

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 15 February 1982

on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing

(82/121/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 54 (3) (g) and 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Directive 80/390/EEC of 17 March 1980 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 ⁽⁴⁾ seeks to ensure improved protection of investors and a greater degree of equivalence in the protection provided, by coordinating requirements as to the information to be published at the time of admission ;

Whereas, in the case of securities admitted to official stock-exchange listing, the protection of investors requires that the latter be supplied with appropriate regular information throughout the entire period during which the securities are listed ; whereas coordi-

nation of requirements for this regular information has similar objectives to those envisaged for the listing particulars, namely to improve such protection and to make it more equivalent, to facilitate the listing of these securities on more than one stock exchange in the Community, and in so doing to contribute towards the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets ;

Whereas, under Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing ⁽⁵⁾, listed companies must as soon as possible make available to investors their annual accounts and report giving information on the company for the whole of the financial year ; whereas the fourth Directive 78/660/EEC ⁽⁶⁾ has coordinated the laws, regulations and administrative provisions of the Member States concerning the annual accounts of certain types of companies ;

Whereas companies should also, at least once during each financial year, make available to investors reports on their activities ; whereas this Directive can, consequently, be confined to coordinating the content and distribution of a single report covering the first six months of the financial year ;

Whereas, however, in the case of ordinary debentures, because of the rights they confer on their holders, the protection of investors by means of the publication of a half-yearly report is not essential ; whereas, by virtue

⁽¹⁾ OJ No C 29, 1. 2. 1979, p. 5 and OJ No C 210, 16. 8. 1980, p. 5.

⁽²⁾ OJ No C 85, 8. 4. 1980, p. 69.

⁽³⁾ OJ No C 53, 3. 3. 1980, p. 54.

⁽⁴⁾ OJ No L 100, 17. 4. 1980, p. 1.

⁽⁵⁾ OJ No L 66, 16. 3. 1979, p. 21.

⁽⁶⁾ OJ No L 222, 14. 8. 1978, p. 11.

of Directive 79/279/EEC, convertible or exchangeable debentures and debentures with warrants may be admitted to official listing only if the related shares are already listed on the same stock exchange or on another regulated, regularly operating, recognized open market or are so admitted simultaneously; whereas the Member States may derogate from this principle only if their competent authorities are satisfied that holders have at their disposal all the information necessary to form an opinion concerning the value of the shares to which these debentures relate; whereas, consequently, regular information needs to be coordinated only for companies whose shares are admitted to official stock-exchange listing;

Whereas the half-yearly report must enable investors to make an informed appraisal of the general development of the company's activities during the period covered by the report; whereas, however, this report need contain only the essential details on the financial position and general progress of the business of the company in question;

Whereas, in order to take account of difficulties resulting from the current state of laws in certain Member States, companies may be allowed a longer period to implement the provisions of this Directive than that laid down for the adaptation of national laws;

Whereas, so as to ensure the effective protection of investors and the proper operation of stock exchanges, the rules relating to regular information to be published by companies, the shares of which are admitted to official stock-exchange listing within the Community, should apply not only to companies from Member States, but also to companies from non-member countries

HAS ADOPTED THIS DIRECTIVE :

SECTION I

General provisions and scope

Article 1

1. This Directive shall apply to companies the shares of which are admitted to official listing on a stock exchange situated or operating in a Member State, whether the admission is of the shares themselves or of certificates representing them and whether such admission precedes or follows the date on which this Directive enters into force.

2. This Directive shall not, however, apply to investment companies other than those of the closed-end type.

For the purposes of this Directive 'investment companies other than those of the closed-end type' shall mean investment companies :

- the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading, and
 - the shares of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of those companies' assets. Action taken by such companies to ensure that the stock-exchange value of their shares does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.
3. The Member States may exclude central banks from the scope of this Directive.

Article 2

The Member States shall ensure that the companies publish half-yearly reports on their activities and profits and losses during the first six months of each financial year.

Article 3

The Member States may subject companies to obligations more stringent than those provided for by this Directive or to additional obligations, provided that they apply generally to all companies or to all companies of a given class.

SECTION II

Publication and contents of the half-yearly report

Article 4

1. The half-yearly report shall be published within four months of the end of the relevant six-month period.
2. In exceptional, duly substantiated cases, the competent authorities shall be permitted to extend the time limit for publication.

Article 5

1. The half-yearly report shall consist of figures and an explanatory statement relating to the company's activities and profits and losses during the relevant six-month period.
2. The figures, presented in table form, shall indicate at least :
 - the net turnover, and
 - the profit or loss before or after deduction of tax.

These terms shall have the same meanings as in the Council Directives on company accounts.

3. The Member States may allow the competent authorities to authorize companies, exceptionally and on a case-by-case basis, to supply estimated figures for profits and losses, provided that the shares of each such company are listed officially in only one Member

State. The use of this procedure must be indicated by the company in its report and must not mislead investors.

4. Where the company has paid or proposes to pay an interim dividend, the figures must indicate the profit or loss after tax for the six-month period and the interim dividend paid or proposed.

5. Against each figure there must be shown the figure for the corresponding period in the preceding financial year.

6. The explanatory statement must include any significant information enabling investors to make an informed assessment of the trend of the company's activities and profits or losses together with an indication of any special factor which has influenced those activities and those profits or losses during the period in question, and enable a comparison to be made with the corresponding period of the preceding financial year.

It must also, as far as possible, refer to the company's likely future development in the current financial year.

7. Where the figures provided for in paragraph 2 are unsuited to the company's activities, the competent authorities shall ensure that appropriate adjustments are made.

Article 6

Where a company publishes consolidated accounts it may publish its half-yearly report in either consolidated or unconsolidated form. However, the Member States may allow the competent authorities, where the latter consider that the form not adopted would have contained additional material information, to require the company to publish such information.

Article 7

1. The half-yearly report must be published in the Member State or Member States where the shares are admitted to official listing by insertion in one or more newspapers distributed throughout the State or widely distributed therein or in the national gazette, or shall be made available to the public either in writing in places indicated by announcement to be published in one or more newspapers distributed throughout the State or widely distributed therein, or by other equivalent means approved by the competent authorities.

2. A half-yearly report must be drawn up in the official language or languages or in one of the official languages or in another language, provided that, in the Member State concerned, such official language or languages or such other language are customary in the

sphere of finance and are accepted by the competent authorities.

3. The company shall send a copy of its half-yearly report simultaneously to the competent authorities of each Member State in which its shares are admitted to official listing. It shall do so not later than the time when the half-yearly report is published for the first time in a Member State.

Article 8

Where the accounting information has been audited by the official auditor of the company's accounts, that auditor's report and any qualifications he may have shall be reproduced in full.

SECTION III

Powers of the competent authorities

Article 9

1. Member States shall appoint one or more competent authorities and shall notify the Commission of the appointment of such authorities, giving details of any division of powers among them. Member States shall also ensure that this Directive is applied.

2. The Member States shall ensure that the competent authorities have the necessary powers to carry out their task.

3. Where particular requirements of this Directive are unsuited to a company's activities or circumstances, the competent authorities shall ensure that suitable adaptations are made to such requirements.

4. The competent authorities may authorize the omission from the half-yearly report of certain information provided for in this Directive if they consider that disclosure of such information would be contrary to the public interest or seriously detrimental to the company, provided that, in the latter case, such omission would not be likely to mislead the public with regard to facts and circumstances knowledge of which is essential for the assessment of the shares in question.

The company or its representatives shall be responsible for the correctness and relevance of the facts on which any application for such exemption is based.

5. Paragraphs 3 and 4 shall also apply to the more stringent or additional obligations imposed pursuant to Article 3.

6. If a company governed by the law of a non-member country publishes a half-yearly report in a non-member country, the competent authorities may authorize it to publish that report instead of the half-yearly report provided for in this Directive, provided

that the information given is equivalent to that which would result from the application of this Directive.

7. This Directive shall not affect the competent authorities' liability, which shall continue to be governed solely by national law.

SECTION IV

Cooperation between Member States

Article 10

1. The competent authorities shall cooperate whenever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.

2. Where a half-yearly report has to be published in more than one Member State, the competent authorities of these Member States shall, by way of derogation from Article 3, use their best endeavours to accept as a single text the text which meets the requirements of the Member State in which the company's shares were admitted to official listing for the first time or the text which most closely approximates to that text. In cases of simultaneous admission to official listing on two or more stock exchanges situated or operating in different Member States, the competent authorities of the Member States concerned shall use their best endeavours to accept as a single text the text of the report which meets the requirements of the Member State in which the company's head office is situated; if the company's head office is situated in a non-member country, the competent authorities of the Member States concerned shall use their best endeavours to accept a single version of the report.

SECTION V

Contact Committee

Article 11

1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function :

- (a) without prejudice to Articles 169 and 170 of the Treaty to facilitate the harmonized implementation of this Directive through regular consultations on any practical problems arising from its application on which exchanges of views are deemed useful ;

(b) to facilitate consultation between the Member States on the more stringent or additional obligations which they may impose pursuant to Article 3 with a view to the ultimate convergence of obligations imposed in all Member States, in accordance with Article 54 (3) (g) of the Treaty ;

(c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive ; in particular, the Committee shall consider the possible modification of Articles 3 and 5 in the light of progress towards the convergence of obligations referred to in (b) above.

2. Within five years of notification of this Directive, the Commission shall, after consulting the Contact Committee, submit to the Council a report on the application of Articles 3 and 5 and on such modifications as it would be possible to make thereto.

SECTION VI

Final provisions

Article 12

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 30 June 1983. They shall forthwith inform the Commission thereof.

2. Member States may postpone application of the measures referred to in paragraph 1 until 36 months from the date on which they bring such measures into force.

3. As from the notification of this Directive, Member States shall communicate to the Commission the main provisions of the laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 15 February 1982.

For the Council

The President

P. de KEERSMAEKER