

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 33 final - COD 451

Brussels, 15.02.1994

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

AMENDING DIRECTIVE 80/390/EEC CO-ORDINATING THE
REQUIREMENTS FOR THE DRAWING UP, SCRUTINY AND
DISTRIBUTION OF THE LISTING PARTICULARS TO BE PUBLISHED FOR
THE ADMISSION OF SECURITIES TO OFFICIAL STOCK-EXCHANGE
LISTING, WITH REGARD TO THE OBLIGATION TO PUBLISH LISTING
PARTICULARS

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

I. GENERAL CONSIDERATIONS

1. On 23 December 1992 the Commission adopted a proposal for a Directive¹ amending Directive 80/390/EEC (Listing Particulars). It was sent to the Council by letter dated 23 December 1992.

The Council immediately forwarded this text to Parliament and to the Economic and Social Committee, and on 23 March 1993 it began to examine the proposal.

2. The Economic and Social Committee unanimously adopted an opinion on the Commission proposal at its 305th plenary meeting which took place in Brussels on 28 April 1993². For the Committee the proposal is the logical evolution of the original directive.
3. The European Parliament adopted the legislative resolution embodying the opinion of Parliament on the Commission proposal at its sitting of 15 December 1993³. The Parliament's opinion contains four amendments as discussed below.
4. The amended proposal has been drafted to take account of the outcome of the consultation of these two institutions. It also contains some modifications resulting from the EU-Treaty and more in particular from its Article 189B (co-decision).

¹ OJ No C 23, 27.01.1993, p. 6.

² OJ No C 161, 14.06.1993, p. 31.

³ PE 177-122 - Minutes of the sitting of Wednesday, 15 December 1993.

II COMMENTS ON PARLIAMENT'S AMENDMENTS

3

The European Parliament has suggested four amendments to the initial proposal. As explained below, two of them are fully accepted by the Commission, one is partially accepted, and the other one is rejected.

1. Amendment 1 states that recital 12, which allows Member States to establish minimum quantitative criteria to benefit from the proposal, must be deleted mainly because quantitative criteria are not inserted in the body of the directive.

The Commission agrees to this suggestion. However, the Commission is still convinced that, in practice, given the nature of the subject matter, additional criteria, and more specifically quantitative criteria, may have to be imposed by Member States as part of the "forms and methods" chosen to achieve the results envisaged by the directive. This is also the approach followed by the Federation of European Stock Exchanges to select the companies which would be admitted to the EUROLIST project to become multi-listed in the Community.

2. Amendment 2 suggests that Article 1(1)4(d)(i) second indent had to require the details of any recent change or development and not only those which are significant. An equivalent suggestion is also made by the Economic and Social Committee.

The Commission disagrees with these suggestions because, on the one hand, it may become too cumbersome for the issuers and, on the other hand, the experience shows that investors are interested only in those modifications or events which have a minimum of importance. The same principle is followed in Article 23 of the original directive.

- 4
3. Amendment 3 suggests introducing in Article 1(1)4(d)(i) fourth indent, a degree of objectivity in the definitions of the omissions likely to affect the importance of the document to be supplied to investors.

The Commission accepts this suggestion because, by stating explicitly what is implicit in the text, it remains in the same direction as the initial proposal.

4. Amendment 4 suggests that before being listed, banks and similar firms would have to provide investors with statements and opinions produced by auditors and advisors. In addition such statements and opinions would have to refer to the immediate standing of the business.

The Commission can only accept partially such a suggestion (new Article 1(1)4(d)(iv)). The Commission can only accept that issuers provide investors with the reports of the auditors on the last published annual accounts. Moreover, such reports will have to be provided not only by banks and similar firms, but also by all kind of issuers. The reason why such reports are not explicitly requested in the initial proposal is that they are usually inserted in the annual reports.

The idea of requesting the reports on the immediate standing of the business is unacceptable because such a tough measure is not included in the original directive (80/390/EEC) and therefore does not fit in well with the new directive, which tries to simplify the existing requirements.

COMMISSION

Amended proposal for a European Parliament and Council Directive amending Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, with regard to the obligation to publish listing particulars

INITIAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal of the Commission,

Unchanged

In cooperation with the European Parliament,

Deleted

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

Unchanged

Recital 12

Whereas Member States may find it useful to set an objective minimum quantitative threshold, such as the current equity market capitalization, which issuers must meet in order to become eligible to benefit from Article 6 of Directive 80/390/EEC;

Deleted

HAS ADOPTED THIS DIRECTIVE :

HAVE ADOPTED THIS DIRECTIVE :

INITIAL PROPOSAL

AMENDED PROPOSAL

6

Article 1(1) 4(d)(i) fourth indent

- a declaration by the persons responsible for the information given in accordance with the preceding indents that such information is in accordance with the facts and contains no omissions likely to affect the import of the document;

Article 1(1) 4(d)(i) fourth indent

- a declaration by the persons responsible for the information given in accordance with the preceding indents that such information is in accordance with the facts and contain no omissions which, viewed objectively, are likely to affect the import of the documents;

Article 1(1) 4(d)(iv) - (new)

Article 1(1) 4(d)(iv) - (new)

any reports concerning the last published annual accounts by the official auditors required by the national law of the Member State within the territory of which the issuer's registered office is situated,

Signatures

Done in Brussels,
For the Council,
the President

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For the European Parliament,
the President
For the Council,
the President

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DOCUMENTS

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