

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 679 final

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Brussels, 30th November 1979

AMENDED PROPOSAL FOR AN EIGHTHS DIRECTIVE
FOUNDED ON ARTICLE 54(3)(g) OF THE EEC TREATY
CONCERNING THE APPROVAL OF PERSONS RESPONSIBLE
FOR CARRYING OUT STATUTORY AUDITS OF THE
ANNUAL ACCOUNTS OF CERTAIN TYPES OF COMPANY

(presented by the Commission to the Council,
pursuant to the second paragraph of article 149 of the EEC treaty)

COM(79) 679 final

EXPLANATORY MEMORANDUM

I. INTRODUCTION

This Amended Proposal for an Eighth Directive founded on article 54(3)(g) of the Treaty concerning the harmonisation of the qualifications of auditors of limited liability companies has two principal objectives : to take account of the opinion of the Economic and Social Committee of 4 April 1979 (1) and the opinion of the Parliament of 11 May 1979(2).

II. COMMENTARY ON THE ARTICLES

Article 1

The companies included for Ireland and the United Kingdom are those set out in the 4th Directive. Furthermore the "commanditaire vennootschap op aandelen" no longer exists in the Netherlands.

Article 2, paragraph 2a)

2nd dash : The Parliament and the Economic and Social Committee as well as the Study Group of Accounting Experts of the EEC felt that the majority of the capital of professional auditing companies or associations always ought to be held by auditors. In consequence the Commission has amended its text in the way indicated above to guarantee a greater independence for auditors.

3rd dash : The Parliament and the Economic and Social Committee wised the confidentiality of the documents relating to an audit to be protected but did not wish such documents to be withheld from certain of the auditors associates (lawyers, tax experts, etc.) who although not complying individually with the conditions of the Directive help auditors in carrying out their task.

(1) OJ C 171 of 9.7.1979, p. 30

(2) OJ C 140 of 5.6.1979, p. 154.

The new text respects this request which takes account of realities and seeks not to deprive auditors of the services of certain of their colleagues.

Article 3

Taking account of the observations of the Economic and Social Committee the amended text seeks to clarify the notion of independence with a view to obtaining approval.

Article 4

The Parliament found the notion of "a course of advanced training" a little ambiguous and wished it to be replaced by "a programme of professional education and training". The new text respects this request which corresponds more closely with the actual situation in certain Member States.

Article 5, paragraph 4

Taking account of the request of the Parliament the new text seeks to allow all practical training with an approved person to take place after the test of theoretical knowledge.

Article 7

Article 11 which had been mentioned in error has been deleted in accordance with the opinion of the Parliament (This also applies to articles 8 and 10).

The last part of the sentence in paragraph 1 has been amended in accordance with the opinion of the Parliament, to ensure that this provision only applies to persons who have in fact carried out audits of annual accounts.

Article 10

The Parliament and the Economic and Social Committee wished to see the deletion or amendment of the provision which foresaw that qualifications obtained in other Member States in accordance with this Directive should be deemed to be equivalent. Nevertheless the Commission feels that the objective of this Directive is to have the qualifications, the conditions of training and the other conditions which it lays down accepted as sufficient to allow Member States to approve persons in this domain. In consequence it follows that at Community level the adequate nature of these rules for ensuring a reliable audit of the annual accounts of companies must be recognized by all, even if certain States have stricter requirements at a national level. Moreover, it results from the Treaty itself, as it has been interpreted by the Court of Justice of the European Communities, that the approval given in one country in accordance with rules, admittedly minimal, but harmonized by Directive, carries with it per se the recognition of that approval which allows persons based in one country to carry out an audit of the annual accounts of a company based in another country. For these reasons the text could not make allowance for the request of the Parliament and the Economic and Social Committee.

Article 11

At the request of the Parliament and the Economic and Social Committee the word "loans" has replaced the word "benefits" the translation of which was delicate in certain languages. The Parliament also wished that not only the auditor but also the firm to which he belongs may not receive loans from the company which he audits. The text respects this request.

Article 12

The amendment to this text follows the opinion of the Parliament.

Article 13

The time limits for application have been lengthened at the request of the Parliament.

Article 13(a)

The functions of the consultative committee suggested by the Parliament and the Economic and Social Committee could be advantageously fulfilled by the Contact Committee on accounting matters already set up on the basis of Article 52 of the 4th Directive (see also Article 26(a) of the Proposed 7th Directive). The statute of the Contact Committee would allow the appropriate participation of professionals in the committee's deliberations.

ORIGINAL PROPOSAL

PROPOSAL FOR AN
EIGHTH COUNCIL 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 COUNCIL OF THE EUROPEAN
COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54(3)(g) thereof,

Having regard to the Proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

AMENDED PROPOSAL

AMENDED PROPOSAL FOR AN
EIGHTH COUNCIL 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 certain types of company

THE COUNCIL OF THE EUROPEAN
COMMUNITIES

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

Having regard to the opinion of the European Parliament (2),

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

(1) OJ C 112 of 13.5.1978, p. 6.

(2) OJ C 140 of 5.6.1979, p. 154.

(3) OJ C 171 of 9.7.1979, p. 30.

Whereas under Council Directive ... of ... (1) for coordination of national legislation regarding the annual accounts of limited Liability companies, the annual accounts of the companies referred to in Article 1(1)(b) thereof must be audited by one or more persons approved under national law to audit accounts;

Whereas the latter Directive has been supplemented by Council Directive ... of ... (2) concerning group accounts;

Whereas under Council Directive ... of ... (3) as regards structure of sociétés anonymes and the powers and obligations of their organs, only persons who are independent and who are nominated or approved by a judicial or administrative authority may be charged with the responsibility of auditing the accounts of public limited liability companies;

Whereas under Council Directive 78/660/EEC (2) on the coordination of national legislation on the annual accounts of certain types of company, the annual accounts of the companies referred to in Article 1(1) thereof must be audited by one or more persons approved under national law to audit accounts;

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- (1) Amended Proposal for a Fourth Directive on the annual accounts of limited liability companies, Supplement 6/74 - Bull. EC.
(2) Proposal for a Seventh Directive, OJ C 121 of 2.6.1976.
(3) Proposal for a Fifth Directive, OJ C 131 of 13.12.1972.

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- (1) OJ L 222, 14 August 1978, p. 11.
(2) OJ C 14, 17 January 1979.
(3) Unchanged.

Whereas, although in some Member States the task of carrying out statutory audits of the accounts of limited liability companies is entrusted to highly qualified persons, this is not the rule in all Community countries;

Whereas this Directive is therefore an essential corollary to the proposed Fourth, Fifth and Seventh Directives;

Whereas a high level of theoretical and practical knowledge must be required to carry out statutory audits of the accounts of limited liability companies and whereas the Member States will be able to approve only those persons who pass an examination of professional competence at graduate level;

Whereas Member States should be authorized to provide an opportunity for social advancement for those persons who, without being able to give proof of theoretical training, have long and sound practical experience in the field of law, finance and accountancy;

Whereas this Directive is therefore an essential corollary to Directive 78/660/EEC and to the proposed Fifth and Seventh Directives;

Whereas, although in some Member States the task of carrying out statutory audits of the accounts of companies is entrusted to highly qualified persons, this is not the rule in all Community countries;

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Whereas Member States should also be Unchanged
authorized to lay down transitional
provisions for the benefit of audit-
ors who do not fulfil all the
conditions laid down in this
Directive;

Whereas the Member States will be
empowered to approve both natural
persons and professional associations
or companies if they ensure, in
particular, that a person should not
be entrusted with carrying out
statutory audits as a member or
such a professional association or
company if he is not approved to
carry out that activity as an
individual;

Whereas the recognition of the appro-
val given to persons coming from other
Member States in respect of the stat-
utory audit of accounts will be speci-
fically regulated within the framework
of a directive concerning the mutual
recognition of qualifications for
activities carried out in the finan-
cial, economic and accounting fields;

Whereas the Member States will be
able to approve auditors who
have obtained qualifications out-
with the Community which are deemed
to be objectively equivalent to those
required under this Directive and who
have passed the test of necessary
legal knowledge;

Whereas the independence of approved Unchanged
auditors must be assured in a general
manner so as to supplement the more
specific provisions laid down in the
proposal for a Fifth Directive;

Whereas members of various professions
who fulfil the conditions laid down
in the Directive will be able to seek
approval from the Member State in
which they wish to carry out the
activity of auditing the accounts of
limited liability companies,

HAS ADOPTED THIS DIRECTIVE :

Article 1

The coordination measures prescribed in this Directive shall apply to provisions laid down by laws, regulations or administrative provisions of the Member States concerning the approval of persons responsible for carrying out statutory audits of the annual accounts of the following companies :

- In Belgium :

La société anonyme, de naamloze vennootschap, la société en commandite par actions, de commanditaire vennootschap op aandelen, la société de personnes à responsabilité limitée, de personen vennootschap met beperkte aansprakelijkheid;

- In Denmark :

Aktieselskab, Kommandit-Aktieselskab, Anpartsselskab;

- In the Federal Republic of Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung.

- In France :

La société anonyme, la société en commandite par actions, la société à responsabilité limitée;

Article 1

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- In Denmark :

Aktieselskaber, Kommanditaktieselskaber, anpartsselskaber;

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- In Ireland :

Companies incorporated with limited liability;

- In Ireland :

Public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

- In Italy :

La società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

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- In Luxembourg :

La société anonyme, la société en commandite par actions, la société à responsabilité limitée;

- In the Netherlands :

De naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid, de commanditaire vennootschap op aandelen;

- In the Netherlands :

De naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

- In the United Kingdom :

Companies incorporated with limited liability.

- In the United Kingdom :

Public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

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, 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;

Article 2

Unchanged

- that the abovementioned persons may not intervene in the choice of natural persons acting as auditor on behalf of the company or association 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 professional companies or associations;

- that the confidentiality of audit reports produced by the auditors 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 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.

- that such persons do not hold a majority of the capital or voting rights of such professional companies or associations;

- that the confidentiality of audit reports and all documents relating thereto is protected.

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Article 3

The Member States shall grant approval only to persons who are of good repute and independent.

Article 3

Member States shall grant approval only to persons who are of good repute and not carrying on any activity of such nature as to cast doubt on their independence.

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 organized or recognized by the State.

2. Such examination, the general content of which is set out in Article 5, shall guarantee in the most appropriate manner a good level of theoretical knowledge of subjects relevant to the auditing of accounts and the ability to apply such knowledge in practice.

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 programme of professional education and training and passed an examination of professional competence at graduate level which is organized or recognized by the State.

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Article 5

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

- auditing,
- evaluation and critical appraisal of balance sheet 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,

In so far as they are relevant to auditing :

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

Article 5

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

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- internal control,
- accounting standards and method of evaluating balance sheet items and of determining results,

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- information and computer systems,

Unchanged

2. By way of derogation from paragraph 1, holders of a university degree or equivalent qualification in one or more of the subjects referred to in paragraph 1 may be exempted from the test of theoretical knowledge in the subjects covered by such degree or qualification.

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3. The test of practical knowledge referred to in Article 4 shall take place after a minimum of three years' practical training with an auditor approved pursuant to this Directive and involving principally the statutory audit of the annual accounts of companies.

3. The test included in the examination of ability to apply the theoretical knowledge in practice shall take place after a minimum of three years' practical training with an auditor approved pursuant to this Directive and involving principally the statutory audit of the annual accounts of companies.

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, such practical training may take place after the test of theoretical knowledge referred to in paragraph 1.

Article 6

1. Member States may authorize 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 under Article 4 if they can show :

(a) that they have for fifteen years engaged in activities enabling them to acquire sufficient experience in the field of finance, law and accountancy; or

(b) that they have for seven years engaged in such activities and have also undergone the supervised practical training referred to in Article 5(3) or (4) and are at least twenty-five years of age.

2. Member States may deduct periods of professional training in the subjects referred to in Article 5(1) from the years of activity referred to in (a) and (b) above.

Article 6

Unchanged

(b) that they have for seven years engaged in such activities and have also undergone the practical training referred to in Article 5(3) or (4) and are at least twenty-five years of age.

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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 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.

2. Member States may adopt transitional measures in respect of persons who, after the date specified under point 1, retain the right to audit the accounts of certain types of company not subject to statutory audits, but who will be deprived of that right by the introduction of new statutory audits unless special measures are enacted for their benefit.

Article 7

Without prejudice to Articles 3 and 9 :

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 and had in fact engaged in such activity.

2. Member States may adopt transitional measures in respect of persons who, after the date specified under point 1, audit the accounts of certain types of company not subject to statutory audits, but who will no longer be able to carry out such audits upon the introduction of new statutory audits unless special measures are enacted for their benefit.

Article 8

1. Member States may adopt transitional measures in respect of students already undergoing professional training when this Directive enters into force, who, on completion of their studies, would not fulfil the conditions laid down herein and who would therefore be unable to carry out the statutory audit of company accounts for which they had been trained.

2. Articles 3, 9 and 11 shall apply where approval is granted to the persons referred to in paragraph 1.

Article 8

Unchanged

2. Articles 3 and 9 shall apply where approval is granted to the persons referred to in paragraph 1.

Article 9

No person may be approved under Articles 7 or 8 by way of derogation from Article 4 unless he is judged by the competent authorities fit to carry out his duties on the ground that he affords the same guarantees as persons approved under Article 4.

Article 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.

2. In this case Article 3 and 11 shall apply.

Article 10

Unchanged

(a) they have obtained, elsewhere than in a Member State, qualifications which are deemed by the competent authorities to be objectively equivalent to those required under this Directive.

2. In this case Article 3 shall apply.

Article 11

1. An approved person whose independence does not appear to be sufficiently guaranteed in relation to the persons who are members of the body which represents, administers, directs or supervises a company, or its majority shareholders or members, shall not audit the accounts of that company.

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.

3. A person may only audit the annual accounts of a company or group of companies where more than 10 % of his turnover is derived from that client if the disciplinary authorities consider that, in view of the circumstances, this situation is not such as to limit his independence.

Article 11

Unchanged

2. An auditor of a company's accounts or the professional company or association to which he belongs may, neither directly nor 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.

Unchanged

4. Member States shall ensure that approved persons fulfil their obligations either through appropriate administrative measures or by making such persons subject to professional discipline. In particular, approved persons shall, as a minimum, be liable to disciplinary sanctions if they fail to carry out their duties as auditors with all due professional care and complete moral and financial independence.

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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.

2. Such lists shall contain, beside the names of the legal persons and professional companies and associations approved, the names of the natural persons referred to in Article 2(2)(b).

3. This list shall be brought up to date regularly and published annually, but any interested party may at any time consult the competent authority in order to examine the exact list of approved persons.

Article 12

1. Member States shall ensure the publication of 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.

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3. Such lists shall be brought up to date regularly and published annually, but any interested party may at any time consult the competent authorities in order to examine the exact lists of approved persons.

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.

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 recognize, pursuant to Article 4(1), as providing guarantees which are at least equal to those provided by the examination organized by the State.

Article 13

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive within two years 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 for a period of three years from the end of the period laid down in the said paragraph.

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4. Member States shall also ensure that they communicate to the Commission a list of the examinations recognized pursuant to Article 4(1).

Article 13. a

The contact committee set up pursuant to Article 52 of Directive 78/660/EEC shall also have as its function :

(a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized 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.

Article 14

This Directive is addressed to the
Member States.

Article 14

Unchanged

