

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 133 final - SYN 191
Brussels, 22 March 1989

Proposal for a
COUNCIL DIRECTIVE

amending Directive 80/390/EEC in respect of
mutual recognition of stock exchange listing
particulars

(presented by the Commission)

Com 1334

Explanatory memorandum

1. On 21 December 1988 the Council of Ministers adopted a common position on the proposal for a Directive on the public offer prospectus. Once brought into force that Directive will require Member States to provide for mutual recognition of public offer prospectuses where public offers take place in two or more Member States more or less at the same time, provided that the prospectus is approved by the competent authorities of the home Member State and meets similar disclosure standards to those laid down by Directive 80/390/EEC on stock exchange listing particulars ¹.

2. Three separate situations are envisaged by the Directive on the public offer prospectus:
 - application for listing is made in one of the Member States where the public offer takes place (Article 7);

 - application for listing is made in a Member State other than one in which the public offer is taking place (Article 8);

 - the public offer takes place without listing being requested at that time, but notwithstanding this the public offer prospectus is approved by the competent authorities and meets the necessary standards of disclosure (Article 12);

3. In all three cases the fact that the public offer prospectus has been approved by the competent authorities of the home Member States qualifies it for mutual recognition in host Member States. Articles 20 and 21 of the Directive on the public offer prospectus therefore provide that such a public offer prospectus is to be recognised as complying with public offer prospectus requirements in the host Member States where offers are made, with no possibility of subjecting it to further approval or to additional requirements.

¹ Directive 80/390/EEC (OJ L 100 of 17.4.1980)

4. In the course of discussions in the Council on the public offer prospectus it became clear that the majority of Member States felt that a public offer prospectus complying with Article 7,8 or 12 of the Directive should be mutually recognized not only for the purposes of public offers in host Member States but also for the purposes of admission to official listing there. This would apply even if there was to be no public offer in the Member State where listing was requested.
5. To make this possible, an amendment to the Directive relating to mutual recognition of stock exchange listing particulars ¹, which itself amends the basic Directive on stock exchange listing particulars, is needed, and the Commission has undertaken to transmit a proposal to this effect to the Council in the first three months of 1989. This further measure is needed because the 1987 Directive lays down only a limited possibility for public offer prospectuses to be mutually recognised as listing particulars i.e. where listing in at least two Member States is requested one of which is concerned by the public offer (Article 24b). The purpose of the present amendment is to extend mutual recognition to cover cases where admission is requested in only one Member State, and whether or not that Member State is concerned by the public offer.
6. As regards the period during which mutual recognition is to apply this is laid down as three months from the date of publication of the public offer prospectus. This is the same period as that currently provided in Article 24b of the 1987 Directive.
7. The present proposal will mean that the mutual recognition regime envisaged in the public offer prospectus will be given an even greater field of application, because public offer prospectuses can be used not only for the purposes of public offers anywhere in the Community but also for the purposes of admission to official stock exchange listing in any Member State. This will represent a useful step forward in the creation of an internal securities market for the Community.

¹ Directive 87/345/EEC (OJ L 185 of 4.7.1987)

8. It might appear at first sight inappropriate to cover the case envisaged by Article 12 of the public offer prospectus Directive, which pre-supposes that no request for listing has been made at the time when the public offer takes place. It is however possible that a request for admission might take place during the following three months, in which case mutual recognition of the public offer prospectus should apply.

9. As the present proposal for a Directive modifies Directive 87/345/EEC the time limits for Member States to comply with the provisions of the present proposal should be aligned on those laid down in the 1987 Directive (1 January 1990 but 1 January 1991 for Spain and 1 January 1992 for Portugal).

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

COM(89) 133 final — SYN 191

(Submitted by the Commission on 30 March 1989)

(89/C 101/05)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

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

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

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

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

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

⁽¹⁾ OJ No L ...

Article 2

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

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

Article 3

This Directive is addressed to the Member States.

⁽¹⁾ OJ No L 100, 17. 4. 1980, p. 1.

⁽²⁾ OJ No L 185, 4. 7. 1987, p. 81.

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

- I. What is the main reason for introducing the measure?
The measure provides for mutual recognition of public offer prospectuses approved in the issuer's home Member State as listing prospectuses where a request for admission to official listing is made in a host Member State.
- II. Features of the businesses in question. In particular:
- (a) Are there many SMEs?
The proposal only applies where there is an application for admission to official stock exchange listing in host Member States, so that in the vast majority of cases only larger companies whose securities are internationally traded will be covered by its scope.
- (b) Are they concentrated in regions which are:
- i. eligible for regional aid in the Member States?
not applicable
- ii. eligible under the ERDF?
not applicable
- III. What direct obligations does this measure impose on businesses?
The measure imposes no new obligations on businesses but rather removes an existing one insofar as it will no longer be necessary to publish a separate listing prospectus in a host Member State if the Directive's conditions are complied with.
- IV. What indirect obligations are local authorities likely to impose on businesses?
None
- V. Are there any special measures in respect of SMEs? Please specify.
No
- VI. What is the likely effect on:
- (a) the competitiveness of businesses?
EEC issuers should find that the measure has a helpful impact on their competitiveness insofar as access to the stock exchange markets of the Community will be made easier, and thus their ability to raise capital on a Community wide basis will be facilitated.
- (b) employment?
Although the measure has no direct impact on employment it should have a favourable effect on the financial position of the issuer and therefore contribute to its continuing stability as an employer.
- VII. Have both sides of industry been consulted?
Please indicate their opinions.
- Both sides of industry will be consulted when the proposal is examined by the Economic and Social Committee. It is anticipated that its opinion will be favourable.