

Proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading

(2001/C 240 E/33)

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(Submitted by the Commission on 1 June 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Council Directive 80/390/EEC of 17 March 1980 co-ordinating the requirements for the drawing up, scrutiny and distribution for the listing particulars to be published for the admission of securities to official stock exchange listing ⁽¹⁾ and Council Directive 89/298/EEC of 17 April 1989 co-ordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public ⁽²⁾ have been adopted several years ago introducing a partial and complex mutual recognition mechanism which is unable to ensure the objective of the single passport the said Directives should be upgraded, updated and grouped together into a single text.
- (2) This Directive constitutes an instrument essential to the achievement of the internal market as set out in a timetable form in the Communication from the Commission — Risk Capital Action Plan ⁽³⁾ and the Communication from the Commission — Implementing the framework for financial market: action Plan ⁽⁴⁾ facilitating the widest possible access to investment capital on an EU-wide basis, including for small and medium size enterprises (SMEs) and start-ups, by means of a 'single passport' for issuers.
- (3) On 17 July 2000, the Council set up the Committee of Wise Men on the regulation of European securities markets. In its initial report the Committee stresses the lack of an agreed definition of public offer of securities,

with the results that the same operation is analysed as a private placement in some Member States and not in others; the current system discourages firms from raising capital on an European wide basis and therefore from having real access to a large, liquid and integrated financial market.

- (4) In its final report the Committee of Wise Men proposed the introduction of new legislative techniques based on a four level approach, namely framework principles, implementing measures, co-operation and enforcement. Level 1, the Directive, should confine itself to broad general 'framework' principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.
- (5) The Stockholm European Council Resolution endorsed the final report of the Committee of Wise Men and the proposed four level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (6) According to the Stockholm European Council Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments and deadlines should be set for all stages of Level 2 work.
- (7) Implementing measures adopted pursuant to this Directive should aim to ensure investor protection and market integrity, in accordance with high regulatory standards adopted in the relevant international fora.
- (8) Full coverage of equity and debt securities admitted to trading on regulated markets as defined by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽⁵⁾ and not only securities which have been admitted to the official list of stock exchanges is also needed to ensure the protection of investors. The wide definition of securities in this Directive is valid only for this Directive and consequently in no way affects the various definitions of financial instruments used in national legislation for other purposes such as taxation. It covers negotiable instruments only.

⁽¹⁾ OJ L 100, 17.4.1980, p. 1. Directive as last amended by European Parliament and Council Directive 94/18/EC (OJ L 135, 31.5.1994, p. 1).

⁽²⁾ OJ L 124, 5.5.1989, p. 8.

⁽³⁾ SEC(1998) 552 final.

⁽⁴⁾ COM(1999) 232 final.

⁽⁵⁾ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

- (9) The grant of a single passport to the issuer valid throughout the Community and the application of the principles of home Member State supervision requires the identification of the home Member State as the one best placed to regulate the issuer for the purposes of this Directive.
- (10) One of the objective of this Directive is to protect investors. It is therefore appropriate to take account of the different requirements for protection of the various categories of investors and their level of expertise. Disclosure provided by the prospectus is not required for offers limited to the same categories as far as securities have been bought for one's own account. Any resale to the public or public trading through admission to trading on a regulated market requires the publication of a prospectus.
- (11) The provision of full, appropriate information concerning securities and issuers of such securities promotes the protection of investors. Moreover, such information is an effective mean of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The form in which this information is required is the publication of the prospectus.
- (12) Investment in securities, like any other form of investment, involves risk. Safeguards for the protection of the interests of the actual and potential investors are required in all Member States in order to put them in a position to make a correct assessment of such risks so as to be able to take investment decisions in full knowledge of the facts.
- (13) Such information, which needs to be sufficient and as objective as possible concerning the financial circumstances of the issuer and the right attaching to the securities, should be provided in an easy analysable and comprehensible form. The harmonisation of the information contained in the prospectus should provide equivalent protection for investors at Community level.
- (14) Best practices have been adopted at international level in order to allow multinational offerings to be made using a single set of disclosure standards by the International Organisation Securities Commissions (IOSCO); the IOSCO disclosure standards⁽¹⁾ will upgrade information available for the markets and investors and, at the same time will simplify the procedure for European issuers wishing to raise capital in third countries.
- (15) Fast track procedures for issuers admitted to trading on regulated market and frequently raising capital on the markets require the introduction at Community level of a registration document system. The system is based on a new format of prospectus composed of separate documents. Issuers whose securities are not admitted to trading on regulated markets may wish to draft the prospectus as a single document.
- (16) Investors are protected by ensuring publication of reliable information. The companies admitted to trading on a regulated market are subject to ongoing disclosure obligation and not to publish updated information in a coherent and aggregate format; the yearly update of their registration document is a suitable way to ensure the publication of consistent and easily understandable information on the issuer. To simplify and avoid excessive burden for issuers, they should be allowed to use the registration document for the reporting requirements laid down by the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies⁽²⁾ and the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts⁽³⁾.
- (17) The opportunity of allowing issuers to incorporate by reference documents containing the information to be disclosed under prospectus provided that the documents incorporated by reference have been previously filed and accepted by the competent authority should facilitate the procedure of drawing a prospectus and lower the costs for the issuers without endangering investor protection.
- (18) Differences regarding the efficacy, methods and timing of the check of the information given therein are not only to make it more difficult for undertakings to raise capital or to obtain admission to trading in several Member States but also to hinder the acquisition by investors residing in one Member State of securities offered by an issuer established in another Member State or traded in another Member State. These differences should be eliminated by harmonising the rules and regulations in order to achieve an adequate degree of equivalence of the safeguards required in each member States to ensure the provision of information which is sufficient and as objective as possible for actual or potential securities holders.
- (19) To facilitate the circulation of the various documents composing the prospectus, the use of electronic communication facilities such as internet should be encouraged. The prospectus should be always delivered in paper form free of charge to investors on request.

⁽¹⁾ International Disclosure Standards for cross-border offering and initial listings by foreign issuers, Part I International Organisation of Securities Commissions, September 1998.

⁽²⁾ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 1999/60/EC (OJ L 162, 26.6.1999, p. 65).

⁽³⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ L 317, 16.11.1990, p. 60).

- (20) It is also necessary, in order to avoid loopholes in Community legislation which would undermine public confidence and therefore prejudice the proper functioning of financial markets, to harmonise procedures under which advertising can take place.
- (21) Any new fact liable to influence the assessment of the investment intervened after the publication of the prospectus but before the closing of the offer or the starting of the trading on a regulated market should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement of information.
- (22) The obligation for an issuer to translate the full prospectus into all the relevant national languages discourages cross-border offerings or multiple trading. To facilitate cross-border offers, where the prospectus is drawn up in a language that is customary in the sphere of finance and accepted by the competent authority, the host country should only be entitled to require a summary in its domestic language.
- (23) The competent authority of the host Member State should be entitled to receive a certificate from the competent authority of the home Member State which states that the prospectus has been drafted in accordance with this Directive. In order to ensure that the purposes of this Directive will be fully achieved, it is also necessary to include within its scope securities issued by issuers governed by the laws of third countries.
- (24) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary costs and overlapping of responsibilities without providing any additional benefit. The private for-profit nature of certain entities may raise conflicts of interest and is unsuitable for ensuring protection of the markets and investors. In each Member State a competent authority should be designated to approve prospectuses. It should be established as an administrative authority and in such a form that its independence from economic actors is guaranteed and conflicts of interests are avoided.
- (25) A common minimum set of powers for the competent authorities will guarantee the effectiveness of their supervision. Flow of information to the markets required by Council Directive 79/279/EEC of 5 March 1979 co-ordinating the conditions for the admission of securities to official stock exchange listing ⁽¹⁾ has to be ensured and action against breaches taken by competent authorities.
- (26) For the purposes of carrying out their duties, co-operation between competent authorities is required.
- (27) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾,
- they should be adopted by use of the regulatory procedures provided for in Article 5 of that Decision.
- (28) The Member States should lay down rules on penalties, including administrative sanctions, applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (29) Provision should be made for the right to apply to the Courts against decisions by the competent national authorities in respect of the application of this Directive.
- (30) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the completion of a single securities market to lay down rules on a single passport for issuers. This Directive confines itself to what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
- (31) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.
- (32) Directives 80/390/EEC and 9/298/EEC should be repealed accordingly,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. The purpose of this Directive is to harmonise requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered to the public or admitted to trading.
2. This Directive shall apply to securities which:
 - (a) are offered to the public in one or more Member States, or
 - (b) are admitted to, or are the subject of a procedure for admission to, trading on a regulated market situated or operating within a Member State.
3. This Directive shall not apply to:
 - (a) units issued by collective investment undertakings other than the close-end type,

⁽¹⁾ OJ L 66, 16.3.1979, p. 21.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

(b) securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members or by the European Central Bank.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(a) 'securities' means any shares in companies and other transferable securities equivalent to shares in companies, bonds and other forms of securitized debt which are negotiable on a regulated market and any other transferable securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to cash settlement;

b) 'offer of securities to the public' means an offer, invitation or promotional message, in any form, addressed to the public, whose objective is the sale or subscription of securities including by placing securities through financial intermediaries;

(c) 'qualified investors' means credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and retirement funds, supranational institutions, government and central administrative authorities;

(d) 'issuer' means a person who issues or proposes to issue securities;

(e) 'person making an offer' (or 'offeror') means a person who intends to offer securities to the public;

(f) 'regulated market' means a market as defined by Article 1(13) of Directive 93/22/EEC;

(g) 'home Member State' of an issuer means:

— the Member State where an issuer has its registered office;

— in the case of an issuer incorporated in a third country, the Member State where its securities have been admitted to trading for the first time;

(h) 'host Member State' means the State where an offer to the public is made or admission to trading is sought when different from the home Member State;

(i) 'collective investment undertaking other than the close-end type' means unit trusts and investment companies:

— the object of which is the collective investment of capital provided by the public, and which operate on the principle of the risk spreading, and

— the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;

(j) 'units of a collective investment undertaking' means securities issued by a collective investment undertaking representing rights of the participants in such an undertaking over its assets.

2. The definitions referred to in paragraph 1 shall in order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive be clarified and adapted by the Commission in accordance with the procedure referred to in Article 22(2).

Article 3

Conditions for offer of securities to the public

1. Member States shall ensure that any offer of securities to the public within their territories is subject to the publication of a prospectus by the person making the offer.

2. This obligation shall not apply to the following types of offer, excluding any subsequent resale to the public:

(a) where the securities are offered to qualified investors for their own account;

(b) where the offer is addressed to a restricted circle of persons, the number of which is below 150 per Member State or below 1 500 in the case of a multinational offer;

(c) where the securities offered can be acquired only for a consideration of at least EUR 150 000 per investor.

3. The obligation provided for in paragraph 1 shall not apply to the offer of securities of the following types:

(a) shares issued in substitution for shares already traded on the same regulated market if the issuing of such new shares does not involve any increase in the issued capital;

(b) securities offered in connection with a take over provided that a document containing information which is regarded by the competent authority as equivalent to that of the prospectus is available;

- (c) securities offered in connection with a merger provided that a document containing information which is regarded by the competent authority as equivalent to that of the prospectus is available;
- (d) shares offered in exchange with no overall increase of capital to existing shareholders or allotted free of charge;
- (e) securities offered or allotted to existing or former employees upon condition that it is not in exchange for any form of payment or consideration;
- (f) shares resulting from the conversion of convertible debt securities or from the exercise of the rights conferred by warrants or shares offered in exchange for exchangeable debt securities, provided that a prospectus relating to those convertible or exchangeable debt securities or those warrants was available;
- (g) securities issued, with a view to their obtaining the means necessary to achieve their objectives, by associations with legal status or non-profit-making bodies, recognised by the State.

4. The terminology and the exemptions provided for in paragraphs 2 and 3 shall in order to take account of development on financial markets in the application of this Directive be clarified and adapted by the Commission in accordance with the procedure referred to in Article 22(2).

Article 4

Conditions for admission of securities to trading on regulated market

Member States shall ensure that any admission of securities to trading on a regulated market situated or operated within their territories is subject to the availability of a prospectus.

That obligation is deemed to be satisfied when the issuer has filed with home competent authority the registration document and, where necessary, the securities note, and fulfils the requirements set out in Article 9 of updating annually the registration document.

CHAPTER II

DRAWING UP OF THE PROSPECTUS

Article 5

The prospectus

1. The prospectus shall contain all the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses,

and prospects of the issuer and of the rights attaching to such securities.

2. The information provided for in paragraph 1 shall be presented in an easy analysable and comprehensible form and shall be made available by means of publication of a single or separate documents.

3. The prospectus published as a single document shall include at least the information referred to in Annex I.

4. The prospectus composed of separate documents shall include a registration document, a securities note and a summary note. The registration document shall include at least the information referred to in Annex II. The securities note shall include at least the information referred to in Annex III. The summary note shall include at least the information referred to in Annex IV.

5. Member States shall ensure that the obligation provided for in paragraph 1 is incumbent upon the administrative, management or supervisory bodies of the issuers, the offeror and the guarantor as the case may be.

Article 6

Minimum information

1. Detailed rules regarding the specific information which must be included in the prospectus according to Article 5(3) and (4), in the form of models for the different type of securities and of issuers shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

2. The rules referred to in paragraph 1 shall be in accordance with the information requirements set out by the International Organisation of Securities Commissions and namely in Part I of the International Disclosure Standards for cross-border offering and initial listings.

3. Member States shall ensure that where the final offering price and amount of securities which will be allotted to the public cannot be included in the prospectus, the prospectus shall contain the criteria, and/or the conditions according to which, the above elements will be determined. The final terms shall be filed with the competent authority of the home Member State and made available according to the modalities provided for in Article 12(2).

4. Detailed rules on modalities of the offer in order to ensure uniform application of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

*Article 7***Language and format of the prospectus**

1. The prospectus shall be drawn up in a language accepted by the competent authority in the home Member State.
2. Issuers whose securities are admitted or are the subject of a procedure for admission to trading on regulated markets shall publish a prospectus comprising the separate documents provided for in Article 5(4).
3. Issuers whose securities are not admitted to trading and are not the subject of a procedure for admission to trading on a regulated market may decide to draw up the prospectus as a single document, including at least the information referred to in Annex I.

*Article 8***Use of a registration document, securities note and summary note**

1. An issuer who has already filed with the competent authority the registration document shall be required to draw up only the securities note and the summary note when securities are publicly offered or admitted to trading.
2. In any case, in addition to the information items required under Article 5(4), the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the registration document was published.

*Article 9***Annual updating of the registration document**

1. Subsequent to the first filing the registration document shall be updated on a regular basis by the issuer each year after the approval of the financial statements according to the requirements applicable to the issuer in the home Member State. The registration document shall be filed with and scrutinised by competent authority of the home Member State.
2. Member States may allow the issuer to use the registration document for the purpose of complying with the requirement laid down in Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC.

*Article 10***Incorporation by a reference**

1. Member States shall allow information to be incorporated in the prospectus by referring to one or more documents, which have been filed and published in accordance with this Directive. Such information shall be approved by the

competent authority of the home Member State, pursuant to Article 19.

2. When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.

3. Detailed rules concerning the information to be incorporated by a reference in order to ensure uniform application in the Community of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

CHAPTER III

ARRANGEMENTS FOR THE SCRUTINY AND DISTRIBUTION OF THE PROSPECTUS*Article 11***Approval and publication of the prospectus**

1. No prospectus shall be published until it has been approved by the competent authority of the home Member State.
2. The competent authority of the home Member State shall notify the issuer or the offeror of its decision regarding the approval of the prospectus within 15 days of the submission of the draft prospectus or, should the competent authority verify that the submission is incomplete or require any further information, within 15 days of the issuer's supplying the required information.
3. The time limit referred to in paragraph 2 shall be reduced to 7 days if the approval is required for the securities note only. It shall be extended to 40 days if public offer involves securities that are not already admitted to trading.
4. If the competent authority of the home Member State fails to give a decision within the time limit laid down in paragraphs 2 and 3, this shall be deemed to be a rejection of the application, such rejection shall give right to apply to the courts.
5. This Directive shall not affect the competent authority's liability, which shall continue to be governed solely by the national law.

6. Detailed technical rules concerning the scrutiny of the prospectus and adaptation of deadlines in order to take account of developments on financial markets and to ensure uniform application of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

*Article 12***Availability of the prospectus**

1. The prospectus once approved shall be filed with the competent authority of the home Member State in an electronic format and must be made available to the public immediately by the issuer or the offeror.
2. The prospectus shall be deemed available to the public by the issuer or the offeror when published either:
 - (a) by insertion in one or more newspapers circulated throughout the Member States in which the offer is made or the admission to trading is sought, or widely circulated therein, or
 - (b) in the form of a brochure to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered offices of the issuer and at the offices of the financial intermediaries placing or selling the securities,
 - (c) in electronic form on the issuer's web-site and, if applicable, on the web-site of the financial intermediaries placing the securities.
3. In any case, the approved prospectus shall be available for consultation on the web-site of the competent authority of the home Member State.
4. In the case of a prospectus drawn up according to Article 5(4), the documents composing the prospectus may be published and circulated separately as long as the said documents are made available, free of charge, to the public, according to the arrangements established in paragraph 2.
5. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, should at all times be identical to the original version approved by and filed with the competent authority.
6. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless, be delivered free of charge to the investor on request.
7. Detailed technical rules on publication and availability of the prospectus shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

*Article 13***Advertising**

1. Advertisements, notices, posters shall be communicated in advance to the competent authority of the home Member

State which shall check them before publication against the principles contained in this Article. Those documents shall state that a prospectus will be published and indicate where investors will be able to obtain it.

2. Advertising shall be clearly recognisable as such. The information contained in an advertisement shall be fair, accurate and consistent with that contained in the prospectus.

3. In any case, the information concerning the offer or the admission to trading divulged in an oral form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

4. Information addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings, shall also be disclosed to the public.

5. The dissemination of advertisements, notices, posters announcing the intention to offer securities to the public or the admission to trading, before the prospectus has been made available to the public or before the opening of the subscription shall also comply with technical rules laid down in accordance with the procedure referred to in Article 22(2). These technical rules shall be adopted by the Commission within 180 days after the entry into force of this Directive.

*Article 14***Supplement to the prospectus**

Every significant new factor capable of affecting assessment of the securities which arises or is noted between the time when the prospectus is approved and the definitive closure of the offer or, if applicable, the time when trading begins shall be mentioned in a supplement to the prospectus, scrutinised in the same way and published and made available to the public in accordance with at least the same arrangements as were applied when the original prospectus was disseminated.

CHAPTER IV

MULTINATIONAL OFFERINGS AND ADMISSION TO TRADING*Article 15***Mutual recognition**

1. Where an application has been made for an offer or admission to trading on a regulated market in one or more Member States and the securities have been the subject of a prospectus approved in the home Member State according to Article 11, in the three months preceding the application, the competent authority of the host Member State shall accept the prospectus for public offer or admission to trading.

2. If more than three months have elapsed since the approval of the prospectus by the competent authority of the home Member State, the competent authority of the host Member State where the offer is made or the admission to trading takes place may require for the publication of an updated securities note and summary document to be approved as provided for in Article 11(1), in the case of a prospectus drawn up according to Article 5(4). It may require for a publication of an updated prospectus in the case provided for in Article 5(3).

3. The competent authority of the host Member State may refuse to accept the prospectus only if information items specific to all the relevant host markets according to the rules referred to in Article 6 are not contained in the securities note provided for in Article 5(4), or in the prospectus in the case provided for in Article 5(3).

Article 16

Language regime

Where an offer is made or admission to trading on a regulated market is sought in more than one Member State, the prospectus or, where appropriate, the registration document and the securities note shall also be made available in a language customary in the sphere of finance which is generally accepted by the competent authority of the host Member State. In such case, the competent authority of the host Member State may only require that the summary note be translated into its domestic language.

Article 17

Notification

The competent authority of the home Member State shall provide the competent authority of the Member States where the offer or the admission to trading is made with the prospectus and a certificate of approval attesting that the document has been drawn up in accordance with this Directive.

Article 18

Issuers incorporated in third countries

1. The competent authority of the home Member State, responsible for approving the prospectus of issuers having their registered office in a third country may allow the issuer to use a prospectus drawn up for an offer or admission to trading in a third country provided that

- (a) this prospectus has been drawn up according to the IOSCO Disclosure Standards and
- (b) the information requirements, including information of financial nature, are equivalent to the requirements under this Directive.

Each Member State shall notify the Commission and the Member States of the text of the rules applicable to issuers in third countries and shall notify it without delay of any subsequent amendment affecting them. If within two months of Member States and the Commission having been so notified an objection is raised by a Member State or the Commission on the equivalence of such rules, the Commission shall subject the matter to the procedure referred to in Article 22(2). The Member State shall take the appropriate measures to implement the decisions taken in accordance with that procedure.

Each Member State shall forward to the Commission without delay a list of the issuers incorporated in a third country whose prospectuses have been approved. This list shall be updated every six months.

2. In the case of offer or admission to trading of securities issued by an issuer incorporated in a third country in another Member State the requirements set out under Articles 15, 16 and 17 shall apply.

3. Technical rules to facilitate a concerted attitude between the Member States and ensure an uniform application of paragraphs 1 and 2 shall be adopted by the Commission in accordance with the procedures referred to in Article 22(2).

4. No later than three years after the entry into force of this Directive, the Commission shall draw up a report taking into account the experience acquired in applying this Article.

CHAPTER V

COMPETENT AUTHORITIES

Article 19

Powers

1. Each Member State shall designate the competent administrative authority competent to carry out the duties provided for in this Directive and to ensure that this Directive is applied. They shall inform the Commission thereof.

2. The competent authority must have all the powers necessary for the performance of its functions. A competent authority that has received an application for approving a prospectus shall at least be empowered to:

- (a) require issuers to include in the prospectus supplementary information if necessary for investor protection;
- (b) require issuers, and the persons that control them or are controlled by them to provide information and documents;
- (c) carry out on-site inspections;
- (d) require auditors and managers to provide information;

- (e) suspend a public offer for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
- (f) prohibit or suspend advertising for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
- (g) prohibit a public offer if it finds that the provisions of this Directive have been infringed;
- (h) suspend, or ask the relevant regulated markets to suspend, the trading for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
- (i) prohibit trading if it finds that the provisions of this Directive have been infringed;
- (j) make public the fact that an issuer is failing to comply with its obligations.
3. The competent authority shall, once the securities have been offered to the public or admitted to trading on regulated markets, have the power to:
- (a) require the issuer to disclose all material information which may have an effect on the assessment of the securities offered to public or admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;
- (b) suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests;
- (c) ensure that the issuers whose securities are traded on regulated markets comply with the obligations provided for under Article 17 of Directive 79/279/EEC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position in all Member States where the offer is made or the securities are traded.

Article 20

Professional secrecy

1. Member States shall ensure that all persons employed or formerly employed by the competent authorities shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority, save in summary or aggregate form such that individual issuers or markets cannot be identified, without prejudice to cases covered by criminal law.
2. The competent authorities shall co-operate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose. Paragraph 1 shall not prevent the competent authorities from

exchanging confidential information. 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.

Article 21

Precautionary measures

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer procedures or breaches of the issuer's obligations, resulting from the fact that the securities are admitted to trading, it shall refer these findings to the competent authority of the home Member State.
2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer procedures persist in violating the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the competent authority of the host Member State must amend or abolish those measures.

3. Each decision taken by the competent authority of the host Member State shall be properly justified and subject to the right to apply to the courts in the Member State which adopted it.

CHAPTER VI

IMPLEMENTING MEASURES

Article 22

Committee

1. The Commission shall be assisted by the European Securities Committee, instituted by Commission Decision (2001/. . ./EC) ⁽¹⁾.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

⁽¹⁾ Commission Decision establishing the European Securities Committee not yet adopted.

*Article 23***Penalties**

The Member States shall lay down the rules on penalties, including administrative sanctions, applicable to infringement of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties and administrative sanctions provided for must be effective, proportionate and dissuasive in order to promote compliance with those measures. The Member States shall notify those provisions to the Commission by 31 December 2003 specified in Article 25 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 24***Right of appeal**

Member States shall ensure that decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts.

*Article 25***Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003, at the latest. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS*Article 26***Repeal**

Directives 80/390/EEC and 89/298/EEC shall be repealed with effect from 31 December 2003.

*Article 27***Transitional provisions**

Issuers whose securities have already been admitted to trading on a regulated market when the implementing measures provided for under Article 6 (1) enter into force shall submit to the competent authority of their home Member State the registration document required by Article 5(4) on the occasion of the first presentation of the annual accounts and reports after that date.

*Article 28***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 29***Addresses**

This Directive is addressed to the Member States.

ANNEX I

PROSPECTUS

I. SUMMARY

The summary shall give in a few pages the most important information included in the prospectus, at least covering the following items.

- identity of directors, senior management, advisors and auditors
- offer statistics and expected timetable
- key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors.
- information concerning the issuer
 - history and development of the issuer
 - business overview
- operating and financial review and prospects
 - research and development, patents and licences, etc.
 - trend information
- directors, senior management and employees
- major shareholders and related party transactions
- financial information
 - consolidated statement and other financial information
 - significant changes
- the offer and admission to trading details
 - offer and admission to trading details
 - plan of distribution
 - markets
 - selling shareholders
 - dilution (shares)
 - expenses of the issue
- Additional information
 - share capital
 - memorandum and articles of incorporation
 - documents on display

II. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 5 of the Directive and those responsible for auditing the financial statements.

III. OFFER STATISTICS AND EXPECTED TIMETABLE

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

- A. Offer Statistics
- B. Method and Expected Timetable

IV. KEY INFORMATION

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Selected Financial Data
- B. Capitalisation and Indebtedness
- C. Reasons for the offer and use of proceeds
- D. Risk Factors

V. INFORMATION ON THE COMPANY

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future increases or decreases in such capacity.

- A. History and Development of the Company
- B. Business Overview
- C. Organisational Structure
- D. Property, Plant and Equipment

VI. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating Results
- B. Liquidity and Capital Resources
- C. Research and Development, Patents and Licences, etc.
- D. Trend Information

VII. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

- A. Directors and Senior Management
- B. Compensation
- C. Board Practices
- D. Employees
- E. Share Ownership

VIII. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major Shareholders
- B. Related Party Transactions
- C. Interests of Experts and Counsel

IX. FINANCIAL INFORMATION

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined according to international accounting and auditing standards.

- A. Consolidated Statements and Other Financial Information
- B. Significant Changes

X. THE OFFER AND ADMISSION TO TRADING DETAILS

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and Admission to Trading
- B. Plan of Distribution
- C. Markets
- D. Selling Securities Holders
- E. Dilution (for equity securities only)
- F. Expenses of the Issue

XI. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share Capital
 - B. Memorandum and Articles of Association
 - C. Material Contracts
 - D. Exchange Controls
 - E. Taxation
 - F. Dividends and Paying Agents
 - G. Statement by Experts
 - H. Documents on Display
 - I. Subsidiary Information
-

ANNEX II

REGISTRATION DOCUMENT

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 5 of the Directive and those responsible for auditing the financial statements.

II. KEY INFORMATION ABOUT THE ISSUER

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

A. Selected Financial Data

B. Capitalisation and Indebtedness

C. Risk Factors

III. INFORMATION ON THE COMPANY

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future increases or decreases in such capacity.

A. History and Development of the Company

B. Business Overview

C. Organisational Structure

D. Property, Plant and Equipment

IV. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

A. Operating Results

B. Liquidity and Capital Resources

C. Research and Development, Patents and Licenses, etc.

D. Trend Information

V. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

A. Directors and Senior Management

B. Compensation

C. Board Practices

D. Employees

E. Share Ownership

VI. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major Shareholders
- B. Related Party Transactions
- C. Interests of Experts and Counsel

VII. FINANCIAL INFORMATION

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined according to international accounting and auditing standards.

- A. Consolidated Statements and Other Financial Information
- B. Significant Changes

VIII. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share Capital
 - B. Memorandum and Articles of Association
 - C. Material Contracts
 - D. Statement by Experts
 - E. Documents on Display
 - F. Subsidiary Information
-

ANNEX III

SECURITIES NOTE

I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 5 of the Directive and those responsible for auditing the financial statements.

II. OFFER STATISTICS AND EXPECTED TIMETABLE

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

- A. Offer Statistics
- B. Method and Expected Timetable

III. KEY INFORMATION ABOUT THE ISSUER

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

- A. Capitalisation and Indebtedness
- B. Reasons for the offer and use of proceeds
- C. Risk Factors

IV. INTERESTS OF EXPERTS

The purpose is to provide information regarding transactions the company has entered into with experts or counsellors employed on a contingent basis.

V. THE OFFER AND ADMISSION TO TRADING DETAILS

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and Admission to Trading
- B. Plan of Distribution
- C. Markets
- D. Selling Securities Holders
- E. Dilution (for equity securities only)
- F. Expenses of the Issue

VI. ADDITIONAL INFORMATION

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Exchange Controls
 - B. Taxation
 - C. Dividends and Paying Agents
 - D. Statement by Experts
 - E. Documents on Display
-

ANNEX IV

SUMMARY NOTE

The summary should give in a few pages the most important information included in the prospectus, at least coming from the following items.

- identity of directors, senior management, advisors and auditors
 - offer statistics and expected timetable
 - key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors.
 - information concerning the issuer
 - history and development of the issuer
 - business overview
 - operating and financial review and prospects
 - research and developments, patents and licences, etc.
 - trend information
 - directors, senior management and employees
 - major shareholders and related party transactions
 - financial information
 - consolidated statement and other financial information
 - significant changes
 - the offer and admission to trading details
 - offer and admission to trading details
 - plan of distribution
 - markets
 - selling shareholders
 - dilution (shares)
 - expenses of the issue
 - Additional information
 - share capital
 - memorandum and articles of incorporation
 - documents on display
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