

EUROPEAN COMMUNITIES
THE COUNCIL

Brussels, 29. VI. 1990

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PRO-COOP 76

COMMON POSITION
ADOPTED BY THE COUNCIL ON 29. VI. 1990
WITH A VIEW TO THE ADOPTION OF A COUNCIL DIRECTIVE
AMENDING DIRECTIVE 78/660/EEC ON ANNUAL ACCOUNTS AND
DIRECTIVE 83/349/EEC ON CONSOLIDATED ACCOUNTS AS REGARDS THE SCOPE
OF THOSE DIRECTIVES

COUNCIL DIRECTIVE

of

**amending Directive 78/660/EEC on annual accounts and
Directive 83/349/EEC on consolidated accounts
as regards the scope of those Directives**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In co-operation with the European Parliament ⁽²⁾,

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

(1) OJ No C 144, 11. 6.1986, p. 10.

(2) OJ No C 125, 11. 5.1987, p. 140 and Decision of.....(not yet published in the Official Journal).

(3) OJ No C 328, 22.12.1986, p. 43.

Whereas Directive 78/660/EEC ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, applies to the annual accounts of public and private limited liability companies in particular because those types of company offer no safeguards to third parties beyond the amounts of their net assets;

Whereas, in accordance with Directive 83/349/EEC ⁽²⁾, as amended by the Act of Accession of Spain and Portugal, Member States need require only companies covered by Directive 78/660/EEC to draw up consolidated accounts;

Whereas, within the Community, there is a substantial and constantly growing number of partnerships and limited partnerships all of the fully liable members of which are constituted either as public or as private limited liability companies;

Whereas these fully liable members may also be companies which do not fall within the law of a Member State but which have a legal status comparable to that referred to in Directive 68/151/EEC ⁽³⁾;

Whereas it would run counter to the spirit and aims of those Directives to allow such partnerships and partnerships with limited liability not to be subject to Community rules;

(1) OJ No L 222, 14.8.1978, p. 11.

(2) OJ No L 193, 18.7.1983, p. 1.

(3) OJ No L 65, 14.3.1968, p. 8.

Whereas the provisions covering the scope of the two Directives in question should therefore be explicitly supplemented;

Whereas it is of importance that the name, head office and legal status of any undertaking of which a limited liability company is a fully liable member should be indicated in the notes to the accounts of such member;

Whereas the obligation to draw up, publish and to have audited the accounts of partnerships and limited liability partnerships may also be imposed on the fully liable member; whereas it should also be possible to include these companies in consolidated accounts, drawn up by such member or established at a higher level;

Whereas some of the partnerships covered by this Directive are not subject, in the Member State where they have their head office, to entry in a register, which makes it difficult to apply accounting obligations to them; whereas, in particular in these cases, special rules are necessary according to whether the fully liable members are undertakings which fall within the law of the same Member State, another Member State or a third country,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 78/660/EEC is hereby amended as follows:

1) The following subparagraphs shall be added to Article 1(1):

"The co-ordination measures prescribed by this Directive shall also apply to the Member States' laws, regulations and administrative provisions relating to the following types of company:

(a) in Germany:

die offene Handelsgesellschaft, die Kommanditgesellschaft;

(b) in Belgium:

la société en nom collectif/de vennootschap onder firma,
la société en commandité simple/de gewone commanditaire vennootschap;

(c) in Denmark:

interessentskaber, kommanditselskaber;

(d) in France:

la société en nom collectif, la société en commandite simple;

(e) in Greece:

η ομόρρυθμος εταιρία, η ετερόρρυθμος εταιρία;

- (f) in Spain:
sociedad colectiva, sociedad en comandita simple;
- (g) in Ireland:
partnerships, limited partnerships, unlimited companies;
- (h) in Italy:
la società in nome collettivo, la società in accomandita semplice;
- (i) in Luxembourg:
la société en nom collectif, la société en commandite simple;
- (j) in the Netherlands:
de vennootschap onder firma, de commanditaire vennootschap;
- (k) in Portugal:
sociedade em nome colectivo, sociedade em comandita simples;
- (l) in the United Kingdom:
partnerships, limited partnerships, unlimited companies,

where all members having unlimited liability are companies of the types set out in the first subparagraph or companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

This Directive shall also apply to the types of companies or firms referred to in the second subparagraph where all members having unlimited liability are themselves companies of the types set out in that or the first subparagraph."

2) The following subparagraph shall be added in Article 43(1), number 2:

"the name, the head or registered office and the legal form of each of the undertakings of which the company or firm is a member having unlimited liability. This information may be omitted where for the purposes of Article 2(3) it is of negligible importance only".

3) The following paragraph shall be inserted in Article 47:

"1a. The Member State of a company or firm referred to in Article 1(1), second and third subparagraphs (entity concerned) may exempt that entity from publishing its accounts in accordance with Article 3 of Directive 68/151/EEC, provided that those accounts are available to the public at its head office, where:

(a) all the members having unlimited liability of the entity concerned are the companies referred to in the first subparagraph of Article 1(1) governed by the laws of Member States other than the Member State whose law governs that entity and none of those companies publishes the accounts of the entity concerned with its own accounts, or

(b) all the members having unlimited liability are companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

Copies of the accounts must be obtainable upon request. The price of such a copy may not exceed its administrative cost. Appropriate sanctions must be provided for failure to comply with the publication obligation imposed in this paragraph."

4) The following Article shall be inserted:

"Article 57a

1. Member States may require the companies referred to in the first subparagraph of Article 1(1) governed by their law, which are members having unlimited liability of any of the companies and firms listed in Article 1(1), second and third subparagraphs (entity concerned), to draw up, have audited and publish, with their own accounts, the accounts of the entity concerned in conformity with the provisions of this Directive.

In this case, the requirements of this Directive do not apply to the entity concerned.

2. Member States need not apply the requirements of this Directive to the entity concerned where:

(a) the accounts of this entity are drawn up, audited and published in conformity with the provisions of this Directive by a company which is a member having unlimited liability of the entity and is governed by the law of another Member State;

(b) the entity concerned is included in consolidated accounts drawn up, audited and published in accordance with Directive 83/349/EEC by a member having unlimited liability or where the entity concerned is included in the consolidated accounts of a larger body of undertakings drawn up, audited and published in conformity with Council Directive 83/349/EEC by a parent undertaking governed by the law of a Member State. The exemption must be disclosed in the notes on the consolidated accounts.

3. In these cases, the entity concerned must reveal to whomsoever so requests the name of the entity publishing the accounts."

Article 2

Directive 83/349/EEC is hereby amended as follows:

1) The following subparagraph shall be inserted in Article 4(1):

"The first subparagraph shall also apply where either the parent undertaking or one or more subsidiary undertakings is constituted as one of the types of company mentioned in Article 1(1), second or third subparagraph of Directive 78/660/EEC."

2) In Article 4, paragraph 2 shall be replaced by the following:

"2. The Member States may, however, grant exemption from the obligation imposed in Article 1(1) where the parent undertaking is not constituted as one of the types of company mentioned in Article 4(1) of this Directive or in Article 1(1), second or third subparagraph of Directive 78/660/EEC."

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.
2. Member States may provide that the provisions referred to in paragraph 1 shall first apply to the annual accounts and consolidated accounts for financial years beginning on 1 January 1995 or during the 1995 calendar year.
3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg,

For the Council
The President