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(Acts whose publication is obligatory)

DIRECTIVE 94/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 1994

amending Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock-exchange listing, with regard to the obligation to publish listing particulars

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

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

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

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽³⁾,

Whereas one of the main goals of the Directive in the
field of securities listing is to create the conditions for
greater interpenetration of securities markets in the
Community by removing those obstacles that may
prudently be removed;

Whereas cross-border listing within the Community is
one of the available means of making such
interpenetration a reality;

Whereas a major difficulty in seeking admission to listing
in other Member States is the lengthy procedures, as well
as the costs associated with the publication of listing
particulars as required by 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⁾;

Whereas Council Directive 87/345/EEC of 22 June 1987
amending Directive 80/390/EEC coordinating the
requirements for the drawing up, scrutiny and
distribution of the listing particulars to be published for
the admission of securities to official stock-exchange
listing ⁽⁵⁾, which provides for the mutual recognition of
listing particulars when admission is sought
simultaneously in two or more Member States, was an
important step in the simplification of cross-border listing
procedures;

Whereas Council Directive 90/211/EEC of 23 April 1990
amending Directive 80/390/EEC in respect of the
mutual recognition of public-offer prospectuses as
stock-exchange listing particulars ⁽⁶⁾, which recognizes a
public-offer prospectus as listing particulars when
admission to official listing is requested within a short
period of the public offer, was another important step in
the same direction;

Whereas every new measure simplifying cross-border
procedures even further may accelerate the
interpenetration of securities markets in the Community;

Whereas Article 6 of Directive 80/390/EEC already
defines a number of instances in which competent
authorities may provide for partial or complete
exemption from the obligation to publish listing
particulars; whereas such partial or complete exemptions,
which mainly concern cases in which securities of the
same class are already listed on an official exchange in
the same country and therefore have no application to
most cross-border cases, are provided for on the

⁽¹⁾ OJ No C 23, 27. 1. 1993, p. 6.
OJ No C 88, 25. 3. 1994, p. 3.

⁽²⁾ OJ No C 161, 14. 6. 1993, p. 31.

⁽³⁾ Opinion of the European Parliament of 15 December 1993
(OJ No C 20, 24. 1. 1994). Council common position of
4 March 1994 (OJ No C 137, 19. 5. 1994) and Decision of
the European Parliament of 20 April 1994 (OJ No C 128,
9. 5. 1994).

⁽⁴⁾ OJ No L 100, 17. 4. 1980, p. 1.

⁽⁵⁾ OJ No L 185, 4. 7. 1987, p. 81.

⁽⁶⁾ OJ No L 112, 3. 5. 1990, p. 24.

assumption that investors in that country are already partially or fully protected because up-to-date, reliable information, partial or full, concerning the companies in question is already widely circulated and available;

Whereas the faculty provided for in this Directive is a useful measure in that it complies with the principle of the protection of investors while ensuring proper operation of the markets;

Whereas it seems appropriate to provide for the possibility for the Member State in which admission to official listing is sought in certain cases to grant partial or complete exemption from the obligation to publish listing particulars to issuers the securities of which have already been admitted to official stock-exchange listing in another Member State;

Whereas companies which have already been listed in the Community for some time and are of high quality and international standing are the most likely candidates for cross-border listing; whereas those companies are generally well known in most Member States; whereas information concerning them is widely circulated and available;

Whereas the aim of Directive 80/390/EEC is to ensure that sufficient information is provided for investors; whereas, therefore, when such a company seeks to have its securities admitted to listing in a host Member State, investors operating on the market in that country may be sufficiently protected by receiving only simplified information rather than full listing particulars;

Whereas Member States may find it useful to establish non-discriminatory minimum quantitative criteria, such as the current equity market capitalization, which issuers must fulfil to be eligible to benefit from the possibilities for exemption provided for in this Directive; whereas, given the increasing integration of securities markets, it should equally be open to the competent authorities to give smaller companies similar treatment;

Whereas, furthermore, many stock exchanges have second-tier markets in order to deal in shares of companies not admitted to official listing; whereas in some cases the second-tier markets are regulated and supervised by authorities recognized by public bodies that impose on companies disclosure requirements equivalent in substance to those imposed on officially listed companies; whereas, therefore, the principle underlying Article 6 of Directive 80/390/EEC could also be applied when such companies seek to have their securities admitted to official listing;

Whereas the measures contemplated represent true added value measured in terms of higher efficiency in the operation of Community securities markets, resulting from the adaptation of existing Community legislation to

new market needs and realities; whereas those measures, by providing sufficient new ground for the exclusive responsibility of the competent authorities in each Member State, while still maintaining an adequate level of regulation at Community level, also represent for the time being the most appropriate answer to the new needs in the field of the admission of securities to official listing;

Whereas the system provided for in Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing ⁽¹⁾, is not affected by the partial or complete exemption from the obligation to publish listing particulars contemplated in this Directive;

Whereas in order to protect investors the documents intended to be made available to the public must first be sent to the competent authorities in the Member State in which admission to official listing is sought; whereas it is for that Member State to decide whether those documents should be scrutinized by its competent authorities and to determine, if necessary, the nature and the manner in which that scrutiny should be carried out,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. In Article 6, the following paragraphs shall be added:

4. where
 - (a) the securities or the shares of the issuer or certificates representing such shares have been officially listed in another Member State for not less than three years before the application for admission to official listing;
 - (b) to the satisfaction of the competent authorities of the Member State in which admission to official listing is sought, the competent authorities of the Member State or Member States in which the issuer's securities are officially listed have confirmed that during the preceding three years or during the entire time the issuer's securities have been listed, if that is less than three years, the issuer has complied with all the requirements concerning information and

⁽¹⁾ OJ No L 66, 16. 3. 1979, p. 21.

admission to listing imposed by Community Directives on companies the securities of which are officially listed;

(c) all the following are published in the manner stipulated in Articles 20 and 21 (1):

(i) a document containing the following information:

- a statement that application has been made for admission of the securities to official listing. In the case of shares, the statement shall also specify the number and class of the shares in question and give a concise description of the rights attaching thereto. In the case of certificates representing shares the statement shall also specify the rights attaching to the original securities and give information concerning the possibility of converting the certificates into original securities and the procedure for that conversion. In the case of debt securities the statement shall also specify the nominal amount of the loan (if that amount is not fixed, a statement to that effect shall be made) and the conditions and terms of the loan; except in the case of continuous issues, the issue and redemption prices and the nominal interest rate (if several interest rates are provided for, an indication of the conditions governing changes in the rate); in the case of convertible debt securities, exchangeable debt securities, debt securities with warrants or warrants the statement shall also specify the nature of the shares offered by way of conversion, exchange or subscription, the rights attaching thereto, the conditions of and procedures for conversion, exchange or subscription and details of the circumstances in which they may be amended,
- details of any significant change or development which has occurred since the date to which the documents referred to in (ii) and (iii) relate,
- information specific to the market in the country in which admission is sought concerning in particular the income tax system, the paying agent for the issuer and the ways in which notices to investors are published, and

— a declaration by the persons responsible for the information given in accordance with the first three indents that such information is in accordance with the facts and includes no omissions likely to affect the import of the document;

(ii) the latest annual report, the latest audited annual accounts (where the issuer prepares both own and consolidated annual accounts both sets of accounts shall be supplied. The competent authorities may, however, allow the issuer to supply either his own or the consolidated accounts, on condition that the accounts which are not supplied do not provide any significant additional information) and the issuer's latest half-yearly statement for the year in question where it has already been published;

(iii) any listing particulars, prospectus or equivalent document published by the issuer in the 12 months preceding the application for admission to official listing; and

(iv) the following information where it is not already given in the documents provided for in (i), (ii) and (iii):

— the composition of the company's administrative, management and supervisory bodies and the functions performed by individual members,

— general information about the capital,

— the current situation on the basis of the latest information communicated to the issuer under Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of⁽¹⁾, and

— any reports concerning the last published annual accounts by the official auditors required by the national law of the Member State within the territory of which the issuer's registered office is situated;

⁽¹⁾ OJ No L 348, 17. 12. 1988, p. 62.

- (d) the notices, bills, posters and documents announcing the admission of the securities to official listing and indicating the essential characteristics of those securities and all other documents relating to their admission and intended for publication by the issuer or on his behalf state that the information referred to in (c) exists and indicate where it is being or will be published in the manner prescribed in Article 20; and
- (e) the information referred to in (c) and the notices, bills, posters and documents referred to in (d) have been sent to the competent authorities before being made available to the public;
5. where companies the shares in which have already been dealt in for at least the preceding two years on a second-tier market, regulated and supervised by authorities recognized by public bodies, seek to have their securities admitted to official listing in the same Member State and, in the opinion of the competent authorities, information equivalent in substance to that required by this Directive is available to investors before the date on which admission to official listing becomes effective.';

2. The following Article 6a shall be inserted:

'Article 6a

The information referred to in Article 6 (4) (c) and (d) shall be published in the official language or one of the official languages of the Member State in which admission to official listing is sought or in another language, provided that in the Member State in question that other language is customary in the

sphere of finance, accepted by the competent authorities and, where appropriate, such further conditions as they may impose are complied with'.

Article 2

1. Those Member States which intend to make use of the option provided for in this Directive shall bring into force the provisions necessary for them to comply with this Directive at any time after its publication. They shall forthwith inform the Commission thereof.
2. When the Member States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. The Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 30 May 1994.

*For the
European Parliament
The President
E. KLEPSCH*

*For the Council
The President
G. ROMEOS*