

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 129 final

Brussels, 24 March 1987

Proposal for a  
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

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(presented by the Commission)

COM(87) 129 final

Proposal for a Council Directive amending  
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EXPLANATORY MEMORANDUM

1. On 13 January 1981 the Commission transmitted a proposal for a Directive to the Council relating to the prospectus to be published when transferable securities are offered to the public ("the public offer prospectus proposal")<sup>(1)</sup>. This proposal was a logical follow-up to Directive 80/390/EEC adopted by the Council on 17 March 1980 concerning the listing particulars to be published when securities are admitted to official stock exchange listing ("the listing particulars Directive")<sup>(2)</sup>.
2. In its opinion of 23 April 1982<sup>(3)</sup> on the public offer prospectus proposal the European Parliament requested that where public offers of the same securities are made in two or more Member States a single public offer prospectus approved in only one Member State should suffice for the purposes of the public offer in all the Member States. In other words, the public offer prospectus should be accorded mutual recognition. In view of this, the Commission provided for the principle of mutual recognition in its amended proposal (Article 23) which it transmitted to the Council on 19 July 1982<sup>(4)</sup>.

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(1) OJ. No C. 355 of 31.12.1980

(2) OJ. No L 100 of 17.4.1980

(3) OJ. No C 125 of 17.5.1982

(4) OJ. No C 226 of 31.8.1982

3. On 17 November 1986 the Council adopted Directive 86/566/EEC amending the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty <sup>(5)</sup>. This Directive abolishes exchange control restrictions on (inter alia) the admission of securities to official stock exchange listing as from 1 March 1987. This liberalization should result in an increased number of requests for admission to stock exchange listing on a cross-border basis. This tendency can only be reinforced by the increasing internationalization of securities markets which is currently under way.
4. In order to facilitate the process described above it seems appropriate to reduce to the minimum other types of obstacles to multi-national listings. One such obstacle is the requirement to publish somewhat different prospectuses for admission to listing in different Member States (the degree of coordination achieved by the listing particulars Directive not being absolute). It follows that the principle of mutual recognition should be applied to listing particulars in the same way as to the public offer prospectuses. The listing particulars Directive should therefore be amended to provide for this. This is the objective of the present proposal.
5. Specifically, it modifies Article 24 of the listing particulars Directive which at the moment merely provides that the competent authorities are to use their "best endeavours" to agree a common text in the case of simultaneous admission to stock exchanges in several Member States. Direct mutual recognition is to apply in the future, which is provided for in five new paragraphs. These lay down rules as to which Member State's legislation is to apply as regards the content and approval of the listing particulars which are to be accorded mutual recognition. The previous second paragraph, dealing with the case of a listing in another Member State in the last six months is retained and becomes paragraph 6, and a new seventh paragraph is added providing for cooperation between competent authorities, in the same terms as Article 18(1) of Council Directive 79/279/EEC coordinating stock exchange listing conditions <sup>(6)</sup>.

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(5) OJ. No L 332 of 26.11.1986

(6) OJ. No L 66 of 16.3.1979

A further change is that a third paragraph is to be added to Article 25. This is merely designed to bring that provision, which relates to professional secrecy, into line with the wording of a similar provision in Council Directive 85/611/EEC relating to undertakings for collective investment in transferable securities (Article 50)<sup>(7)</sup>.

Finally, a new Article 25A is added which provides for the possibility of the Community entering into agreements with third countries with a view to extending the principle of mutual recognition to such countries on a reciprocal basis.

6. Mutual recognition of listing particulars will represent a major step forward in the creation of the internal market for the Community, as called for in the Commission's White Paper on this subject. It will contribute to the realization of an integrated securities market in the Community and thus favour the creation of a truly unified common capital market.

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(7) OJ. No L 375 of 31.12.1985.

## II

(Preparatory Acts)

## COMMISSION

Proposal for a 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

COM(87) 129 final

(Submitted by the Commission to the Council on 25 March 1987)

(87/C 110/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Article 54 (3) (g) of the EEC Treaty provides that the Council shall coordinate to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by the Member States of companies or firms within the meaning of Article 58 (2) with a view to making such safeguards equivalent throughout the Community;

Whereas the Council adopted on 17 November 1986 Directive 86/566/EEC (1) amending the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty; whereas that Directive abolishes exchange control restrictions on, *inter alia*, the admission of securities to official stock exchange listing; whereas as a consequence of this the number of cross-border requests for admission to listing is likely to increase;

Whereas Article 24 of Council Directive 80/390/EEC (2) provides that, where securities are to be admitted to official listing on stock exchanges in several Member States, the competent authorities are to cooperate and endeavour to agree a single text for listing particulars for use in all the countries concerned;

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

Whereas mutual recognition represents a major step forward in the creation of the Community's internal market,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 80/390/EEC is hereby amended as follows:

1. Article 24 is amended as follows:

(a) Replace paragraph 1 with the following:

'1. Where for the same securities applications for admission to official listing on stock exchanges situated or operating in several Member States are made simultaneously or within a period of one month, including the Member State in which the issuer's registered office is situated, the listing particulars shall be drawn up in accordance with the rules laid down in this Directive in the Member State where the issuer has its registered office and approved by its competent authorities; if the issuer's registered office is not situated in one of these Member States, the issuer shall decide under which of those Member States' legislations the listing particulars shall be drawn up and approved.

2. Once approved in accordance with paragraph 1, the listing particulars must be recognized by the other Member States in which admission to official listing is applied for, without further approval from the competent authorities of those Member States having to be obtained.

3. The relevant competent authorities shall, if they approve the listing particulars, provide the issuer with a certificate indicating whether or not a partial exemption from the requirement to publish full listing particulars under this Directive has been granted. In the case of partial exemption, the type of exemption and its justification shall be indicated.

(1) OJ No L 332, 26. 11. 1986, p. 22.

(2) OJ No L 100, 17. 4. 1980, p. 1.

4. The approved listing particulars must be recognized in the other Member States in which application for admission to official listing is made even if they benefit from a partial exemption provided that:
- (a) the exemption in question is of a type that is recognized in the legislation of the other Member State or States concerned, and
  - (b) the same conditions that justify the exemption or their equivalent exist as well in the other Member State or States concerned.
5. The approved listing particulars, the certificate mentioned in paragraph 3 and the version of the listing particulars for use in the other Member State concerned shall be communicated for information by the issuer to the competent authorities of each of the other Member States where admission to official listing has also been applied for. The version referred to above shall be the same as the approved listing particulars subject to any need for translation and changes of a minor, administrative nature.'
- (b) Paragraph 2 becomes paragraph 6.
  - (c) The following is added as paragraph 7:

7. The competent authorities shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.'
2. The following paragraph 3 is added to Article 25:
- '3. Without prejudice to cases covered by criminal law, the competent authority receiving such information may use it only for the performance of its duties or in the context of administrative appeals or legal proceedings relating to such performance.'
3. The following Article 25a is inserted:
- Article 25a*
- The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different from those provided for in this Directive, for the purpose of ensuring, under conditions of reciprocity, adequate protection for investors in Member States.'
- Article 2*
1. Member States shall take the measures necessary for them to comply with this Directive by 1 January 1989 at the latest. They shall forthwith inform the Commission thereof.
  2. The Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.
- Article 3*
- This Directive is addressed to the Member States.