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COUNCIL DIRECTIVE

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

(80/390/EEC)

(OJ L 100, 17.4.1980, p. 1)

Amended by:

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		No	page	date
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►**M2**	Council Directive 87/345/EEC of 22 June 1987	L 185	81	4.7.1987

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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

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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 the market in which undertakings operate has been enlarged to embrace the whole Community and this enlargement involves a corresponding increase in their financial requirements and extension of the capital markets on which they must call to satisfy them; whereas admission to official listing on stock exchanges of Member States of securities issued by undertakings constitutes an important means of access to these capital markets; whereas furthermore exchange restrictions on the purchase of securities traded on the stock exchanges of another Member State have been eliminated as part of the liberalization of capital movements;

Whereas safeguards for the protection of the interests of actual and potential investors are required in most Member States of undertakings offering their securities to the public, either at the time of their offer or of their admission to official stock exchange listing; whereas such safeguards require the provision of information which is sufficient and as objective as possible concerning the financial circumstances of the issuer and particulars of the securities for which admission to official listing is requested; whereas the form under which this information is required usually consists of the publication of listing particulars;

Whereas the safeguards required differ from Member State to Member State, both as regards the contents and the layout of the listing particulars and the efficacy, methods and timing of the check on the information given therein; whereas the effect of these differences is not only to make it more difficult for undertakings to obtain admission of securities to official listing on stock exchanges of several Member States but also to hinder the acquisition by investors residing in one Member State of securities listed on stock exchanges of other Member States and thus to inhibit the financing of the undertakings and investment throughout the Community;

Whereas these differences should be eliminated by coordinating the rules and regulations without necessarily making them completely uniform, in order to achieve an adequate degree of equivalence in the safeguards required in each Member State to ensure the provision of information which is sufficient and as objective as possible for actual or potential security holders; whereas at the same time, taking into account the present degree of liberalization of capital movements in the Community and the fact that a mechanism for checking at the time the securities are offered does not yet exist in all Member States, it would appear sufficient at present to limit the coordination to the admission of securities to official stock exchange listing;

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[1] OJ No C 131, 13. 12. 1972, p. 61.
[2] OJ No C 11, 7. 2. 1974, p. 24.
[3] OJ No C 125, 16. 10. 1974, p. 1.

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Whereas such coordination must apply to securities independently of the legal status of the issuing undertaking, and accordingly, in so far as this Directive applies to entities to which no reference is made in the second paragraph of Article 58 of the Treaty and goes beyond the scope of Article 54 (3) (g), it must be based also on Article 100,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

General provisions

Article 1

1. This Directive shall apply to securities which are the subject of an application for admission to official listing on a stock exchange situated or operating within a Member State.

2. This Directive shall not apply to:

— units issued by collective investment undertakings other than the closed-end type,

— securities issued by a State or by its regional or local authorities.

Article 2

For purposes of applying this Directive:

(a) 'collective investment undertakings other than the closed-end type' shall mean 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 risk spreading, and

— the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings. Action taken by such undertakings to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption;

(b) 'units of a collective investment undertaking' shall mean securities issued by a collective investment undertaking as representing the rights of participants in the assets of such an undertaking;

(c) 'issuers' shall mean companies and other legal persons and any undertaking whose securities are the subject of an application for admission to official listing on a stock exchange;

(d) 'net turnover' shall comprise the amounts derived from the sale of products and the provision of services falling within the undertaking's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover;

(e) 'credit institution' shall mean an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

(f) 'participating interest' shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds these rights;

(g) 'annual accounts' shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

Article 3

Member States shall ensure that the admission of securities to official listing on a stock exchange situated or operating within their territories is conditional upon the publication of an information sheet, hereinafter referred to as listing particulars.

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Article 4

1. The listing particulars shall contain the information which, according to the particular nature of the issuer and of the securities for the admission of which application is being made, is necessary to enable investors and their investment advisers to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of the rights attaching to such securities.

2. Member States shall ensure that the obligation referred to in paragraph I is incumbent upon the persons responsible for the listing particulars as provided for in heading 1.1 of Schedules A and B annexed hereto.

Article 5

1. Without prejudice to the obligation referred to in Article 4, Member States shall ensure that, subject to the possibilities for exemptions provided for in Articles 6 and 7, listing particulars contain, in as easily analysable-and comprehensible a form as possible, at least the items of information provided for in Schedules A, B or C, depending on whether shares, debt securities or certificates representing shares are involved.

2. In the specific cases covered by Articles 8 to 17 the listing particulars are to be drawn up in accordance with the specifications given in those Articles, subject to the possibilities for exemptions provided for in Articles 6 and 7.

3. Where certain headings in Schedules A, B and C appear inappropriate to the issuer's sphere of activity or legal form, listing particulars giving equivalent information shall be drawn up by adapting these headings.

Article 6

Member States may allow the authorities responsible for checking the listing particulars within the meaning of this Directive (hereinafter referred to as 'the competent authorities') to provide for partial or complete exemption from the obligation to publish listing particulars in the following cases:

1. where the securities for which admission to official listing is applied for are:

   (a) securities which have been the subject of a public issue;

   (b) securities issued in connection with a takeover offer;

   (c) securities issued in connection with a merger involving the acquisition of another company or the formation of a new company, the division of a company, the transfer of all or part of an undertaking's assets and liabilities or as consideration for the transfer of assets other than cash;

   and where, not more than 12 months before the admission of the securities to official listing, a document, regarded by the competent authorities as containing information equivalent to that of the listing particulars provided for by this Directive, has been published in the same Member State. Particulars shall also be published of any material changes which have occurred since such document was prepared. The document must be made available to the public at the registered office of the issuer and at the offices of the financial organizations retained to act as the latter's paying agents, and any particulars of material changes shall be published in accordance with Articles 20 (1) and 21 (1).

2. where the securities for which admission to official listing is applied for are:

   (a) shares allotted free of charge to holders of shares already listed on the same stock exchange; or

   (b) shares resulting from the conversion of convertible debt securities or shares created after an exchange for exchangeable debt securities, if shares of the company whose shares are offered by

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way of conversion or exchange are already listed on the same stock exchange; or

(c) shares resulting from the exercise of the rights conferred by warrants, if shares of the company whose shares are offered to holders of the warrants are already listed on the same stock exchange; or

(d) shares issued in substitution for shares already listed on the same stock exchange if the issuing of such new shares does not involve any increase in the company's issued share capital;

and, where appropriate, the information provided for in Chapter 2 of Schedule A is published in accordance with Articles 20 (1) and 21 (1).

3. where the securities for which admission to official listing is applied for are:

(a) shares of which either the number or the estimated market value or the nominal value or, in the absence of a nominal value, the accounting par value, amounts to less than 10 % of the number or of the corresponding value of shares of the same class already listed on the same stock exchange; or

(b) debt securities issued by companies and other legal persons which are nationals of a Member State and which:

— in carrying on their business, benefit from State monopolies, and

— are set up or governed by a special law or pursuant to such a law or whose borrowings are unconditionally and irrevocably guaranteed by a Member State or one of a Member State's federated States; or

(c) debt securities issued by legal persons, other than companies, which are nationals of a Member State, and

— were set up by special law, and

— whose activities are governed by that law and consist solely in:

(i) raising funds under state control through the issue of debt securities, and

(ii) financing production by means of the resources which they have raised and resources provided by a Member State, and

— the debt securities of which are, for the purposes of admission to official listing, considered by national law as debt securities issued or guaranteed by the State; or

(d) shares allotted to employees, if shares of the same class have already been admitted to official listing on the same stock exchange; shares which differ from each other solely as to the date of first entitlement to dividends shall not be considered as being of different classes; or

(e) securities already admitted to official listing on another stock exchange in the same Member State; or

(f) shares issued in consideration for the partial or total renunciation by the management of a limited partnership with a share capital of its statutory rights over the profits, if shares of the same class have already been admitted to official listing on the same stock exchange; shares which differ from each other solely as to the date of first entitlement to dividends shall not be considered as being of different classes; or

(g) supplementary certificates representing shares issued in exchange for the original securities, where the issuing of such new certificates has not brought about any increase in the company's issued capital, and provided that certificates representing such shares are already listed on the same stock exchange, and where:

— in the case of (a), the issuer has complied with the stock exchange publicity requirements imposed by the national authorities and has produced annual accounts and annual and