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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.