II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 5 March 1979

coordinating the conditions for the admission of securities to official stock exchange listing

(79/279/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

Whereas the coordination of the conditions for the admission of securities to official listing on stock exchanges situated or operating in the Member States is likely to provide equivalent protection for investors at Community level, because of the more uniform guarantees offered to investors in the various Member States ; whereas it will facilitate both the admission to official stock exchange listing, in each such State, of securities from other Member States and the listing of any given security on a number of stock exchanges in the Community ; whereas it will accordingly make for greater interpenetration of national securities markets and therefore contribute to the prospect of establishing a European capital market ;

Whereas such coordination must therefore apply to securities, independently of the legal status of their issuers, and must therefore also apply to securities issued by non-member States or their regional or local authorities or international public bodies ; whereas this Directive therefore covers entities not covered by the second paragraph of Article 58 of the Treaty and goes beyond the scope of Article 54 (3) (g) while directly affecting the establishment and functioning of the common market within the meaning of Article 100 ;

Whereas there should be the possibility of a right to apply to the courts against decisions by the competent national authorities in respect of the application of this Directive, although such right to apply must not be allowed to restrict the discretion of these authorities ;

Whereas, initially, this coordination should be sufficiently flexible to enable account to be taken of present differences in the structures of securities markets in the Member States and to enable the Member States to take account of any specific situations with which they may be confronted ;

Whereas, for this reason, coordination should first be limited to the establishment of minimum conditions for the admission of securities to official listing on stock exchanges situated or operating in the Member States, without however giving issuers any right to listing ;

Whereas, this partial coordination of the conditions for admission to official listing constitutes a first step towards subsequent closer alignment of the rules of Member States in this field,

(1) OJ No C 56, 10. 3. 1976, p. 3.
(2) OJ No C 238, 11. 10. 1976, p. 38.
(3) OJ No C 204, 30. 8. 1976, p. 5.

HAS ADOPTED THIS DIRECTIVE :

SECTION I

General provisions

Article 1

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

2. Member States may decide not to apply this Directive to :

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

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

Article 2

For the 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 request of holders, 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 shall mean securities issued by collective investment undertakings as representing the rights of participants in the assets of such undertakings ;

(c) European unit of account shall mean the unit of account as defined in Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [1].

Article 3

Member States shall ensure that :

— securities may not be admitted to official listing on any stock exchange situated or operating within their territory unless the conditions laid down by this Directive are satisfied, and that

— issuers of securities admitted to such official listing, whether admission takes place before or after the date on which this Directive is implemented, are subject to the obligations provided for by this Directive.

Article 4

1. The admission of securities to official listing shall be subject to the conditions set out in Schedules A and B to this Directive, relating to shares and debt securities respectively.

2. The issuers of securities admitted to official listing must fulfil the obligations set out in Schedules C and D to this Directive, relating to shares and debt securities respectively.

3. Certificates representing shares may be admitted to official listing only if the issuer of the shares represented fulfils the conditions set out in I (1) to I (3) of Schedule A and the obligations set out in Schedule C and if the certificates fulfil the conditions set out in II (1) to II (6) of Schedule A.

Article 5

1. Subject to the prohibitions provided for in Article 6 and in Schedules A and B, the Member States may make the admission of securities to official listing subject to more stringent conditions than those set out in Schedules A and B or to additional conditions, provided that these more stringent and additional conditions apply generally for all issuers or for individual classes of issuer and that they have been published before application for admission of such securities is made.

2. Member States may make the issuers of securities admitted to official listing subject to more stringent obligations than those set out in Schedules C and D or to additional obligations, provided that these more stringent and additional obligations apply generally for all issuers or for individual classes of issuer.

3. Member States may, under the same conditions as those laid down in Article 7, authorize derogations from the additional or more stringent conditions and obligations referred to in paragraphs 1 and 2 hereof.

4. Member States may, in accordance with the applicable national rules require issuers of securities admitted to official listing to inform the public on a regular basis of their financial position and the general course of their business.

[1] OJ No L 356, 31. 12. 1977, p. 1.

Article 6

Member States may not make the admission to official listing of securities issued by companies or other legal persons which are nationals of another Member State subject to the condition that the securities must already have been admitted to official listing on a stock exchange situated or operating in one of the Member States.

Article 7

Any derogations from the conditions for the admission of securities to official listing which may be authorized in accordance with Schedules A and B must apply generally for all issuers where the circumstances justifying them are similar.

Article 8

Member States may decide not to apply the conditions set out in Schedule B and the obligations set out in A (4) (a) and (c) of Schedule D in respect of applications for admission to official listing of debt securities issued by companies and other legal persons which are nationals of a Member State and which are set up by, governed by or managed pursuant to a special law where repayments and interest payments in respect of those securities are guaranteed by a Member State or one of its federal states.

SECTION II

Authorities competent to admit securities to official listing

Article 9

1. Member States shall designate the national authority or authorities competent to decide on the admission of securities to official listing on a stock exchange situated or operating within their territories and shall ensure that this Directive is applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.

2. Member States shall ensure that the competent authorities have such powers as may be necessary for the exercise of their duties.

3. Without prejudice to the other powers conferred upon them, the competent authorities may reject an application for the admission of a security to official listing if, in their opinion, the issuer's situation is such that admission would be detrimental to investors' interests.

Article 10

By way of derogation from Article 5, Member States may, solely in the interests of protecting the investors, give the competent authorities power to make the admission of a security to official listing subject to any special condition which the competent authorities consider appropriate and of which they have explicitly informed the applicant.

Article 11

The competent authorities may refuse to admit to official listing a security already officially listed in another Member State where the issuer fails to comply with the obligations resulting from admission in that Member State.

Article 12

Without prejudice to any other action or penalties which they may contemplate in the event of failure on the part of the issuer to comply with the obligations resulting from admission to official listing, the competent authorities may make public the fact that an issuer is failing to comply with those obligations.

Article 13

1. An issuer whose securities are admitted to official listing shall provide the competent authorities with all the information which the latter consider appropriate in order to protect investors or ensure the smooth operation of the market.

2. Where protection of investors or the smooth operation of the market so requires, an issuer may be required by the competent authorities to publish such information in such a form and within such time limits as they consider appropriate. Should the issuer fail to comply with such requirement, the competent authorities may themselves publish such information after having heard the issuer.

Article 14

1. The competent authorities may decide to suspend the listing of a security where the smooth operation of the market is, or may be, temporarily jeopardized or where protection of investors so requires.

2. The competent authorities may decide that the listing of the security be discontinued where they are satisfied that, owing to special circumstances, normal regular dealings in a security are no longer possible.

Article 15

1. Member States shall ensure decisions of the competent authorities refusing the admission of a security to official listing or discontinuing such a listing shall be subject to the right to apply to the courts.

2. An applicant shall be notified of a decision regarding his application for admission to official listing within six months of receipt of the application or, should the competent authority require any further information within that period, within six months of the applicant's supplying such information.

3. Failure to give a decision within the time limit specified in paragraph 2 shall be deemed a rejection of the application. Such rejection shall give rise to the right to apply to the courts provided for in paragraph 1.

Article 16

Where an application for admission to official listing relates to certificates representing shares, the application shall be considered only if the competent authorities are of the opinion that the issuer of the certificates is offering adequate safeguards for the protection of investors.

SECTION III

Publication of the information to be made available to the public

Article 17

1. The information which issuers of a security admitted to official listing in a Member State are required to make available to the public in accordance with the requirements of Schedules C and D shall be published in one or more newspapers distributed throughout the Member State or distributed widely therein or shall be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout the Member State or widely distributed therein or by other equivalent means approved by the competent authorities. The issuers must simultaneously send such information to the competent authorities.

2. The information referred to in paragraph 1 shall be published in the official language or languages, or in one of the official languages or in another language provided that in the Member State in question the official language or languages or such other language is or are customary in the sphere of finance and accepted by the competent authorities.

SECTION IV

Cooperation between Member States

Article 18

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

2. Where applications are to be made simultaneously or within short intervals of one another for admission of the same securities to official listing on stock exchanges situated or operating in more than one Member State, or where an application for admission is made in respect of a security already listed on a stock exchange in another Member State, the competent authorities shall communicate with each other and make such arrangements as may be necessary to expedite the procedure and simplify as far as possible the formalities and any additional conditions required for admission of the security concerned.

3. In order to facilitate the work of the competent authorities, any application for the admission of a security to official listing on a stock exchange situated or operating in a Member State must state whether a similar application is being or has been made in another Member State, or will be made in the near future.

Article 19

1. Member States shall provide that all persons employed or formerly employed by the competent authorities shall be bound by professional secrecy. This means that any confidential information received in the course of their duties may not be divulged to any person or authority except by virtue of provisions laid down by law.

2. Paragraph 1 shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. 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.

SECTION V

Contact Committee

Article 20

1. A Contact Committee (hereinafter called 'the Committee') shall be set up alongside the Commission. Its function shall be :

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

(b) to facilitate the establishment of a concerted attitude between the Member States on the more stringent or additional conditions and obligations which, pursuant to Article 5 of this Directive, they may lay down at national level;

(c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments to be made in accordance with Article 21.

2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The chairman shall be a representative of the Commission. Secretarial services shall be provided by the Commission.

4. Meetings of the Committee shall be convened by its chairman, either on his own initiative or at the request of one Member State delegation. The Committee shall draw up its rules of procedure.

Article 21

1. For the purpose of adjusting, in the light of the requirements of the economic situation, the minimum amount of the foreseeable market capitalization laid down in the first paragraph of I (2) of Schedule A, the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion within the period laid down by its chairman. Its decisions shall require 41 votes in favour, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty.

2. When the Committee has delivered an opinion in favour of the draft of the measures envisaged by the Commission the latter shall adopt them.

Where the opinion of the Committee is not in accordance with the draft of the measures envisaged by the Commission or where the Committee has not delivered an opinion within the required period, the Commission shall without delay lay before the Council, which shall act by qualified majority, a proposal concerning the measures to be taken.

Where the Council fails to act on the proposal within three months of its receipt, the measures proposed shall be adopted by the Commission.

SECTION VI

Final provisions

Article 22

1. Member States shall take the measures necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

This period shall be extended by one year in the case of Member States simultaneously introducing this Directive and the proposed Council Directive on the particulars to be published when securities issued by companies within the meaning of the second paragraph of Article 58 of the Treaty are admitted to official stock-exchange listing.

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

Article 23

This Directive is addressed to the Member States.

Done at Brussels, 5 March 1979.

For the Council

The President

J. FRANÇOIS-PONCET