



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.8.2002  
COM(2002) 460 final

2001/0117 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the prospectus to be published when securities are offered to the public or admitted  
to trading and amending Directive 2001/34/EC**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. GENERAL COMMENTS**

In the context of an integrated European capital market, the Commission attaches great importance to improving the framework for investing and raising capital on an EU wide basis. A single financial market will promote the competitiveness of the European economy, lowering the cost of raising capital for all types of companies. It will bring major benefits for consumers and investors.

This objective also satisfies the Lisbon European Council's request to introduce a single passport for issuers in the European Union.

Facilitating the widest possible access to capital markets, including for SMEs, requires a complete overhaul of the Community provisions on prospectuses, the first of which are 20 years old (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<sup>1</sup> and Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public).

The need to upgrade these Directives has been listed as a top priority in the Financial Services Action Plan and the Risk Capital Action Plan.

In May 2000, FESCO (the Forum of European Securities Commissions) published for public consultation the paper *European Public Offer*. Following that consultation, and as a result of the process, on 17 January 2001 it published a new paper *A European Passport for Issuers - A report to the EU Commission*, calling also for an urgent overhaul of the existing rules and suggesting possible new approaches.

A proposal for a Directive on prospectuses was adopted by the Commission on 30 May 2001. This legislative initiative was given a first reading by Parliament, which on 14 March 2002 amended the text adopted by the Commission. At the same time, the Council Working Party on Financial Services (Prospectus) met on several occasions to try and reach agreement on the proposal.

**To speed up the legislative process and meet the expectations expressed at the Barcelona Council on the early adoption of a directive on prospectuses, the Commission wishes to put forward an amended proposal for a Directive that takes account of many of Parliament's and the Council's wishes and concerns. The presentation of the proposal has been changed as regards form to make the text more understandable and readable.**

The amended proposal also includes new, flexible arrangements for firms that were not in the proposal adopted by the Commission on 30 May 2001 while remaining consistent with the principles of protection and sound information for investors.

---

<sup>1</sup> Directive repealed and since replaced by the consolidated Directive 2001/34/EC.

The indications that the current Community instruments on prospectuses are not suited to the operation of capital markets have not changed. There are currently many different practices and differing interpretations based on distinct traditions within the European Union regarding the content and the layout of prospectuses. The methods used and the time required for checking the information given therein are also different. Unless reform is undertaken, inconsistencies will continue and the European financial market will remain fragmented. Cross-border capital raising will therefore remain the exception, rather than the rule - the antithesis of the logic of the single currency.

The current complex and partial mutual recognition mechanism is unable to ensure the objective of providing a single passport for issuers. There is a need for modernisation and more flexibility. To achieve this objective, harmonisation of the information contained in each prospectus, including those relating to markets specially intended for professional investors, is necessary in order to provide equivalent protection for investors at Community level.

The European passport for issuers is also a unique opportunity to simplify regulatory compliance for issuers without their having to produce duplicative sets of documentation or respond to numerous additional national requirements.

The main changes compared with the Commission's original proposal are:

- introduction of enhanced disclosure standards in line with international standards for the public offer of securities and admission to trading;
- introduction of special Community rules for securities designed to be traded by professionals;
- introduction of new prospectus formats for frequent issuers, and the duty on firms whose securities are listed on a regulated market to update the information on issuers at least once a year;
- Possibility to offer or admit securities to trading on the basis of a simple notification of the prospectus approved by the home competent authority
- Concentration of the responsibilities in the home administrative competent authority
- extensive use of the committee system, following the Stockholm European Council's broad endorsement of the Lamfalussy Report in the resolution adopted by Heads of State or Government on more effective securities markets regulation in the European Union.

#### The need for enhanced European disclosure standards for publicly offered securities

Adequate and equivalent disclosure standards should be in place in all European Member States when securities are offered to the public or traded on regulated markets.

This implies that the existing disclosure standards need to be aligned in order to introduce the same standards for the public offer of securities and admission to trading throughout the Union, in accordance with the principle of maximum harmonisation.

Clear and common definitions have to be agreed to clarify the scope of the Directive and ensure necessary harmonisation at Community level. As recognised by the Preliminary Report of the Wise Men (15 November 2000), the introduction of a definition of public offer is a prerequisite for attaining the objective and encouraging firms to raise capital on a European basis under similar rules. It aims at avoiding loopholes at Community level and disparity in the treatment accorded to retail investors due to the fact that the same operation is considered as a private placement in some Members States (for which no prospectus has to be published) but not in others. A common definition of a public offer of securities automatically entails harmonising the concept of private placement in the European Union.

It is accompanied by new rules on exemptions, which will also assist the introduction of uniform standards in all Member States.

The amended proposal extends the scope of the existing measures to ensure that harmonised disclosure requirements are available for equity and debt securities traded on regulated markets. Directive 2001/34/EC applies only to securities that have been admitted to an official stock exchange, i.e. one which was known at the time the Directive was adopted. It is worth noting that start-ups and high tech companies are mainly traded on regulated markets outside the official listing segment. At present, it is up to each Member State to decide what information relating to these markets is required, and this has implications for the cross-border offering of these securities.

Need to introduce special Community rules for securities, especially those intended to be traded between professionals

The operation of the wholesale capital markets at European level needs to be made more efficient in order to improve the integration of the European financial market. It is therefore planned to establish Community rules for these markets and no longer automatically leave them outside the Community's scope as in the current Directives. It is planned to introduce special rules for those securities specially intended to be traded between professionals, while still applying the common arrangements in the European passport.

The basis of these arrangements is that there is no need for a prospectus in the case of an offer to qualified investors in the form of a private placing, the rules on advertising do not apply to this type of offer, and the content of the prospectus in the event of admission to trading is adapted to trading for this type of investor: in particular there is no obligation to provide a summary. Such issues are also not caught by the traditional rule of determining the competent authority by reference to the issuer's registered office.

European regulated markets are distinguished by their lack of barriers to entry, which is consistent with the functioning of the single market. Since wholesale and retail investors have free access to these stockmarkets, an objective criterion based on a high nominal value for the securities to be traded has been introduced, in order to create an effective distinction between markets for professionals and the general public. Thus the more flexible arrangements envisaged cannot be put into effect to the detriment of retail investors.

## A simple, effective notification system that will make it possible to use a single prospectus for a public offer or admission to trading in two or more Member States

The introduction of a true single passport for issuers requires the replacement of the existing mutual recognition system by a simple notification system, similar to the one present in the financial intermediaries Directives for the cross border provision of services.

Under the new system, host Member States will be deprived of the possibility of asking for additional information to be included in the prospectus.

The operation of such a system requires a great degree of trust among competent authorities in charge of approving the prospectus and supervising the information disseminated by issuers. The proposal therefore specifies that the competent administrative authority in the home Member State is responsible for providing supervision that will ensure equivalent treatment of all investors as regards access to information and the on-going disclosure of material information by the issuer.

Independent administrative authorities, i.e. authorities in charge of ensuring general good objectives, are necessary for ensuring market and investor protection. The delegation of resources, but not of responsibilities, to private bodies may be entertained, subject to an organisation being set up that has no conflict of interest and does not impede competition between stockmarkets.

Other measures are foreseen in order to improve the functioning of the existing Community legislation. The requirement to fully translate the content of the prospectus does not encourage multinational offerings or admission to trading in more than one country. The proposal provides for a new language regime: host Member States' competent authorities may now require, if they so wish, only a translation of the summary of the prospectus, provided that the full prospectus is drafted in a language which is customary in the sphere of finance (normally English). These arrangements should facilitate cross-border arrangements, while guaranteeing adequate protection for retail investors: the latter will always receive the key information in summary form in their own domestic language. The purpose of the summary is to provide, in particular to retail investors, immediate, succinct information on the most relevant aspects relating to the issuer and the proposed operation.

## The need for best practice concerning the content of financial disclosure

The disclosure requirements provided for by Directive 2001/34/EC are no longer sufficient to meet the needs of investors in modern global financial markets. Increasingly, investors want to make decisions on the basis of a continuum of standardised company financial and non-financial information. The current requirements need to be replaced by new European disclosure standards. Fostering best practice will enhance market confidence and attract capital. The upgrade of EU disclosure standards shall be in accordance with the International Disclosure Standards approved in 1998 by IOSCO (International Organisation of Securities Commissions). This new approach is designed to provide key information on certain topics such as risk factors, related-party transactions, corporate governance or management's discussion and analysis that are not currently dealt with at EU level.

To hasten the completion of the single market in securities and improve the comparability of information, the Commission has updated the Community accounting rules by adopting a new regulation: all companies in the European Union whose securities are traded on a regulated market will have to prepare their consolidated accounts in accordance with a single set of accounting rules, namely the International Accounting Standards (IAS). This requirement should enter into effect in 2005 at the latest. Thus it will be possible to trade the securities of the companies concerned on EU and international financial markets on the basis of a single set of accounting standards.

Need to improve the ways of presenting the prospectus and ensure that information is easily available and regularly updated

The proposal introduces several new formats for the Community prospectus, leaving each issuer to choose which is most suitable. The issuer implements the policy described above, aiming at increasing the quality and the quantity of the information to be put at the disposal of investors and markets. It is the Commission's firm belief that increasing investor confidence will deliver significant benefits, lowering the cost of raising capital and ultimately improving job creation and the overall dynamism of the European economy.

The prospectus may consist of one or more documents. In all cases, a summary of the documentation is required. For frequent issuers such as credit institutions that issue in a continuous or repeated manner, the system proposed is a basic document plus supplements. A similar system is planned for issuers that programme their offers.

Another new format is also proposed, in which the prospectus consists of two parts: the registration document, containing information about the issuer, and the securities note, containing information about the securities (as explained in detail below). A summary of the two parts is provided in an ad hoc summary note. This system introduces a fast-track procedure for new issues, under which only the information related to the securities offered or admitted to trading has to be given, plus any updating of the information in the registration document. The competent supervisory authority will be required to approve only the securities note, and therefore the time for approval will be reduced. The introduction of the new system therefore meets an increasing demand from multinational issuers (i.e. issuers frequently raising capital on European and world markets).

In addition, incorporation by reference will be allowed. This means that information to be disclosed in a prospectus may be incorporated into that document by reference to another document, previously filed and approved by the home competent authority. This will save time and money for companies frequently raising capital on the market. The issuer will be allowed to use a document or prospectus that have already been approved, and red tape will therefore be reduced.

To ensure the long-term protection of, and reliable information for, holders of securities, it is planned that information about issuers whose securities are traded on regulated markets should be updated at least annually. The updating may be based on all the current disclosure requirements in other Community legislation, such as the Company Law Directives, the Directive on information to be published on a regular basis by listed companies (cf. Directive 2001/34), and the Regulation on International Accounting Standards. In order not to overload certain companies, the updating system is not compulsory for those that have offered

securities which are not being traded on a regulated market. For small and medium-sized enterprises, the minimum requirement of an annual updating is limited to the filing of their financial statements.

The rapid development of information and communication technology is changing the way financial information is disseminated. To facilitate the circulation of prospectuses (and the various documents composing a prospectus) the use of electronic means such as the Internet is encouraged. This will be less costly for companies than current requirements but may also have a number of advantages. Investors would have effective and free access to information on a real-time basis, as the issuer is now able to publish the prospectus in electronic format.

Need for an extensive use of committee procedures (*comitology*) to keep up with developments in the financial sphere.

Member States' securities markets are facing dramatic changes and increasing consolidation, driven by new technologies, globalisation and the effect of the euro. Standard setting is also evolving rapidly. Competition between securities markets calls for best practice taking new financial techniques and new products into account. On the other hand, consumer protection and confidence has to be maintained at Community level. It is important to ensure that any new measures adopted do not leave consumers wishing to invest in innovative products without proper protection and remedies or vulnerable to differentiated treatment depending on each Member State's interpretation.

To meet the challenge of regulating modern financial markets, new legislative techniques have to be introduced. On 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee called for each Directive to be a split between framework principles and "non-essential" technical implementing measures to be adopted by the Commission under the Union's committee procedures. In its resolution on more effective securities markets regulation in the European Union, the Stockholm European Council welcomed the Commission's intention to establish a Securities Committee. The Securities Committee, acting in its advisory capacity, should be consulted on policy issues, in particular for the kind of measures the Commission might propose at the level of framework principles. In its resolution, the European Council added that, subject to specific legislative acts proposed by the Commission and adopted by the European Parliament and the Council, the Securities Committee should function as a regulatory committee in accordance with the 1999 Decision on comitology to assist the Commission when it takes decisions on implementing measures under Article 202 of the EC Treaty. This Directive follows the guidelines laid down by the Stockholm European Council and the European Parliament.

The amended proposal identifies the second-tier implementing arrangements that will have to be decided by the Commission by the committee procedure - for example, adaptation and clarification of the definitions and exemptions set out in the Directive in order to ensure uniform application and compatibility with developments on financial markets. Adaptation of disclosure standards and deadlines, and clarification of the rules on publication of the prospectus and the technical arrangements for advertisements of a promotional and marketing nature will also be dealt with by the Commission under committee procedure. The areas have been selected in order to ensure a prompt response to fast-changing reality and to ensure the proper functioning of the internal market (in accordance with the home country principle) and adequate protection for retail investors.

## 2. DESCRIPTION OF ARTICLES

The main formal changes made to the proposal for a Directive adopted by the Commission on 30 May 2001 are as follows:

Paragraphs 1 and 2 of Article 1 of the original proposal have been merged for the sake of clarity and simplicity.

Article 3 has been replaced by a description of the situations where there is an obligation to publish a prospectus, the original paragraph 2 having been incorporated in the definition of a public offer of securities in Article 2, while the original paragraph 3 has been moved to Article 4 - Exemptions from the obligation to publish a prospectus.

Article 4 now deals with the conditions for exemption from the obligation to publish a prospectus.

The amended proposal includes a new Article 6, which deals with responsibility for the content of a prospectus.

Article 7 corresponds to the former Article 6 on the information to be included in a prospectus.

The amended proposal includes a new Article 8, which deals with the omission of information from a prospectus and in particular incorporates paragraph 3 of the former Article 6.

The amended proposal includes a new Article 9, which deals with the period of validity of the various types of prospectus.

The amended proposal includes a new Article 10, which deals with the obligation to update all the information on issuers whose securities are admitted to trading on a regulated market and replaces Article 9 on the annual update of the registration document.

The arrangement of the articles in Chapter III has not been changed. The former Chapter IV, however, has been split into two, so as to deal separately with the practical arrangements for the "European passport" for issuers, while a new Chapter V concerns the language regime and the arrangements for prospectuses drawn up under the rules in force in third countries.

Lastly, the articles containing the transitional and final provisions have been rearranged.

The main substantive changes are as follows:

In Article 1, issues of securities by non-profit-making organisations and certificates of deposit issued by credit institutions have been withdrawn from the scope of the Directive. Sovereign issuers may fall within the scope of the Directive and thus qualify for the European passport.

In Article 2, the definition of securities has been aligned on that in the Investment Services Directive and clarified with regard to the rules for money market instruments with a fixed

maturity. The definition of qualified investors has been expanded to include more legal persons and, subject to certain conditions, natural persons. A definition of small and medium-sized enterprises (SMEs) has been included, as has a definition of credit institutions. Definitions of "offering programme", "securities issued in a continuous or repeated manner" and the "approval" of a prospectus have been added. The definition of "offer of securities to the public" has been supplemented and clarified. It is at once a positive and a negative definition, so that private placings may be accurately identified. Small-scale issues (less than EUR 2 500 000) are not treated as public offers. A new system, based on the principle of a high nominal value, has been introduced in order to allow an objective distinction to be made between wholesale and retail regulated markets. The definition of home Member State has been adapted in order to allow certain issuers of securities with a high nominal value a free choice as to their competent authority.

In Article 4, which concerns exemptions from the obligation to publish a prospectus, certain clarifications have been added, e.g. the payment of dividends in the form of shares, while the rules on offers of securities, including in the form of stock options, to employees or directors have been relaxed in order to exempt such offers from the said obligation.

In Article 5, the obligation to draw up a prospectus in the form of a registration document plus a securities note and a summary note has been dropped in favour of leaving the issuer with a choice. The article also contains provisions aimed at regulating the content of the summary. A new prospectus format for certain types of issue, namely offering programmes and issues of mortgage bonds, has also been introduced.

The new Article 6 establishes the principle of the responsibility of the issuer for the content of the prospectus, and the obligation on Member States to ensure that, where appropriate, the issuer is liable towards third parties. In the case of the summary, such liability is limited.

Article 7 describes explicitly the type of adjustments needed when implementing measures for the different models of prospectus are adopted and establishes the reference standards for the information to be supplied.

Article 8 gives competent authorities a new right, which is not to require certain information normally requested, subject to certain conditions. It is also possible to adapt certain required items, where they are not suited to the issuer's situation.

Article 9, which is new, grants the right to use the same prospectus for a maximum period of twelve months, subject to updating where appropriate.

Article 10, which is also new, concerns the obligation to update all the information on issuers admitted to trading on a regulated market; it has been reworked and made more flexible. There is no obligation to monitor updated information. The format is left open, and the reference to other documents required by other Community instruments is a wide-ranging one.

Article 11, which concerns the incorporation of information by reference, has been supplemented in order to clarify the types of document that may be used when drawing up a prospectus. the summary may not refer to other documents.

Article 12 makes clear that the registration document does not have to be approved, if it is not used for drawing up a prospectus.

The time limits set for the approval of a prospectus have been shortened in Article 13, and failure by a competent authority to comment is now regarded as approval. Failure by a competent authority to act will allow the issuer to change competent authority. A competent authority may also transfer approval of a prospectus to an authority in another Member State, if that authority agrees. Concerning the liability of competent authorities, the law applicable has been clarified, as has the power of a Member State to exonerate from any liability a competent authority which it has appointed.

In Article 14, the deadline by which a prospectus must be published has been made more flexible to take account of the constraints on the issuer and the placing of the prospectus by the competent authority on its website.

There is no longer any obligation to presubmit advertisements of issues and admission to trading. However, a competent authority must have the power to monitor such advertising. Lastly, the principle of equal treatment for investors regarding oral information at investors' meetings is confined to important and sensitive information.

The scope of Article 16 has been extended to include substantive errors and other inaccurate information.

As regards the automatic mutual recognition procedure in Article 17, the three-month time limit has been abolished, as has any opportunity for the host competent authority to intervene in the procedure.

A time limit of three days between applying for and obtaining a certificate of approval has been attached to the notification procedure in Article 18.

In Article 19, the language regime has been spelt out to cover all scenarios.

The procedure for allowing the conditional use of prospectuses drawn up under third-country rules has been relaxed and at the same time expanded to include action by the Commission on the harmonisation of practices.

Article 21, which concerns the powers of the competent authorities, has been supplemented to make it possible for several authorities in one Member State to be involved and to allow tasks to be delegated to other bodies. The power to conduct on-the-spot inspections has been withdrawn.

Article 22 on professional secrecy has been supplemented with detailed rules on inter-authority cooperation.

Article 23 on precautionary measures has been amended by withdrawing from the Commission the power to ask a Member State to amend or abolish such measures.

Article 24, which deals with the operation of the European Securities Committee, has been supplemented by a provision terminating the Committee's regulatory power after a period of four years from the entry into force of the Directive.

Article 25 on sanctions has been aligned with the relevant provisions in the Market Abuse Directive.

The time limit on transposition has been extended in Article 29, and the references to the repealed Community provisions have been updated following the entry into force of Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities.

Article 30, which deals with transitional provisions, has been revised, so that it no longer refers to the first time the annual update obligation is performed; on the contrary, it now contains a provision governing the initial declaration by third-country issuers of their home country and competent authority.

## **Article 1 - Subject matter and scope**

The purpose of the Directive is to harmonise requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered to the public or admitted to trading.

The Directive is applicable to the securities which are offered to the public or are admitted to trading on a regulated market as defined in the Investment Services Directive (93/22/EEC - ISD). This represents a major change from the previous system based on the consolidated Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities and Directive 89/298/EEC coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

The wording "admission to trading" has been selected in order to avoid possible loopholes in the implementation of the Directive. "Admission to the official list" is not defined in Community legislation. In many cases it has been interpreted as admission to the official segment of the national stock exchange (in certain cases even if trading does not take place). This implies that disclosure requirements for other types of "regulated markets" (definition introduced by the ISD) are not fully harmonised at EU level and in several cases mutual recognition is not allowed. In other Member States, implementation of the ISD has resulted in the replacement of the term "official listing" by "first-tier market", "second-tier market", etc. Nevertheless, the ISD definition requires that rules should be adopted to ensure that certain requirements are met before securities can be traded on a regulated market (such requirements being either imposed by the consolidated Directive 2001/34/EEC or left to the national legislator to decide). The aim of the new Directive is to ensure that initial disclosure requirements are as set forth in the Directive.

As called for by European securities regulators, the two Directives are now merged and the disclosure standards required are the same. In addition, certain types of securities which were left outside the old system because they were traded on regulated markets without being admitted to the official list are now included and can benefit from the single passport.

At the same time the system increases the information and the guarantee provided to investors in the European Union.

Traditional exemptions have been kept for securities of specific types (such as UCITS units, covered by different harmonisation provisions) or issued by Member States or international bodies. However, sovereign issuers may draw up prospectuses in accordance with the Directive in order to qualify for the provisions concerning the European passport for issuers.

## **Article 2 - Definitions**

The definitions listed in Article 2 are partly drafted by reference to existing Directives but also contain new elements. Thus the definition of "securities" is little different from that in Directive 89/298/EEC (it has simply been updated and aligned with the operation of the secondary market in securities as provided for in Directive 93/22/EC on investment services); on the other hand, the introduction of the concept of a "public offer" is a major innovation. When Directive 89/298/EEC was adopted it proved impossible to reach an agreement on a common definition (see recital 7 of the said Directive). However, as recognised in the Wise Men's report, it is important to ensure a common approach to this subject in order to avoid disparities in investor protection in an era when, through electronic communication networks, investors can be reached throughout Europe (and elsewhere). Different interpretations of the "public offer" requirement in the Member States may have the effect that in certain cases securities can be sold without any disclosure requirement (and this behaviour can affect the entire European capital market).

To complement this definition, a new harmonised scheme for exemptions is envisaged: this includes offers targeted only at certain "qualified" investors (i.e. who have specific professional qualifications or characteristics) or at investors who are able to acquire securities for an overall amount of at least EUR 50 000 or securities with a nominal value of at least EUR 50 000. Offers that are addressed to a limited number of investors or are less than EUR 2 500 000 are exonerated from the prospectus.

The new system is based on the approval of the prospectus by the competent authority in the home Member State; the concepts of "home Member State" and "host Member State" have therefore been defined. A definition is also provided for the case where the issuer is incorporated outside the EU and its securities are offered or admitted to trading in the EU.

Clarifications and adaptations of definitions, if necessary, can be adopted by using the procedure foreseen in Article 24 in accordance to the suggestion to delegate to the Commission detailed technical regulations. This means that the Commission, assisted by the Securities Committee, will be able for example to determine whether new securities fall within the Directive's scope, thereby ensuring that the Directive reflects developments on the financial markets.

## **Article 3- Conditions for the offer of securities to the public and their admission to trading**

Article 3 specifies that no securities may be offered to the public or admitted to trading on a regulated market in the European Union, unless the initial information required (the prospectus) has been made available to the market and investors.

## **Article 4 - Exemptions from the obligation to publish a prospectus**

As already explained with regard to the definition of "public offer", a harmonised approach is required in order to avoid loopholes and ensure uniform treatment and protection of investors throughout the EU. It is therefore important to introduce common exemption arrangements.

This objective has been achieved by revising the existing provisions and eliminating the flexibility that allows Member States to decide whether or not the exemptions have to be incorporated into national law.

One series of exemptions relates to the fact that certain types of securities are offered in exchange for already existing securities or result from specific operations for which equivalent information is or has already been made available to the public or the shareholders.

A second series concerns admission to trading in the case of specific transactions that do not require special information in order to ensure investor protection and hence do not entail the burden of drawing up a prospectus.

Clarifications and adaptations of definitions and/or exemptions, if necessary, may be adopted under the procedure provided for in Article 24, in accordance with the proposal to delegate to the Commission the adoption of the detailed technical provisions. This should avoid differentiated implementation by the Member States undermining the Commission's objective of ensuring adequate investor protection.

## **Article 5 - Prospectus**

Article 5 broadly reflects principles, on the function and the format of the prospectus, already present in Directives 2001/34/EC and 89/298/EEC. These principles, the aim of which is to ensure that all material information is disclosed to investors, are also consistent with the international principles adopted by IOSCO (see also the IOSCO report *Objectives and Principles for Securities Regulation*). In line with best international practice, the Article also requires that the information should be presented in easily understandable and analysable form.

Paragraph 1 clearly states that all necessary information should be disclosed in the prospectus, while paragraph 2 describes the operation of the summary attached to the prospectus.

Paragraph 3 explains that the prospectus may be drawn up as a single document or as separate documents consisting of a registration document, a securities note and a summary note. The registration document contains general information on the issuer as well as its financial statements. The securities note contains details on the securities offered to the public or

admitted to trading and the modalities of this operation. The summary is a résumé of the main items included in the prospectus (or the registration document and the securities note if this is the case).

A different prospectus format is proposed for facilitating the task and reducing the amount of work of frequent issuers, in particular those which programme their offers or which issue mortgage bonds in a continuous or frequent manner.

### **Article 6 - Responsibility for the prospectus**

As in the present system, responsibility for ensuring that all material information is disclosed in the prospectus lies with the administrative, management or supervisory bodies of the issuer, the offeror and the guarantor as the case may be. Member States are also required to ensure that this obligation is backed by civil liability measures, but with different arrangements for responsibility for the summary of the prospectus.

### **Article 7 - Minimum information to be included in the prospectus.**

The specific items of information to be included in the prospectus, whether in the form of a single document or a set of documents, are detailed implementing measures and should be adopted in accordance with the procedure proposed in the report by the Committee of Wise Men (i.e. at level 2) with reference being made to the Annexes to the Directive. The Community's detailed disclosure standards should be in line with those adopted by IOSCO for multinational offerings and listings and with the indicative Annexes to the Directive. Annex I lists the items of information to be included in the prospectus when drawn up as a single document. Annexes II, III and IV refer to the registration document, the securities note and the summary note respectively.

The decision to base the Community system on the IOSCO Disclosure Standards also means that the European prospectus will be in line with internationally accepted best practice and should also be acceptable for public offers or admission to trading outside Europe, in IOSCO member jurisdictions. This will provide benefits to EU issuers, which will not be obliged to duplicate disclosure documents.

IOSCO's basic requirements will nevertheless have to be adapted to the various categories of security offered to the public or admitted to trading, especially those in-between equities and other securities, but also securities specially intended for professionals (as determined by the nominal value). The content of the prospectus will also have to be adapted in the case of programmed offers and continuous or repeat issues. Lastly, there is a requirement to take the size of firms and the nature of their activities into account. Such adaptation will have to be made by the Commission in accordance with the committee procedures.

Since the above measures are necessary for the single passport system to become effective, a deadline for the approval (180 days after the entry into force of the Directive) has been set. This means that the Commission, assisted by the Securities Committee, will have to issue detailed technical rules about the specific information which must be included in the actual prospectuses in the form of models for the different types of securities and issuers.

## **Article 8 - Omission of information from the prospectus**

This Article clarifies the treatment of items of information that cannot be included in the prospectus because they are not available at the time when the prospectus is drafted - i.e. the final offering price and the number of shares that will be allotted to the public. In this case the prospectus should contain the objective criteria according to which the final decision will be taken and the requirement that these items will be published in a supplement to the prospectus to be made available to the public according to the same arrangements as the original prospectus.

The Article also lays down the treatment for derogations that a competent authority may grant an issuer in respect of certain sensitive information and for non-essential information required by the detailed plans adopted under the committee procedure.

In this case too, detailed rules will be adopted under a level 2 procedure.

## **Article 9 - Period of validity of a prospectus**

Article 9 specifies the period of validity of a prospectus and of the various documents that make up a prospectus. The period of validity is limited to twelve months except for prospectuses for the issue and admission to trading of mortgage bonds, which remain valid until the maturity of the securities in question.

## **Article 10 - Investor protection**

To ensure an appropriate level of information for, and protection of, investors once securities are traded on a regulated market, an issuer will have to update at least once a year the information that a prospectus or registration document must contain about the company. The updated information must be sent to and filed with the issuer's competent authority, although there is no Community obligation to approve such information. To lighten the administrative burden and reduce costs, the Directive allows the issuer to use documents required by other Community directives on company law and securities.

Lastly, this updating obligation does not apply to securities more particularly intended for professionals (as determined by the par value) and arrangements limited to the production of financial statements for small and medium-sized enterprises.

## **Article 11 - Incorporation of information by reference**

The Directive introduces another measure in order to make life easier for the issuer and to reduce costs: the incorporation of information by reference.

Article 11 states that the prospectus may incorporate the relevant information by reference to one or more documents. Such information should result from the application of Community requirements on company law and on securities admitted to trading on a regulated market. Filed in advance, it must have been approved by the competent authority and must be made available to the public under the same arrangements as for the prospectus.

The detailed rules concerning the documents that can be incorporated by reference and the relevant arrangements will be adopted under a level 2 committee procedure.

Since these measures are necessary for the single passport system to become effective, a deadline for the approval (180 days after the entry into force of the Directive) has been set.

### **Article 12 - Use of registration document, securities note and summary note**

This Article states that an issuer that has already filed a registration document, in the case of a new issue (or admission to trading), is required to produce a summary and a securities note only if it wishes to draw up a prospectus. This means that a full new prospectus is not required.

If the registration document has been approved by the competent authority, any updating of the securities note and the summary note will have to be approved separately.

If the registration document has simply been filed without being approved, all the documentation will have to be checked.

### **Article 13 - Approval of the prospectus**

The prospectus must be approved by the home competent authority before being published. The previous system already required prior approval for the listing particulars and, in any case, mutual recognition was available only for prospectuses that had been pre-vetted. To ensure the smooth operation of the system, however, the Directive sets clear deadlines for approval which differentiate between issuers already known to the market and subject to supervision and issuers raising capital for the first time.

A maximum deadline of 15 days (which can be interrupted if new information is needed or the documentation is incomplete) is set. However, it is extended to 30 days in the case of a first-time offer.

Failure by a competent authority to act will allow the issuer to change competent authority. A competent authority may also transfer approval of a prospectus to an authority in another Member State, if that authority agrees.

The legal rules governing the liability of the competent authority when approving a prospectus will continue to be determined by the national law of each Member State.

The level 2 committee procedure may be implemented in order to reduce the maximum time limits for approval, if this should prove necessary in the light of developments on the financial markets.

## **Article 14 - Publication of the prospectus**

Article 14 updates the rules already existing in the listing particulars and the public offer Directives. It allows the use of modern communication technology in addition to conventional, print-based methods of publication. In particular, an issuer may choose to put its prospectus on its web site. The Commission will have to adopt detailed rules on this subject to ensure the common implementation of the Directive. This means that it could issue rules concerning the arrangements for delivering, free of charge, a copy of the prospectus to prospective investors asking for it.

To set up a central information point and enable investors, especially in third countries, to obtain the relevant information, the Directive requires that the approved prospectus (whether in the form of a single document or a set of separate documents) should be filed with the competent authority and made available to the public on the latter's web site or via a link to the issuer's own site.

## **Article 15 - Advertising**

The Directive updates the Community rules on advertising in the context of public offerings of securities and admissions to trading on a regulated market.

To ensure proper investor protection and consistency with the information which is or will be included in the prospectus (which is deemed to be the document on the basis of which investment decisions have to be taken), advertising must state that a prospectus is or will be available and how it may be obtained.

The Directive also establishes the principle that advertising should be clearly recognisable as such and the information contained in an advertisement must be fair, accurate and in any case consistent with that contained in the prospectus.

Detailed rules to ensure common implementation and investor protection should be adopted by the Commission in this respect under a level 2 committee procedure. This means that the Commission may establish guidelines about how to advertise the performance of the securities offered to the investor to avoid giving retail investors misleading information about future gains.

Since these measures are necessary for the single passport system to become effective, a deadline for their adoption (180 days after the entry into force of the Directive) has been set.

The Directive states that information addressed by the issuer or the offeror to qualified or special categories of investors should also be disclosed to the public.

## **Article 16 - Supplement to the prospectus**

Article 16 borrows a rule from the two existing Directives on prospectuses, namely that a supplement is required where significant new factors capable of affecting assessment of the securities arise after the prospectus has been published and before the offer is closed or trading has started. For consistency's sake, the supplement is submitted to the same rules applicable to the prospectus in terms of prior approval and availability to the public.

## **Article 17 - Community scope of an approval of a prospectus**

Article 17 replaces the existing mutual recognition system. The aim of the provision is to ensure that in the case of multinational offerings or multiple trading (i.e. offer or admission to trading in Member States other than the home Member State) the prospectus approved by the home competent authority is accepted in all Member States concerned without the need to provide additional information or obtain fresh approval.

## **Article 18 - Notification to the host competent authority**

To ensure proper investor protection, and in line with the requirements applicable in the Directives providing for a European passport (the Investment Services Directive and the Second Banking Directive), the competent authority in the home Member State must send the competent authorities of the other Member States a certificate of approval stating that the provisions of this Directive have been complied with, and any translation of the summary made by the issuer.

## **Article 19 - Language regime**

Article 19 lays down new language rules for the operation of the European passport. The system is already part of the *acquis communautaire* in the field of securities, in particular Directive 2001/34/EC, but has been updated. The competent authority in the host Member State may accept a prospectus in any language which it considers appropriate, though not necessarily a language of that Member State. It may not require a translation of the full prospectus into its national language(s), but it may, if it wishes, require a translation of the summary only, and ask for the prospectus to be written in a language generally accepted in the sphere of international finance.

## **Article 20 - Issuers incorporated in third countries**

In the case of issuers incorporated in a third country, the prospectus shall be approved by the EU "home country" authority, designated in accordance with the Directive. This authority may recognise the prospectus drawn up in accordance with the rules applicable to the issuer in the third country, provided that the information requirements are generally equivalent to those required by the Directive, most notably compliance with the international standards established by the international securities commissions. Once approved by the home competent authority, the prospectus may be used in other Member States.

To ensure a consistent approach at European level, the Commission should determine under a level 2 committee procedure which third countries have rules that can be regarded as generally equivalent to those in the Directive.

### **Article 21 - Rights of the competent authorities**

The introduction of a notification system requires mutual trust among competent authorities and similarities in performing regulatory and supervisory functions. At present the Directives simply require Member States to notify who the competent authorities are.

The designation of an administrative competent authority in each Member State meets the need for efficiency and clarity, and is designed to enhance cooperation between the different national competent authorities. A Member State may, however, designate several competent administrative authorities, but only one authority per Member State will have the necessary powers of approval and notification in the case of a public offer or admission to trading on a regulated market in other Member States.

The administrative nature of these single competent authorities is necessary to ensure their independence from the markets and to avoid conflicts of interest. Nevertheless, an administrative authority may delegate tasks to other bodies, subject to strict conditions aimed at preventing any conflict of interest and any restrictive practice.

Article 21 lists the minimum rights that each should have in order to fulfil its duties. The provision will also ensure greater consistency and clarity in the application of the Directive.

### **Article 22 - Professional secrecy**

As is customary in all Community financial legislation, rules are required in order to ensure the confidentiality of information collected by the competent authorities in performing their tasks.

However, such confidentiality must not constitute a barrier to mutual assistance and cooperation between the competent authorities of the Member States and, subject to certain guarantees, between these and the competent authorities of third countries.

Article 22 sets forth these rules in accordance with the principles already embodied in existing legislation (in particular the Insider Dealing and the Investment Services Directives).

### **Article 23 - Precautionary measures**

Article 23 applies a principle enshrined in the Treaty and common to all Community financial legislation: where the competent authority in the host Member State ascertains irregularities committed by the issuer or by the financial institutions in charge of the public offer procedures or violations of the obligations deriving for the issuer from the fact that the securities are admitted to trading, it must inform the competent authority in the home Member State. In an emergency, however, it is authorised to take any necessary steps to protect investors. They must also be notified to the Commission.

## **Article 24 - Committee**

Article 24 refers to the Securities Committee ("the Committee"). The Committee's purpose is to assist the Commission in the exercise of its level 2 powers (committee procedure).

## **Article 25 - Sanctions**

Article 25 provides for an adequate sanctioning mechanism to be put in place in each Member State. It states that such sanctions, including administrative ones, must be effective, proportionate and dissuasive.

## **Article 26 - Right of action**

To ensure proper protection for all affected parties, Article 26 lays down that all decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to judicial remedy.

## **Article 27 - Amendments**

Article 27 sets out which articles and paragraphs of Directive 2001/34/EC are deleted.

## **Article 28 - Repeal**

The provisions of Directive 89/298/EEC are repealed on the date of entry into force of this Directive, as provided for in Article 29 above.

## **Article 29 - Transposition**

Article 29 sets the time limit for transposition of the Directive.

## **Article 30 - Transitional provisions**

Article 30 specifies the cut-off date by which third country issuers whose securities have already been admitted to trading on a regulated market must choose their home country in the Community.

## **Article 31 - Entry into force**

Article 31 specifies when the Directive will enter into force.

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC**

**(text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission<sup>2</sup>

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>

Having regard to the opinion of the European Central Bank<sup>4</sup>

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>5</sup>

Whereas:

- (1) Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution for the listing particulars to be published for the admission of securities to official stock exchange listing<sup>6</sup> and Council Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public<sup>7</sup> have been adopted several years ago introducing a partial and complex mutual recognition mechanism which is unable to ensure the objective of the single passport.. Those Directives should be upgraded, updated and grouped together into a single text.
- (2) Meanwhile Directive 80/390/EEC was integrated into Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities<sup>8</sup> which codifies several Directives in the field of listed securities.

---

<sup>2</sup> OJ C 240 E, 28.8.2001, p. 272.

<sup>3</sup> OJ C 80, 3.4.2002, p. 52.

<sup>4</sup> OJ C 344, 6.12.2001, p. 8.

<sup>5</sup> Opinion of the European Parliament of ..../....

<sup>6</sup> OJ L 100, 17.4.1980, p. 1. Directive as last amended by European Parliament and Council Directive 94/18/EC (OJ L 135, 31.5.1994, p. 1)

<sup>7</sup> OJ L 124, 5.5.1989, p. 8.

<sup>8</sup> OJ L184, 6.7.2001, p.1.

- (3) For reasons of coherence in the subject matter, however, it is appropriate to regroup the provisions of Directive 2001/34/EC which stem from Directive 80/390/EEC together with Directive 89/298/EEC and to amend Directive 2001/34/EC accordingly.
- (4) This Directive constitutes an instrument essential to the achievement of the internal market as set out in a timetable form in the Communication from the Commission - Risk Capital Action Plan<sup>9</sup> and the Communication from the Commission – Implementing the framework for financial market: action Plan<sup>10</sup> facilitating the widest possible access to investment capital on an Community-wide basis, including for small and medium size enterprises (SMEs) and start ups, by means of a “single passport” for issuers.
- (5) On 17 July 2000, the Council (Ecofin) set up the Committee of Wise Men on the regulation of European securities markets. In its initial report of 9 November 2000 the Committee stresses the lack of an agreed definition of public offer of securities, with the results that the same operation is analysed as a private placement in some Member States and not in others; the current system discourages firms from raising capital on an European wide basis and therefore from having real access to a large, liquid and integrated financial market.
- (6) In its final report the Committee of Wise Men proposed the introduction of new legislative techniques based on a four level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the Directive, should confine itself to broad general “framework” principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.
- (7) The European Council at its meeting in Stockholm on 23-24 March 2001 endorsed the final report of the Committee of Wise Men and the proposed four level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (8) The resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament before the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chair of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.
- (9) According to the Stockholm European Council Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments and deadlines should be set for all stages of Level 2 work.
- (10) Implementing measures adopted pursuant to this Directive should aim to ensure investor protection and market integrity, in accordance with high regulatory standards adopted in the relevant international fora.

---

<sup>9</sup> SEC (1998) 552 final.  
<sup>10</sup> COM(1999) 232 final.

- (11) Full coverage of equity and debt securities admitted to trading on regulated markets as defined by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>11</sup> and not only securities which have been admitted to the official list of stock exchanges is also needed to ensure the protection of investors. The wide definition of securities in this Directive is valid only for this Directive and consequently in no way affects the various definitions of financial instruments used in national legislation for other purposes such as taxation. It covers only negotiable instruments that are or could possibly be traded on regulated markets. In particular, equity securities issued by housing companies or joint-stock property companies in order to own real estate or by companies for the sole purpose to provide goods and services to holders of their securities are not covered by this definition if they are not fungible.
- (12) The grant of a single passport to the issuer valid throughout the Community and the application of the principles of home Member State supervision requires the identification of the home Member State as the one best placed to regulate the issuer for the purposes of this Directive.
- (13) One of the objective of this Directive is to protect investors. It is therefore appropriate to take account of the different requirements for protection of the various categories of investors and their level of expertise. Disclosure provided by the prospectus is not required for offers limited to the same categories as far as securities have been bought for one's own account. Any resale to the public or public trading through admission to trading on a regulated market requires the publication of a prospectus.
- (14) The provision of full, appropriate information concerning securities and issuers of such securities promotes, together with rules on the conduct of business, the protection of investors. Moreover, such information is an effective mean of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The form in which this information is required is the publication of the prospectus.
- (15) Investment in securities, like any other form of investment, involves risk. Safeguards for the protection of the interests of the actual and potential investors are required in all Member States in order to put them in a position to make a correct assessment of such risks so as to be able to take investment decisions in full knowledge of the facts.
- (16) Such information, which needs to be sufficient and as objective as possible concerning the financial circumstances of the issuer and the right attaching to the securities, should be provided in an easily analysable and comprehensible form. The harmonisation of the information contained in the prospectus should provide equivalent protection for investors at Community level.
- (17) Best practices have been adopted at international level in order to allow multinational offerings of equities to be made using a single set of disclosure standards by the International Organisation Securities Commissions (IOSCO); the IOSCO disclosure standards<sup>12</sup> will upgrade information available for the markets and investors and, at the

---

<sup>11</sup> OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

<sup>12</sup> International Disclosure Standards for cross-border offering and initial listings by foreign issuers, Part I International Organisation of Securities Commissions, September 1998.

same time will simplify the procedure for European issuers wishing to raise capital in third countries. The Directive also calls for tailored disclosure standards to be adopted for other types of securities and issuers.

- (18) Fast track procedures for issuers admitted to trading on a regulated market and frequently raising capital on the markets require the introduction at Community level of a new format of prospectuses for offering programmes or mortgage bonds and a new registration document system. Issuers may choose not to use those formats and therefore to draft the prospectus as a single document.
- (19) Omission of sensitive information to be included in a prospectus should be allowed through a derogation granted by the competent authority in order to avoid detrimental situations for an issuer. Non appropriate or applicable information items required in a prospectus should also be adapted to the particular situation of an issuer or type of securities.
- (20) A clear time limit should be set for the validity of a prospectus to avoid outdated information. This validity should be extended to the maturity of a mortgage bond because of the lower risk profile of such securities.
- (21) Investors should be protected by ensuring publication of reliable information. The companies admitted to trading on a regulated market are subject to an ongoing disclosure obligation but not to publish updated information regularly. To supplement this, issuers should at least update the information related to them and contained in a prospectus. This should be a way to ensure the publication of consistent and easily understandable information on a regular basis. To avoid excessive burden for certain issuers, SMEs and issuers of securities with high minimum denomination should not be required to meet this obligation. Issuers should be allowed to use all the different reporting requirements laid down in other Community legislative texts to fulfil the update obligation..
- (22) The opportunity of allowing issuers to incorporate by reference documents containing the information to be disclosed under prospectus provided that the documents incorporated by reference have been previously filed and accepted by the competent authority should facilitate the procedure of drawing a prospectus and lower the costs for the issuers without endangering investor protection.
- (23) Differences regarding the efficacy, methods and timing of the check of the information given therein are not only to make it more difficult for undertakings to raise capital or to obtain admission to trading in several Member States but also to hinder the acquisition by investors residing in one Member State of securities offered by an issuer established in another Member State or traded in another Member State. These differences should be eliminated by harmonising the rules and regulations in order to achieve an adequate degree of equivalence of the safeguards required in each Member States to ensure the provision of information which is sufficient and as objective as possible for actual or potential securities holders.
- (24) To facilitate the circulation of the various documents composing the prospectus, the use of electronic communication facilities such as internet should be encouraged. The prospectus should be always delivered in paper form free of charge to investors on request.

- (25) It is also necessary, in order to avoid loopholes in Community legislation which would undermine public confidence and therefore prejudice the proper functioning of financial markets, to harmonise procedures under which advertising can take place.
- (26) Any new fact liable to influence the assessment of the investment intervened after the publication of the prospectus but before the closing of the offer or the starting of the trading on a regulated market should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement of information.
- (27) The obligation for an issuer to translate the full prospectus into all the relevant national languages discourages cross border offerings or multiple trading. To facilitate cross borders offers, where the prospectus is drawn up in a language that is customary in the sphere of international finance, the host country should only be entitled to require a summary in its domestic language.
- (28) The competent authority of the host Member State should be entitled to receive a certificate from the competent authority of the home Member State which states that the prospectus has been drafted in accordance with this Directive. In order to ensure that the purposes of this Directive will be fully achieved, it is also necessary to include within its scope securities issued by issuers governed by the laws of third countries.
- (29) A variety of competent authorities in Member States, having different responsibilities, may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State a competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with the provisions adopted for the implementation of this Directive. Under strict conditions, a Member State should be allowed to designate other administrative authorities but only one will assume the duties for international collaboration. Such an authority or authorities should be established as an administrative authority and in such a form that its independence from economic actors is guaranteed and conflicts of interests are avoided. The designation of a competent authority for prospectus approval does not exclude forms of collaboration and even delegation of tasks between that authority and other entities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants, and markets alike.
- (30) A common minimum set of powers for the competent authorities will guarantee the effectiveness of their supervision. Flow of information to the markets required by Directive 2001/34/EC of 28 May 2001 has to be ensured and action against breaches taken by competent authorities.
- (31) For the purposes of carrying out their duties, cooperation between competent authorities is required.
- (32) Technical guidance and implementing measures to the rules laid down in this Directive may from time to time be necessary to take into account of new developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and that the Commission acts according to the principles set out in this Directive, after consulting the European Securities Committee

established by Commission Decision 2001/528/EC<sup>13</sup>. Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>14</sup>, they should be adopted by use of the regulatory procedures provided for in Article 5 of that Decision.

(33) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:

- the need to ensure confidence in financial markets among households and SMEs by promoting high standards of transparency in financial markets;
- the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;
- the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against white-collar crime;
- the need for a high level of transparency and consultation with all market participants and with the European Parliament and Council;
- the need to encourage innovation in financial markets if they are to be dynamic and efficient;
- the need to ensure systemic stability of the financial system by a close and reactive monitoring of financial innovation;
- the importance of reducing the cost of, and increasing access to, capital;
- the need to balance the costs and benefits to market participants on a long-term basis (including small and medium-sized businesses and small investors) of any implementing measures;
- the need to foster the international competitiveness of the Community's financial markets without prejudice to a much-needed extension of international cooperation;
- the need to achieve a level playing field for all market participants by establishing Community-wide regulations every time it is appropriate;
- the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;
- the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

---

<sup>13</sup>

OJ L 191, 13.7.2001, p. 45

<sup>14</sup>

OJ L 184, 17.7.1999, p. 23

- (34) The European Parliament will be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission will re-examine the draft measures.
- (35) The Member States should lay down rules on sanctions, including administrative sanctions, applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.
- (36) Provision should be made for the right to apply to the Courts against decisions by the competent national authorities in respect of the application of this Directive.
- (37) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the completion of a single securities market to lay down rules on a single passport for issuers. This Directive confines itself to what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
- (38) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

HAVE ADOPTED THIS DIRECTIVE:

# **Chapter I**

## **General Provisions**

### *Article 1*

#### *Subject matter and scope*

1. The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.
2. This Directive shall not apply to:
  - (a) units issued by collective investment undertakings other than the closed-end type,
  - (b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States,
  - (c) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities,
  - (d) securities issued, with a view to their obtaining the means necessary to achieve their non commercial objectives, by associations with legal status or non-profit making bodies recognised by the State,
  - (e) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities:
    - i) are not subordinated, convertible or exchangeable;
    - ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative;
    - iii) materialise reception of repayable deposits;
    - iv) are covered by a deposit guarantee scheme under Directive 94/19/EC<sup>15</sup>.
3. Notwithstanding Paragraph (2) (b), a Member State or one of a Member State's regional or local authorities, a public international body of which one or more Member States are members, the European Central Bank or the central banks of the Member States shall have the possibility to draw up a prospectus in accordance with this Directive when securities are offered to the public or admitted to trading on a regulated market.

---

<sup>15</sup>

OJ L 135, 31.5.1994, p.5.

## *Article 2*

### *Definitions*

1. For the purposes of this Directive, the following definitions shall apply:
  - (a) ‘securities’ mean transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of bonds or other debt securities, having a maturity of less than one year, and which are not subordinated, convertible or exchangeable and do not give a right to subscribe to or acquire other types of securities and that are not linked to a derivative;
  - (b) ‘equity securities’ mean shares and other transferable securities equivalent to shares in companies as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities, as a consequence of them being converted or the rights conferred by them being exercised, provided that the latter type of securities are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;
  - (c) ‘non-equity securities’ mean all securities that are not equity securities;
  - (d) ‘offer of securities to the public’ means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, that might enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries;
  - (e) ‘qualified investors’ mean:
    - i) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers as well as entities not authorised or regulated whose corporate purpose is solely to invest in securities;
    - ii) national and regional governments, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;
    - iii) other legal entities which are not small or medium-sized enterprises;
    - iv) natural persons if they expressly ask to be considered as qualified investors and meet at least two of the criteria set out in paragraph 3;
  - (f) ‘small and medium-sized enterprise’ means a company, which according to its last annual or consolidated accounts, meets at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43.000.000 and an annual net turnover not exceeding EUR 50.000.000;

- (g) ‘credit institution’ means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant loans for its own accounts;
- (h) ‘issuer’ means a legal entity which issues or proposes to issue securities;
- (i) ‘person making an offer’ (or ‘offeror’) means a legal entity or individual which offers securities to the public;
- (j) ‘regulated market’ means a market as defined by Article 1(13) of Directive 93/22/EEC;
- (k) ‘offering programme’ means an issuer’s plan for the issuance of non-equity securities having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;
- (l) ‘securities issued in a continuous or repeated manner’ means issues on tap with at least two separate issues of securities of a similar type and/or class over a period of twelve months;
- (m) ‘home Member State’ means:
  - i) for non-equity securities whose denomination per unit amounts to at least EUR 50 000 , the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public at the choice of the issuer, the offeror or the person asking for admission, as the case may be;
  - ii) for all EU issuers of securities whose denomination per unit amounts to less than EUR 50 000 , the Member State where the issuer has its registered office;
  - iii) for all issuers of securities incorporated in a third country and whose denomination per unit amounts to less than EUR 50 000, the Member State where the securities are intended to be offered for the first time after the entry into force of this Directive or where the first application for admission to trading is made on a regulated market, at the choice of the issuer, the offeror or the person asking for admission, as the case may be.
- (n) ‘host Member State’ means the State where an offer to the public is made or admission to trading is sought when different from the home Member State;
- (o) ‘collective investment undertaking other than the closed-end type’ means unit trusts and investment companies:
  - i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading, and
  - ii) the units of which are, at the holder’s request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;

- (p) ‘units of a collective investment undertaking’ mean securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets;
- (q) ‘approval’ means prior scrutiny of the completeness of the prospectus by the home competent authority including the coherence of the information given and its comprehensibility.

2. For the purposes of paragraph 1(d) the following types of offer shall not be considered as an offer of securities to the public:

- (a) an offer of securities addressed to qualified investors;
- (b) an offer of securities addressed to less than 100 natural or legal persons per Member State, other than qualified investors;
- (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least Euro 50.000 per investor, for each discreet offer;
- (d) an offer of securities whose denomination per unit amounts to at least Euro 50.000;
- (e) an offer of securities with a total consideration of less than Euro 2.500.000 which limit shall be calculated over a period of twelve months.

However, any subsequent resale of securities shall be regarded as a separate offer and the definition set out to in paragraph 1(d) shall apply to decide whether it is an offer of securities to the public. Transactions solely executed upon customers' orders, whether on or off exchange, shall not be considered as an offer of securities to the public.

3. For the purposes of paragraph 1(e)(iv) the following criteria shall apply

- (a) the investor has carried out, transactions, in significant size, on securities market at an average frequency of 10 per quarter over the previous four quarter;
- (b) the size of the investor's securities portfolio exceeds Euro 0,5 million;
- (c) the investor works or has worked in the financial sector for at least one year in a professional position which requires knowledge of securities investment.

Each competent authority shall ensure that appropriate mechanisms are in place for a register of qualified investors, taking into account the need to ensure an adequate level of data protection. The register shall be available to all issuers. Each natural person wishing to be considered as qualified investor shall register and such registered investor may decide whenever to opt out.

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall in accordance with the procedure set out in Article 24(2), adopt implementing measures concerning the definitions referred to in paragraph 1, including the possible increase of the figures used for the definition of SMEs taking into account the evolution of the economic

trend and disclosure measures related to the registration of individual qualified investors.

### *Article 3*

#### *Obligation to publish a prospectus*

1. Member States shall ensure that any offer of securities to the public within their territories is subject to the publication of a prospectus.
2. Member States shall ensure that any admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.

### *Article 4*

#### *Exemptions from the obligation to publish a prospectus*

1. The obligation to publish a prospectus set out in Article 3 shall not apply to the offer of the following types of securities:
  - (a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
  - (b) securities offered in connection with a take over by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
  - (c) securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
  - (d) shares offered, allotted or to be allotted free of charge to existing shareholders and dividends paid out in the form of shares of the same class as the shares in respect of which the dividend is paid, provided that a document is published containing information on the number and nature of the shares and the reasons for and detail of the operation;
  - (e) securities offered, allotted or to be allotted to existing or former directors or employees by the issuer or an affiliated undertaking provided that a document is published containing information on the number and nature of the securities and the reasons for and detail of the operation.
2. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following types of securities:
  - (a) shares representing, over a period of twelve months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;

- (b) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;
- (c) securities offered in connection with a take over by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
- (d) securities offered, allotted or to be allotted in connection with a merger provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
- (e) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividend is paid, provided that said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is published containing information on the number and nature of the shares and the reasons for and detail of the operation;
- (f) securities offered, allotted or to be allotted to existing or former directors or employees by the issuer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market;
- (g) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that said securities are of the same class as the securities already admitted to trading on the same regulated market.

3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the terminology and exemptions provided for in paragraphs 1 and 2 of this article.

## **Chapter II**

### **Drawing up of the prospectus**

#### *Article 5*

##### *The prospectus*

1. The prospectus shall contain all the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and any guarantor of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.

2. The prospectus shall contain information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market. It shall also include a summary. The summary shall not be more than 2.500 words in the language in which the prospectus was first written, be written in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities offered to the public or admitted to trading and contain a warning that:

- (a) it should be read as an introduction to the prospectus, and
- (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor.

Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50 000, there shall be no requirement to provide a summary.

3. The issuer, offeror or person asking for the admission to trading on a regulated market may decide to draw up the prospectus as a single or as separate documents. The prospectus composed of separate documents shall include a registration document, a securities note and a summary note. The registration document shall contain the information related to the issuer. The securities note shall contain the information concerning the securities offered or to be admitted to trading on a regulated market.

4. For the following types of securities, the prospectus shall be defined as a base prospectus with all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading:

- (a) non-equity securities issued under an offering programme
- (b) non-equity securities issued in a continuous or repeated manner by credit institutions,
  - i) where the sums deriving from the issue of the said securities, according to national legal provisions, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date, and
  - ii) where, in the event of the bankruptcy of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest becoming due, without prejudice to the provisions of Directive 2001/24/EC<sup>16</sup>.

The information given in the base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the securities to be offered to the public or admitted to trading in accordance with Article 16. If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each

---

<sup>16</sup>

OJ L 125, 5.5.2001, p.15

public offering is made as soon as practicable but not necessarily in advance of the beginning of the offer.

5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the format of the prospectus or base prospectus and supplements.

## *Article 6*

### *Responsibility attached to the prospectus*

1. Member States shall ensure that the responsibility for the information given in a prospectus is incumbent upon the administrative, management or supervisory bodies of the issuer, the offeror, the person asking for the admission to trading on a regulated market or the guarantor as the case may be. The persons responsible shall be clearly identified in the prospectus with their names and functions as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.
2. Member States shall ensure that their laws, regulation and administrative provisions on civil liability applies to those persons responsible for the information given in a prospectus.

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

## *Article 7*

### *Minimum information*

1. Detailed implementing measures regarding the specific information which must be included in the prospectus and avoiding duplication of information when a prospectus is composed of separate documents shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2). The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

In particular, while developing the different models of prospectuses, account shall be taken of the following:

- (a) the different types of information needed by investors relating to equity securities as compared to non equity-securities while taking a consistent approach with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;
- (b) the different types and nature of offers and admissions to trading of non-equity securities. The information items required in a prospectus being appropriate

from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 50 000;

- (c) the format used and the information required in prospectuses relating to securities issued under an offering programme;
- (d) the format used and the information required in prospectuses relating to non-equity securities, insofar as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivatives products, issued on a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;
- (e) the different activities and size of the issuer, in particular small and medium-sized enterprises. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record.

2. The implementing rules referred to in paragraph 1 shall be based on the standards in the field of financial and non financial information set out by international securities commission organisations, and in particular by the International Organisation of Securities Commissions (IOSCO) and on the indicative Annexes to this Directive.

## *Article 8*

### *Omission of information*

- 1. Member States shall ensure that where the final offering price and amount of securities which will be sold to the public cannot be included in the prospectus:
  - (a) the criteria, and/or the conditions according to which, the above elements will be determined or, in the case of price, the maximum price should be disclosed in the prospectus, or;
  - (b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than 48 hours after the final offering price and amount of securities which are offered to the public have been filed.

The final terms shall be filed with the competent authority of the home Member State and published according to the arrangements provided for in Article 14(2).

- 2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the implementing rules referred to in Article 7(1), if it considers that:
  - (a) disclosure of such information would be contrary to the public interest; or
  - (b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates.

3. Without prejudice to the adequate information of investors, where, exceptionally, certain information required in implementing measures referred to in Article 7(1) to be included in a prospectus are inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such equivalent information, the requirement shall not apply.
4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 1,2 and 3.

### *Article 9*

#### *Validity of a prospectus, base prospectus and registration document*

- 1 A prospectus shall be valid during twelve months after its publication for offers to the public or admissions to trading on a regulated market in a Member State, provided that the prospectus is completed with any supplements required pursuant to Article 16.
- 2 In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to twelve months.
- 3 In the case of non-equity securities issued in a continuous or repeated manner by credit institutions, the base prospectus shall be valid until maturity of the securities issued
  - (a) where the sums deriving from the issue of the said securities, according to national legal provisions, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date, and
  - (b) where, in the event of the bankruptcy of the related credit institution, the sums referred to in point (a) are intended, as a priority, to repay the capital and interest becoming due, without prejudice to the provisions of Directive 2001/24/EC.
- 4 A registration document, as referred to in Article 5(3), previously filed, shall be valid for a period of up to twelve months provided that it has been updated according to Article 10(1). The registration document accompanied with the securities note, updated if applicable according Article 12(2), and the summary note shall be considered as a valid prospectus.

### *Article 10*

#### *Investor protection*

1. Issuers whose securities are admitted to trading on a regulated market shall at least update the information related to the issuer and contained in a prospectus or in a registration document every year after the approval of the financial statements, according to the requirements applicable to the issuer in the home Member State.

2. The obligation set out in paragraph 1 shall not apply to issuers of non-equity securities whose denomination per unit amounts to at least EUR 50 000. Where the issuer is a small or medium-sized enterprise, the updating requirement laid down in paragraph 1 shall be restricted to the annual financial statements.
3. The updated information of the registration document or part of the prospectus shall be filed with the competent authority of the home Member State.
4. Issuers may refer to the information and documents required pursuant to Company Law Directives, Directive 2001/34/EC and Regulation (EC) No .../...[on the adoption of International Accounting Standards] for the purpose of complying with the requirement laid down in paragraph 1, provided that those information and documents comply with the information requirements set out in this Directive and in its implementing measures.
5. Issuers whose securities have already been admitted to trading on a regulated market shall file with the competent authority of their home Member State the first update of information at the latest at the same time as the first presentation of the annual accounts and reports after the 1 January 2006.
6. In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission may, in accordance with the procedure referred to in Article 24 (2), adopt implementing measures concerning the annual update. The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

### *Article 11*

#### *Incorporation by reference*

1. Member States shall allow information to be incorporated in the prospectus by referring to one or more previously published documents, which have been approved or filed in accordance with this Directive, in particular pursuant to Article 10, or with Titles IV and V of Directive 2001/34/EC. This information shall be the latest available to the issuer. The summary referred to in article 5(3) shall contain no information incorporated by a reference.
2. When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to easily identify specific items of information.
3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the information to be incorporated by reference. The first set of implementing rules shall be adopted within 180 days after the entry into force of this Directive.

## *Article 12*

### *Use of a registration document, securities note and summary note*

An issuer who already has a registration document approved by the competent authority shall only be required to draw up the securities note and the summary note when securities are publicly offered or admitted to trading.

In this case the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development since the latest updated registration document was approved. The securities and summary notes shall be subject to a separate approval.

Where, an issuer has only filed a registration document without approval, updated information according to Article 10 shall be provided for all the documents. The whole documentation shall be subject to approval.

## **Chapter III**

### **Arrangements for the approval and publication of the prospectus**

## *Article 13*

### *Approval of the prospectus*

1. No prospectus shall be published until it has been approved by the competent authority of the home Member State.
2. The competent authority of the home Member State shall notify the issuer, the offeror or the person asking for admission, as the case may be, of its decision regarding the approval of the prospectus within 15 working days of the submission of the draft prospectus. If the competent authority fails to give a decision within this maximum time limit, the issuer, the offeror or the person asking for admission shall be free to withdraw its application and apply for approval of the prospectus from a competent authority in another Member State as defined in Article 2 (1) (m) i). A withdrawal and new application shall be notified to both competent authorities.
3. The time limit referred to in paragraph 2 shall be extended to 30 working days if the public offer involves securities issued by an issuer who does not have any securities admitted to trading on a regulated market or who has not yet offered securities to the public.
4. If the competent authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that complementary information is needed, the time limits referred to in paragraphs 2 and 3 shall only apply from the date such complementary information is provided by the issuer, the offeror or the person asking for admission.
5. If the competent authority of the home Member State fails to comment on the prospectus within the time limit laid down in paragraphs 2 and 3, this shall be deemed to be an approval of the application.

6. The competent authority of the home Member State may decide to transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. This transfer shall be notified to the issuer, the offeror or the person asking for admission within 5 working days from the date of the decision taken by the competent authority of the home Member State. The time limit in paragraph 2 shall apply from this date.
7. This Directive shall not affect the competent authority's liability, which shall continue to be governed solely by national law. Each Member State shall ensure that their national provisions on competent authority's liability are only applicable to approval of prospectuses given by their competent authority or authorities. Nothing in this Directive shall prevent a Member State from exonerating a competent authority from any liability resulting from the approval of a prospectus.
8. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the conditions according to which deadlines may be reduced.

#### *Article 14*

##### *Publication of the prospectus*

1. The prospectus shall be filed once approved with the competent authority of the home Member State and shall be made available to the public by the issuer, offeror or person asking for the admission as soon as practicable and in any case, at a reasonable time in advance of the beginning of the offer or the admission to trading on a regulated market of the securities involved.
2. The prospectus shall be deemed available to the public when published either:
  - a) by insertion in one or more newspapers circulated throughout the Member States in which the offer is made or the admission to trading is sought, or widely circulated therein, or
  - b) in the form of a brochure to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered offices of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents, or
  - c) in electronic form on the issuer's web-site and, if applicable, on the web-site of the financial intermediaries placing or selling the securities, including paying agents.
3. The competent authority shall publish on its web-site over a period of twelve months, at its choice, all the prospectuses approved or, at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer.
4. In the case of a prospectus drawn up with several documents and/or with information incorporated by reference, the documents and information composing the prospectus may be published and circulated separately as long as the said documents are made

available, free of charge, to the public, according to the arrangements established in paragraph 2, with a link between those documents.

5. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, should at any time be identical to the original version approved by the competent authority.
6. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless, be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.
7. In order to take account of technical developments on financial markets and to ensure uniform application in the Community, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2 and 3. The first set of implementing measures shall be adopted within 180 days after the entry into force of this Directive.

### *Article 15*

#### *Advertising*

1. Any type of advertisements relating either to a public offer of securities or to an admission to trading on a regulated market, shall respect the principles contained in paragraphs 2 to 5.
2. Advertisements shall state that a prospectus will be or has been published and indicate where investors will be able to obtain it.
3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, misleading or inconsistent with that contained in the prospectus.
4. In any case, the information concerning the offer or the admission to trading divulged in an oral form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.
5. Material information addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings, shall also be disclosed to the public through an appropriate and relevant range of media, including the issuer's web-site.
6. The competent authority of the home Member State shall have the power to exercise control over the compliance of the advertising activity, relating to a public offer of securities or an admission to trading, with the principles referred to in paragraphs 2 to 5.
7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the dissemination of advertisements, notices, posters announcing the intention to offer securities to the public or the admission to trading, before the prospectus has been

made available to the public or before the opening of the subscription and concerning paragraph 4. The first set of implementing measures shall be adopted by the Commission within 180 days after the entry into force of this Directive.

### *Article 16*

#### *Supplement to the prospectus*

Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus, which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the definitive closure of the offer or, if applicable, the time when trading begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way and published in accordance with at least the same arrangements as were applied when the original prospectus was disseminated.

## **Chapter IV**

### **Multinational offerings and admission to trading**

### *Article 17*

#### *Community scope of an approval of a prospectus*

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is foreseen in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State, as well as any supplements, shall be valid for public offer or admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall undertake no approval or administrative procedures related to prospectuses.
2. If there are significant new factors, as referred to in Article 16, since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplementary document to be approved as provided for in Article 13(1). The competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information.

### *Article 18*

#### *Notification*

1. The competent authority of the home Member State shall, at the request of the issuer, within three working days from that request provide the competent authority of the host Member States with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive. If applicable, this notification is accompanied by the translation of the summary produced under the responsibility of

the issuer. The same procedure shall be followed for any supplement to the prospectus.

2. The application of the provisions referred to in Article 8 (2) and (3) shall be stated in the certificate, as well as its justification.

## Chapter V

### **Language regime and issuers incorporated in third countries**

#### *Article 19*

##### *Language regime*

1. Where an offer to the public is made or admission to trading is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority in the home Member State.
2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities in those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission, as the case may be. The competent authority of each host Member State may only require that the summary be translated into its language(s).
3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority in the home Member State and shall also be made available either in a language accepted by the competent authorities in the host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission as the case may be. The competent authority of each host Member State may only require that the summary referred to in Article 5(2) be translated into its language(s).
4. Where an offer to the public is made or admission to trading on a regulated market of securities whose denomination per unit amounts to at least EUR 50 000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities in the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission as the case may be.

## *Article 20*

### *Issuers incorporated in third countries*

1. The competent authority of the home Member State of issuers having their registered office in a third country may approve a prospectus for an offer to the public or for an admission to trading on a regulated market, drawn up according to the legislation of a third country, provided that
  - a) this prospectus has been drawn up according to international standards set out by international securities commission organisations, including the IOSCO Disclosure Standards and
  - b) the information requirements, including information of a financial nature, are broadly equivalent to the requirements under this Directive.
2. In the case of offer to the public or admission to trading of securities issued by an issuer incorporated in a third country in a Member State other than the home Member State, the requirements set out in Articles 17, 18 and 19 shall apply.
3. In order to ensure uniform application of this Directive, the Commission may decide, in accordance with the procedure referred to in Article 24(2), that a third country ensures the broad equivalence of prospectuses drawn up in that country with this Directive, by reason of its domestic law, or of the practices or procedures based on international standards set out by international organisations, including the IOSCO Disclosure Standards. The Member States shall take the measures necessary to comply with the Commission's decision.

## **Chapter VI**

### **Competent Authorities**

## *Article 21*

### *Rights*

1. Each Member State shall designate a central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied.

However, this Member State may designate other administrative authorities to apply Chapter III.

These competent authorities shall be completely independent from all market participants.

If a multinational offering or admission to trading in more than one Member State is sought, only the central competent authority designated by each Member State shall be entitled to approve the prospectus.

Member States shall inform the Commission of the list of administrative authorities they have designated.

2. Member States may allow their competent authority or authorities to delegate tasks. Any delegation of tasks to other entities than the authorities referred to in paragraph 1, in particular in distinguishing risk capital regulated markets, shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they should be carried out.

These conditions shall include a clause obliging the entity in question to be organised in a manner so as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted shall lie with the competent authority/ies designated in accordance with paragraph 1.

Member States shall inform the Commission and competent authorities of other Member States of any arrangements entered with regard to delegation of tasks.

3. Each competent authority shall have all the rights necessary for the performance of its functions. A competent authority that has received an application for approving a prospectus shall at least be empowered to:
  - (a) require issuers, offerors or persons asking for admission to trading to include in the prospectus supplementary information if necessary for investor protection;
  - (b) require issuers, offerors or persons asking for admission to trading, and the persons that control them or are controlled by them to provide information and documents;
  - (c) require auditors and managers of the issuer, offeror or person asking for admission, as well as financial intermediaries commissioned to carry out the offer or admission to trading, to provide information;
  - (d) suspend a public offer or admission to trading for a maximum of 10 days at one time if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed;
  - (e) prohibit or suspend advertising for a maximum of 10 days if it has reasonable grounds for believing that the provisions of this Directive have been infringed;
  - (f) prohibit a public offer if it finds that the provisions of this Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed;
  - (g) suspend, or ask the relevant regulated markets to suspend, the trading on a regulated market for a maximum of 10 days if it has reasonable grounds for believing that the provisions of this Directive have been infringed;
  - (h) prohibit trading on a regulated market if it finds that the provisions of this Directive have been infringed;
  - (i) make public the fact that an issuer is failing to comply with its obligations.

Where necessary, the competent authority may request to the relevant judicial authority for permission to enforce the rights referred to in points (d) to (h) of the first sub-paragraph.

4. The competent authority/ies shall, once the securities have been admitted to trading on a regulated market, have the right to:
  - (a) require the issuer to disclose all material information which may have an effect on the assessment of the securities offered to the public or admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;
  - (b) suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests;
  - (c) ensure that the issuers whose securities are traded on regulated markets, comply with the obligations provided for in Articles 102 and 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position, in all Member States where the offer is made or the securities are traded.
5. Paragraphs 1 to 4 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

## *Article 22*

### *Professional secrecy and cooperation between authorities*

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority and for entities to whom competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.
2. Competent authorities of Member States shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in their activities when an issuer has more than one home competent authority because of its various classes of securities. Where appropriate, the competent authority of the host Member State may request assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards new type or rare forms of securities. The competent authority of the home Member State may ask for information to the competent authority of the host Member State on any items specific to the relevant market.

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information. 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.

### *Article 23*

#### *Precautionary measures*

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer procedures or breaches of the issuer's obligations, resulting from the fact that the securities are admitted to trading, it shall refer these findings to the competent authority of the home Member State.
2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer procedures persists in violating the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

## **Chapter VII**

### **Implementing measures**

#### *Article 24*

#### *Committee*

1. The Commission shall be assisted by the European Securities Committee, instituted by Decision 2001/528/EC.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof, provided that the implementing measures adopted according to this procedure do not modify the essential provisions of this Directive.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
4. Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following its entry into force, the application of the provisions of this Directive stipulating the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

## *Article 25*

### *Sanctions*

1. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure that the appropriate administrative measures can be taken or sanctions be imposed against the persons responsible, where the provisions adopted pursuant to this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.
2. Member States shall provide that the competent authority may disclose to the public every measure or sanction that will be imposed for infringement of the provisions adopted pursuant to this Directive, unless the disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

## *Article 26*

### *Right of appeal*

Member States shall ensure that decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts.

## **Chapter VIII**

### Transitional and final provisions

## *Article 27*

### *Amendments*

With effect from the date set out in Article 29, Directive 2001/34/EC is amended as follows:

- 1 Article 3 is deleted,
- 2 Articles 20 to 41 are deleted,
- 3 Articles 98 to 101 are deleted,
- 4 Article 104 is deleted,
- 5 Article 107(3) the first sub-paragraph is deleted.
- 6 In Article 108(2)(a), the p "conditions of establishment, the control and circulation of listing particulars to be published for admission" are deleted;
- 7 Article 108(2)(c)(ii) is deleted,
- 8 Annex I is deleted.

*Article 28*

*Repeal*

Directive 89/298/EEC shall be repealed from the date specified in Article 29. References to the repealed Directive shall be construed as references to this Directive.

*Article 29*

*Transposition*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2004, at the latest. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 30*

*Transitional provision*

Issuers of securities incorporated in a third country and whose securities have already been admitted to trading on a regulated market shall choose their competent authority in accordance with Article 2(1) m) iii) and notify their decision to the competent authority of their chosen home Member State at the latest by 31 December 2005.

*Article 31*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 32*

*Addressees*

This Directive is addressed to the Member States.

Done at,

*For the European Parliament*

*The President*

*For the Council*

*The President*

## **ANNEX I**

### **PROSPECTUS**

#### **I. SUMMARY**

The summary shall give in a few pages the most important information included in the prospectus, at least covering the following items.

- identity of directors, senior management, advisors and auditors
- offer statistics and expected timetable
- key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors.
- information concerning the issuer
  - history and development of the issuer
  - business overview
- operating and financial review and prospects;
  - research and development, patents and licences, etc.
  - trend information
- directors, senior management and employees:
- major shareholders and related party transactions:
- financial information
  - consolidated statement and other financial information
  - significant changes
- the offer and admission to trading details
  - offer and admission to trading details
  - plan of distribution
  - markets
  - selling shareholders
  - dilution (shares)
  - expenses of the issue

- Additional information
- share capital
- memorandum and articles of incorporation
- documents on display

## **II. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS**

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

## **III. OFFER STATISTICS AND EXPECTED TIMETABLE**

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

### **A. Offer Statistics.**

### **B. Method and Expected Timetable.**

## **IV. KEY INFORMATION**

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

### **A. Selected Financial Data.**

### **B. Capitalisation and Indebtedness.**

### **C. Reasons for the offer and use of proceeds**

### **D. Risk Factors.**

## **V INFORMATION ON THE COMPANY**

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future increases or decreases in such capacity.

- A. **History and Development of the Company.**
- B. **Business Overview.**
- C. **Organisational Structure.**
- D. **Property, Plant and Equipment.**

## **VI. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

- A. **Operating Results.**
- B. **Liquidity and Capital Resources.**
- C. **Research and Development, Patents and Licences, etc.**
- D. **Trend Information.**

## **VII. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES**

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

- A. **Directors and Senior Management.**
- B. **Compensation.**
- C. **Board Practices.**
- D. **Employees.**
- E. **Share Ownership.**

## **VIII. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS**

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. **Major Shareholders.**
- B. **Related Party Transactions.**
- C. **Interests of Experts and Counsel.**

## **IX. FINANCIAL INFORMATION**

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature.

- A. **Consolidated Statements and Other Financial Information.**
- B. **Significant Changes.**

## **X. THE OFFER AND ADMISSION TO TRADING DETAILS**

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. **Offer and Admission to Trading.**
- B. **Plan of Distribution.**
- C. **Markets.**
- D. **Selling Securities Holders.**
- E. **Dilution (for equity securities only).**
- F. **Expenses of the Issue.**

## **XI. ADDITIONAL INFORMATION**

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. **Share Capital.**
- B. **Memorandum and Articles of Association.**
- C. **Material Contracts.**
- D. **Exchange Controls**
- E. **Taxation**
- F. **Dividends and Paying Agents.**

- G. Statement by Experts.**
- H. Documents on Display.**
- I. Subsidiary Information.**

**ANNEX II**  
**REGISTRATION DOCUMENT**

**I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS**

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

**II. KEY INFORMATION ABOUT THE ISSUER**

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

- A. Selected Financial Data.**
- B. Capitalisation and Indebtedness.**
- C. Risk Factors.**

**III. INFORMATION ON THE COMPANY**

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future increases or decreases in such capacity.

- A. History and Development of the Company.**
- B. Business Overview.**
- C. Organisational Structure.**
- D. Property, Plant and Equipment.**

**IV. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

The purpose is to provide management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating Results.
- B. Liquidity and Capital Resources.
- C. Research and Development, Patents and Licenses, etc.
- D. Trend Information.

## **V. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES**

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess such individuals' experience, qualifications and levels of compensation, as well as their relationship with the company.

- A. Directors and Senior Management.
- B. Compensation.
- C. Board Practices.
- D. Employees.
- E. Share Ownership.

## **VI. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS**

The purpose is to provide information regarding the major shareholders and others that control or may control the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major Shareholders.
- B. Related Party Transactions.
- C. Interests of Experts and Counsel.

## **VII. FINANCIAL INFORMATION**

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature..

- A. Consolidated Statements and Other Financial Information.
- B. Significant Changes.

## **VIII. ADDITIONAL INFORMATION**

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share Capital.**
- B. Memorandum and Articles of Association.**
- C. Material Contracts.**
- D. Statement by Experts.**
- E. Documents on Display.**
- F. Subsidiary Information.**

## **ANNEX III**

### **SECURITIES NOTE**

#### **I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS AND AUDITORS**

The purpose is to identify the company representatives and other individuals involved in the company's offering or admission to trading; these are the persons responsible for drafting the prospectus as required by Article 6 of the Directive and those responsible for auditing the financial statements.

#### **II. OFFER STATISTICS AND EXPECTED TIMETABLE**

The purpose is to provide key information regarding the conduct of any offering and the identification of important dates relating to that offering.

##### **A. Offer Statistics.**

##### **B. Method and Expected Timetable.**

#### **III. KEY INFORMATION ABOUT THE ISSUER**

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data also must be restated.

##### **A. Capitalisation and Indebtedness.**

##### **B. Reasons for the offer and use of proceeds.**

##### **C. Risk Factors.**

#### **IV. INTERESTS OF EXPERTS**

The purpose is to provide information regarding transactions the company has entered into with experts or counsellors employed on a contingent basis.

#### **V. THE OFFER AND ADMISSION TO TRADING DETAILS**

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

##### **A. Offer and Admission to Trading.**

##### **B. Plan of Distribution.**

##### **C. Markets.**

- D. **Selling Securities Holders.**
- E. **Dilution (for equity securities only).**
- F. **Expenses of the Issue.**

## **VI. ADDITIONAL INFORMATION**

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. **Exchange Controls.**
- B. **Taxation.**
- C. **Dividends and Paying Agents.**
- D. **Statement by Experts.**
- E. **Documents on Display.**

## **ANNEX IV**

### **SUMMARY NOTE**

The summary should give in a few pages the most important information included in the prospectus, at least coming from the following items.

- identity of directors, senior management, advisors and auditors
- offer statistics and expected timetable
- key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors.
- information concerning the issuer
  - history and development of the issuer
  - business overview
- operating and financial review and prospects;
  - research and developments, patents and licences, etc.
  - trend information
- directors, senior management and employees:
- major shareholders and related party transactions:
- financial information
  - consolidated statement and other financial information
  - significant changes
- the offer and admission to trading details
  - offer and admission to trading details
  - plan of distribution
  - markets
  - selling shareholders
  - dilution (shares)
  - expenses of the issue
  - Additional information
  - share capital

- memorandum and articles of incorporation
- Documents on display

## **IMPACT ASSESSMENT FORM**

### **THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES( SMEs)**

#### **TITLE OF PROPOSAL**

Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

#### **DOCUMENT REFERENCE NUMBER**

COM(2001) 280 final 2001/0117 (COD)

#### **THE PROPOSAL**

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

A single financial market should promote the competitiveness of the European economy, lowering the cost of raising capital for all types of companies.

The current complex and yet partial mutual recognition mechanism is unable to ensure the objective of providing a single passport for issuers. There is a need for modernisation and enhanced flexibility. To achieve this objective, harmonisation of the information contained in the prospectus is likely to provide equivalent protection for investors at Community level and thus facilitate cross border offers and trading.

In addition, the European passport for issuers is also an opportunity to simplify regulatory compliance for issuers without their having to produce duplicative sets of documentation or respond to numerous additional national requirements.

This action responds to the Lisbon European Council's request to introduce a single passport for issuers in the European Union. Facilitating the widest possible access to investment capital, including for SMEs, requires a complete overhaul of the two existing prospectus Directives<sup>17</sup>, the first of which is 21 years old.

The Directive is in line with the recommendations in the final report of the Committee of the Wise Men on the Regulation of European Securities Markets (Brussels, 15 February 2001).

The Directive is designed to strike the best possible balance between investor protection, market integrity and allowing the full home country control, for all type of issuers and the possibility to access all European markets on the basis of home country regulation.

---

<sup>17</sup>

80/390/EEC (listing particulars) and 89/298/EEC (public offer of securities)

## THE IMPACT ON BUSINESS

### 2. Who will be affected by the proposal?

- which sectors of business

All issuers will be affected apart from EU sovereign issuers, international bodies of which one or more Member States are members, the ECB and UCITS.

- which sizes of business (what is the concentration of small and medium-sized firms)

The single passport will be available to all issuers irrespectively from their size. However, normally capital is raised directly on the market by listed companies and medium size firms.

- are there particular geographical areas of the Community where these businesses are found

No. Issuers everywhere in the Community will be affected.

### 3. What will business have to do to comply with the proposal?

Business will have to meet the requirements provided for the publication of the prospectus and, as the case may be, to update the relevant information

### 4. What economic effects is the proposal likely to have?

- on employment

Positive effects on job creation can be expected. By facilitating and lowering the cost of raising capital directly on the securities market improving the amount of new financial resources available to business.

- on investment and the creation of new businesses

As explained above, efficient European securities market should improve the overall macroeconomic performance of the economy, producing higher economic growth with positive impact on employment creation, business innovation, and productivity (including, encouraging venture capital growth).

- on the competitiveness of businesses

Positive impact can be expected due to the lower cost of raising capital and the existence of harmonised and comparable conditions, for all competitors, within the Union.

### 5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The proposal provides that through a comitology decision, the Commission can reduce the present requirement of three years of existence required to have access to the single passport for issuers and the mutual recognition system. As far as the disclosure standards are concerned, the Commission, in line with international

relevant organisations believes that there should not be any difference due to size of the issuers. The prospectus should allow the investor to make a proper assessment of the securities offered or admitted to trading; high level disclosure standards (as the US experience demonstrates) should improve investor confidence, finally, standardisation is cost saving.

## CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

The Commission has consulted the actors concerned directly and indirectly. The Forum group on consumer information has widely discussed issues linked to the consumer information.

FESCO (Forum of European Securities Committee) to whose work the Commission take part as an observer has published for consultation in May 2000 a paper on the European public offer. The answers to the consultation have been made available to the Commission. Among others, 18 EU and national Federations, submitted their comments. Following the outcome of the consultation FESCO has submitted to the Commission a new paper on European Public Offer, the content of which is broadly consistent with the Commission proposal.

Commission has discussed this issue with national representatives and supervisory authorities in the High Level Securities Supervisors Committee on 8 June 2000 and has organised an ad hoc meeting to discuss the draft proposal on 26 January 2001. The FSPG has also discussed about broad policy lines on the introduction of the single passport for issuers.

In order to draft the Final Report on the Regulation of European Securities Markets, the wise men consulted the industry collecting written statements and organising ad hoc hearings. As it comes out from the initial report (page 36) the need of introducing a single passport for issuers was at the top of the list of key issues to be urgently addressed by the Commission.

The third progress report on the implementation of the Action Plan (and the discussion in the FSPG) also indicates the upgrading of the existing regulation in the field of prospectuses and the introduction of the single passport for issuers as a top priority.