

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

Council Directive

on information to be published on a regular basis by
companies whose transferable securities are admitted to official stock exchange listing

(submitted to the Council by the Commission)

Explanatory memorandum

INTRODUCTION

Official stock exchanges are an element of primary importance in the capital markets of the Member States. This means that in promoting interpenetration as between one EEC stock exchange and another, a significant step is taken towards the creation of a European capital market.

Such interpenetration presupposes that issuers from one Member State are able to become quoted on the official stock exchanges of one or more of the other Member States, without obstacles being placed in their way in the shape of differing rules and regulations. Interpenetration is made more difficult by differences in the rules and regulations applying to stock exchanges in the various Member States. It is with a view to reducing such differences and to achieving a first stage of coordination that the Commission has already forwarded to the Council proposals for directives relating to the prospectus to be published when securities are admitted to official stock exchange listing¹ and to conditions of admission to official stock exchange listing². The present proposal represents an essential complement to these two proposals.

It should be borne in mind that all three proposals are also intended to ensure that standards of investor protection and information are maintained at a high and more uniform standard throughout the Community.

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¹Original proposal of 5.10.1972, modified on 8.12.1975, OJ C 131 of 13.12.1972.

²Original proposal of 30.12.1975, modified on 3.11.1976, OJ C 56 of 10.3.1976.

The directive relating to the admission prospectus regulates on a minimum basis information to be provided to investors at the moment when securities are admitted to official quotation. The Commission considers it essential to supplement this measure by providing to investors and to potential investors information about the issuers of such securities during the entire period that the securities are admitted to quotation.

At Community level, this second type of information is to be made available as follows:

1. By requiring quoted companies to make their annual accounts available to investors in the Member States where the securities are quoted;
2. by requiring information of an exceptional nature which is price-sensitive to be published as soon as possible after the event in question;
3. by providing that half-yearly reports relating to the business of quoted companies during the first six months of each of their financial years be published on a regular basis.

The first two requirements mentioned above are already provided for in the proposal relating to conditions of admission to official stock exchange listing; the third requirement is dealt with in the present proposal.

The principle of the obligation to publish regular information was originally contained in the proposal relating to conditions of admission to official stock exchange listing, the intention being to draw up a separate proposal for a directive at a later stage containing detailed rules on this subject. It appeared, however, that this approach would have caused difficulties in those Member States which do not as yet have a half-yearly reporting requirement - such Member States would have been obliged to introduce such an obligation, but without knowing the content of the information that would be required later on. It was decided therefore to delete all references to continuing information from the proposal relating to conditions of admission, and to deal with this topic entirely in the context of the present proposal.

THE INDIVIDUAL ARTICLES

Articles 1 and 2

The directive will apply to companies whose transferable securities are officially listed on an EEC stock exchange. Companies are under a particular obligation to keep the investing public informed as to their affairs once they apply for their securities to be traded on an official market. It should be noted that the directive will therefore also apply to companies from third countries provided that their securities are listed within the Community.

The securities to which the directive will apply are shares, convertible debentures, exchangeable debentures, debentures with warrants attached, and participating debentures. This list does not include "normal" debentures; the holder of such a security is entitled to receive payment of interest at fixed dates, and also to be reimbursed the capital sum at the end of the period of the loan. Hence, it does not appear necessary to provide such a debenture holder with regular information about development of the company's business. It should be borne in mind that the proposal for a directive relating to conditions of admission obliges all listed companies, including those having only "normal" debentures admitted to official quotation, to make their annual accounts available to the public so that the holder of a "normal" debenture will have access to the annual accounts, which appear sufficient to satisfy his information requirements.

In the case of the other types of debenture mentioned in Article 1 it is considered that the debenture holder is really equivalent to a shareholder, because the value of his security is more closely related to the progress of the company's business, and that he should therefore receive the same information as shareholders.

The term "participating debentures" perhaps requires some explanation: these debentures are encountered mainly in Belgium, and their characteristic is that the amount of interest payable depends in whole or in part on the results of the company.

It should be noted that the directive will apply not only to companies whose securities are listed after the date of its coming into force, but also to all companies whose securities are already officially listed at that moment.

Finally, the directive will not apply to companies which are investment companies of the open-ended type. Such companies will, in general, come within the scope of the proposal for a directive relating to collective investment undertakings for transferable securities¹, which provides particular rules as regards information to be given to investors.

Article 3

The directive represents only a first step on the road to harmonization, as it did not appear possible to achieve a greater degree of harmonization at this stage. This being the case, the directive contains rules which are minimum ones only. This means that Member States which wish to impose more stringent rules on companies than those contained in the directive are free to do so. As an example of this, the practice in the Federal Republic of Germany is to publish at least two half-yearly reports each year - the directive requires only a single half-yearly report during the course of the financial year. The directive will permit the German practice to continue. Again, in at least one Member State, quoted companies are required to give net profit figures in their half-yearly reports - the directive contains a less stringent requirement in this connection (gross operating result) but will not prevent net profit figures from being continued to be given.

Such more stringent rules must, however, be of general application for all companies, or for individual classes of companies, so as to ensure equal treatment for all companies, whether or not they be from the same Member State in which the securities are quoted.

¹Original proposal of 29.4.1976, modified on 9.6.1977, OJ C 171 of 26.7.1976.

Articles 4, 5 and 6

The half-yearly report must relate to the first six months of the company's financial year, and be published no later than three months after the end of the relevant period.

It was not considered appropriate to require the publication of a second six monthly report, because the annual accounts of companies generally appear within a comparatively short period of the end of the financial year, and to require a second half-yearly report only a few weeks ahead of the annual accounts might result in unnecessary duplication and confusion.

The report is to be divided into two sections, firstly, figures of a financial nature, set out in the form of a table, and secondly, an explanatory statement which should permit investors to understand the true significance of such figures, and generally to appreciate how the company's business has fared during the relevant period.

It will be noted that the type of information required relates to the case of a typical industrial or commercial company. There is of course a wide variety of other types of company quoted on the stock exchange (banking and insurance companies, property companies, investment companies, etc.) for which the information required is not appropriate. It did not appear possible, at the present time, to draw up rules at Community level for each and every type of company; at this stage it seemed sufficient to provide (in Article 11(3)) that the competent authorities shall make suitable adaptations to the information to be given. Article 11(3) does not permit any lessening of the standard of information to be given, but rather ensures that equivalent information is provided, in accordance with the particular nature of the company concerned. The Contact Committee mentioned in Article 12 could usefully discuss ways in which the directive is adapted in this way in the various Member States, so that no undue divergences arise. The Commission could, in any event, return to this subject at a later stage, and possibly provide specific rules for certain particular types of issuer (e.g. banks and insurance companies).

The financial figures required in Article 5(2) are defined (in Article 6) by reference to terms used in the Articles relating to the layout of the profit and loss accounts contained in the Fourth Council Directive on the annual accounts of certain types of companies¹. The reference to terms used in the Fourth Directive is merely for definition purposes, so as to clarify the meaning of the requirements of the present directive.

The explanatory statement will in practice be the directors' responsibility to establish, and its contents are dealt with in Article 5(4), including a list of specific items which must in any event be mentioned, unless such information is of minor importance only. In the latter case, it could be omitted under Article 11(4) first hyphen.

The definition of net turnover in Article 6 corresponds to Article 28 of the Fourth Directive mentioned above, but turnover attributable to the sale of products and provision of services within a group of companies is to be excluded.

Article 7

It is considered that a breakdown of turnover by reference to branches of activity and geographical market is a significant item of information which should be made available to investors; the present directive follows the Fourth Directive and the admission prospectus directive in this regard.

Article 8

This Article does not seek to impose any new obligation as regards consolidation of accounts, but rather provides that basically the same treatment shall be adopted for the half-yearly report as for the company's annual accounts.

¹ Directive No 78/660/EEC - OJ L 222 of 14.8.1978.

Article 9

The intention is that the half-yearly information should be available to the widest possible number of investors, whether they already hold securities in the company or are merely prospective investors.

Publication of the full half-yearly report in newspapers is generally the most immediate means of achieving this objective, but it should be noted that it would also be sufficient to call the public's attention to the existence of the half-yearly report by a brief announcement in the press, which would mention where copies of the report could be obtained.

Copies of the half-yearly report must be supplied to the competent authorities in each Member State that the securities are quoted, but this does not imply that those authorities are responsible for checking the accuracy of the information provided.

Article 10

The directive does not require the half-yearly financial information to be audited, but requires a statement to be included as to whether or not an audit has been carried out, and if so, as to whether any qualifications were made by the auditor.

Article 11

Article 11(3) provides for the possibility of adaptations to be made to the requirements of the directive in accordance with the nature of the company's business (see also the comments above relating to Article 5).

It should be borne in mind that this Article is widely drafted and does not limit itself to the information required under Article 5. An adaptation could for example be made to the requirement as to when the report has to be published, or as to the period to be covered. This might, for example, be necessary in the case of a company whose business was of a seasonal nature,

and for which the observance of the same rules as other companies would not permit investors to have a satisfactory picture of the development of the company's business over the relevant period.

Article 11(4) provides for a dispensation from the requirement to publish information in the cases specified. Such a dispensation might operate if the company could show, for example, that a breakdown of its turnover by geographical market was unduly prejudicial to its interests, and that such information was not essential to be given to investors.

Articles 12, 13 and 14

These are standard articles and call for no especial comment, except for the requirement contained in Article 13(2).

This provision is similar to Article 55(2) of the Fourth Directive relating to the annual accounts of certain types of companies and provides for a transitional period of one year for companies to adapt themselves to the directive's requirements, counting from the date that a Member State takes the measures necessary to comply with the directive, such date being at the latest two years from the date of its notification. In other words, if a Member State decides to comply with the directive at the expiration of a period of (say) 18 months, it can provide that the provisions of the directive will not come into force until 1 year after the expiration of the 18 month period.

The reason why this provision has been included is as follows: Article 5(3) and (4) provide that figures for the corresponding period in the previous financial year must be given. Unless a transitional period is provided, many companies would not have available figures relating to the previous financial year when the directive comes into force. The transitional period is aimed at permitting companies to have such figures available at that moment.

**Proposal for a Council Directive on information to be published on a regular basis
by companies whose transferable securities are admitted to official stock exchange
listing**

(Submitted by the Commission to the Council on 19 January 1979)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas the Sixth Council Directive ... of ... concerning the content, checking and distribution of the prospectus to be published when securities issued by companies within the meaning of Article 58 (2) of the Treaty are admitted to official stock exchange listing seeks to ensure improved protection of investors and a greater degree of equivalence from country to country in the protection provided, by coordinating requirements as to the information to be published at the time of admission;

Whereas, in the case of securities admitted to official stock exchange listing, the protection of investors requires that these latter be supplied with appropriate regular information throughout the entire period during which the securities are listed; whereas coordination of this regular information has similar objectives to those envisaged for the prospectus, namely to improve such protection and to make it more equivalent, to make securities more attractive to investors, to facilitate the quotation of these securities on more than one stock exchange in the Community, and in so doing to contribute towards the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets;

Whereas, under Council Directive ... of ... coordinating the conditions for the admission of securities to official stock exchange listing, quoted companies must at the end of the financial year make available to investors their annual accounts and report giving information on the company for the whole of the financial year; whereas the Fourth

Council Directive 78/660/EEC of 25 July 1978 ⁽¹⁾ has coordinated the laws, regulations and administrative provisions of the Member States concerning the annual accounts of certain types of companies;

Whereas the company should also, at least once during the financial year, make available to investors a report on the company's business; whereas the present Directive can, consequently, be confined to coordinating the content and distribution of a single report covering the first six months of the financial year;

Whereas, however, in the case of ordinary debentures, because of the rights they confer on their bearer, the protection of investors by means of the publication of a half-yearly report is not essential; whereas consequently regular information needs to be coordinated only for companies whose shares, convertible debentures, exchangeable debentures, debentures with warrants attached or participating debentures are admitted to official stock exchange listing;

Whereas the half-yearly report must enable the investors to make an informed appraisal of the general development of the company's activity during the period covered by the report; whereas, however, this report need contain only the essential details on the financial position and general progress of the business of the company in question;

Whereas coordination should be achieved by stages and should therefore be confined at present to the establishment of minimum rules;

Whereas, in order to take account of difficulties resulting from the current state of legislation in certain Member States, a longer period may be provided for companies to adapt themselves to the provisions of the Directive than that provided for the adaptation of national legislation;

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 11.

Whereas, so as to ensure effective protection of investors and the proper operation of stock exchanges, the rules relating to regular information to be published by companies whose securities are admitted to official stock exchange listing within the Community should apply not only to companies from Member States referred to in Article 58 (2) of the Treaty, but also to companies from third countries,

HAS ADOPTED THIS DIRECTIVE:

SECTION I:

General provisions and field of application

Article 1

1. This Directive shall apply to companies whose shares, convertible debentures, exchangeable debentures, debentures carrying warrants or participating debentures are admitted to official listing on a stock exchange situated or operating within the territory of a Member State, whether such securities themselves or certificates representing them are admitted and whether such admission precedes or follows the date when this Directive enters into force.

2. This Directive shall, however, not apply to investment companies other than of the closed-end type.

For the purposes of this Directive, 'investment companies other than of the closed-end type' shall mean investment companies:

- whose object is the collective investment of capital provided by the public, and which operate on the principle of risk spreading, and
- whose units are, at the request of holders, repurchased or redeemed, directly or indirectly, as a charge on the assets of these companies.

Action taken by a company to ensure that the stock exchange value of its units does not significantly vary from the net asset value shall be regarded as equivalent to such repurchase or redemption.

Article 2

The companies referred to in Article 1 shall publish, each financial year, a half-yearly report relating to their activity during the first six months of their financial year.

Article 3

The Member States may make companies to which this Directive applies subject to more rigorous obligations than those contained in this Directive, or to additional obligations, provided that they are of general application for all companies or for individual classes of company.

SECTION II:

Publication and contents of half-yearly report

Article 4

The half-yearly report shall be published within three months of the end of the relevant six-month period.

Article 5

1. The half-yearly report shall consist of figures and an explanatory statement relating to the company's business during the relevant six-month period.

2. The figures, presented in table form, shall show at least the following:

- net turnover,
- other operating income,
- operating charges,
- gross operating result,
- interim dividends (if any) paid or proposed.

3. Against each of the above figures, the figure for the corresponding period in the preceding financial year shall also be shown.

4. The explanatory statement shall enable investors to make an informed appraisal of the company's business during the relevant period and to make a comparison with the corresponding period of the previous financial year. The explanatory statement shall relate to the figures referred to in

paragraph 2 and to at least the following items, giving supporting figures whenever appropriate:

- the number of persons employed,
- investment carried out and decisions taken as to future investment,
- state of the order book,
- the general situation regarding stocks of finished products,
- the degree of capacity utilization,
- any new products or activities which have had a significant effect on turnover.

Article 6

1. For the purposes of this Directive:
 - net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover. Where the half-yearly report is drawn up on a consolidated basis, net turnover shall not comprise the sale of products and provision of services between companies forming part of the group;
 - other operating income shall comprise items 2, 3 and 4 in Article 23 and their equivalents in Article 24, and item 6 of Article 25 and its equivalent in Article 26 of the Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies;
 - operating charges shall comprise items 5, 6, 7 and 8 in Article 23 and their equivalents in Articles 24 and items 2, 4 and 5 of Article 25 and their equivalents in Article 26 of the Fourth Directive referred to above;
 - gross operating result is the difference between (a) the net turnover together with other operating income and (b) operating charges.
2. In respect of companies whose annual accounts do not have to be drawn up in accordance with the Fourth Directive referred to above, the information defined in the second and third indents of paragraph 1 above shall be established in an equivalent manner.

Article 7

Net turnover shall be broken down by categories of activity and into geographical markets, in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another.

Article 8

1. If the company prepares consolidated annual accounts only, the half-yearly report shall be drawn up in consolidated form.
2. If the company prepares both unconsolidated accounts and consolidated accounts, the half-yearly report shall be drawn up in both forms. In that event, however, the competent authority may authorize the company to draw up the half-yearly report either in unconsolidated or in consolidated form, provided that the other form does not convey any significant supplementary information.

Article 9

1. The half-yearly report shall be published in one or more newspapers distributed throughout the country or distributed widely, or in the national gazette, 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 country or widely distributed, or by other equivalent means approved by the competent authorities.

If the transferable securities are admitted to official listing in more than one Member State, the half-yearly report shall be published simultaneously in each such Member State.

2. The half-yearly report shall be published in the official language or languages or in one of the official languages or in another language, provided that, in the State concerned, such official language or languages or such other language are customary in the sphere of finance and are accepted by the competent authorities.
3. The company shall send a copy of the half-yearly report simultaneously, not later than the time of its publication, to the competent authorities of each Member State in which the transferable securities are admitted to official listing.

Article 10

The half-yearly report must state whether the financial information contained therein has or has not been checked by the official auditor of the company's accounts. If the auditor has made any qualifications, these must also be stated.

SECTION III:

Powers of the competent authorities

Article 11

1. The Member States shall designate the national authority or authorities responsible for ensuring that the rules laid down in this Directive are applied. They shall inform the Commission accordingly, indicating, if appropriate, how duties have been allocated.
2. The Member States shall ensure that the competent authorities are invested with such authority and such powers as may be necessary for carrying out their task.
3. In cases where particular requirements of this Directive are inappropriate to the company's sphere of activity, the competent authorities shall ensure that suitable adaptations are made to these requirements.
4. The competent authorities may exempt the company from publishing any information required by this Directive if they are satisfied that:
 - such information is of minor importance only and is unlikely to influence assessment of the development of the company's business;
 - disclosure of such information would be contrary to the public interest or seriously detrimental to the company, provided that, in the latter case, non-publication is not likely to mislead the public with regard to facts and circumstances essential for assessment of the company's transferable securities referred to in Article 1.
5. The provisions of paragraphs 3 and 4 shall also apply to the more rigorous or additional obligations imposed pursuant to Article 3.

SECTION IV:

Contact Committee

Article 12

The Contact Committee established by the Council Directive of ... coordinating the conditions for the admission of securities to official stock exchange listing shall also have as its function:

- (a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of the Directive through regular consultations on any practical problems arising from its application, on which exchanges of opinion are deemed useful;
- (b) to facilitate the establishment of a concerted attitude between the Member States on the more rigorous or additional obligations which they may lay down at purely national level pursuant to Article 3;
- (c) to advise the Commission, if necessary, on any supplements or amendments to be made to the Directive.

SECTION V:

Final provisions

Article 13

1. Member States shall take the measures necessary in order to comply with this Directive within two years of its notification and shall forthwith inform the Commission thereof.
2. The Member States may stipulate that the measures referred to in paragraph 1 shall not apply until one year after the end of the period provided for in that paragraph.
3. With effect from the notification of this Directive, 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 14

This Directive is addressed to the Member States.