

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (88) 549 final - SYN 35

Brussels, 4 October 1988

Amendment to the
Proposal for a
COUNCIL DIRECTIVE

COORDINATING REGULATIONS

ON INSIDER TRADING

(presented by the Commission pursuant to the
third paragraph of Article 149 of the EEC Treaty)

207547/

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE COORDINATING REGULATIONS ON INSIDER TRADING

Original proposal

Amended proposal

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Unchanged

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

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 a thereof,

Having regard to the proposal from the Commission,

Unchanged

Having regard to the opinion of the European Parliament,

In cooperation with the European Parliament,

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

Unchanged

Whereas Article 54 (3) (g) 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 Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community ;

Whereas Article 100 (a) (1) states that the Council shall adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market;

Whereas the secondary market in transferable securities plays an important role in the financing of undertakings;

Unchanged

Whereas, for it to be able to play that role effectively, every possible measure should be taken to ensure that that market operates smoothly;

Unchanged

Whereas the smooth operation of the secondary market depends to a large extent on the confidence it inspires in investors;

Unchanged

Whereas one of the factors on which such confidence depends is the assurance afforded to investors that they are placed on an equal footing;

Unchanged

Whereas insider trading, by benefiting certain investors at the expense of others, is likely to undermine that confidence and may therefore prejudice the smooth operation of the secondary market in transferable securities;

Unchanged

Whereas it is therefore necessary to take all appropriate measures to combat insider trading;

Unchanged

Whereas in most Member States there are no rules or regulations prohibiting insider trading; whereas the rules or regulations that do exist differ appreciably between Member States;

Unchanged

Whereas it is therefore necessary to adopt coordinated Community rules in this field;

Unchanged

Whereas such coordinated rules also have the advantage of helping, through cooperation between the competent authorities, to combat transfrontier insider trading more effectively,

Unchanged

HAS ADOPTED THIS DIRECTIVE:

Unchanged

Article 1

Article 1

1. Member States shall prohibit any person who, in the exercise of his profession or duties, acquires inside information as defined in Article 6 from taking advantage of that information to buy or sell on their territory, either directly or through another person, transferable securities admitted to trading on their stock exchange markets.

1. Member States shall prohibit any person who, in the exercise of his employment, profession or duties, acquires inside information as defined in Article 6 from taking advantage of that information to buy or sell on their territory, either directly or indirectly, transferable securities admitted to trading on their stock exchange markets.

Where the purchase or sale of transferable securities is carried out on a stock exchange market, it shall be deemed to be carried out on the territory of the Member State in which the stock exchange in question is situated or operates.

Unchanged

Where the purchase or sale of transferable securities is carried out outside a stock exchange market, it shall be deemed to be carried out on the territory of the Member State in which the counterpart of the person referred to in the first subparagraph is resident.

Unchanged

2. Where the person referred to in paragraph 1 is a company or any other type of legal person, the prohibition laid down in that paragraph shall apply to its de jure or de facto directors.

2. The prohibition laid down in paragraph 1 shall not apply to transferable securities bought or sold outside a stock exchange market without the involvement of a professional intermediary.

Article 2

Member States shall prohibit any person who is resident on their territory and who acquires inside information in the exercise of his profession or duties from:

- disclosing that inside information to a third party unless such disclosure is made in the normal course of exercising his profession or duties;

- using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

Article 3

1. Member States shall impose the prohibition provided for in Article 1 in accordance with the terms referred to therein also on any person who has knowingly obtained inside information from a person who has acquired that information in the exercise of his profession or duties.

2. Member States shall prohibit any person referred to in paragraph 1:

- from disclosing the inside information to a third party;

- from using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

3. Member States may provide that the prohibition laid down in paragraph 1 shall not apply to transferable securities bought or sold outside a stock exchange market without the involvement of a professional intermediary.

Article 2

Member States shall prohibit any person who is resident on their territory and who acquires inside information in the exercise of his employment, profession or duties from:

(a) disclosing that inside information to a third party unless such disclosure is made in the normal course of exercising his employment, profession or duties;

(b) using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

Article 3

1. Member States shall impose the prohibition provided for in Article 1 in accordance with the terms referred to therein also on any person who has knowingly obtained inside information from a person who acquired that information in the exercise of his employment, profession or duties.

2. Member States shall prohibit any person referred to in paragraph 1 who is resident on their territory from:

(a) disclosing the inside information to a third party;

(b) using that inside information to recommend a third party to buy or sell transferable securities admitted to trading on their stock exchange markets.

Article 4

Member States may lay down more stringent rules than those contained in this Directive provided that they are non-discriminatory.

Unchanged

Article 4

Article 5

For the purposes of this Directive transferable securities shall include not only securities usually traded on the stock exchange market such as shares and debt securities but also traded options relating to such securities.

Unchanged

Article 5

Article 6

For the purposes of this Directive, inside information is information unknown to the public of a specific nature and relating to one or more issuers of transferable securities, or to one or more transferable securities, which, if it were published, would be likely to have a material effect on the price of the transferable security or transferable securities in question.

For the purposes of this Directive, inside information is information inaccessible or not available to the public of a specific nature and relating to one or more issuers of transferable securities or to one or more transferable securities, which, if it were published, would have a material effect on the price of the transferable security or transferable securities in question.

Article 6

Article 7

1. Issuers whose transferable securities are admitted to official listing in one or more Member States or are traded there on another stock exchange market shall immediately inform the public in that Member State or those Member States of any circumstance or decision which would be likely to have a material effect on the price of such transferable securities.

Unchanged

Article 7

2. Where an issuer is unable to inform the public immediately of a circumstance or decision as referred to in paragraph 1 because disclosure would prejudice its legitimate interests, it shall immediately inform the competent authorities thereof, who may relieve it of the obligation provided for in paragraph 1.

Unchanged

Article 8

1. Member States shall designate the authority or authorities competent to ensure that the provisions adopted pursuant to this Directive are applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.

2. The competent authorities shall be given all such supervisory powers as may be necessary for the exercise of their duties.

3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

Article 9

1. Member States shall provide that all persons employed or formerly employed by the competent authorities referred to in Article 8 shall be bound by professional secrecy. Information covered by professional secrecy may not be divulged to any person or authority except by virtue of provisions laid down by law.

2. Paragraph 1 shall not, however, preclude exchanges of information between the various Member States by the authorities referred to in Article 8 as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

3. Without prejudice to cases falling under criminal law, the authorities referred to in Article 8 which receive information may use it only for the exercise of their duties and in connection with administrative or judicial proceedings specifically relating to the exercise of those duties.

Article 8

Unchanged

2. The competent authorities shall be given all such supervisory and investigatory powers as may be necessary for the exercise of their duties.

Unchanged

Article 9

Unchanged

Unchanged

Unchanged

Article 10

The Contact Committee set up by Article 20 of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing shall also have as its function:

Unchanged

to facilitate the harmonized implementation of this Directive through regular consultations on any practical problems which arise from its application and on which exchanges of view are deemed useful;

Unchanged

(b) to advise the Commission on any amendments to be made to this Directive.

Unchanged

Article 11

Member States shall determine the penalties to be applied for infringement of the measures taken pursuant to this Directive.

Article 11

Member States shall determine the penalties to be applied for infringement of the measures taken pursuant to this Directive. The penalties shall be sufficiently dissuasive to ensure respect for those measures.

Article 12

1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1990. They shall forthwith inform the Commission thereof.

Unchanged

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

Unchanged

Article 13

This Directive is addressed to the Member States.

Article 13

Unchanged

Done at

For the Council