



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

(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 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, the first of which is 20 years old (80/390/EEC of 17 March 1980 co-ordinating 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 and 89/298/EEC of 17 April 1989 co-ordinating 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.

FESCO (the Forum of European Securities Commissions) has published for public consultation in May 2000 a paper on European Public Offer. After this consultation, and as a result of the process, FESCO published on 17 January 2001 a document titled "A European Passport for Issuers – A report to the EU Commission" calling, also, for an urgent overhaul of the existing regulation, and suggesting possible new approaches.

In view of the urgency of a new framework, and in view of the extensive consultation on the issue already carried out with Member State governments, regulators and supervisors, and other interested parties, the Commission has decided to come forward with the proposal now rather than delay it through recourse to a more formal consultation process as foreseen in the Lamfalussy Report. 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. The European financial market will remain fragmented. And cross border capital raising will 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 is necessary in order to provide equivalent protection for investors at Community level.

The European passport for issuers is also an 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 key features of the new system are based on the following:

- Introduction of enhanced disclosure standards in line with international standards for public offer of securities and admission to trading;
- Introduction of the registration document system for issuers whose securities are admitted to trading on regulated markets in order to ensure a yearly update of the key information concerning the issuer;
- 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 comitology process, following the Stockholm European Council's broad endorsement of the Lamfalussy Report in the Resolution adopted by Heads of State and Governments 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 public offer of securities and admission to trading throughout the Union.

Clear and common definitions have to be agreed to clarify the scope of the Directive and ensure necessary harmonisation throughout Europe. As recognised by the Preliminary Report of the Wise Men (15 November 2000), the introduction of a definition of public offer is a precondition to reach the objective and to encourage 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 Member States (for which no prospectus has to be published) but not in others.

The definition is accompanied by a new regime of exemptions from the obligation to publish a prospectus. This serves the same purpose of ensuring harmonised requirements in all Member States.

The proposal extends the scope of existing measures in order to ensure that harmonised disclosure requirements are available for equity and debt securities traded on regulated markets. The scope of the existing Directive on listing particulars is, in fact, restricted to the case of securities which have been admitted to the official stock exchanges and which were known at the time when the Directive was adopted. It may be 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 which type of disclosure is required which has implications for the possibility of offering these securities cross border.

A simple and efficient notification system in order to ensure the possibility of using a single set of disclosure document in the case of multinational offering or admission to trading

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 issuers. The proposal therefore clarifies that the home Member State administrative competent authority shall be responsible for ensuring proper supervision for the purposes of ensuring equivalent treatment of investors and on-going disclosure of material information by the issuer.

Independent administrative authorities, i.e. authorities in charge of ensuring general good objectives, are better placed to ensure market and investor protection. In fact, exchanges which are now for-profit entities are subject to a conflict of interest and should not be in charge of ensuring any longer “public functions”, such as the approval of prospectuses. At the same time exchanges and markets, relieved of the duty to perform such functions, will be free to compete solely on the basis of commercial efficiency.

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. The proposal provides for a new language regime: host Member States competent authorities shall only be entitled to ask for 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). This provision should facilitate cross-borders operations while ensuring at the same time proper protection of retail investors. In fact, retail investors shall always receive the summary key information in their own domestic language. The purpose of the summary is, in fact, to provide, in particular to retail investors, immediate succinct information on the most relevant aspects relating to the issuer and the proposed operation in a concise format.

The need for best practice in the content of financial disclosure

Disclosure requirements provided for by Directive 80/390/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 practices 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 the 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 which are not currently dealt with at EU level.

In order to accelerate the completion of a single securities market and to enhance comparability of information, the European Commission is also envisaging the updating of EU accounting rules. All EU companies admitted to trading on a regulated market should prepare their consolidated accounts in accordance with one single set of accounting standards, namely International Accounting Standards (IAS). This requirement should enter into effect, at the latest, from 2005 onwards. This policy shall ensure that securities can be traded on EU and international financial markets on the basis of a single set of accounting standards.

The need for a single prospectus format and easy availability of information

The proposal introduces a new format for EU prospectuses. This 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 the markets. It is the firm belief of the Commission that increasing investor confidence will deliver significant benefits in terms of lowering the cost of raising capital and at the end of the chain, it will improve job creation and the overall dynamism of the European economy.

According to the new model the prospectus will be split into separate documents: the registration document containing information about the issuer and the securities note containing information on the securities (as explained in detail below). A summary of the information concerning the issuer and the securities is provided in an ad hoc summary note.

The registration document system provides for, at least, a yearly updating of the information to the holders of securities, supplementing the existing ongoing disclosure obligation system (cf. 79/279/EEC; 82/121/EEC and 88/627/EEC). In addition it introduces a fast track procedure for new issues; in fact, in the case of a new issuance only the information related to the securities offered or admitted to trading has to be given. The 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 responds to an increasing demand from multinational issuers (i.e. issuers frequently raising capital on European and world markets).

This new format, however, is intended to be mandatory for those issuers whose securities are traded on regulated markets. Issuers whose securities are simply offered to the public without admission to trading may decide to publish the prospectus as a single document using the traditional format.

In addition, incorporation by reference will be allowed. This means that information to be disclosed in a prospectus could be incorporated into that document by reference to another document, previously filed and approved by the home competent authority. This will save time and cost for companies frequently raising capital on the market. The issuer will be allowed to use a previous document or registration statement and therefore bureaucracy will be reduced. On the occasion of a new issuance or admission to trading, the issuer will publish only the securities note and a summary. As already explained as far as disclosure obligations are concerned, the issuer will access all EU markets following the notification under the sole condition of translating the summary of information into the relevant national languages.

The rapid development of information and communication technologies 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 would also have a number of advantages. Investors would have effective and free access to information on a real-time basis due to the new obligation to ensure availability of the prospectus on the competent authority web-site and the possibility for the issuer to publish the prospectus in electronic format.

The need for an extensive use of committee procedures to follow development 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 into account new financial techniques and new products. On the other hands, consumers confidence has to be protected at Community level. It is important to ensure that new

measures can be adopted to avoid that consumers willing to invest in innovative products are left without proper protection and proper remedies or are treated differently depending on the different understanding in each Member State.

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 comitology procedures. In its Resolution on more effective securities markets regulation in the European Union, the Stockholm European Council welcomed the intention of the Commission to establish a Securities Committee. The Securities Committee, acting in its advisory capacity, should be consulted on policy issues, in particular, but not only, for the kind of measures the Commission might propose at the level of framework principles. According to this Resolution, the 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 line drawn up by the Stockholm European Council.

This proposal indicates which are the non-essential implementing details should be dealt with by the Commission through comitology procedure. For example this will include adaptation and clarification of the definition and exemptions in order to ensure uniform application and compatibility with developments on financial markets. Adaptation of disclosure standards, of deadlines, and clarification of the rules concerning publication of the prospectus, technical details concerning advertising and marketing shall also be areas to be dealt with by the Commission under comitology procedure. The areas have been selected in order to ensure a prompt response to fast changing reality and to ensure proper functioning of the internal market (on the basis of the country approach) as well as proper protection to retail investors.

According to the Stockholm Resolution deadlines should be set for all stages of work at Level 2; this Directive provides deadlines for those measures which are necessary in order to ensure the effective operation of this Directive. In line with the report of the Wise Men, the Commission will engage in consultations, as foreseen in the Stockholm European Council Resolution, when it prepares the implementing measures in accordance with the relevant provisions of the proposed Directive.

2. DESCRIPTION OF ARTICLES

Article 1 – Subject matter and scope

The goal of the Directive is stated in the first paragraph of Article 1. It clarifies that the purpose of this Directive is to harmonise requirements for the drawing up, scrutiny and distribution of the prospectus to be published when securities are offered to 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 Directive 80/390/EEC laying down listing particulars for securities admitted to official listing on official stock exchanges and Directive 89/298/EEC on public offer of securities.

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 the implementation of the ISD has led to the removal of the wording “official list”. They have introduced first tier, second tier markets, etc. In any case, the ISD definition of regulated markets requires that rules should be provided for in order to ensure that certain requirements are met before the securities can be negotiated on the market (being the requirements provided for in the listing admission Directive 79/279/EEC when applicable or specific national requirements). The aim of the new Directive is to ensure, as far as initial disclosure requirements are concerned, that these are the requirement set forth in this 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 type 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 guarantees provided to investors in the European Union.

Traditional exemptions have been kept for securities of specific types (such as unit of UCITS covered by different harmonisation provisions) or issued by Member States or international bodies.

Article 2 – Definitions

Definitions listed in Article 2 are partly drafted by reference to existing Directives and partly new. While for the definition of securities no major changes have been foreseen (but just an updating) with respect to the definition included in Directive 89/298/EEC, the introduction of a definition of public offer constitutes a major innovation. When Directive 89/298/EEC was adopted it proved to be impossible to reach an agreement on a common definition (see recital no. 7 of the said Directive). However, as recognised in the Wise Men report it is important to ensure a common approach to this subject in order to avoid disparities in investor protection in an era where through electronic communication networks investors can be reached throughout Europe (and elsewhere). Different interpretations of the “offer to the public” 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 approach has been envisaged for exemptions: this includes offers targeted only to certain “qualified” investors (holding specific professional qualifications) or to investors who are able to acquire securities for a consideration of at least 150.000 Euro. At the same time offers targeted to a small number of investors are not included.

The new system is based on the approval of the prospectus granted by the home country competent authority; therefore definitions have been provided in order to identify the home country and the host country. 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 22 in accordance to the suggestion to delegate to the Commission detailed technical regulations. This means that the Commission, assisted by the Securities Committee, could clarify in detail which type of actual securities can be deemed as covered by the Directive in order to ensure that the Directive is kept up to date with financial markets developments.

Article 3– Conditions for offer of securities to the public

Article 3 clarifies that no securities can be offered in the EU unless initial disclosure requirements (a prospectus) are available to the market and the investors.

As explained for the definition of public offer a harmonised approach is required in order to avoid loopholes and disparity of treatment and investor protection within the EU. It is therefore important to introduce a common uniform regime for exemptions.

The 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 implemented into national law.

A first series of exemptions is established in order to take into account the special nature of the investors to whom the offer is addressed. These exemptions are made for securities offered to ‘qualified’ investors (i.e. investors with specific “qualifications”) for their own account excluding any subsequent resale; when the offer is addressed to a restricted circle of persons the number of which is below 150 per Member State or below 1.500 in the case of a multinational offer or when the securities offered can be acquired only for a consideration of at least 150,000 Euro per investor.

A second series of exemptions relate 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.

Clarifications and adaptations of definitions and/or exemptions, if necessary, can be adopted by using the procedure foreseen in Article 22 in accordance to the suggestion to delegate to the Commission detailed technical regulations. This means that the Commission, assisted by the Securities Committee, could issue rules to indicate which actual entities can be considered as belonging to the category of “non-profit making bodies” which is exempted by the obligation to publish a prospectus. This to avoid that different implementation in Member States can undermine the objective pursued by the Directive of ensuring a proper investor protection.

Article 4 – Conditions for admission of securities to trading on regulated market

Article 4 clarifies that securities can be admitted to trading on regulated markets only if a prospectus has been published. However, it is expressly stated that there is no need to issue a new prospectus if the issuer has already filed with the home competent authority the registration document and the securities note for public offer or for admission to trading on another regulated market. Regulated markets in Europe wishing to trade the securities are required to accept the prospectus approved by the issuer’s home country competent authority. This is intended to improve the possibilities of multinational trading of securities on EU regulated markets. The issuer will not be obliged to provide a new set of initial disclosure

documents on condition that all the relevant information (filed with the home competent authority) is made available.

Article 5 – Content of the prospectus

This Article broadly reflects principles, on the function and the content of the prospectus, already present in both the listing particulars and the public offer Directives. 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 IOSCO Objectives and Principles for Securities Regulation).

Paragraph 2, in line with international best practices, requires that the information is presented in an easy analysable and comprehensible form and states that the prospectus can be presented as a single disclosure document or as a set of disclosure documents comprising a registration document, a securities note and a summary note. The registration document shall contain general information on the issuer as well as its financial statements. The securities note shall contain 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).

The minimum information items to be included in the prospectus as a single document or as a set of documents are laid down in the following paragraphs 3 and 4 by cross reference to the Annexes to the Directive. Annex I lists the information items 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.

Paragraph 5 of the Article indicates, as in the present system, that the responsibility for ensuring that all material information is disclosed in the prospectus lies upon the administrative, management or supervisory bodies of the issuer, the offeror and the guarantor as the case may be.

Article 6 – Minimum information to be included in the prospectus.

Article 5 makes clear that all relevant information has to be disclosed. In line with the international principles and the pre-existing system it provides for a mere list of information items that have to be included in the prospectus. The detailed elements issuers should include under each item required, constitute technical measures. They are necessary in order to provide the degree of harmonisation and mutual confidence to allow Member State to recognise the home prospectus without requiring the inclusion of additional information, on the base of a simple notification.

These rules should be adopted following the procedure suggested by the Wise men Report (so called Level 2). However, the Commission will not be entirely free. The detailed disclosure standards should be in line with those adopted by IOSCO for multinational offerings and listings.

The decision to base the system on the IOSCO Disclosure Standards means also that the European prospectus will be in line with internationally accepted best practice and should also be acceptable for offerings 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.

The basic IOSCO disclosure requirements should be adapted to the different type of securities that are offered or admitted to trading. This adaptation shall be made by the Commission following “comitology procedures”. Due to the fact that 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. This means that the Commission, assisted by the Securities Committee, shall 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.

The last paragraph of Article 6 also 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. This is the case of the final offer price and the amount of securities which 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 provided for the original prospectus. Also in this case detailed rules will be provided under Level 2 (comitology) procedures. The deadline set for the Commission is the same, 180 days after the entry into force of the Directive.

Article 7 – Language and format of the prospectus

Article 7 provides for the language and format of the prospectus. The prospectus must be drawn up in a language accepted by the competent authority in the home Member State. Paragraph 2 clarifies which types of issuers are required to publish the prospectus as a set of disclosure documents. Issuers whose shares are or shall be admitted to trading are required to draw up the prospectus as a set of disclosure documents: registration document, securities note and summary note.

Issuers whose securities are not admitted to trading, may decide to draw up the prospectus as a single document. In this case, it is up to the issuer to decide which format is more suitable.

Article 8 – Use of registration document, securities note and summary note

This Article clarifies that the issuer who has already filed a registration document, in the case of a new issuance (or admission to trading) shall be only required to produce a summary and a securities note. This means that a new full prospectus is not required.

Article 9 – Annual updating of the registration document

In order to ensure an adequate level of investor information, supplementing the existing provisions on ongoing disclosure obligations, the issuer is required each year to update (and file with the competent authority) the registration document. The issuer will update the registration document each year after the approval of the financial statements. Information will be scrutinised by the competent authority according to the general procedure.

To simplify the procedure and reduce costs the Directive allows the issuer to use the registration document for the purpose of Article 46 of Directive 78/770/EEC (fourth company law Directive) and Article 36 of Directive 83/349/EEC (seventh company law Directive).

Article 10 – 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 10 states that the prospectus may incorporate the relevant information by reference to one or more documents. Such information has to be approved by the competent authority and made available to the public according to the same arrangements envisaged for the prospectus.

Details on which documents can be incorporated by reference and the relevant modalities shall be provided according to Level 2 (comitology) procedure.

Due to the fact that 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 11 –Approval and publication 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. The Directive, however, in order to ensure a smooth operation of the system provides clear deadlines for approval taken into account also different type of issuers: issuers already known to the market and subject to supervision or issuers raising capital for the first time.

A standard deadline of 15 days (which can be interrupted if new information is needed or the documentation is incomplete) is set. However, this deadline is expanded up to 40 days in the case of an IPO (initial public offering) while it is reduced to 7 days if only the securities note has to be scrutinised.

Guidance on the scrutiny of the prospectus to ensure uniform implementation shall be provided according to the Level 2 (comitology) procedure. The same procedure should be followed to adapt the deadlines set for the approval, if necessary in light of developments in financial markets.

This means that the Commission shall issue guidance about the best practice to be implemented by the Securities Regulators when checking the actual prospectuses submitted for approval or issue guidance about the relevant deadlines.

Article 12 – Availability of the prospectus

This Article updates the rules already existing in the listing particulars and the public offer Directives. It recognises the possibility of using modern technologies in addition to the already existing arrangements. The Commission shall adopt detailed rules on this subject to ensure a common implementation of the Directive. This means that the Commission could issue rules concerning the modalities for delivering, free of charge, a copy of the prospectus to prospective investors asking for it.

In order to ensure a central point of information and enable investors to get the relevant information the Directive requires that the prospectus (as a single document or the separate documents) is made available on the competent authority web-site.

Article 13 –Advertising

The Directive establishes rules on advertising.

In order to ensure proper investor protection and consistency with the information which will be included in the prospectus (which is deemed to be the document on the basis of which investment decisions have to be taken) certain conditions are required. Competent authorities must receive and check the advertisements, notices, and posters before their publication.

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 a common implementation and investor protection shall be provided by the Commission according to Level 2 (comitology) procedure. This means that the Commission could establish guidance about how to advertise the performance of the securities offered to the investor to avoid giving to retail investors misleading impression about future gains.

Due to the fact that 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.

The Directive clarifies that information addressed by the issuer or the offer to qualified or special categories of investors shall also be disclosed to the public.

Article 14 – Supplement to the prospectus

This Article reproduces rules already provided for in the listing particulars and the public offer Directives. A supplement is required in case 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. In order to maintain consistency, the supplement is subject to the same rules as applicable to the prospectus in terms of prior approval and availability to the public.

Article 15 – Mutual recognition

This Article 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 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 for provision of additional information or approval of this information.

However, due to the fact that information is a good that is quickly out of date certain guarantees are provided for in paragraph 2. In case more than three months have lapsed the competent authority in the host Member State is entitled to ask for the publication of an updated securities note and summary document to be approved by the home competent authority.

Article 16 – Language regime

The Article provides for a new language regime which allows host Member States to require the translation of the summary note only, provided that the registration document and the securities note are available in a language which is usually accepted in the sphere of finance. This concept is already part of the ‘acquis’ in the field of securities. In particular, Article 17, paragraph 2 of Directive 79/279/EEC on listing admission refers to the publication of the information in a language or languages which are “customary in the sphere of finance and

accepted by the competent authorities”. Similar provisions are included in Article 7, paragraph 2, of Directive 82/121/EEC (regular reporting); Article 10, paragraph 2, of Directive 88/627/EEC (major holdings) and included in Directive 80/390/EEC by Directive 94/18/EC (Eurolist).

Article 17 – Notification to the host competent authority

In order to ensure proper protection, and in line with the requirements applicable in the Directives providing for an European passport (Investment Services Directive, Second Banking Directive), the host authorities should receive a notification of the prospectus (and the relevant supplements) accompanied by a certificate of approval granted by the home country authority stating that the prospectus has been drawn up supplying all the information required by this Directive.

Article 18 – Issuers incorporated in third countries

In case of issuers incorporated in a third country, the prospectus shall be approved by the EU “home country” authority designated according to this Directive. This authority may recognise the prospectus drafted according to the rules applicable to the issuer in the third country provided that the information requirements are equivalent to those required by this Directive. Once approved by the EU “home” competent authority the prospectus may be used in other EU member State.

To ensure an European approach the competent authorities are required to notify to the Commission and Member States the rules applicable to third country issuers. In case of objections raised by the Commission or other Member States on the equivalence of such rules, the Commission shall subject the matter to comitology.

Member States are also required to notify the Commission the list of the issuers which prospectus have been approved.

The Commission is required to draw up a report on the implementation of this Article and to submit proposal for a new Directive if appropriate.

In addition guidance to promote a common and consistent approach by Member States shall be provided under the Level 2 (comitology) procedure.

Article 19 – Powers 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 answers the need for efficiency and clarity, and to enhance co-operation between competent authorities.

The administrative nature of these single competent authorities is necessary to ensure their independence from the markets and to avoid conflicts of interest.

The Directive sets out a minimum list of requirements for powers to be given to competent authorities. These requirements will allow competent authorities to fulfil their duties and will lead to greater consistency and clarity in the application of the provisions of the Directive.

Article 20 - Professional secrecy

As it is common to all Community legislation in the financial field, rules are required in order to ensure proper confidentiality for information collected by the competent authorities in performing their tasks.

However, the confidentiality cannot constitute a barrier to mutual assistance and co-operation among competent authorities at EU level and, provided that certain guarantees are met with the competent authorities of third countries.

This Article provides for all these requirements along the lines of already existing legislation (including insider dealing and Investment Services Directives).

Article 21 - Precautionary measures

The Article implements a principle already provided for in the Treaty and common to all Community legislation in the financial field. When the competent authorities of the host Member State ascertain irregularities committed by the issuer or by the financial institutions in charge of the public offer procedures or violations of the obligations deriving from the fact that the securities are admitted to trading they must refer to the home competent authorities. However, as a matter of necessity and urgency, in order to protect investors they are allowed to take all the required measures. These measures must be properly justified and subject to the right to apply to the courts in the Member State which adopted them .

Notification of the measures to the Commission is envisaged. The Commission has the power to require the competent authority to amend or abolish the measures.

Article 22 - Committee

This Article refers to the Committee, the Securities Committee This Committee shall assist the Commission in performing the Level 2 (comitology) tasks.

Article 23 - Penalties

The Directive also provides for an adequate sanctioning mechanism to be put in place in each Member State. It states that penalties, including administrative sanctions, must be effective, proportionate and dissuasive.

Article 24 - Right of appeal

In order to ensure proper protection for all affected parties, the Directive requires that all decisions taken under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts.

Article 25 - Transposition

This Article states the transposition deadline.

Article 26 – Repeal

Directive 80/390/EEC, as amended by 82/148/EEC, 87/345/EEC, 90/211/EEC and 94/18/EC and Directive 89/298/EEC are repealed at the same date as this Directive will enter into force as provided for in Article 25 above.

Article 27 Transitional Provisions

This Article provides for the first submission of the registration document by issuers whose securities have already been admitted to trading on regulated markets.

Article 28 – Entry into force

This Article deals with the entry into force and the deadline for the implementation of this Directive in Member State laws.

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

(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 Commission¹

Having regard to the opinion of the Economic and Social Committee²

Acting in accordance with the procedure laid down in Article 251 of the Treaty³

Whereas:

- (1) Council Directive 80/390/EEC of 17 March 1980 co-ordinating 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 listing⁴ and Council Directive 89/298/EEC of 17 April 1989 co-ordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public⁵ 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 the said Directives should be upgraded, updated and grouped together into a single text.
- (2) 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 Plan⁶ and the Communication from the Commission – Implementing the framework for financial market: action Plan⁷ facilitating the widest possible access to investment capital on an EU-wide basis, including for small and medium size enterprises (SMEs) and start ups, by means of a “single passport” for issuers.

¹ OJ C...

² OJ C...

³ Opinion of the European Parliament of .././....

⁴ 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)

⁵ OJ L 124, 5.5.1989, p. 8.

⁶ SEC (1998) 552 final.

⁷ COM/1999/232 final.

- (3) On 17 July 2000, the Council set up the Committee of Wise Men on the regulation of European securities markets. In its initial report 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.
- (4) 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, co-operation 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.
- (5) The Stockholm European Council Resolution 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.
- (6) 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.
- (7) 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.
- (8) 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 field⁸ 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 negotiable instruments only.
- (9) 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.
- (10) 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.

⁸ 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).

- (11) The provision of full, appropriate information concerning securities and issuers of such securities promotes 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.
- (12) 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.
- (13) 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 easy analysable and comprehensible form. The harmonisation of the information contained in the prospectus should provide equivalent protection for investors at Community level.
- (14) Best practices have been adopted at international level in order to allow multinational offerings to be made using a single set of disclosure standards by the International Organisation Securities Commissions (IOSCO); the IOSCO disclosure standards⁹ will upgrade information available for the markets and investors and, at the same time will simplify the procedure for European issuers wishing to raise capital in third countries.
- (15) Fast track procedures for issuers admitted to trading on regulated market and frequently raising capital on the markets require the introduction at Community level of a registration document system. The system is based on a new format of prospectus composed of separate documents. Issuers whose securities are not admitted to trading on regulated markets may wish to draft the prospectus as a single document.
- (16) Investors are protected by ensuring publication of reliable information. The companies admitted to trading on a regulated market are subject to ongoing disclosure obligation and not to publish updated information in a coherent and aggregate format; the yearly update of their registration document is a suitable way to ensure the publication of consistent and easily understandable information on the issuer. To simplify and avoid excessive burden for issuers, they should be allowed to use the registration document for the reporting requirements laid down by the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies¹⁰ and the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts¹¹.
- (17) 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.

⁹ International Disclosure Standards for cross-border offering and initial listings by foreign issuers, Part I International Organisation of Securities Commissions, September 1998.

¹⁰ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 1999/60/EC (OJ L 162, 26.6.1999, p. 65).

¹¹ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ L 317, 16.11.1990, p. 60).

- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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 finance and accepted by the competent authority, the host country should only be entitled to require a summary in its domestic language.
- (23) 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.
- (24) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary costs and overlapping of responsibilities without providing any additional benefit. The private for-profit nature of certain entities may raise conflicts of interest and is unsuitable for ensuring protection of the markets and investors. In each Member State a competent authority should be designated to approve prospectuses. It 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.
- (25) 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 Council Directive 79/279/EEC of 5 March 1979 co-ordinating the conditions for the

admission of securities to official stock exchange listing¹² has to be ensured and action against breaches taken by competent authorities.

- (26) For the purposes of carrying out their duties, co-operation between competent authorities is required.
- (27) 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 Commission¹³, they should be adopted by use of the regulatory procedures provided for in Article 5 of that Decision.
- (28) The Member States should lay down rules on penalties, including administrative sanctions, applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (29) 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.
- (30) 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.
- (31) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.
- (32) Directives 80/390/EEC and 9/298/EEC should be repealed accordingly.

HAVE ADOPTED THIS DIRECTIVE:

¹² OJ L 66, 16.3.1979, p. 21.

¹³ OJ L 184, 17.7.1999, p. 23

Chapter I

General Provisions

Article 1

Subject matter and scope

1. The purpose of this 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.
2. This Directive shall apply to securities which:
 - (a) are offered to the public in one or more Member State, or
 - (b) are admitted to, or are the subject of a procedure for admission to, trading on a regulated market situated or operating within a Member State
3. This Directive shall not apply to:
 - (a) units issued by collective investment undertakings other than the close-end type,
 - (b) 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 or by the European Central Bank.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:
 - a) 'securities' means any shares in companies and other transferable securities equivalent to shares in companies, bonds and other forms of securitized debt which are negotiable on a regulated market and any other transferable securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to cash settlement;
 - b) 'offer of securities to the public' means an offer, invitation or promotional message, in any form, addressed to the public, whose objective is the sale or subscription of securities including by placing securities through financial intermediaries;
 - c) 'qualified investors' means credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and

retirement funds, supranational institutions, government and central administrative authorities;

- d) 'issuer' means a person who issues or proposes to issue securities;
- e) 'person making an offer' (or 'offeror') means a person who intends to offer securities to the public;
- f) 'regulated market' means a market as defined by Article 1(13) of Directive 93/22/EEC;
- g) 'home Member State' of an issuer means :
 - the Member State where an issuer has its registered office ;
 - in the case of an issuer incorporated in a third country, the Member State where its securities have been admitted to trading for the first time;
- h) '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;
- i) 'collective investment undertaking other than the close-end type' means unit trusts and investment companies:
 - the object of which is the collective investment of capital provided by the public, and which operate on the principle of the risk spreading, and
 - the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;
- j) 'units of a collective investment undertaking' means securities issued by a collective investment undertaking representing rights of the participants in such an undertaking over its assets.

2. The definitions referred to in paragraph 1 shall in order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive be clarified and adapted by the Commission in accordance with the procedure referred to in Article 22(2).

Article 3

Conditions for offer of securities to the public

1. Member States shall ensure that any offer of securities to the public within their territories is subject to the publication of a prospectus by the person making the offer.
2. This obligation shall not apply to the following types of offer, excluding any subsequent resale to the public:
 - a) where the securities are offered to qualified investors for their own account;

- b) where the offer is addressed to a restricted circle of persons, the number of which is below 150 per Member State or below 1.500 in the case of a multinational offer;
 - c) where the securities offered can be acquired only for a consideration of at least 150,000 Euro per investor.
3. The obligation provided for in paragraph 1 shall not apply to the offer of securities of the following types:
- a) shares issued in substitution for shares already traded on the same regulated market 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 provided that a document containing information which is regarded by the competent authority as equivalent to that of the prospectus is available;
 - c) securities offered in connection with a merger provided that a document containing information which is regarded by the competent authority as equivalent to that of the prospectus is available;
 - d) shares offered in exchange with no overall increase of capital to existing shareholders or allotted free of charge;
 - e) securities offered or allotted to existing or former employees upon condition that it is not in exchange for any form of payment or consideration;
 - f) shares resulting from the conversion of convertible debt securities or from the exercise of the rights conferred by warrants or shares offered in exchange for exchangeable debt securities, provided that a prospectus relating to those convertible or exchangeable debt securities or those warrants was available;
 - (g) securities issued, with a view to their obtaining the means necessary to achieve their objectives, by associations with legal status or non-profit-making bodies, recognised by the State.
4. The terminology and the exemptions provided for in paragraphs 2 and 3 shall in order to take account of development on financial markets in the application of this Directive be clarified and adapted by the Commission in accordance with the procedure referred to in Article 22(2).

Article 4

Conditions for admission of securities to trading on regulated markets

Member States shall ensure that any admission of securities to trading on a regulated market situated or operated within their territories is subject to the availability of a prospectus.

That obligation is deemed to be satisfied when the issuer has filed with home competent authority the registration document and, where necessary, the securities note, and fulfils the requirements set out in Article 9 of updating annually the registration document.

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 of the rights attaching to such securities.
2. The information provided for in paragraph 1 shall be presented in an easy analysable and comprehensible form and shall be made available by means of publication of a single or separate documents.
3. The prospectus published as a single document shall include at least the information referred to in Annex I.
4. The prospectus composed by separate documents shall include a registration document, a securities note and a summary note. The registration document shall include at least the information referred to in Annex II. The securities note shall include at least the information referred to in Annex III. The summary note shall include at least the information referred to in Annex IV.
5. Member States shall ensure that the obligation provided for in paragraph 1 is incumbent upon the administrative, management or supervisory bodies of the issuers, the offeror and the guarantor as the case may be.

Article 6

Minimum information

1. Detailed rules regarding the specific information which must be included in the prospectus according to Article 5(3) and (4), in the form of models for the different type of securities and of issuers shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.
2. The rules referred to in paragraph 1 shall be in accordance with the information requirements set out by the International Organisation of Securities Commissions and namely in Part I of the International Disclosure Standards for cross-border offering and initial listings.
3. Member States shall ensure that where the final offering price and amount of securities which will be allotted to the public cannot be included in the prospectus, the prospectus shall contain the criteria, and/or the conditions according to which, the

above elements will be determined. The final terms shall be filed with the competent authority of the home Member State and made available according to the modalities provided for in Article 12(2).

4. Detailed rules on modalities of the offer in order to ensure uniform application of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

Article 7

Language and format of the prospectus

1. The prospectus shall be drawn up in a language accepted by the competent authority in the home Member State.
2. Issuers whose securities are admitted or are the subject of a procedure for admission to trading on regulated markets shall publish a prospectus comprising the separate documents provided for in Article 5(4).
3. Issuers whose securities are not admitted to trading and are not the subject of a procedure for admission to trading on a regulated market may decide to draw up the prospectus as a single document, including at least the information referred to in Annex I.

Article 8

Use of a registration document, securities note and summary note

1. An issuer who has already filed with the competent authority the registration document shall be required to draw up only the securities note and the summary note when securities are publicly offered or admitted to trading.
2. In any case, in addition to the information items required under Article 5(4), 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 registration document was published.

Article 9

Annual updating of the registration document

1. Subsequent to the first filing the registration document shall be updated on a regular basis by the issuer each year after the approval of the financial statements according to the requirements applicable to the issuer in the home Member State. The registration document shall be filed with and scrutinised by competent authority of the home Member State.

2. Member States may allow the issuer to use the registration document for the purpose of complying with the requirement laid down in Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC.

Article 10

Incorporation by a reference

1. Member States shall allow information to be incorporated in the prospectus by referring to one or more documents, which have been filed and published in accordance with this Directive. Such information shall be approved by the competent authority of the home Member State, pursuant to Article 19.
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. Detailed rules concerning the information to be incorporated by a reference in order to ensure uniform application in the Community of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

Chapter III

Arrangements for the scrutiny and distribution of the prospectus

Article 11

Approval and publication 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 or the offeror of its decision regarding the approval of the prospectus within 15 days of the submission of the draft prospectus or, should the competent authority verify that the submission is incomplete or require any further information, within 15 days of the issuer's supplying the required information.
3. The time limit referred to in paragraph 2 shall be reduced to 7 days if the approval is required for the securities note only. It shall be extended to 40 days if public offer involves securities that are not already admitted to trading.
4. If the competent authority of the home Member State fails to give a decision within the time limit laid down in paragraphs 2 and 3, this shall be deemed to be a rejection of the application, such rejection shall give right to apply to the courts.
5. This Directive shall not affect the competent authority's liability, which shall continue to be governed solely by the national law.

6. Detailed technical rules concerning the scrutiny of the prospectus and adaptation of deadlines in order to take account of developments on financial markets and to ensure uniform application of this Directive shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

Article 12

Availability of the prospectus

1. The prospectus once approved shall be filed with the competent authority of the home Member State in an electronic format and must be made available to the public immediately by the issuer or the offeror.
2. The prospectus shall be deemed available to the public by the issuer or the offeror 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,
 - c) in electronic form on the issuer's web-site and, if applicable, on the web-site of the financial intermediaries placing the securities.
3. In any case, the approved prospectus shall be available for consultation on the web-site of the competent authority of the home Member State .
4. In the case of a prospectus drawn up according to Article 5(4), the documents 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.
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 all times be identical to the original version approved by and filed with the competent authority.
6. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless, be delivered free of charge to the investor on request.
7. Detailed technical rules on publication and availability of the prospectus shall be adopted by the Commission in accordance with the procedure referred to in Article 22(2). These rules shall be adopted within 180 days after the entry into force of this Directive.

Article 13

Advertising

1. Advertisements, notices, posters shall be communicated in advance to the competent authority of the home Member State which shall check them before publication against the principles contained in this Article. Those documents shall state that a prospectus will be published and indicate where investors will be able to obtain it.
2. Advertising shall be clearly recognisable as such. The information contained in an advertisement shall be fair, accurate and consistent with that contained in the prospectus.
3. 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.
4. 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.
5. 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 shall also comply with technical rules laid down in accordance with the procedure referred to in Article 22(2). These technical rules shall be adopted by the Commission within 180 days after the entry into force of this Directive.

Article 14

Supplement to the prospectus

Every significant new factor capable of affecting assessment of the securities 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, scrutinised in the same way and published and made available to the public 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 15

Mutual recognition

1. Where an application has been made for an offer or admission to trading on a regulated market in one or more Member States and the securities have been the subject of a prospectus approved in the home Member State according to Article 11, in the three months preceding the application, the competent authority of the host Member State shall accept the prospectus for public offer or admission to trading.
2. If more than three months have elapsed since the approval of the prospectus by the competent authority of the home Member State, the competent authority of the host Member State where the offer is made or the admission to trading takes place may require for the publication of an updated securities note and summary document to be approved as provided for in Article 11(1), in the case of a prospectus drawn up according to Article 5(4). It may require for a publication of an updated prospectus in the case provided for in Article 5(3).
3. The competent authority of the host Member State may refuse to accept the prospectus only if information items specific to all the relevant host markets according to the rules referred to in Article 6 are not contained in the securities note provided for in Article 5(4), or in the prospectus in the case provided for in Article 5(3).

Article 16

Language regime

Where an offer is made or admission to trading on a regulated market is sought in more than one Member State, the prospectus or, where appropriate, the registration document and the securities note shall also be made available in a language customary in the sphere of finance which is generally accepted by the competent authority of the host Member State. In such case, the competent authority of the host Member State may only require that the summary note be translated into its domestic language.

Article 17

Notification

The competent authority of the home Member State shall provide the competent authority of the Member States where the offer or the admission to trading is made with the prospectus and a certificate of approval attesting that the document has been drawn up in accordance with this Directive.

Article 18

Issuers incorporated in third countries

1. The competent authority of the home Member State, responsible for approving the prospectus of issuers having their registered office in a third country may allow the issuer to use a prospectus drawn up for an offer or admission to trading in a third country provided that
 - a) this prospectus has been drawn up according to the IOSCO Disclosure Standards and
 - b) the information requirements, including information of financial nature, are equivalent to the requirements under this Directive.

Each Member State shall notify the Commission and the Member States the text of the rules applicable to issuers in third countries and shall notify it without delay of any subsequent amendment affecting them. If within two months of Member States and the Commission having been so notified an objection is raised by a Member State or the Commission on the equivalence of such rules, the Commission shall subject the matter to the procedure referred to in Article 22(2). The Member State shall take the appropriate measures to implement the decisions taken in accordance with that procedure.

Each Member State shall forward to the Commission without delay a list of the issuers incorporated in a third country whose prospectuses have been approved. This list shall be updated every six months.

2. In the case of offer or admission to trading of securities issued by an issuer incorporated in a third country in another Member State the requirements set out under Articles 15, 16 and 17 shall apply.
3. Technical rules to facilitate a concerted attitude between the Member States and ensure an uniform application of paragraphs 1 and 2 shall be adopted by the Commission in accordance with the procedures referred to in Article 22(2).
4. No later than three years after the entry into force of this Directive, the Commission shall draw up a report taking into account the experience acquired in applying this Article.

Chapter V

Competent Authorities

Article 19

Powers

1. Each Member State shall designate the competent administrative authority competent to carry out the duties provided for in this Directive and to ensure that this Directive is applied. They shall inform the Commission thereof.
2. The competent authority must have all the powers 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 to include in the prospectus supplementary information if necessary for investor protection;
 - b) require issuers, and the persons that control them or are controlled by them to provide information and documents;
 - c) carry out on site inspections;
 - d) require auditors and managers to provide information;
 - e) suspend a public offer for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
 - f) prohibit or suspend advertising for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
 - g) prohibit a public offer if it finds that the provisions of this Directive have been infringed;
 - h) suspend, or ask the relevant regulated markets to suspend, the trading for a maximum of 10 days if it has grounds for suspecting that the provisions of this Directive have been infringed;
 - i) prohibit trading if it finds that the provisions of this Directive have been infringed;
 - j) make public the fact that an issuer is failing to comply with its obligations.
3. The competent authority shall, once the securities have been offered to the public or admitted to trading on regulated markets, have the power to:
 - a) require the issuer to disclose all material information which may have an effect on the assessment of the securities offered to 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 under Article 17 of Directive 79/279/EEC 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.

Article 20

Professional secrecy

1. Member States shall ensure that all persons employed or formerly employed by the competent authorities shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority, save in summary or aggregate form such that individual issuers or markets cannot be identified, without prejudice to cases covered by criminal law.
2. The competent authorities shall co-operate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose. 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 21

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 persist 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.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the competent authority of the host Member State must amend or abolish those measures.

3. Each decision taken by the competent authority of the host Member State shall be properly justified and subject to the right to apply to the courts in the Member State which adopted it.

Chapter VI

Implementing measures

Article 22

Committee

1. The Commission shall be assisted by the European Securities Committee, instituted by Commission Decision (2001/.../EC)¹⁴.
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.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 23

Penalties

The Member States shall lay down the rules on penalties, including administrative sanctions, applicable to infringement of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties and administrative sanctions provided for must be effective, proportionate and dissuasive in order to promote compliance with those measures. The Member States shall notify those provisions to the Commission by 31 December 2003 specified in Article 25 at the latest and shall notify it without delay of any subsequent amendment affecting them.

¹⁴ Commission Decision establishing the European Securities Committee not yet adopted .

Article 24

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.

Article 25

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003, 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.

Chapter VII

Transitional and final provisions

Article 26

Repeal

Directives 80/390/EEC and 89/298/EEC shall be repealed with effect from 31 December 2003.

Article 27

Transitional provisions

Issuers whose securities have already been admitted to trading on a regulated market when the implementing measures provided for under Article 6 (1) enter into force shall submit to the competent authority of their home Member State the registration document required by Article 5(4) on the occasion of the first presentation of the annual accounts and reports after that date.

Article 28

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 29

Addresses

This Directive is addressed to the Member States.

Done at,

For the European Parliament

For the Council

The President

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 5 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. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined according to international accounting and auditing standards.

- 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 5 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. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined according to international accounting and auditing standards.

- 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 5 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
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 - 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

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

DOCUMENT REFERENCE NUMBER

COM(XXX)

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 Directives¹⁵, 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.

¹⁵ 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 irrespective of 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.