

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 27 July 1982

Amended proposal for a

COUNCIL DIRECTIVE

coordinating the requirements for the drawing up, scrutiny and distribution
of the prospectus to be published when securities are offered
for subscription or sale to the public

(presented to the Council by the Commission pursuant to the second
paragraph of Article 149 of the EEC Treaty)

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 19 July 1982)

ORIGINAL VERSION

Proposal for a Council Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public

NEW VERSION

Amended proposal for a Council Directive coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered for subscription or sale to the public

Preamble and recitals unchanged

SECTION I

General provisions

Article 1

1. This Directive shall apply to securities which are offered for subscription or sale to the public within a Member State provided that the securities are not admitted to official listing on a stock exchange situated or operating in that Member State.

2. For the purposes of applying this Directive, securities shall be considered to be offered for subscription or sale to the public where the offer is not addressed exclusively to a restricted circle of persons.

The Member States shall determine what is meant by 'restricted circle of persons' having regard to the number of persons to whom the offer is addressed and, if appropriate, having regard also to their nature, to the amount of the offer, and to the means of publicity used for making the offer.

Article 1

1. This Directive shall apply to securities which are offered **directly or indirectly** by the issuer for subscription or sale to the public **within one or more Member States**.

Unchanged.

An offer shall be considered to be made to a restricted circle of persons where it is addressed to an identifiable category of persons or bodies known to the offeror, to whom the offer is directly communicated by the offeror or his appointed agent, so that only members of that category may accept the offer and such members are in possession of sufficient information to be able to make a reasonable evaluation of the offer.

Notwithstanding the foregoing, a Member State may consider that an offer is addressed to a restricted circle of persons where it is addressed to not more than a given number of persons to be specified by that Member State, which number shall not exceed 250.

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<i>Article 2</i>	<i>Article 2</i>
<p>This Directive shall not apply to:</p> <p>(a) units issued by collective investment undertakings other than the closed-end type; or</p> <p>(b) securities issued by a State or by its regional or local authorities; or</p> <p>(c) securities issued in connection with a takeover offer; or</p> <p>(d) 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; or</p> <p>(e) shares allotted free of charge to holders of shares; or</p> <p>(f) shares issued in substitution for shares if the issuing of such new shares does not involve any increase in the company's issued share capital; or</p> <p>(g) shares allotted directly or indirectly to employees or to trustees holding them on behalf of employees.</p>	<p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p> <p>Unchanged.</p>
	<p>(h) Eurobonds; or</p> <p>(i) shares resulting from the conversion of convertible debt securities or shares created after an exchange for exchangeable debt securities or shares resulting from the exercise of the rights conferred by warrants; or</p> <p>(j) securities which are admitted to official listing on a stock exchange situated or operating in the Member State where the public offer is made.</p>
<i>Article 3</i>	<i>Article 3</i>
<p>For the purposes of applying this Directive:</p> <p>(a) 'collective investment undertakings other than the closed-end type' shall mean unit trusts and investment companies:</p> <ul style="list-style-type: none"> — 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 holder's request, purchased 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 their units does not 	<p>Unchanged.</p> <p>Unchanged.</p>

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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;	Unchanged.
(c) 'issuers' shall mean companies and other legal persons and any undertakings whose securities are offered for subscription or sale to the public;	Unchanged.
(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 linked directly to the turnover;	Unchanged.
(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;	Unchanged.
(f) 'participating interests' 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;	Unchanged.
(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.	Unchanged.
	(h) 'securities' shall mean shares, debt securities or certificates representing shares.

Articles 4 and 5 unchanged

Article 6

1. Without prejudice to the obligation referred to in Article 5, Member States shall ensure that, subject to the possibilities for exemptions provided for in Articles 7 and 8, prospectuses contain, in as easily analyzable 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 9 to 16 the prospectus is to be drawn up in accordance with the specifications given in those Articles, subject to the possibilities for exemptions provided for in Articles 7 and 8.

Article 6

1. Without prejudice to the obligation referred to in Article 5, Member States shall ensure that, subject to the possibilities for exemption provided for in Articles 7, 7a and 8, prospectuses contain, in as easily analyzable 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 9 to 16 the prospectus is to be drawn up in accordance with the specifications given in those Articles, subject to the possibilities for exemptions provided for in Articles 7, 7a and 8.

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

Article 7

Member States may allow the authorities responsible for checking the prospectus 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 a prospectus in the following cases:

1. where the securities are not offered by the issuer or by financial intermediaries;

2. where the securities offered are:

(a) shares resulting from the conversion of convertible debt securities or shares created after an exchange for exchangeable debt securities; or

(b) shares resulting from the exercise of the rights conferred by warrants;

and, where appropriate, the information provided for in Chapter 2 of Schedule A is published in accordance with Article 19 and Article 20 (1);

3. where the securities offered are:

(a) shares of which either the number or the nominal value or, in the absence of a nominal value, the accounting par value, amount to less than 10 % of the number or of the corresponding value of shares of the same class as have already been offered to the public in the Member State where the offer is made, and of which the nominal value, or in the absence of a nominal value, the accounting par value, is in any event less than 25 000 units of account;

(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 irrev-

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Unchanged.

Article 7

Unchanged.

1. Deleted.

2. Deleted.

3. where the securities offered are:

(a) shares for which admission to official listing is or will be applied for and 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, provided that the issuer has complied with the stock exchange publicity requirements imposed by the national authorities and has produced annual accounts and annual and interim reports which these authorities have considered adequate.

(b) Unchanged.

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ocably 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
- are set up by special law,
 - the activities of which 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 as debt securities issued or guaranteed by the State; or

- (d) 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 share capital, provided that a document which the competent authorities consider to contain equivalent information to that contained in the prospectus required by this Directive and relating to the certificates representing such shares has already been published in the same Member State as that in which the offer to the public is made;

and where in all the cases referred to in the points mentioned above information concerning the number and type of securities to be offered and the circumstances in which such securities have been issued has been published in accordance with Articles 19 and 20 (1).

(c) Unchanged.

(d) Unchanged.

Unchanged.

4. Where the securities offered are debt securities issued in a continuous or repeated manner by credit institutions which regularly publish their annual accounts and which, within the Community, are set up or governed by a special law, or pursuant to such a law, or are subject to public supervision designed to protect savings.

Article 7a

Where the offer relates to securities issued by an undertaking the securities of which are not admitted to official listing on a stock exchange situated or

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operating in the same Member State as that in which the offer is made and provided that that undertaking has not requested the admission of its securities to such listing, the competent authorities may authorize omission from the prospectus of certain information contained in Chapters 4 and 6 of Schedule A or B depending on whether the offer is of shares or of debt securities. Moreover, wherever a reference to information of a financial nature is made in Chapter 5 of Schedule A or B as the case may be, the competent authorities may authorize such information to be given merely for the last financial year, instead of for the last three financial years (in the case of Schedule A) or the last two financial years (in the case of Schedule B).

Article 8

1. The competent authorities may authorize omission from the prospectus of certain information provided for by this Directive if they consider that:

- (a) such information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer; or
- (b) disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer, provided that, in the latter case, such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

2. Where the person making the offer is a person other than the issuer or a person acting on his behalf, the competent authorities may authorize omission from the prospectus of certain information which would not normally be in his possession.

Article 8

Unchanged.

Deleted.

SECTION II

Contents of the prospectus in certain specific cases

Articles 9 to 11 unchanged

Article 12

1. Where the offer relates to debt securities issued in a continuous or repeated manner by credit institutions which regularly publish their annual accounts and which, within the Community, are set up or governed by a special law, or pursuant to such

Article 12

1. Deleted.

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a law, or are subject to public supervision designed to protect savings, the Member States may provide that the prospectus shall contain only:

- the information provided for in heading 1.1 and Chapter 2 of Schedule B, and
- information concerning any events of importance for the assessment of the securities in question which have occurred since the end of the financial year in respect of which the last annual accounts were published. Such accounts must be made available to the public at the issuer's offices and at those of the financial organizations retained to act as the latter's paying agents.

2. Where the debt securities referred to in paragraph 1 are issued at very short intervals, the Member States may provide that the prospectus shall only contain information on the characteristics of such debt securities.

2. Deleted.

Article 13 unchanged

Article 14

1. Where the offer relates to convertible debt securities, exchangeable debt securities or debt securities with warrants, the prospectus must include:

- information concerning the nature of the shares offered by way of conversion, exchange or subscription, and the rights attaching thereto,
- the information provided for in heading 1.3 and Chapters 3 to 7 of Schedule A,
- the information provided for in Chapter 2 of Schedule B, and
- the conditions of and procedures for conversion, exchange or subscription and details of the situations in which they may be amended.

2. When the issuer of the convertible debt securities, the exchangeable debt securities or the debt securities with warrants is not the issuer of the shares, the prospectus must include:

- information concerning the nature of the shares offered by way of conversion, exchange or subscription and the rights attaching thereto, and
- in respect of the issuer of the securities, the information provided for in Schedule B,
- in respect of the issuer of the shares, that provided for in heading 1.3 and Chapters 3 to 7 of Schedule A, and
- the conditions of and procedures for conversion, exchange or subscription and details of the situations in which they may be amended.

However, where the issuer of the debt securities is a finance company within the meaning of Article 11

Article 14

1. Where the offer relates to convertible debt securities, exchangeable debt securities or debt securities with warrants the prospectus must include:

- Unchanged.
- the information provided for in **Chapter 1** and in Chapters 3 to 7 of Schedule A,
- Unchanged.
- Unchanged.

2. Unchanged.

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(3), the prospectus need contain, in relation to that company, only the information provided for in Chapters 1, 2 and 3 and headings 5.1.0 to 5.1.5 and 6.1 of Schedule B.

Article 15

1. Where the offer relates to certificates representing shares, the prospectus must contain the information, as regards certificates, provided for in Schedule C and the information, as regards the shares represented, provided for in Schedule A.

2. However, the competent authorities may relieve the issuer of the certificates of the requirement to publish details of its own financial position, when then issuer is:

- a credit institution which is a national of a Member State and is set up or governed by a special law or pursuant to such law or is subject to public supervision designed to protect savings, or
- a subsidiary 95 % or more of which is owned by a credit institution within the meaning of the preceding indent, the commitments of which towards the holders of certificates are unconditionally guaranteed by that credit institution and which is subject, *de jure* or *de facto*, to the same supervision; or
- an 'Administratiekantoor' in the Netherlands governed, for the safe custody of the original securities, by special regulations laid down by the competent authorities.

3. In the case of certificates issued by a securities transfer organization or by an auxiliary institution set up by such organization, the competent authorities may dispense with the publication of the information provided for in Chapter 1 of Schedule C.

Article 15

1. Unchanged.

2. Unchanged.

— Unchanged.

— a subsidiary 95 % or more of which is owned by **one or more** credit institutions within the meaning of the preceding indent, the commitments of which towards the holders of certificates are unconditionally guaranteed by **that credit institution or those credit institutions** and which is subject, *de jure* or *de facto*, to the same supervision; or

— Unchanged.

3. Unchanged.

Article 16 unchanged

SECTION III

Arrangements for the scrutiny and publication of the prospectus

Articles 17 and 18 unchanged

Article 19

The prospectus must be published and be made permanently available to the public in accordance with conditions laid down by the Member State in which the offer to the public is made.

Article 19

1. The prospectus must be published and be made permanently available to the public **in the Member State in which the offer to the public is made in accordance with conditions laid down by that Member State.**

2. The prospectus must be drawn up in the official language or languages or in one of the official

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Article 20

1. The prospectus must be published no later than the time of opening of the offer.

Moreover, where the offer is preceded by trading of the pre-emptive subscription rights, the prospectus must be published within a reasonable period, to be laid down by the competent authorities, before such trading starts.

2. In exceptional, properly justified cases, the competent authorities may allow the postponement of the publication of the prospectus until after the date of the opening of trading in pre-emptive subscription rights.

Article 20

languages or in another language, provided that, in the Member 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.

1. Unchanged.

2. Unchanged.

3. If the public offer relates to debt securities and if some of the terms of the issue are not finalized until the last moment, the competent authorities may merely require the publication of a prospectus omitting information as to these terms but indicating how it will be given. Such information must be published before the date on which the public offer opens.

Articles 21 and 22 unchanged

SECTION IV

Cooperation between the Member States

Article 23

1. Where offers of the same securities are made simultaneously, or within short intervals of one another within several Member States, the competent authorities shall exchange information and use their best endeavours to achieve maximum coordination of their requirements concerning the prospectus, to avoid a multiplicity of formalities and to agree to a single text requiring at the most translation, where appropriate, and the issue of supplements as necessary to meet the individual requirements of each Member State concerned.

Offers concerning more than one Member State

Article 23

1. The competent authorities shall provide each other with such cooperation as is necessary for the carrying out of their task and shall in this connection provide each other with all relevant information.

Notwithstanding Article 17 (2), where offers of the same securities are made simultaneously within more than one Member State the prospectus need only be approved by the competent authorities of the Member State in which the issuer has its registered office, or in cases where the issuer has no registered office in the Community, by the competent authorities to which the financial institution with principal responsibility for the transaction applies. Once so approved, subject only to any need for translation and to any changes of a purely formal nature to adapt the prospectus to the particular circumstances of the other Member State, the prospectus must be recognized by the other Member States in which the offer is made without the

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2. Where an offer is made in a Member State of securities which have been offered in another Member State less than six months previously, the competent authorities of the former Member State shall contact the competent authorities of the latter and shall, as far as possible, exempt the issuer of those securities from the preparation of a new prospectus, subject to any need for updating, translation or the issue of supplements in accordance with the individual requirements of the Member State concerned.

need to obtain further approval from the competent authorities of those Member States.

The approved version of the prospectus together with any translation shall be sent by the person making the offer to the competent authorities in such other Member States not later than the time when the offer is open in such other Member States.

2. Deleted.

Article 24 unchanged

SECTION V

Contact Committee

Article 25

1. The Contact Committee set up by Article 20 of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing ⁽¹⁾, shall also have as its function:

- (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 on which exchanges of views are deemed useful;
- (b) to facilitate consultation between the Member States on the supplements and improvements to the prospectus which the competent authorities are entitled to require or recommend at national level;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive *or on any adaptation to be made in accordance with Article 26.*

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

Article 25

1. Unchanged.

(a) Unchanged.

(b) Unchanged.

(c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

2. Unchanged.

⁽¹⁾ OJ No L 66, 16. 3. 1979 p. 21.

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*Article 26**Article 26*

1. For the purpose of adjusting, in the light of economic requirements, the amount referred to in Article 7 (3) (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.

1. Deleted.

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.

2. Deleted.

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

Articles 27 and 28 unchanged

Schedules A, B and C unchanged

Proposal for a Council Regulation on the granting of limited financial support in the field of transport infrastructure

(Submitted by the Commission to the Council on 20 July 1982)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 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 a proposal for a Regulation on support for projects of Community interest in transport infrastructure has been submitted to the Council;

Whereas the Commission has undertaken the preparatory work called for by the Council at its meeting on 23 November 1978;

Whereas a limited amount of financial support should be provided, in order to assess how useful this might be in developing a transport network of interest to the Community and the whole of the operational appropriation included in the 1982 budget should be used;

Whereas in this experimental phase eligible projects must concern routes of prime importance to Community traffic and must be urgent,