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DOCUMENT 173/79

REPORT

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the  
European Communities to the Council (Doc. 127/78)  
for an eighth Directive pursuant to Article 54 (3)  
(g) of the EEC Treaty concerning the approval of  
persons responsible for carrying out statutory  
audits of the annual accounts of limited liability  
companies

Rapporteur: Mr Michael SHAW

By letter of 10 May 1978 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 54 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for an Eighth Directive pursuant to Article 54(3)(g) of the EEC Treaty concerning the approval of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies.

On 12 June 1978 the President of the European Parliament referred this proposal to the Legal Affairs Committee as committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

At its meeting of 22 June 1978 the Legal Affairs Committee appointed Mr Shaw rapporteur.

It considered the proposal for an Eighth Directive, on the basis of an introductory statement by Mr Shaw, at its meeting of 28 September 1978. On 5/6 April 1979 and on 8 May 1979 it examined the proposal on the basis of the draft report and adopted the motion for a resolution unanimously.

Present: Mr Broeks, acting chairman; Mr Shaw, rapporteur; Lord Ardwick, Mr Bayerl, Mr Fletcher-Cooke, Mr de Gaay Fortman, Lord Murray of Gravesend, Mr Santer, Mr Schwörer and Mr Sieglerschmidt.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for an Eighth Directive pursuant to Article 54(3)(g) of the EEC Treaty concerning the approval of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies

The European Parliament,

- having regard to the proposal from the Commission of the European Communities<sup>1</sup>,
  - having been consulted by the Council pursuant to Article 54 of the EEC Treaty (Doc. 127/78),
  - having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Economic and Monetary Affairs ( Doc. 173/79),
1. Welcomes the Commission's proposal that the first step should be to harmonize the minimum qualifications laid down by the Member States for auditors in such a way as to protect the interests of members and other persons in accordance with Article 54(3)(g) of the EEC Treaty;
  2. Agrees with the Commission that the effective introduction of freedom of establishment and freedom to provide services in respect of the statutory audits of company accounts will be facilitated by the advance harmonization of the minimum qualifications needed to acquire the rights to carry out such audits in the Member States;
  3. Notes that the Eighth Directive is intended neither to introduce the mutual recognition of diplomas, certificates or other qualifications required for the purpose of carrying out statutory audits of accounts nor to secure freedom to provide services or freedom of establishment in the sector under consideration;
  4. Recognizes that this Eighth Directive is an essential complement to the Fourth Council Directive of 25 July 1978<sup>2</sup> which requires limited liability companies to have their annual accounts audited by one or

<sup>1</sup> OJ No. C 112, 13.5.1978, p. 6

<sup>2</sup> OJ No. L 222, 14.8.1978, p. 11

more persons approved under national law to audit accounts; to the Seventh Directive concerning group accounts - at present under consideration by the Council<sup>1</sup>, and to the Fifth Directive concerning the structure of limited liability companies<sup>2</sup>;

5. Recalls that Article 203(2) of the amended proposal for a Statute for European Companies stipulates that 'only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing an examination, both of which must be legally established or recognized, and shall be persons authorized in a Member State to act as auditors of the annual accounts of companies limited by shares whose shares are quoted on a stock exchange';
6. Agrees that it is undesirable for natural persons who do not personally fulfil the conditions laid down in the directive, to hold a majority of the capital of professional companies or associations carrying out statutory audits, but thinks that there should be a transitional period during which these persons should reduce their holdings so as no longer to retain a majority of the capital.
7. Considers the examination of knowledge acquired by candidates at the end of at least three years' supervised practical training, which normally precedes the examination of competence, to be extremely useful, but would prefer Article 5(4) to provide even more flexible arrangements for acquiring practical knowledge, by allowing the whole of the practical training period to take place after the examination of professional competence has been passed;
8. Approves the provisions of Article 6, the purpose of which is to permit the social advancement of persons who have not completed the studies necessary for entrance to an advanced training course but who have, nevertheless, as a result of personal effort, acquired sufficient theoretical and practical knowledge to sit the examination of professional competence provided for in the Directive.

<sup>1</sup> OJ No. C 14, 17.1.1979, p. 2

<sup>2</sup> OJ No. C 131, 13.12.1972

9. Considers the provisions of Article 7 which safeguard the position of professionals established under previous national legislation to be in accordance with the general principle of the non-retrospection of laws, but - in view of the aim of the Directive - feels that this provision should not apply to those who have acquired the qualifications required by national legislation but have not entered the profession of statutory auditing and have preferred to engage in other activities;
10. Welcomes the transitional measures provided for in Article 8 in respect of students who are already undergoing professional training in accordance with legislation in force prior to the Directive and who would, on completion of their studies, be otherwise unable to carry out statutory audits of company accounts in accordance with the Directive;
11. Stresses the import of Article 9 of the Directive, under which a person may not be approved by way of derogation from Article 4 unless he is judged fit by the competent authorities to carry out his duties through his ability to afford the same guarantees as persons approved under Article 4;
12. Proposes to amend Article 10 so as to clarify its purpose of allowing Member States to act as host to persons trained in countries outside the European Community without jeopardising their reciprocal rights with other Member States;
13. Approves the general tenor of Article 11 as regards the independence required of an auditor of company accounts but thinks that a similar requirement should be made in respect of the firm to which he belongs;
14. Considers that the publication of one or more lists of all the natural and legal persons authorised to carry out statutory audits of accounts will make an important contribution to the protection of the interests of members and others, and that the Member States should therefore make such publication obligatory in pursuance of Article 12;
15. Considers it essential to extend the time limits laid down in Article 13 for bringing national legislation into line with the Eighth Directive because of the delicate nature of the sector in question and the large number of joint-stock and limited liability companies that will be affected by the new arrangements for auditing accounts; the Member States should also communicate to the Commission all the provisions which they intend to adopt on the subject, as also a list of examinations that comply with the Eighth Directive.

16. Suggests, in view of the complexity of the subject dealt with in the Eighth Directive, that a Consultative Committee be set up under the auspices of the Commission for the purpose of facilitating the harmonised implementation of the Directive and advising the Commission on any amendments the Directive may need;
17. Invites the Commission therefore pursuant to Article 149(2) of the EEC Treaty, to incorporate the following amendment in its proposal;
18. Subject to the above observations and amendments proposed, approves the proposal for an Eighth Directive as a whole.

Proposal for an Eighth Directive pursuant to Article 54(3)(g) of  
the EEC Treaty concerning the approval of persons responsible for  
carrying out statutory audits of the annual accounts of limited  
liability companies

Preamble, recitals and Article 1 unchanged

Article 2

Member States shall approve to carry out statutory audits of the annual accounts of the companies referred to in Article 1 only:

1. Natural persons who satisfy at least the conditions specified in the following articles;
2. Legal persons or other types of professional companies or associations which satisfy the following conditions:
  - (a) The partners, members, persons responsible for the management,

Member States shall approve to carry out statutory audits of the annual accounts of the companies referred to in Article 1 only:

1. Natural persons who satisfy at least the conditions specified in the following articles;
2. Legal persons or other types of professional companies or associations which satisfy the following conditions:
  - (a) The partners, members, persons responsible for the management

<sup>1</sup>For complete text see OJ No. C 112 of 13.5.1978, p.6

administration, direction or supervision of such professional companies or associations who do not personally fulfil the conditions laid down in this Directive shall exercise no influence over the statutory audits carried out under the auspices of such approved professional companies or associations.

The law shall, in particular, ensure:

- that the abovementioned persons may not participate in the appointment or removal of auditors and that they may not issue to the latter any instruction regarding the carrying out of audits;
- that such persons shall not hold a majority of the capital of such professional companies or associations constituted after the entry into force of measures implementing this Directive and that they may not thereafter increase their holding so as to obtain a majority of the capital of existing companies or associations;
- that the confidentiality of audit reports produced by the audits and all documents relating thereto is protected and that these are withheld from the knowledge of the abovementioned persons;

(b) The natural persons who are responsible for the audit and certification of annual accounts carried out

administration, direction or supervision of such professional companies or associations who do not personally fulfil the conditions laid down in this Directive shall exercise no influence over the statutory audits carried out under the auspices of such approved professional companies or associations.

The law shall, in particular, ensure:

- that the persons referred to in para 2 (a) of this article may not participate in the appointment or removal of auditors and that they may not issue to the latter any instruction regarding the carrying out of audits ;
- unchanged

- that the confidentiality of audit documents produced by the auditors and all documents relating thereto is protected. (12 words deleted)

(b) The natural persons who are responsible for the audit and certification of annual accounts carried out

under the auspices of the professional company or association in the Member State in which approval is sought, shall satisfy at least the conditions specified in the following Articles.

under the auspices of the professional company or association in the Member State in which approval is sought, shall satisfy at least the conditions specified in the following Articles.

Article 3 unchanged

Article 4

1. A natural person may be approved to carry out the activities referred to in Article 1 only after having attained university entrance level, followed a course of advanced training and passed an examination of professional competence at graduate or an equivalent level of training which is organised or recognised by the State.

1. A natural person may be approved to carry out the activities referred to in Article 1 only after having attained university entrance level, followed a programme of professional education and training and passed an examination of professional competence at graduate or an equivalent level of training which is organised or recognised by the State.

Paragraph 2 unchanged

Article 5

1. The test of theoretical knowledge shall cover in particular the following subjects:

- auditing,
- evaluation and critical appraisal of balance sheets and profit and loss accounts,

1. The test of theoretical knowledge shall cover in particular the following subjects:

- auditing,
- evaluation and critical appraisal of balance sheets and profit and loss accounts,

- general accounting,
- problems relating to group accounts,
- cost and management accounting,
- internal audits,
- principles of evaluating balance sheet items and of determining results,
- company tax law,
- company criminal law,
- company law.

Insofar as they are relevant to auditing:

- principles of law (civil, commercial and social law),
- information systems and computer science,
- business, general and financial economics,
- mathematics and statistics,
- basic principles of financial management of business undertakings.

- general accounting,
- problems relating to group accounts
- cost and management accounting,
- internal control,
- principles of evaluating balance sheet items and of determining results.
- company tax law,
- company criminal law,
- company law.

Insofar as they are relevant to auditing:

- principles of law (civil, commercial and social law),
- information systems and computer science,
- business, general and financial economics,
- mathematics and statistics,
- basic principles of financial management of business undertakings.

Paragraphs 2 and 3 unchanged

4. By way of derogation from paragraph 3, part of such practical training may take place after the examination of professional competence has been passed, but in such case the competent authorities shall certify before granting approval that the candidate has the practical ability necessary to carry out his duties.

4. By way of derogation from paragraph 3, (2 words deleted) such practical training may take place after the examination of professional competence has been passed, but in such case the competent authorities shall certify before granting approval that the candidate has the practical ability necessary to carry out his duties.

Article 6 unchanged

Article 7

Without prejudice to Articles 3, 9 and 11:

1. Member States may, if they have not previously done so, approve persons who do not fulfil all the conditions

Without prejudice to Articles 3, 9 and 11:

1. Member States may, if they have not previously done so, approve persons who do not fulfil all the conditions

laid down in this Directive but who, until the date of entry into force of the provisions specified in Article 13(1), had the right to carry out statutory audits of the annual accounts of companies, even if they did not in fact engage in such activity.

laid down in this Directive but who, until the date of entry into force of the provisions specified in Article 13(1), had the right to carry out statutory audits of the annual accounts of companies. (11 words deleted.)

Paragraph 2 unchanged

Articles 8 and 9 unchanged

Article 10

1. A Member State, where necessary by way of derogation from Article 4, may approve to carry out the statutory audits referred to in Article 1 persons who fulfil the following two conditions:

(a) they have obtained, elsewhere than in that Member State, qualifications which are deemed by the competent authorities to be objectively equivalent to those required under this Directive. Qualifications obtained in another Member State are however always to be considered equivalent if approval has already been granted in this latter State according to the provisions of this Directive;

(b) they have proved that they have sufficient legal knowledge to carry out statutory audits in the Member State in which approval is sought.

1. A Member State, where necessary by way of derogation from Article 4, may approve to carry out the statutory audits referred to in Article 1 persons who fulfil the following two conditions:

(a) they have obtained, elsewhere than in that Member State, qualifications which are deemed by the competent authorities to be (1 word deleted) equivalent to those required under this Directive (30 words deleted);

(b) they have proved that they have the stipulated legal knowledge to carry out statutory audits in the Member State in which approval is sought.

Paragraph 2 unchanged

Article 11

Paragraph 1 unchanged

2. An auditor of a company's accounts may, neither directly nor through another person, receive benefits from that company or from the persons specified in paragraph 1 and may not have an interest in the capital of that company.

2. An auditor of a company's accounts or his firm may not, either directly or through another person, receive loans from that company or from the persons specified in paragraph 1 and may not have an interest in the capital of that company.

Paragraphs 3 and 4 unchanged

Article 12

1. Member States shall publish a list of all natural persons and all professional companies and associations approved by them to carry out statutory audits of the annual accounts of the companies referred to in Article 1.

1. Member States shall cause to be published a list or lists of all natural persons and all professional companies and associations approved by them to carry out statutory audits of the annual accounts of the companies referred to in Article 1.

Paragraphs 2 and 3 unchanged

Article 13

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to comply with this Directive within eighteen months of its notification. They shall forthwith inform the Commission thereof.

1. Member States shall bring into force the laws, regulations or administrative provisions needed in order to comply with this Directive within twenty-four months of its notification. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 shall not apply to the parties concerned for a period of two years at the most from the date of their entry into force.
3. Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
4. Member States shall also ensure that they communicate to the Commission a list of the examinations which they recognise, pursuant to Article 4(1), as providing guarantees which are at least equivalent to those provided by the examination organized by the State.
2. Member States may provide that the provisions referred to in paragraph 1 shall not apply to the parties concerned for a period of three years at the most from the date of their entry into force.
3. Member States shall ensure that they communicate to the Commission the text of the (one word deleted) provisions of national law which they adopt in the field covered by this Directive.
4. Member States shall also ensure that they communicate to the Commission a list of the examinations which they recognise, pursuant to Article 4(1). (18 words deleted)

Article 13A (new)

1. A Consultative Committee shall be set up under the auspices of the Commission. Its function shall be:
- (a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonised application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;
- (b) to advise the Commission, if necessary, on additions or amendments to this Directive.
2. The Consultative Committee shall be composed of representatives of the Member States (at least one of whom must be a member of the audit profession) and representatives of the Commission. The chairman shall be a representative of the Commission.

The Commission shall provide the secretariat.

3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

Article 14 unchanged

EXPLANATORY STATEMENTI. INTRODUCTION

1. The proposal for an Eighth Directive pursuant to Article 54(3)(g) of the EEC Treaty, concerning the approval of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies, is the logical corollary to the following proposals for directives on company law:

- a Fourth Directive<sup>1</sup>, obliging limited liability companies to have their annual accounts audited by one or more persons authorized by the national law to audit accounts;
- A Fifth Directive<sup>2</sup>, under Article 52 of which 'only persons who are independent of the company and who are nominated or approved by a judicial or administrative authority may be charged with the responsibility of auditing the accounts of the company';
- A Seventh Directive<sup>3</sup>, supplementing the Fourth Directive as regards group accounts.

2. In addition, in 1970 the Commission submitted to the Council a proposal, amended in 1975, for a Statute for European Companies<sup>4</sup>. Under Article 203(2) of that proposal, 'only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing an examination, both of which must be legally established or recognized and shall be persons authorized in a Member State to act as auditors of the annual accounts of companies limited by shares whose shares are quoted on a stock exchange.'

3. The purpose of the proposal for an Eighth Directive is to lay down the conditions for the granting of approval to carry out statutory audits of the annual accounts of limited liability companies. Although some Member States require statutory audits to be carried out by highly

<sup>1</sup> Adopted by the Council at its meeting of 26-27 June 1978; see OJ No. L 222, 14.8.78, p.11

<sup>2</sup> At present being considered by the Legal Affairs Committee

<sup>3</sup> See report by Mr Schwörer, Doc. 103/78 and the Commission's amended proposal (OJ No. C 14, 17.1.79)

<sup>4</sup> OJ No. C 124, 10 October 1970 and Bulletin of the European Communities, Supplement 4/75

qualified persons, this is not the rule in all Community countries. For this reason, the proposal for an Eighth Directive is designed to provide shareholders, workers and third parties (for example, creditors) with equivalent guarantees on the quality of the statutory audits.

4. The implementation of the Eighth Directive will thus provide guarantees that in the Member States only persons who have the necessary professional qualifications, and are of good repute and independent, will be authorized to carry out statutory audits of accounts.

## II. CONTENT OF THE PROPOSAL FOR A DIRECTIVE

5. The proposal for an Eighth Directive contains 14 articles. Under Article 1, the coordination of the laws, regulations or administrative provisions of the Member States concerning the approval of persons responsible for carrying out statutory audits of the annual accounts applies only to companies incorporated with limited liability.

6. Article 2 makes provision for the auditing of accounts not only by natural persons but also legal persons 'or other types of professional companies or associations'. This article goes on to lay down a number of conditions governing the approval of legal persons designed to ensure that it does not create loopholes in the Directive's provisions on the qualifications required.

7. Article 3 lays down the general principle whereby the Member States shall grant approval only to persons who are 'of good repute and independent'.

8. Articles 4 to 6 lay down the level of study and knowledge required to obtain approval to carry out statutory audits of accounts. Article 6 allows for the possibility of granting approval to persons who, while not having reached the level of study required by the directive, have nevertheless acquired sufficient theoretical and practical knowledge through experience of these duties.

9. Article 7 and 8 authorize the Member States to adopt transitional measures to ensure that the entry into force of the Directive does not harm the interests of certain categories within the profession or of students about to complete courses of study organized with a view to the arrangements in force before the new requirements were laid down by the Directive. However, under Article 9, the Member States can exempt such categories and students from the examination of professional competence laid down in Article 4 only if they judge that they are fit to carry out their duties on the ground that they afford the same guarantees as persons approved after passing the examination of professional competence.

10. Article 10 sets out the cases in which Member States may derogate from the fundamental principle laid down in Article 4 of the Directive, while maintaining the obligation to ensure that those seeking approval are of good repute and independent. The requirement of independence is dealt with more fully in Article 11(1), (2) and (3). Paragraph 4 of Article 11 lays down the principle whereby the Member States must ensure through appropriate administrative measures, that persons approved for statutory audits of account of companies fulfil their professional obligations.

11. Article 12 provides for the publication of annual lists of all those approved in a Member State to carry out statutory audits of accounts. To make checking simpler, the list must contain, besides the names of the legal persons approved, the names of the natural persons approved within those bodies.

12. As regards time limits, Article 13(1) lays down that Member States must bring into force the national provisions needed in order to comply with the Directive within 18 months of its notification. However, under paragraph 2, the Member States may defer the application of the national provisions implementing the Directive for a maximum period of two years from the date of their entry into force. The Member States must also communicate to the Commission the provisions of national law which they adopt in the field covered by the Directive, and the list of examinations which they recognize as providing guarantees equal to those provided by the examination provided for in Article 4(1) of the Directive.

Article 14 contains the standard formula for directives.

### III. ANALYSIS OF THE PROPOSAL FOR A DIRECTIVE

13. We will now consider the main features of the proposal for an Eighth Directive, which are as follows:

- (a) the granting of approval to carry out statutory audits of account,
- (b) the requirements necessary for approval,
- (c) derogations and transitional provisions,
- (d) the recognition of qualifications obtained in other Member States or outside the Community,
- (e) the time limits for bringing national legislation into line with the Directive,
- (f) the need for a Consultative Committee.

(a) Granting of approval for carrying out statutory audits of accounts

14. Article 1 of the proposal for an Eighth Directive provides principally for the coordination of the laws, regulations and administrative provisions of the Member States on the approval of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies. This article is a direct extension of the provisions of the Fourth Directive.

15. The accounts which are subject to the statutory audit provided for in Article 1 are the same as those set out in Article 2 of the Fourth Directive; the balance sheet, the profit and loss account and the notes on the accounts.

16. With regard to the scope of the term 'approval', it is clear that the explanations supplied by the Commission on Article 4 of the proposal for a Directive<sup>1</sup> allow the possibility of exemptions from state examinations and recognise the equivalence of other types of examination. Moreover, under Articles 7, 8 and 10 of the proposal for a Directive, approval can be granted even without a prior examination of professional competence. It seems, therefore, to mean a form of recognition which the authorities of the Member States may grant in the cases laid down by the provisions of the Directive.

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<sup>1</sup> See Doc. 127/78, page VIII

(b) The requirements necessary for approval

17. The proposal for an Eighth Directive lays down the various requirements which the laws of the Member States must lay down for the purposes of granting approval to carry out statutory audits of accounts. These requirements can be subdivided into the following general categories: persons subject to the Directive, level of knowledge and intrinsic qualities of those seeking approval.

(i) Persons subject to the Directive

18. Under Article 2 of the proposal for a Directive, the Member States can approve both natural and legal persons for carrying out statutory audits of the accounts. Article 2 does, however, lay down conditions on the approval of legal persons to provide a guarantee that natural persons who lack the requisite qualifications do not carry out statutory audits, or interfere in any way in the carrying out of audits by legal persons.

The rapporteur thinks that natural persons who do not personally fulfil the conditions laid down in the directive and hold a majority of the capital of professional companies should be allowed a period in which to reduce their holding, since it might prove difficult to make an immediate reduction. The position could however be safeguarded by national legislations in the framework of Article 13(2) for a period up to three years.

19. The granting of approval for carrying out statutory audits to legal persons and other types of company or professional associations with or without legal personality, presupposes that the Member State has ascertained the qualifications of the natural persons responsible for the audits and certifications carried out on behalf of the company or professional association. The proposal for an Eighth Directive is primarily directed at individuals, even within the context of a company.

The rapporteur is of the view that, certain provisions, including Article 11(2), should apply expressly to firms as well as to individual auditors.

(ii) Level of knowledge

20. The wording of Article 4(1) is somewhat complex, since the Commission has attempted to take account of the various educational systems and the various study courses through which individuals in the Member States can qualify to carry out statutory audits of accounts.

It is not clear whether approval should be considered as being granted automatically with the passing of the examination of professional competence, or whether it constitutes a separate act by the public authorities, without which the person concerned, while having passed the examination, cannot yet carry out statutory audits of accounts. Since the scope of the act referred to as 'approval' depends basically on the system applied in each Member State, the Directive should provide as uniform a definition as possible of this act.

21. The theoretical knowledge needed by those seeking approval to carry out statutory audits of accounts is set out in Article 5(1). This is a complete programme of study which candidates must follow after having reached the entrance level for a course of higher education in accordance with Article 4(1).

Under Article 5(2) holders of a university degree or equivalent qualification in these subjects may be exempted from the tests. This is accepted practice with higher education.

22. Paragraphs 3 and 4 of Article 5 deal with the compulsory practical training which must be undergone to acquire the necessary practical knowledge. The period laid down for this training is sufficiently elastic. However, the question arises of whether a period of training of 'a minimum of three years' to acquire practical knowledge is in proportion to the average length of professional training courses. In the light of the training periods provided for in laws currently in force in the Member States, the period of at least three years does seem appropriate.

23. Article 6 authorises persons to sit the examination of professional competence provided for in Article 4, notwithstanding the fact that they have not attained the level of study required for entrance to higher education, if they can show:

- that they have for fifteen years engaged in activities enabling them to acquire sufficient experience in the field of finance, law and accountancy; or
- that they have for seven years engaged in such activities, and have also undergone a period of practical training in accordance with the provisions of the Directive.

In the latter case, they must be of at least 25 years of age.

(iii) Intrinsic qualities of those seeking approval

24. Under Article 3, Member States may grant approval only to persons who are of good repute and independent. The phrase 'of good repute' obviously refers to the moral qualities of those seeking approval to carry out statutory audits of accounts. This is a necessary stipulation in view of the importance to those concerned of the certificates issued for company accounts.

This provision highlights the fact that approval is an act of the public authorities independent of the passing of the professional examination. Approval can be denied to those who on passing the examination laid down in Article 4, do not, under national law, fulfil the requirement of being 'of good repute'. Conversely, under Article 7

professional auditors may obtain approval even if they do not fulfil all the conditions laid down in this Directive, without having to pass the examination referred to in Article 4. Approval cannot be denied them if they have always observed the proper code of conduct in statutory audits.

25. The term 'independent' in Article 3 seems to indicate not only an intrinsic quality, independence of judgement in the sense of being able to resist pressures from interested parties, but above all the material situation of the person responsible for the statutory audit of the account of the company. Since the first meaning comes within 'of good repute' and the second is dealt with in Article 11, it is felt that the term 'independent' is unnecessary and confusing in this Article.

Article 11 should therefore be viewed as providing for the incompatibility of certain functions or relationships with the company on whose accounts the statutory audit is carried out. The prohibitions laid down in Article 11 to preserve the independence of those responsible for auditing accounts, and the obligation imposed on the Member States to adopt administrative measures and sanctions to govern the activities of the auditors concerned, are in line with the legal provisions in force in most of the Community countries.

(c) Derogations and transitional provisions

26. Article 7(1) authorises the Member States to approve persons who were already engaged in carrying out statutory audits before the entry into force of the Directive but who no longer fulfil all the conditions laid down in the Directive.

Unlike the persons referred to in Article 6, those concerned here are professional auditors whose qualifications were sufficient under the previous legislation but would not be so after the entry into force of the rules of this Directive.

27. Under the general principle that new laws can legislate only for the future and cannot be retrospective in the sense that they cannot apply to legal situations which existed before they were enacted, this provision is aimed at protecting the position of those who obtained their professional qualification under the previous national legislation.

However, in the view of the aims of the Directive, this concession should be reserved exclusively for those who are actually engaged in such activities, and should exclude those who - although at the time they obtained the qualifications required by the national legislation - do not carry out statutory audits and have preferred to engage in other activities.

28. Article 8 of the proposal for a Directive lays down transitional measures in respect of students already undergoing professional training under existing legislation when the Directive enters into force.

It should be stressed that the position of students differs from that of the professional auditors referred to in Article 7 for whom the purpose of the Directive was to preserve their acquired rights to exercise a given activity. As far as students are concerned, in view of the new situation which this Directive has brought about, Member States should take timely and decisive action to help students to acquire the knowledge which will be essential for their future professional activities.

29. Article 9 is a provision designed to counter-balance Article 7, which grants a great degree of discretion to the competent authorities of each Member State. It also makes it clear that the possibility of granting approval by way of derogation from Article 4 is not the general rule. Provision is made for this only with a view to the transitional period between the old and new arrangements for statutory audits of accounts.

(d) The recognition of qualifications obtained in other Member States or outside the Community

30. Although Article 10 also allows for derogations, it differs from the preceding provisions in that it is not limited in time and it is not aimed at facilitating the transition to the new arrangements for statutory audits of accounts.

Article 10(1)(a) envisages two hypotheses:

- (i) the case where an auditor has obtained in a state which is not a Member of the Community qualifications which are deemed by the competent authorities of the Member State to be equivalent to those required under this Directive,
- (ii) the case where an auditor has obtained qualifications in another Member State according to the provisions of this Directive.

31. The Commission justifies the derogations provided for under Article 10 for the first case by stating that some Member States 'attach great importance to being able to act as host to persons trained in other countries, whether or not belonging to the European Community. This Directive allows them to continue doing so provided certain conditions are fulfilled relating in particular to the qualifications of such persons,

who may only be natural persons'.<sup>1</sup>

32. Since the declared aim of this proposal for a Directive is to achieve a high level of theoretical and practical knowledge in the carrying out of statutory audits of accounts, Article 10 should stress mobility within the Community of persons who have been approved pursuant to this Directive.

However, the protection must be given so that a Member State is not forced to recognise the qualifications of another Member State, where such recognition is not reciprocated.

33. Moreover, Article 10(1)(b) lays down the condition that such persons must possess the stipulated legal knowledge to carry out statutory audits in the Member States in which approval is sought.

34. As regards the publication of a list of all natural and legal persons who have been approved for the purpose of carrying out statutory audits of the accounts, Article 12 should make the duty of Member States to legislate for this more clear.

(e) The time limits for bringing national laws into line with the Directive

35. With regard to the time limits laid down in Article 13 for adapting national laws to the provisions of the Directive, it should be borne in mind that the new rules of the Directive will involve a large number of limited liability companies operating in the Member States.

In view of the complex nature of the sector governed by the proposal for an Eighth Directive, the time limits should take account of the need to have available a sufficient number of auditors qualified to work under the new arrangements for statutory audits of accounts. Account should also be taken for this purpose of the provisions of Article 8 concerning the adoption of transitional provisions for students. It would therefore seem advisable to extend the time limits laid down in the proposal for a Directive.

36. Moreover, as regards the information which the Member States must communicate to the Commission, this should not be restricted to the 'main' provisions of national law. The European Parliament, and in particular, the Legal Affairs Committee, have stressed on many occasions that all implementing legislation should be ratified.

(f) The need for a Consultative Committee

37. In view of the complexity of the matters dealt with by the Eighth Directive, it would be advisable to set up a consultative committee on the pattern of that envisaged in Article 52 of the Fourth Directive. The Legal Affairs Committee therefore proposes that an Article 13A be added to the provisions of the Eighth Directive. It is particularly important that members of the audit profession, experts in this field, be represented on the committee.

<sup>1</sup> See Doc. 127/78, P.XXI

IV. CONCLUSIONS

38. In view of the aims of the proposal for an Eighth Directive, which is designed to raise the level of professional training of those responsible for carrying out statutory audits of account and at making approval to carry out such duties subject to uniform conditions in the Member States, the Legal Affairs Committee can give a favourable opinion on the proposal, subject to the proposed amendments outlined above.

OPINION

of the Committee on Economic and Monetary Affairs

Draftsman: Mr ELLIS

On 20 June 1978 the Committee on Economic and Monetary Affairs appointed Mr Ellis draftsman.

It considered the draft opinion at its meeting of 22 March 1979 and adopted it unanimously.

Present: Mr Pisani, Chairman; Mr Ellis, rapporteur; Lord Ardwick, Mr Lange, Mr Nyborg, Mr Ripamonti, Mr Spénale, Mr Starke and Mr Vernaschi.

I. Objective of the proposed eighth directive

1. Article 203 of the proposal for a Statute for European Companies, Article 49 of the proposal for a fourth directive for coordination of national laws regarding the annual accounts of limited liability companies and Articles 51 and 52 of the proposal for a fifth directive on the structure of sociétés anonymes state that company accounts must be audited and that the audit must be carried out by persons holding the necessary qualifications.

The object of the eighth directive is to create a Community framework, pursuant to Article 54 (3) (g) of the EEC Treaty, guaranteeing that all persons authorized to carry out statutory audits of the accounts of limited liability companies have equivalent minimum qualifications. It is also an essential corollary to the directives referred to above, since its aim is to ensure within the Community a minimum level of protection for shareholders and third parties and in particular for workers represented within limited liability companies.

2. It should, however, be pointed out that the proposed directive does not aim at establishing mutual recognition of the diplomas required to carry out this activity or the effective exercise of freedom to provide services or freedom of establishment for auditors. Its purpose is simply to ensure equivalent qualifications in the Community for a particular task, that is, the statutory audit of the annual accounts of limited liability companies. It does not change the fact that in some Member States this audit is carried out by members of different professions.

The Commission should continue its work in this field to ensure future freedom of establishment in respect of these activities, which, in the words of the Treaty, indirectly make 'a particularly valuable contribution to the development of production and trade'.

Similarly, it is regrettable that the proposed directive does not extend beyond limited liability companies to include the cooperative societies and legal persons governed by public or private law referred to in Article 58, second paragraph, of the EEC Treaty.

To achieve its objective, the directive contains provisions relating to competence and independence of persons responsible for carrying out statutory audits.

## II. Competence of authorized auditors

3. Article 2 of the proposed directive makes a distinction between the authorization procedure applicable to natural persons and that applicable to legal persons. For the latter, steps must be taken to ensure that partners, members, and persons responsible for the administration, direction or supervision of professional companies who do not personally hold the qualifications required by the directive, do not influence the statutory audits carried out under the auspices of those companies.

The provisions of the directive concerning the required level of competence vary according to whether they refer to graduate auditors - the majority - or to selftrained persons. Article 4 states that, to obtain authorization, the auditor must prove that he has obtained university entrance level, followed a course of advanced training and passed an examination of professional competence at graduate or an equivalent level of training. These provisions should guarantee a minimum level of competence. However, the directive gives the Member States the right of derogation on a number of points. For example, under Article 5(2) they may exempt holders of a university degree in one or more of the subjects referred to in Article 5(1) from the test of theoretical knowledge forming part of the examination of professional competence. If the Member States' authorities were in a position to require holders of university degrees to resit an examination in a subject for which they already hold a diploma of equivalent standard, this could discourage some candidates and lead to undesirable disparities in the treatment of applicants for this profession between one Member State and another.

4. With the laudable aim of encouraging social advancement, persons who have not obtained university entrance level but have had lengthy experience in the field of finance, law and accountancy - fifteen years or seven years together with supervised practical training - may sit the examination of professional competence provided for in Article 4. This avoids the creation of two categories of authorized auditors at different levels.

However, it is regrettable that Article 6 leaves the Member States completely free to decide whether or not to implement these provisions to help self-trained persons.

Articles 7, 8 and 13 concern transitional measures for the benefit of auditors who were authorized to carry out statutory audits until the date of entry into force of the directive or of students following a training course before that date. This possibility of derogating from the provisions of Article 4 might lead to disparities between the Member States in the treatment of auditors.

### III. Independence of authorized auditors

5. Moral and financial independence are equally as important as competence in guaranteeing accurate audits. The directive stipulates that the auditor's independence must be verified when authorization is sought and be maintained throughout the exercise of his profession. The auditor's independence is of vital importance; it must be checked first of all when authorization is sought to ensure that the auditor requesting authorization is not exercising any function incompatible with that of an auditor.

In this respect Article 3 of the proposed directive is much too vague and begs the question.

On the other hand, Article 11 is more specific about control over the auditor's moral and financial independence throughout the exercise of his profession. Article 11(2) states that an auditor may not receive benefits from the company audited nor have an interest in the capital of that company. It would be better to provide a general rule that the auditor may not have any financial relations with the company concerned. Article 11(3) extends this prohibition to include cases where the fees paid by the company audited exceed 10% of the auditor's turnover. This provision is intended to ensure the auditor's financial independence vis-à-vis his clients and as such is entirely justified. However, its effect is unfortunately reduced by the fact that the disciplinary authorities of the Member States are free to assess in each case the actual extent of the auditor's independence, taking account of the circumstances. Moreover, the 10% limit is likely to penalize more severely natural persons or professional associations with a low turnover.

To conclude, the Committee on Economic and Monetary Affairs

1. welcomes the scope of the provisions contained in the proposed eighth directive, which is intended to ensure a minimum level of protection in the Community for shareholders and third parties during the statutory audit of the accounts of limited liability companies;
2. recalls in this connection that the campaign against tax evasion and the removal of distortions of competition require rigorous control over the activities of national and transnational limited liability companies and considers that the competence and moral and financial independence of persons responsible for auditing accounts can make a decisive contribution to this objective;
3. regrets in this connection that:
  - the provisions of the eighth directive do not include all the companies referred to in Article 58, second paragraph, of the EEC Treaty,
  - on several points the possibility of derogation has been left to the discretion of the authorities of the Member States, thereby reducing the guarantees of competence sought by the directive,
  - the directive is unclear about the verification of the auditor's independence when authorization is sought and in general about the sanctions for failure to comply with its provisions;
4. approves, subject to these reservations, the proposal for an eighth directive as the essential corollary to the previous proposed directives on the harmonization of company law, whose adoption has been delayed too long by the Council.