

Bulletin
of the European Communities

Supplement 4/78

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

(Presented by the Commission to the Council
on 24 April 1978)

COM (78) 168 final
24 April 1978
Official Journal C 112/78

Cover title: Approval of Persons Responsible for
Auditing of Company Accounts. Proposal for an Eighth
Directive

Commission of the
EUROPEAN COMMUNITIES

This publication is also available in the following languages:

DA	ISBN	92-825-0399-2
DE	ISBN	92-825-0400-X
FR	ISBN	92-825-0402-6
IT	ISBN	92-825-0403-4
NL	ISBN	92-825-0404-2

A bibliographical slip can be found at the end of this volume.

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Printed in Belgium 1978

ISBN 92-825-0401-8

Catalogue Number: CB-NF-78-004-EN-C

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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

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,

Whereas under Council Directive of¹ 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 Directive² of² concerning group accounts;

Whereas under Council Directive of³ 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, 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 Member States should also be authorized to lay down transitional provisions for the benefit of auditors 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 independence of approved 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:

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.

— 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;

— in Ireland:

companies incorporated with limited liability;

— in Italy:

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

— 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 United Kingdom:

companies incorporated with limited liability.

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;

— 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.

Article 3

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

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 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,
- 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 systems and computer science,
- business, general and financial economics,
- mathematics and statistics,
- basic principles of financial management of business undertakings.

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.

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.

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.

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 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 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 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 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 Articles 3 and 11 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.

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.

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 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 14

This Directive is addressed to the Member States.

Explanatory memorandum

In 1970 the Commission submitted to the Council a Proposal, amended in 1975, for a Statute for European Companies.¹ Under Article 203 of that Proposal, 'the annual accounts and, in so far as it reviews developments in the company's business and position during the past financial year, the annual report shall be audited by an independent auditor acting on his own responsibility. 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'.

In 1971, the Commission submitted to the Council a Proposal, amended in 1974, for a Fourth Directive pursuant to Article 54(3)(g) of the EEC Treaty for coordination of national laws regarding the annual accounts of limited liability companies.² Under Article 49 of that Proposal, 'the companies referred to in Article 1(1)(b) shall cause their annual accounts to be audited by one or more persons authorized by the national law to audit accounts'. This Proposal for a Directive was supplemented in 1976 by a Proposal for a Seventh Directive on group accounts.³

In 1972 the Commission submitted to the Council a Proposal for a Fifth Directive pursuant to Article 54(3)(g) of the EEC Treaty on the structure of sociétés anonymes and the powers and obligations of their organs.⁴ Under Articles 51 and 52 of that Proposal, 'one or more persons shall be made responsible for auditing the accounts of the company' and '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'. The explanatory memorandum states that the persons who are charged with the responsibility of auditing the company's accounts 'must have the necessary qualifica-

tions. Detailed provisions on this matter cannot be included in this directive, as specific rules are in course of preparation'.

This is the purpose of the present Proposal for an Eighth Directive pursuant to Article 54(3)(g) of the EEC Treaty concerning the authorization of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies, which is an essential corollary to the Proposal referred to above. The object of the present directive is to create a Community framework guaranteeing that, in all the Member States, persons authorized to carry out statutory audits of the accounts of limited liability companies have equivalent minimum qualifications. The result will be that shareholders and third parties in all the Member States will be afforded a minimum level of protection. At the present time, it is clear that although some Member States require statutory audits of the accounts of limited liability companies to be carried out by highly qualified persons, this is not the rule in all Community countries. It is for this reason that this Proposal for a Directive has as its objective to provide shareholders and third parties with the guarantee that in all Member States the statutory audits required under other directives will be carried out by persons who are thoroughly qualified to carry out their duties.

The purpose of the proposed directive is to harmonize the minimum qualifications required in the Member States to audit accounts, in such a way as to protect the interests of shareholders and third parties. Its purpose is not to establish a system for the mutual recognition of the degrees, diplomas or other qualifications required to carry out this activity, nor does it aim to bring about the effective exercise of freedom to provide services or the freedom of establishment of a person authorized in one Member State who

¹ OJ C 124 of 10.10.1970; Supplement 4/75 — Bull. EC.

² Supplement 7/71 — Bull. EC and Supplement 6/74 — Bull. EC.

³ Supplement 9/76 — Bull. EC.

⁴ Supplement 10/72 — Bull. EC.

wishes to practice in another Member State. However, the fact that this Proposal for a Directive will already have harmonized the minimum qualifications required for authorization to be obtained in a Member State will certainly facilitate the effective attainment of freedom of establishment and freedom to provide services with regard to carrying out statutory audits of company accounts.

The purpose of this directive is not to harmonize the qualifications required of members of a particular profession nor to lay down the conditions governing entry to a particular profession. It covers a task, that of carrying out statutory audits of accounts, which in some Member States, is, in fact, carried out by members of a variety of quite distinct professions. This Proposal for a Directive in no way changes this state of affairs, and any member of the various professions who fulfils the requirements of the directive will be able to seek authorization from the Member State in which he wishes to carry out that task. These professions will have to provide evidence of a high level of theoretical and practical knowledge in order to be authorized to carry out statutory audits of the accounts of limited liability companies. Thus the essential purpose of this Proposal is to require at graduate level an examination of professional competence (theoretical and practical), the content of which is specified and which must be passed by all those seeking authorization to carry out statutory audits of the accounts of limited liability companies.

Since this high standard cannot be achieved by those who have not been able to pursue the necessary studies, the Commission authorizes the Member States to allow self-trained persons to sit the same examination of professional competence as graduates, without having to provide evidence of theoretical training, provided they can invoke high quality, lengthy practical experience. If they are successful in an examination of professional competence at graduate level, this will be the fairest means for them of showing that their professional ability is as great as

that of graduates authorized on the basis of the same tests.

Special provisions are included to allow persons already practising, who do not fulfil the conditions laid down in the directive, to be authorized by exempting them from the need to pass the examination of professional competence if the competent authorities consider that the statutory audits carried out by them in the past were of equivalent quality to audits carried out by persons who have passed the examination of professional competence.

The problem of persons who have not obtained their qualifications in the Member State in which they seek authorization is also resolved in line with general principle underlying this Proposal for a Directive, which seeks to establish equivalent guarantees: in addition to the fact that such persons' qualifications will have to have been deemed equivalent by the competent authorities in the Member State in which authorization is sought, such persons will also have to provide evidence of the legal knowledge necessary to carry out statutory audits in the Member State in which they seek authorization.

The very important problem of the independence of authorized auditors is settled in a general manner thus supplementing the more specific provisions on the subject contained in the Proposal for a Fifth Directive.¹ Their independence must be established not only when authorization is granted, but also throughout the period in which they carry out their duties; they must be morally as well as financially independent.

This Proposal for a Directive also supplements Article 52 of the Proposal for a Fifth Directive with regard to another aspect i.e. the auditing of accounts by companies instead of natural persons. Member States will be able to authorize not only natural persons but also any form of company or professional association with or without legal personality. Provision has been made so that if statutory

¹ Articles 52, 53 and 54.

audits are carried out by a professional grouping of this type, shareholders and third parties are afforded the same guarantees as would apply if the task were carried out by an independent natural person. The possibility of a person carrying out statutory audits as a member of a professional grouping without having the qualifications necessary to obtain authorization to do so as an individual must, in particular, be avoided.

Article 1

This Proposal for a Directive supplements the Proposals for a Fourth, Fifth and Seventh Directive, which provided that the annual accounts of companies in the Member States must be audited only by persons empowered or authorized by an administrative or judicial authority. It is left absolutely to the Member States to organize these procedures as they wish, just as it is left to them to appoint the 'component authorities' which will be responsible for verifying the professional competence of persons seeking authorization under the terms of this directive. Some Member States entrust this task to a particular ministry; others to an administrative or judicial authority; others again to a professional association. The need to carry out a process of harmonization only 'as far as is necessary' means that it is not necessary to intervene in this respect in this Proposal for a Directive.

The 'accounts' which are subject to statutory audits and which are referred to in Article 1 are not defined more closely, since they have already been defined in the Proposal for a Fourth Directive. Auditors will be required to certify that the accounts as defined in Article 2 of that directive (the balance sheet, the profit and loss account, the notes on the accounts) have been drawn up properly and honestly, and that the annual report is consistent with the accounts of the year in question in conformity with Article 49(1) of the same directive.

Authorization is required in order for a task to be carried out, i.e. statutory auditing of ac-

counts, and not in order for a particular profession to be practised because in some Member States, several professions may undertake statutory audits, and because there is no need to alter this situation. The important thing is that persons entrusted with the task of carrying out statutory audits, whatever their profession, meet all the requirements laid down in the directive and have been authorized in the Member State concerned.

Article 2

Authorization may be granted to persons practising as individuals (Article 2(1)). Member States may also, where certain requirements are fulfilled, authorize professional associations or companies of all types, whether or not they have legal personality: partnerships, limited liability companies, companies constituted under civil law, professional associations, 'maatschappen', 'associazioni', etc. (Article 2(2)). Such professional groupings will therefore be empowered to carry out statutory audits, but although a Member State may authorize company X or partnership Z to carry out statutory audits, provisions are included to prevent persons, partners, members, directors, managers, members of the management or supervisory bodies, etc. who lack the requisite qualifications specified in this directive from carrying out statutory audits, or interfering in any way in the carrying out of audits by authorized persons under the cover of such a professional grouping (Article 2(2)(a)).

A Member State will not be able to authorize a professional grouping unless it is guaranteed that all the natural persons who will be responsible in that Member State for the auditing and certification of accounts carried out under the auspices of the professional grouping meet the conditions laid down in this directive. This requirement obviously does not apply to persons employed by such groupings who simply carry out their duties under the responsibility of an auditor who meets the conditions laid down in the directive.

There are certain professional associations or firms whose activities extend throughout the Community and even the world. This Proposal for a Directive clearly does not require every auditor of the accounts of such firms or associations to be conversant with all the laws of the Community. The conditions laid down in Article 2(2)(b) in respect of natural persons must be fulfilled in the Member State in which authorization is sought. Thus an association which is authorized in Germany, for example, in order to obtain authorization in France, will have to establish in France that the auditors of that association who will be responsible in France for audits carried out under the auspices of the professional association meet the conditions laid down in the directive.

The use of the words 'at least' is intended to indicate that as the object in view is the harmonization of minimum qualifications, the Member States are free to impose stricter requirements and thus, within the narrower confines of a Member State, to protect shareholders and third parties even more effectively than is possible at Community level.

Article 3

This Article deals with the extremely important question of the independence and good repute of all persons authorized to carry out statutory audits of the accounts of limited liability companies. If confidence is to be placed in the quality of audits those responsible for them must be entirely independent and of good repute. Certification of accounts is of value to a shareholder, creditor or employee only if the auditor is perfectly honest and absolute confidence can be placed in his signature.

No precise definition has been given of the concept of good repute. Most Member States require as evidence thereof a certificate from the criminal records authority or a certificate of good character. It is considered in some Member States that a person's private life has no bearing on an assessment of his professional qualities, a view which may appear de-

batable but one which the Directive does not seek to change; each Member State is free to apply its own criteria in deciding whether a person is entirely of good repute.

The concept of independence is also difficult to define since in some countries more than twelve criteria are applied. Article 3 requires the Member States to authorize only persons who are independent. This implies that a person seeking authorization should not possess any characteristic incompatible with the role of an auditor. These points of incompatibility are to be fixed by the Member States. Generally speaking, the role of an auditor can be said to be incompatible with any activity which is of kind that may limit his independence, and if such an activity is exercised, authorization must be refused. Certainly, an authorized auditor must remain independent throughout the exercise of his functions. These aspects of independence are settled in Article 11.

Article 4

Education systems differ profoundly in the various Member States, and there is not the slightest need to alter this state of affairs. What matters is the end result: the obtaining of a high qualification to be able to carry out statutory audits, in a way which provides all the necessary guarantees.

The concept of 'university entrance level', which corresponds to passing the 'Baccalauréat', the 'Abitur', obtaining a 'diplôme de fin d'études secondaires' or a diploma from an 'Institut technique supérieur', etc. is known and understood in all the Member States. In some Member States university studies in the strict sense are confined to certain subjects which do not include the training of auditors, but in such cases 'advanced' training is given which is at the level of the studies carried out at a university.

The examination of professional competence takes place at the end of a course of advanced training, and is thus at graduate level. Although doctorate level is naturally not

required, it will be necessary to have completed a course of university studies at undergraduate level, for example, or to have undergone equivalent training if the studies were not actually carried out at a university, but, for example, at an 'institut supérieur' a 'grande école', etc. This examination is a professional examination which must enable an assessment to be made of the professional competence of the candidates both with regard to theoretical aspects and their ability to put theory into practice when carrying out statutory audits. The Member States are free to decide whether the examinations should be conducted orally and in writing, or only in writing, as is the rule in many Member States. A Member State may itself organize a State examination. It may also recognize that a particular examination already organized by what it regards as competent authorities, provides guarantees equivalent to those provided by any examination which it might organize itself. Persons holding diplomas which are recognized as being equivalent may in such cases be exempted from sitting a fresh examination. Thus in one Member State, the holders of a 'diplôme d'expertise-comptable' will continue to be exempted from sitting the 'commissaire aux comptes' examination as provided in the rules applied at present in that country.

Article 13(4) merely requires each Member State to communicate to the Commission a list of the examinations which it recognizes as being equivalent pursuant to Article 4. It should be ensured that examinations at a lower level are not recognized as being equivalent.

Where professional grouping seek authorization, they are naturally not required to sit an examination of professional competence as a grouping, but all the natural persons referred to in Article 2(2)(b) must have passed all the tests making up such examination.

Article 5

1. This Article lists the subjects which the examination of professional competence re-

ferred to in Article 4 must cover. In view of the technical nature of the subjects, it is necessary to give more precise details, simply as a guide, however, under the following headings.

Auditing

The objectives, nature and subject matter of statutory audits of annual accounts, prospectuses, profit forecasts and special examinations; rights, obligations and responsibilities of auditors in this context; auditing methods and techniques, and, where necessary, statistical and data processing methods.

General accounting

Principles and practice of the construction of accounting systems based on the double entry method. Principles, practice and rules for valuing an undertaking's assets and the results for the financial year, and for preparing and presenting the annual accounts; the law relating thereto. Interpretation and use of accounting information in connection with all aspects of finance and investment in companies.

Cost and management accounting

Methods and techniques for ascertaining and verifying costs and cost prices. Organization of management information systems; their relationship with management structures and objectives and with problems of organization: presentation, analysis and interpretation of accounting information to be used in determining company policy, long and short-term planning, decision-making, and supervision of the execution of decisions at all levels of the organization and in all their aspects: production, sales promotion, finance, investment.

Internal audits

Principles and practical application of the internal audit procedures to be established

within an organization, particularly those relating to planning, the exercise of delegated powers and the performance of delegated tasks, the protection of assets within the organization, monitoring of income and expenditure and the correct recording of the undertaking's activities. Specific requirements for internal audits in accounting systems. Importance of internal audits and their shortcomings.

Information systems and computer science

Characteristics of equipment of all kinds and of procedure in so far as auditing is concerned, and basic principles involved in selecting and using such machines for specific purposes. Concepts and methods employed in analyzing, organizing and installing all types of accounting systems, including the purpose and limitations of the various types of data processing systems and equipment. Principles of evaluating systems from the point of view of practical efficiency and internal auditing. Systems techniques and their applications, (e.g. flow-charting, graphs, etc.). Commonly used terms.

Company tax law, company criminal law, commercial law, social law and company law

The law and practice of taxation of natural persons and companies, including sources of tax law, tax structure and rules on bases of assessment, calculation, collection and general administration. Main characteristics of specific taxes, both direct and indirect, on income, wealth and the legal transfer of property. Liability for infringements of the law and of administrative, economic or tax regulations. Legal principles, methods and rules, and general nature of legal institutions. Aspects of the law relating to various types of contract, the various types of ownership, commercial instruments, aspects of social security, legal forms of undertakings.

Business, general and financial economics

Basic principles of micro and macro-economics, particularly in relation to the structure of trade and industry, functions of the principal financial institutions and general, legal and taxation factors affecting undertakings. Organization of undertakings. Basic principles of probability and statistics, trends, dispersion and correlation, sampling tests. Application of statistical methods to practical problems. Determination and systematic analysis of the objectives and problems of management (including the usage of mathematical techniques in the undertaking) with a view to establishing possible courses of action for management in situations in which a choice can be made between different courses of action.

2. It could appear unjust to require the holders of university degrees or their equivalent relating to a subject listed in paragraph 1 to resit an examination in that subject where proof of competence in that subject is already provided by an advanced diploma. This might discourage some candidates from pursuing advanced studies in a particular subject, and might be contrary to the objective of this Directive, i.e. to produce auditors with the highest possible level of qualifications. However, the exemption provided for in paragraph 2 does not mean that graduates in a subject relating to accounting are exempt from sitting all the papers listed. Thus, for example, a law graduate who has passed papers in civil law and commercial law does not have to be examined in those two subjects. However, the Member State is not bound to provide for such exemptions, and may require candidates to sit all the subjects referred to in paragraph 1.

3. The test of practical knowledge may be sat only after a period of practical training of sufficient quality and length to ensure perfect mastery of the profession. Candidates will have to show that they have spent three years under the guidance of an auditor authorized pursuant to this Directive and that they have, during this period, been engaged 'principally' in carrying out statutory audits

of company accounts. The purpose of this provision is to prevent persons from entering the employ of an authorized auditor and spending three years carrying out only routine tasks instead of statutory audits. However, the needs of reality dictate that such persons should not be required to spend three years engaged exclusively in carrying out statutory audits in view the fact authorized auditors carry out such audits full-time only during part of the year. Finally, candidates must have carried out statutory audits of the accounts of all kinds of company and not only of the companies referred to in Article 1, which covers only limited liability companies. In some Member States, statutory audits are required for forms of company other than limited liability companies, and there is no need to exclude statutory audits of this kind of company from the course of practical training. However, Article 5(3) provides that the statutory audits concerned must be of the accounts of companies and not, for example, of institutes, cooperatives or hospitals etc. not in the form of companies and which cannot provide the knowledge that is essential for carrying out audits of the accounts of companies, of which process candidates must acquire perfect mastery.

4. In some Member States the sequence of theoretical studies and practical training alternates. Professional examinations provide proof of theoretical knowledge and a certain amount of practical experience, but may quite well be sat before the period of supervised practical training is completed. In such cases, the 'competent authorities' guarantee that the period of practical training has been satisfactorily completed. This practice has not been terminated in so far as the candidate cannot receive authorization from a Member State to certify accounts himself until he can show that he has satisfactorily completed his practical training, even if he has previously passed the examination of professional competence. However, it is not permitted for the whole of the practical training period to take place after the examination of competence has been passed, since this examina-

tion cannot be restricted to a test of theoretical knowledge only.

Each Member State is free to organize the test of practical knowledge acquired after the examination of professional competence, in the manner most appropriate to the educational methods used in that country so long as the provisions of paragraph 4 are observed.

The length of the period of practical training to be given after the examination of professional competence is not strictly defined, thus allowing a degree of flexibility. It should be as short as possible in order not to detract from the professional nature of the examination. It is generally agreed that a period of practical training of about one year is required in order to enable a candidate's general ability to understand the technique of carrying out statutory audits to be tested. It is unlikely that Member States will not abide by the spirit of paragraph 4 and fundamentally reorganize their examinations of professional competence in order to allow only totally insufficient periods of practical training.

No definition is given of the 'competent authorities' referred to in this paragraph. The Member States are free to designate one or other of their ministries, an administrative or judicial authority or one or more professional organizations.

Article 6

1. The purpose of this Article is to permit the social advancement of persons who have not reached university entrance level or have not followed the course of advanced training required but who have, as a result of lengthy personal experience, acquired the necessary theoretical and practical knowledge to sit the same examination of professional competence as candidates who have had an opportunity to follow all the courses of study normally required.

The need not to create two categories of authorized auditors at different levels means that self-trained persons must sit the same

examination of professional competence as candidates who have followed the official course of studies. Thus the guarantees afforded to shareholders and third parties by such auditors will be absolutely identical.

It is only natural that such self-trained persons should have had lengthy practical experience in the field of finance, law and accountancy. Otherwise, it is likely that candidates would in the future be encouraged to seek the benefit of this means of social advancement, which must remain the exception, rather than having undertaken long periods of study, which should be the norm. It is with the same intention that a minimum age of 25 is laid down for persons having the minimum professional experience (Article 6(1)(b)); these candidates are required to have only seven years' experience, but they must also have followed the same course of supervised practical training as provided for under Article 5(3). This similarity has two advantages: firstly, it enables the Member States to organize the same course of practical training for candidates who have followed courses of study and those referred to in Article 6(1)(b); secondly, it provides as far as is possible a common tie between the two types of candidate so as to provide self-trained persons having the minimum professional experience with as much chance as their colleagues sitting the same examination of professional competence.

There is no doubt that the self-trained persons referred to in Article 6(1)(a) who are not required to undergo this period of supervised practical training will demonstrate a higher level of ability if they nonetheless succeed in passing the examination of professional competence. However, it would be unrealistic to attempt to make the examination easier for them by requiring them to undergo an additional period of three years' training when, after 15 years in practice, they will no longer be very young and will doubtless have families and various commitments. It is certainly impossible for any period of training to provide them with the income which they derive from their professional work, and it would not be fair thus to deprive them of in-

come which they badly need, when the equivalence of the guarantees to be afforded to shareholders and third parties is ensured by their passing the examination and cannot justify such a requirement.

The Member States are not required to incorporate the derogations contained in Article 6(1)(a) and/or (b) into their national law if they consider that such derogations are not justified in their country.

2. There is a possibility that some persons who have not achieved the level of study required under Article 4 will nonetheless have undergone a course of professional training in order to carry out audits in a wider sense, i.e. audits of annual accounts in general and not only statutory audits of limited liability companies. Such persons will thus have been able to acquire satisfactory theoretical knowledge in the subjects listed in Article 5(1). It would seem unfair not to take account of the time devoted to this professional training, which is better than no training at all. The Member States are therefore authorized, if they think it is necessary, to deduct such periods of professional training from the periods of professional experience required under Article 6(1)(a) and (b). Member States will naturally have to require candidates seeking to have this deduction made not only to provide evidence that they have undergone a course of professional training in auditing, but also, for example, on the basis of certificates issued by educational authorities, that they have followed such courses diligently and have obtained satisfactory results.

Article 7

The purpose of this Article is to authorize Member States to adopt transitional measures for the benefit of auditors, whether natural persons or professional groupings, which do not fulfil the new conditions which will be laid down by the present directive. There is no need to require these temporary measures to be implemented within a given period, since all amendments to national

laws will have to be applied to the parties concerned within a maximum period of two years from the date on which they enter into force,¹ which in turn must be within a period of 18 months from the date of notification of the directive.²

All persons including natural persons, companies or associations entitled to carry out statutory audits of the accounts of whatever type of company (even those not referred to in Article 1) will be entitled to benefit from these measures if the Member State concerned so decides.

Article 7(1) does not refer to persons who had already obtained official authorization from a Member State to carry out statutory audits of the accounts of limited liability companies before the entry into force of this directive: 'commissaires aux comptes', 'réviseurs d'entreprises', 'Wirtschaftsprüfer', auditors, etc., even if they do not fulfil all the new conditions laid down in the Directive. However, in order for a person not to have to seek authorization, official authorization will have to have been conferred by the State. It will not be enough for a person to have been able to carry out statutory audits because the matter was governed by no legal or administrative provisions whatsoever and only because he was not prohibited from doing so.

Only professionals qualified to carry out statutory audits of company accounts will be entitled to benefit from the transitional measures, to the exclusion of all persons who, in some Member States, were entitled periodically to carry out statutory audits (company directors, former officials, honorary officials, etc.). Nor is it enough for a person to have been able to carry out statutory audits of the accounts of various institutes, hospitals, etc., not constituted in the form of companies, since the fact of carrying out such audits can not provide a guarantee that such a person has the knowledge that is essential for carrying out statutory audits of the accounts of companies, even those not referred to in Article 1.

It is for each Member State to decide whether members of certain professions, who were entitled to carry out statutory audits of company accounts, even if this constituted only part of their activities, should benefit under the transitional measures. It might well prove essential, apart from the obvious social considerations, to retain the services of such persons, without whom the number of qualified auditors might become too small in a particular country to carry out all the necessary statutory audits of company accounts.

The purpose of Article 7(2) is also to enable the adoption of transitional provisions for the benefit of persons whose 'optional' audits of company accounts will not be affected at the actual time at which this directive, which applies only to statutory audits, enters into force, but will be affected subsequently when another directive or a national law requires statutory audits of the accounts of certain companies referred to in Article 1 which until then were not subject to such statutory audits. The purpose of this paragraph is to take account of these consequences of the delayed effect of the directive. Thus, for example, in some Member States, the accounts of private companies (SARL) are not subject to statutory audits. However, some auditors carry out audits of the accounts of this type of limited liability company. When such companies become subject to statutory audits (under the Fourth Directive,³ for example), the present directive will require the Member States to allow such statutory audits to be carried out only by persons qualified in accordance with requirements of the directive, and the persons referred to in Article 7(2) will be deprived of the right to practise if the Member State concerned does not adopt special provisions to accommodate them. All the conditions referred to in connection with Article 7(1) for the granting of authorization also apply to Article 7(2). Finally, the Member States are free in both cases to decide

¹ Article 13 (2).

² Article 13 (1).

³ Supplement 6/74 — Bull. EC.

that such transitional measures are not required and that persons deprived of the right to carry out statutory audits will have to content themselves with carrying out audits that remain optional, or statutory audits of the accounts of hospitals, cooperatives, various institutes, etc., which are not constituted in the form of limited liability companies to which this directive is restricted.

Article 8

Member States might consider that students who have begun a course of training have the right to complete it without being refused entry into the profession for which they have been trained on the ground that stricter provisions have been adopted since they began their training. The Member States are empowered to adopt provisions which they consider to be most appropriate in the circumstances. Authorization is granted subject to the same conditions as those laid down in regard to the persons referred to in Article 7.

Article 9

A Member State may grant authorization pursuant to Articles 7 or 8 only if it is ensured that the person authorized will, in carrying out his duties, provide the same guarantees as persons authorized pursuant to Article 4. The declaration of fitness may be based, for example, on it being established that the statutory audits of company accounts carried out in the past by the person concerned were of a quality equivalent to audits carried out by persons who have passed the examination of professional competence. A Member State may also consider this insufficient evidence, and organize a 'scaled down' examination of professional competence or any other type of test appropriate to national circumstances. In the case of professional groupings, such examinations would, of course, be sat by the natural persons referred to in the second paragraph of Article 2(b). Member States will also have to

ensure that auditors seeking authorization are of good repute and independent.

Article 10

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. The question of foreign professional groupings wishing to obtain authorization in a Member State is governed by Article 2(2)(a) and (b).

Where a person has been trained in a third country and requests authorization in a Member State, the competent authorities will have to check, in the manner they consider most appropriate (diplomas recognized as being equivalent, check on the duration and quality of the studies and practical training, etc.), that the qualifications obtained in the third country are objectively equivalent to those required under this directive. If, on the other hand, the qualifications were obtained in another Member State, they are regarded as equivalent if authorization has already been granted in that Member State, since that State is obliged to fulfil all the requirements laid down in this directive before granting authorization (Article 10(1)(a)). The competent authorities will also have to verify that the person concerned, who doubtless has an expert knowledge of the law of his country also has the necessary degree of knowledge of the law of the Member State in which he seeks authorization (Article 10(1)(b)). Finally, authorization may be granted only to persons who are of good repute and independent (Article 10(2)).

Article 11

The persons referred to in this directive must be independent not only when authorization is sought (Article 2(2)), but throughout the

period in which they carry out their tasks. On the one hand, this independence must be verified at the moment when an authorized auditor is appointed to audit a particular company. The Member States must prohibit the appointment as auditor of a company's accounts of a person whose independence in relation to the directors of the company, or the controlling members or shareholders of the company, might be doubted. For example, the disciplinary authorities may carry out such a verification prior to the planned appointment (Article 11(1)).

On the other hand, an auditor, once authorized and appointed, must continue to carry out his auditing function in complete independence, both moral and financial. If an auditor were to lose this independence, he would in all cases be subject to disciplinary proceedings (Article 11(4)). Moral independence consists, for example, in not yielding to interference or to various forms of pressure, in not lacking honesty, in not carrying out unduly favourable audits, etc. Auditors must tell the truth, the whole truth, with all due strictness about the accounts even if this must necessarily displease those managing the company audited.

Nor must an auditor risk losing his financial independence, for example, because a large part of the capital of the auditing firm to which he belongs is held by persons who dictate terms to him (Article 2(2)(a)). The effect of this article is to preserve the independence of auditors belonging to companies or professional associations, since it prevents those managing the firm or the holders of its capital from interfering in any way in the carrying out of audits and thus deprives them of a means of undermining the independence of the auditor.

Nor is it admissible that an important client, from whom a substantial proportion of an auditor's turnover is derived, should be able to threaten to take his business elsewhere unless the auditor bend to his will (Article 11(3)), nor again, that an auditor, holding a share in the capital of the company audited, should hesitate to reveal certain findings

which might reduce the value of his shares (Article 11(2)). Such is the nature of the financial independence which the disciplinary authorities must verify (Article 11(2), (3), (4)).

To be of good reputation and independent are not the only obligations of an auditor who must also carry out his task with all necessary professional conscience, that is, exercise reasonable care by performing those acts which a professional auditor must perform to carry out his duties properly, and failing which he is exposed to disciplinary sanctions and may even be civilly or criminally liable.

The Member States must ensure that professional obligations, that is, compliance with deontological rules, financial and moral independence, professional conscience, etc. are fulfilled, either by adopting appropriate administrative measures, which corresponds with the practice in certain countries, or by making those concerned subject to a system of professional discipline. Any disciplinary sanctions imposed obviously do not preclude civil or criminal sanctions being imposed by the appropriate jurisdictions. When a professional grouping seeks authorization or carries on its activities, obviously, Article 11 refers to the natural persons specified in Article 2(2)(b).

Article 12

Interested parties require a simple means of determining whether a person carrying out a statutory audit of a company's accounts has all the requisite qualifications, i.e. the auditor's name must be on an official list published annually by the Member State concerned so that interested parties will be able at any time to consult it by approaching the competent authorities responsible for keeping it permanently up to date.

This list must contain the names of natural persons practising as individuals, the names of authorized companies or professional associations and, alongside the name of each such grouping, the names of the natural persons referred to in Article 2(2)(b) who alone

may be responsible for the audit and certification of accounts in the Member State in which authorization has been obtained.

Article 13

The Member States are allowed sufficient time to enable them not only to bring into force the amendments to their laws, regulation or administrative provisions required under this directive (paragraph 1), but also to apply these provisions to those concerned (paragraph 2). The commentary on the fourth paragraph is included in that on Article 4.

European Communities — Commission

Annual accounts of limited liability companies — Proposal for an Eighth Directive

Supplement 4/78 to Bulletin of the EC

Luxembourg: Office for Official Publications of the European Communities

1978 — 24 p. — 17,6 × 25,0 cm.

DA, DE, EN, FR, IT, NL

ISBN 92-825-0401-8

Catalogue Number: CB-NF-78-004-EN-C

BFR	DKR	DM	FF	LIT	HFL	UKL	USD
25,-	4,-	1,70	3,50	600	1,75	0,40	0,70

This proposed Directive lays down the conditions which must be fulfilled by persons who are authorized to carry out statutory audits of the annual accounts of limited liability companies.

It would provide shareholders, employees and third parties, for example creditors, with equivalent guarantees as to the quality of the statutory audits carried out. Such equivalent guarantees are afforded by ensuring that only highly qualified and independent persons of good repute obtain from Member States the authorization necessary to carry out statutory audits.