prospectuses easier to read. In this respect, it is indeed the duty of the authorities to ensure that the presentation of prospectuses makes them easy to understand.

5. Articles 6 to 12. indicate the ways of adapting the schemes of presentation and their terms of application in order to take account of the characteristics of certain issuers (public bodies, financial institutions), of certain kinds of issue (continuous or repeated), of certain securities (guaranteed, convertible or with warrants, certificates representing shares) or the particular circumstances which occasioned the issue (mergers, transfers of assets, the splitting up of companies or public offers of exchange).

In all these cases the annexed schemes of presentation are to be applied in part or in combination one with another and must be followed within the limits stated in the corresponding Articles.

6. Since the schemes of presentation were drawn up for the most general case of a joint stock company operating in the industrial or commercial fields, the requirement to publish certain particulars may prove inappropriate to the particular legal status or economic activity of certain issuers. In order nevertheless to keep the public sufficiently well informed in these cases and to subject all issuers to equivalent requirements, it was felt necessary to allow the competent national authorities freedom to adapt the scheme in question on this limited number of points so as to bring out the particular characteristics of the issuers in the most suitable way. It need not be stressed here that the use of this right must not lead to a widening of the narrow range of exceptions to the Schedules-set out in Articles 4 and 5-but that its sole purpose is to enable the competent national authorities to give a better definition of the information to be given to the public and that it applies only in those cases where some items of the annexed Schedules would be inappropriate.

Article 4: Right to waive publication of a prospectus or certain of its headings

It was considered unnecessary in the cases set out in Article 4 to require publication of a prospectus conforming with the Schedules.

1. In several of these cases the information is already available to the public at large or to the limited circle of operators involved in the transaction. In other cases admission to quotation involves a very small amount of securities, so that it can be considered that the transaction is of interest only to a limited circle of operators, that it makes no major change in the basis for evaluation of the securities or that it does not justify the formalities and costs involved in the publication of a new prospectus. Lastly, in some of the cases specifield, it is impossible to meet the public's needs for continuous information in a satisfactory way by means of a prospectus.

2. Rather than provide for the blanket exclusion of all the cases mentioned from the scope of the Directive it was thought preferable to empower the Member States to establish the appropriate conditions for exemption.

The intention on the part of any Member State to make use of this facility must, however, be notified to the Commission at the latest by the expiry of the time-limit set in Article 20(1), so that the Commission can know precisely the present Directive's field of application. Moreover, the rule set out in Article 2 would remain applicable where the certain Member States nevertheless required a prospectus. Hence, where the circumstances of the case make it necessary to give the public certain facts, the issuer cannot be exempted from publishing a prospectus comprising at least these facts.

Article 5: Dispensation from the provisions of certain sections of the annexed Schedules

Whereas the previous Article sets out certain circumstances in which, in the last analysis, the authorities can grant the issuer a blanket dispensation from publishing a prospectus, Article 5 defines the conditions under which these authorities can, in individual cases, dispense the issuer only from publishing certain information specified in the annexed Schedules.

1. Exemption is possible in the first instance for information which, in the case of individual issuers, is of negligible importance and unlikely to affect assessment of the securities.

Although, in principle, the information specified in the annexed Schedules is necessary and must, therefore, be published, it was felt advisable to give the authorities the possibility of allowing the omission or abbreviation of certain particulars which, in certain defined cases, would give the public no additional aid to assessment but which, on the contrary, would detract from the clarity of the prospectus.

These provisions would not allow the authorities to give all issuers blanket or systematic exemption from the obligation to publish certain information.

2. Provision has also been made for exemption from the obligation to publish information required by the Schedules in certain cases where publication could be contrary to "the public interest" or could be "seriously detrimental to the issuer".

The exemption clauses could only be used in exceptional cases. Thus, the authorities could not grant blanket dispensation or dispensation in the majority of cases in such fashion as would, in practice, restrict the scope of the obligations arising from the Directive. The use of the exceptions is limited by the fact that exemption from publishing this kind of information must not be liable to mislead the public. Hence, for instance, an issuing company must not be exempted from publishing details of its financial situation when this is unsatisfactory, even if publication could have grave consequences.

The concept of "serious detriment to the issuer" must not be restricted to that of detriment to the interests of certain company members.

The concept of "the public interest" could be invoked, for instance, in cases where publication of the information would endanger national defence or the country's commercial policy.

Section II: Content of the prospectus in special cases

Article 6: Financial institutions

1. The annexed Schedules were drawn up for application to the great majority of companies, that is, those engaged in industrial or commercial activities.

Nevertheless, Chapters 1, 2, 3, 5, and 6 could be applied without much change to all concerns irrespective of their business and their legal status.

2. On the other hand, Chapters 4 and 7, relating to the business of the company and its prospects, are unsuitable in their present form for concerns of a financial nature.

On the one hand, certain concepts such as turnover or the order book have no meaning for such concerns and, *vice versa*, the most significant details for these concerns, such as minimum reserves or the liquidity ratio, are not covered in the Schedules. It follows that special schemes of presentation covering these chapters would be necessary for enterprises in the financial sector.

On the other hand rules governing the information to be supplied by enterprises in this sector, such as banks, savings banks, insurance companies, pension funds, are aimed not only at providing information and protection for shareholders but also, and even more, for customers and affiliated members of the institutions. These institutions are of great complexity and diversity, making it difficult to establish Community schemes of presentation immediately.

It therefore seems necessary at this stage to entrust the authorities in the Member States with the task of adapting Chapters 4 and 7 to suit the characteristics of enterprises in the financial sector in such a way that equivalence is achieved in the information supplied.

3. The Member States are free to define financial institutions and thus to specify the cases in which Chapters 4 and 7 of the annexed Schedules will not be applicable in their present form.

Since such definition could be difficult in the case of holding companies, it is necessary when laying down rules them to take into account not their style and legal status but their business activities. The definition and legal status of

“holding companies” varies considerably from one country to another. In practice, this style can cover different functions exercised by the following companies;

- (i) investment companies and collective investment funds of the open or closed-end type;
- (ii) “pure” finance companies, i.e. those engaging in no other activities than assembling capital to make it available to the parent company or to a company directly or indirectly affiliated to it;
- (iii) “pure” holding companies, i.e. those that do not engage in any other activity than managing a portfolio of transferable securities, trade investments, licences or patents;
- (iv) “mixed” companies, i.e. carrying on industrial or commercial activities in addition to one of the activities outlined above.

The system applicable to investment companies and collective investments funds is set out in Article 1, paragraph 2. That for “pure” finance companies is set out in Article 8, so far as guaranteed loans are concerned, and in Article 9 for convertible loans and loans with warrants attached which they issue.

With regard to the shares that they issue, “pure” finance companies and “pure” holding companies can be placed on the same footing as financial institutions and made subject to the same set of rules.

“Mixed” holding companies will be subject to the general system laid down for industrial and commercial companies.

Article 7: Continuous of repeated loan issues by financial institutions

1. It has not seemed necessary to require publication of a complete prospectus at each admission to quotation for securities issued continuously or for repeated loans (issued on average at least twice yearly) in the case of banks, savings banks, credit institutions and mortgage companies which publish their accounts regularly and which within the Community are corporations of public-law status or subject to public supervision designed to protect savings.

In fact, the institutions described in the Directive that make such issues are sufficiently well known and the fact that within the Community they are corporations of public-law status or subject to public supervision designed to protect savings provides sufficient safeguards for subscribers.

Furthermore, to require a prospectus to be published several times a year would be expensive as well as unnecessary, since on most occasions little new information would emerge. Hence, it is sufficient to require the publication of a complete prospectus only every three years.

2. This being the case, it seemed preferable to limit the requirement to publish at the time of each admission to the variable factors: the terms of the loan and conditions of the transaction, the latest annual accounts if these have not been published during the year, particulars of events of significance for assessment of the securities that have occurred since publication of the latest annual accounts.

Article 8: Guaranteed loans

1. Where a guarantee other than in the form of material security is granted by one company for a loan issued by another, the full prospectus must contain, for the two companies, the information laid down in the Schedule for debentures, since the meeting of the borrower's obligations depends on the profitability and solvency of the issuing company and of the company acting as guarantor.

2. Where loans are issued by a finance company on behalf of its parent company and are guaranteed by the latter, it can be considered that the servicing of the loan depends above all on the company acting as guarantor, since the issuing company does not operate on its own account and is not economically independent. The information required concerning the issuing company should, therefore, be simplified and detailed particulars given for the company acting as guarantor.

Where there is more than one guarantor, the authorities can allow less information to be given to make the prospectus easier to read.

3. For group loans, a reduction in the information required for each company may prove necessary in order to keep the prospectus readable. Such reductions shall be made according to instructions issued by the authorities in keeping with the principles outlined in Article 2 and taking into account the share of the various companies in the guarantee.

4. As a source of information, the guarantee contract is generally an important document and must be annexed to the prospectus. However, it is often very bulky and drawn up in a legal form difficult for the public to understand. If such be the case, it is necessary to require publication of abridged particulars of the contract in the prospectus but not publication of the full text, which should simply be made available to any interested persons at the premises of the banks.

Article 9: Convertible loans or loans with warrants attached

1. When application for admission is for debentures convertible into shares of the issuing company or for debentures carrying warrants giving the right to subscribe for a specific number of shares of the company at a specific price,

the issuing company must publish all the particulars set out in the shares Schedule as well as those in Chapter 2 of the debentures Schedule concerning the terms of the loan.

The public must have all the information concerning the terms of the loan and, in addition, information about the securities it will eventually be able to acquire as a result of exercising its rights. The public must be able to determine whether the conversion terms are advantageous, bearing in mind the company's prospects and the lower rates of interest generally applied to such securities.

2. Where the right attaching to the debentures applies to shares of a company other than the company issuing the debentures, the public must, for the same reasons, have complete information in both companies, i.e. the particulars set out in the shares Schedule for the one and those in the debentures Schedule for the other.

However, for reasons explained above in connection with Article 8, it has seemed necessary to relax the requirements of the debentures Schedules when the company issuing the debenture is a "pure" finance company i.e. a company engaging in no other activity than assembling capital to make it available to the parent company or to a company directly or indirectly affiliated to it.

3. Cases in which the convertible debentures and the shares are denominated in different currencies are rare at present but could be more common in the future. The consequences that any changes in the exchange rate relationship between the currencies would have on the conversion terms of the securities must be stated.

Article 10: Admission to stock exchange quotation of securities issued in connection with the merging or splitting of companies, the transfer of assets or a public exchange offer

1. In the case of the admission to stock exchange quotation of securities issued at the time of mergers between companies, the splitting up of companies, the transfer of assets or a public exchange offer, the shareholders, who must give their prior consent either individually or at a general meeting, shall receive information about the various companies involved in the operation so they can evaluate the proposed conversion terms for the securities. The same information is required if securities resulting from such an operation are admitted to quotation within three years of its occurrence since in general the operation continues to affect the profitability and prospects of the company over this period of time.

The information is no longer addressed to the previous shareholders, since the operation is completed on introduction of the securities to stock exchange dealing, but is intended for potential buyers of the securities who have the right to the same particulars.

However, to avoid making the prospectus too bulky, the information can be abridged if it refers to companies already quoted and for which an admission prospectus has been published.

2. Moreover, the information requirements can be relaxed by the competent authorities if the operation has occurred less than six months before admission to stock exchange quotation and if at that time verified information equivalent to that which should appear in a prospectus was published. In these circumstances, it is sufficient for this information to be made available to the public without the publication of a special prospectus being required.

Article 11: Certificates representing shares

1. The information specified in the Schedule for certificates representing shares must be published in addition to that specified in the shares Schedule when certificates representing shares are admitted to quotation.

2. This is often the case with admission to quotation of foreign securities not conforming to the requirements or practices of the place of quotation, and especially:

- (i) when the foreign securities are registered and, by law or by practice, only bearer securities can be quoted, so that bearer certificates have to be issued;
- (ii) when the foreign securities are bearer and only registered securities can be quoted or delivered, so that registered certificates have to be issued;
- (iii) when the delivery time for the original securities is too long or the delivery costs are too high and certificates representing them are in fact circulating;
- (iv) when the denominations of the original securities are in too small or too large units and certificates representing multiples or fractions of these units are quoted.

Hence, it frequently occurs that a bank or other financial institution in the country of the stock market acts as an intermediary, retaining the original securities and issuing certificates to represent them.

3. The same is true of domestic securities in the Netherlands. These are often deposited with trustees who in return issue certificates in respect of which a quotation is applied for and which circulate in place of or alongside the original securities.

4. In these cases, it is necessary to inform the public not only about the original securities by means of a prospectus containing the particulars specified in the shares Schedule but also about the issuer of the certificates and the

terms of issue in accordance with the annexed certificate's Schedule. The concern issuing the certificates can be held legally liable for any loss to the holders caused by its dishonesty or by serious negligence. Holders must, therefore, be afforded the opportunity to satisfy themselves as to the solvency and the financial standing of the issuer of the certificates.

5. However, when the issue of certificates is undertaken by banks, savings banks, credit institutions or mortgage companies which are quoted on the stock exchange, publish their accounts regularly and which within the Community are corporations of public-law status or subject to public supervision designed to protect savings, or by inter-professional associations for the transfer of securities (Kassenverein, SICOVAM etc.) or by trustee offices (administratiekantoren) subject to the strict rules imposed by the Dutch stock exchange authorities in respect of the deposit of the original securities, the competent authorities may exempt the issuers of certificates from publishing their financial situation.

Article 12: Issuers in the public sector

1. The requirement to subject corporate bodies under public-law whose business is of an industrial, commercial or financial nature to the same rules governing information as apply to private companies with comparable business activities is justified primarily by the need to avoid distorting competition between these bodies and private companies with the same business activities within the Community, and by the advisability of submitting these bodies to the discipline of good management usually linked with the requirement to inform the public.

2. However, as far as protection of the saver is concerned, such information is no longer essential when these organizations or their debentures are unconditionally and irrevocably guaranteed by a Member State.

In such case, it seems that the competent authorities should be empowered to simplify the prospectus. However, it is to be hoped that, for the reasons explained above, these authorities will endeavour to limit the use of this concession.

Section III: Arrangements for enforcing the prospectus requirements and for making it publicly available

Article 13: Enforcement of the prospectus requirements

1. In order that the same confidence can be felt everywhere in the quality of information published on securities quoted on the stock exchanges of the various Member States, it seems necessary that prospectuses should contain not

only similar information but that they should be scrutinized with the same efficacy.

To this end the Member States shall entrust implementation of the Directive to national authorities already existing or created for this purpose. The task can be assigned to one or several authorities and their responsibilities must be clearly defined.

It is left to the Member States to determine the characteristics of these authorities, be they public or private, and their relations with government departments on condition, nevertheless, that they be endowed with the competence and powers of supervision necessary for the accomplishment of their task.

2. It was felt necessary to prohibit prospectuses from being published or made available to the public before authorization by the competent authority.

However, the Member States are free to determine the most appropriate method of authorization, be this in the form of positive approval or that of a "nihil obstat" which may or may not be recorded by means of an official stamp. Consequently, the mere publication of the prospectus allows the public in all cases to be aware of the absence of objection on the part of the competent authority.

3. The task of the competent authorities implies that they will refer both to the general principles expounded in Articles 1, 2 and 3 and to the annexed Schedules applicable to the issuers and securities in question. The competent authority is, therefore, obliged to check that the prospectus contains all the particulars required by the relative Schedules or necessary for observance of the general principles; that the particulars are consistent, that they are comparable with information released or published previously, and that they contain all the necessary explanations for any contradictions with the latter or with other information in the possession of the authorities.

In making checks, especially on the net worth and financial position of the issuer, the competent authority will be able to draw on audits undertaken by professional accountants, financial institutions or other reliable experts and may confine itself to requiring evidence of such audits.

Hence, the authority is not obliged to verify that the information published is materially accurate and complete. However, it has the right and even the duty to request the communication and publication of further details, as well as possible specific checks, when it has doubts about certain items of information.

4. The area of competence and supervisory powers of the competent authority can be determined by the Member States either in a general or in a precise fashion according to their constitutional rules and common practice.

They must be sufficient in all cases to allow the authority to require publication, not only of the particulars provided for in the annexed Schedules, but also other information considered necessary to ensure observance of the general principles and to allow it to make the checks necessary for the accomplishment of its task.

Article 14: Methods of publishing the prospectus

1. There are only two methods of publishing a prospectus which satisfy the publication requirement, namely insertion in the press or a pamphlet made available to the public.

These two methods can be considered sufficient if the press medium chosen does in fact reach a sufficiently wide public in the area of the stock exchange in question, and if the pamphlets are in fact made available to the public at the premises of all intermediaries likely to receive subscriptions or orders for buying on the stock exchange.

Member States must, therefore, enforce the use of one or other of these methods; the optional use of other methods cannot be held to be sufficient.

2. However, because of the expense and problems of legibility of the document when published in the press, a combination of the two methods is permitted.

Prospectuses drawn up in accordance with the rules laid down in the Directive will contain more information than at present and hence will be more bulky than a current prospectus. Since publication in papers with a wide circulation is already everywhere more expensive than the publication of pamphlets, a requirement for full publication in the press of prospectuses drawn up in accordance with the Directive would cause a significant increase in costs creating an additional obstacle to stock exchange listing.

Moreover, members of the general public are generally neither sufficiently knowledgeable nor interested to analyse all the information to be contained in the prospectus, this information being of rather more use to their financial advisers. Hence it does not seem essential to make publication of the complete document in the press obligatory if it is made available to all interested parties. Observance of the various conditions set out above will ensure this.

Furthermore, the decision as to which particulars to publish in the press must be taken in accordance with the rules laid down by the competent authority, and under its supervision, to ensure that this incomplete document does not mislead the public.

3. It seemed necessary to make it compulsory to lodge admission prospectuses in places where they would be permanently accessible to any member of the public interested so that they can be consulted, even after a lapse of time, when they are no longer available over the counters of the financial intermediaries. These locations will be freely chosen by Member States. They could well be, for example, at the stock exchange granting quotation, at the offices of the controlling authority, or at the offices of the financial establishments assisting the undertaking in making the issue or introducing it to a stock exchange.

Article 15: Deadlines for publishing the prospectus

1. Two sometimes contradictory requirements must be met when setting the deadline for publishing prospectuses.

The period of time between publication of the prospectus and the opening of dealings recorded in the official list must be:

- (i) long enough for the public to take in the information contained in the prospectus;
- (ii) short enough to remove the temptation for professionals to create an unofficial market meanwhile.

The deadlines chosen—a minimum of eight days beforehand for shares and three days for debentures—reflect the most general current practice and take account of the nature of the securities in question, the factors to be considered being more complex for shares than for debentures. As regards convertible debentures or debentures with warrants it was considered suitable to choose a minimum requirement of eight days when the issue of this type of security carries subscription rights to current shareholders, and of three days only when this is not the case.

2. Three days' clearance has also been prescribed for the publication of the prospectus before the opening of official dealings in subscription rights. This emerged as the best compromise between the contradictory requirements mentioned above; it also takes account of the different deadlines at present obtaining in various markets.

3. When the admission of debentures to quotation is simultaneous with their public issue, the need to finalize precisely certain terms of the issue, such as the issue price or the rate of interest, sometimes means that these terms are not finally settled until the day before issue takes place. In such cases it seemed advisable to allow the Member States to authorise use of the prospectus-publishing technique adopted on the international market. This involves publication, by the set deadline, of a provisional prospectus containing all the information required except for last-minute loan terms settled and published not later than the day before dealings commence.

Thus in practice it is possible to print a document leaving two or three spaces for particulars that will not be settled until the last minute. Prospectuses that are incomplete in this respect only and have been checked by the competent authority can be published with the normal minimum clearance of three days. When the final terms of the loan are fixed, the public must be notified of them either by inserting the information in the pamphlets in stock or by issuing an addendum sheet so as to transform the provisional document into a complete prospectus and by then either distributing this sheet to all the recipients of the provisional document or publishing a notice in the press referring to the complete prospectus and indicating where it may be obtained.

Article 16: Publication of documents other than the prospectus

In order that the prospectus shall be of the greatest possible service and shall really be the main source of information, it is necessary not only to establish requirements for its drafting and vetting but also to lay down rules to ensure on the one hand that information released by the issuer in addition to that in the prospectus, being often more accessible to the public and consequently more likely to influence it, does not distort assessment of the securities, and on the other hand, draws the attention of the public to the existence of the prospectus. To this end:

1. It has been laid down that any document published by the issuer in the period between publication of the prospectus and the opening of official dealings shall refer to the prospectus and indicate how it can be obtained by the public.

2. Furthermore, it was felt necessary to submit to the competent authority for checking any documentation published by the issuer containing more detailed information than a simple announcement of the issue or its admission to quotation and the basic characteristics of the securities, in particular, the partial or abridged prospectus. The purpose of this checking is to ensure that such information, although incomplete, does not distort the impression given by the complete prospectus.

3. The Directive does not require all documents to be checked but only those which are published by the issuer or on his behalf and which are not confined to the announcement of the operation and the basic characteristics of the securities.

Nor does it require an abridged or partial prospectus to be prepared for the benefit of the general public; where one exists, it merely provides for it to be checked by the authorities.

Member States are, nevertheless, recommended to encourage the publication of abridged prospectuses presented in a way which is clear, comprehensible to the

general public and yet objective, and drafted in accordance with the regulations and under the supervision of the competent authority.

Such a prospectus would seem to be useful for the following reasons:

- (i) it would enable the general public to learn at least the most important facts about companies when it was neither sufficiently knowledgeable nor interested to read the complete prospectus;
- (ii) it would facilitate the rapid provision of information to a more sophisticated public and enable it to discriminate among the large number of securities offered before undertaking an analysis in greater depth on the basis of complete prospectuses;
- (iii) it would stimulate interest in securities and accustom the public to take account of more rational factors when reaching investment decisions;
- (iv) it would contribute generally to raising the standard of economic information and knowledge about companies.

4. Finally, provision is made to forbid companies and financial intermediaries acting on their behalf in new issue work or in an admission to quotation to use information not contained in the prospectus in order that the latter shall really be the most complete document and that unchecked particulars shall not be used to the detriment of the public.

Article 17: New factors

The requirement to publish any important new factors emerging between the time that the contents of the prospectus are finalised and stock exchange dealings open is justified by the necessity for the public to have an up to date and complete information document at its disposal. However, only factors likely to influence the public's evaluation of the securities in question should be considered important.

The method of checking such supplements to the prospectus will be the same as for the prospectus itself.

In principle, the methods of publication will also be the same but they may be decided case by case by the competent authority.

Section IV: Procedures for cooperation between Member States in the implementation of the Directive

Article 18: Transactions affecting several Member States

Implementation of the Directive will result in a considerable degree of alignment in the regulations and practices concerning information at the time

of admission to stock exchange quotation in the various Member States. However, it will not lead to identical requirements for issuers, since Member States will be free to go beyond the minimum standards laid down in the Directive and the competent authorities will have, in addition, some latitude of interpretation even of certain identical rules.

The Directive should not only improve the process of informing and protecting the saver at national level but should also facilitate quotation on several stock exchanges within the Community by simplifying the formalities to which the issuer is subject. To this end, it was felt advisable to provide for various ways of coordinating the requirements imposed by the authorities without, however, challenging their autonomy in decision-making.

1. It was felt advisable to require that the authorities coordinate as far as possible their prospectus requirements for issuers seeking quotation simultaneously on the stock exchanges of several Member States in order to arrive at a single text for the greater part of the prospectus. This could be achieved by an appropriate use of the powers of the authorities.
2. It was thought desirable that a similar result should be achieved where admissions to quotation, though not simultaneous, take place at an interval of less than six months.
3. Finally, it is recommended that, by cooperating with each other, the authorities of Member States on whose stock exchanges the same security is quoted should also ensure that information made available in one market which might influence assessment of the merits of the security is made available at or around the same time in all centres.

Article 19: Contact Group

1. Implementation of the Directive and especially that of the prospectus Schedules will probably raise problems of interpretation. It is impossible to predict all the practical difficulties which could arise in individual cases.

Since the competent authorities—who in the last analysis will have to implement the Directive—will take decisions independently of one another, it is necessary to institute regular consultation bearing on the practical problems of implementing the Directive and especially the Schedules between representatives of these authorities and the Commission in order to facilitate uniform implementation of the Directive.

While the creation of a contact group will make possible a common interpretation of the Directive, it will not be prejudicial to the prerogatives invested by the Treaty in the Community institutions—especially the power of interpretation possessed by the Court of Justice—and the duty of the Commission to see to the implementation of Community provisions.

Nor will the contact group have the power to institute further requirements for the competent authorities or for those subject to their control; however, it will be able to bring administrative practices closer together and assure as uniform an implementation as possible of the Community provisions.

2. Moreover, experience in all countries where publication and approval of prospectuses are required has shown the need for gradual improvements and additions to these. Such improvements and additions may become essential in order to take account of new situations created by, for instance, developments in law, financial techniques or the economic and monetary situations in both Member and non-Member States in which issuers seeking a stock market quotation for their securities are domiciled.

It will be impossible to make such additions and improvements binding at Community level without further directives. However, taking into account the general duty incumbent on the competent authorities to ensure that the prospectus gives a correct impression of the issuer's position, in so far as these authorities are entitled to require information additional to that stipulated in the Schedules annexed to the present Directive, and in so far as their powers enable them to require or recommend such additions without amending their national law, it will be helpful for the representatives of these authorities to agree also on the extent of additional information which they will require or recommend within their own countries. This concerting of action, already practised on a bilateral basis, can better be achieved at multilateral level within the contact group.

3. Finally, this group will have a consultative function and will assist the Commission, if necessary, in any new initiatives it may consider appropriate in this field.

DRAFT RECOMMENDATION OF THE COUNCIL

The Council of the European Communities,

Whereas, in order to contribute to interpenetration of capital markets and at the same time ensure adequate protection for savings, it is appropriate to ensure that information which is sufficient and as objective as possible is provided for present and potential holders of the securities issued by the States or their local authorities when these securities are admitted for quotation on the Official List of a stock exchange; and whereas better information for the public concerning these securities is at the same time calculated to stimulate its interest in them, and thus to facilitate the financing of these public issuers;

Whereas, for this purpose, it would be desirable that the Member States should voluntarily introduce for securities issued by themselves, by another State, or by a local authority a prospectus similar to the one which is required of companies within the meaning of Article 58(2) of the Treaty by Council Directive No. ... of ...;

Recommends the Member States to make it a condition of transferable securities issued by a State or by a local authority being admitted or introduced to the Official List of any stock exchange situated within their territory that a prospectus is published or made available to the public which comprises information concerning the prospectus signatories and the operation similar to that specified in Chapters 1 and 2 of the "debentures" Schedule B annexed to Council Directive No. ... of ... and which contains information on the economic and financial situation of the issuer.

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