

# European Communities

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EUROPEAN PARLIAMENT

# Working Documents

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25 April 1983

DOCUMENT 1-117/83

REPORT

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the  
European Communities to the Council (Doc. 1-95/81 -  
COM(81) 84 final) for a directive concerning the  
annual accounts of banks and other financial  
institutions

Rapporteur: Mrs M.-C. VAYSSADE



By letter of 31 March 1981, the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive concerning the annual accounts of banks and other financial institutions.

At its sitting of 6 April 1981, the European Parliament referred this proposal to the Legal Affairs Committee as the committee responsible. At the sitting of 15 June 1981, the President informed Parliament that the Committee on Economic and Monetary Affairs had been asked for an opinion.

On 13 May 1981, the Legal Affairs Committee appointed Mrs GASPARD rapporteur.

As Mrs Gaspard had ceased to be a Member of the European Parliament, the Legal Affairs Committee appointed Mrs VAYSSADE rapporteur on 2 October 1981.

At its meeting of 27 and 28 January 1982 the Legal Affairs Committee heard an introductory statement by its rapporteur, which was followed by an initial exchange of views.

At its meeting of 29 and 30 April 1982 the Legal Affairs Committee continued its consideration of the proposal for a directive on the basis of a working document (PE 76.272) drawn up by its rapporteur.

At its meetings of 19 and 20 October 1982 and 23 and 24 February 1983 the Legal Affairs Committee considered the draft report and voted on all the amendments to the proposal for a directive.

At its meeting of 23 and 24 March 1983 the Legal Affairs Committee decided, by 12 votes to 2 with 1 abstention, to recommend to Parliament that it approve the Commission's proposal with the amendments below.

The Legal Affairs Committee then adopted the motion for a resolution as a whole by 12 votes to 2 with two abstentions.

The following took part in the vote: Mrs Veil, chairman; Mr Luster and Mr Turner, vice-chairmen; Mr Dalziel, Mr Donnez (deputizing for Mr Visentini), Mrs Ewing (deputizing for Mr Vié), Mr Geurtsen, Mr Gontikas, Mr Goppel, Mr Helms (deputizing for Mr Malangré), Mr Megahy, Mr Papaefstratiou (deputizing for Mr Fischbach), Mr Prout, Mr Sieglerschmidt, Mr Tyrrell and Mrs Vayssade.

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

This report was submitted on 30 March 1983.

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The Legal Affairs Committee hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

Proposal from the Commission of the European Communities to the Council for a directive concerning the annual accounts of banks and other financial institutions

TEXT PROPOSED BY THE COMMISSION OF  
THE EUROPEAN COMMUNITIES

AMENDMENTS TABLED BY THE  
LEGAL AFFAIRS COMMITTEE

Preamble unchanged

Recitals 1 to 15 unchanged

Article 1 unchanged

Article 2

1. The coordination measures prescribed by this Directive shall apply to all credit institutions within the meaning of Article 1 of Directive 77/780/EEC, where such institutions are companies or firms within the meaning of the second paragraph of Article 58 of the Treaty.

2. This Directive shall also apply to all other companies or firms whose principal activity is to receive deposits or other repayable funds, for their own account, or to grant credits (including guarantees), to acquire participating interests or make investments, in so far as such companies or firms have not been made subject to Directive 78/660/EEC.

Article 2

1. Unchanged

AMENDMENT No. 1

2. This Directive shall also apply to all other companies or firms having limited liability whose principal activity is to receive deposits or other repayable funds, for their own account, (13 words deleted) in so far as such companies or firms have not been made subject to Directive 78/660/EEC.

<sup>1</sup> For full text see OJ C 130 of 1 June 1981, page 9

3. This Directive shall not apply to: 3. Unchanged
- (a) the credit institutions listed  
in Article 2(2) of Directive  
77/780/EEC;
- (b) the following credit institutions:
- in the Netherlands: credit  
institutions which by virtue  
of Article 8 of the 'Wet  
Toezicht Kredietwezen'<sup>1</sup> are  
not subject to Article 11 of  
the aforesaid law,
  - in the United Kingdom: 'Friendly  
Societies' and 'Industrial and  
Provident Societies'.
4. Member States may defer application 4. Unchanged  
of this Directive to:
- (a) the credit institutions referred (a) Unchanged  
to in Article 2(5) of Directive  
77/780/EEC, and included in the  
Commission communication of  
14 October 1978<sup>2</sup>, for so long  
as the application to them of  
Directive 77/780/EEC is deferred;

<sup>1</sup> Adopted on 13 April 1978, 'Staatsblad' 1978, 255.

<sup>2</sup> OJ No. C 244, 14.10.1978, p. 2

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES

AMENDMENTS TABLED BY THE  
LEGAL AFFAIRS COMMITTEE

AMENDMENT No. 2

(b) other specialized credit institutions, where, because of the nature of their business, immediate application would create serious problems; in this case, these institutions must be notified to the Commission within six months of the notification of this Directive. Member States may decide to defer application of this Directive to these institutions pending further coordination and until 1 January 1988 at the latest.

(b) other specialized credit institutions, where, because of the nature of their business, immediate application would create serious problems; in this case, these institutions must be notified to the Commission within 6 months of the notification of this Directive. Member States may decide to defer application of this Directive to these institutions pending further coordination and until at the latest five years following the notification of this Directive.

Article 3 unchanged

Article 4

The Member States shall prescribe the following layout for the balance sheet.

Assets

Article 4

AMENDMENT No. 3

Member States shall provide that the balance sheet consists of the following items in such order as they may determine:

Assets

Items 1 to 7 unchanged

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES

AMENDMENTS TABLED BY THE  
LEGAL AFFAIRS COMMITTEE

AMENDMENT No. 4

8. Shares and other variable-yield securities, including:  
- participating interests;  
- shares in affiliated undertakings.

8. Shares and other variable-yield securities, including (2 words deleted) shares in affiliated undertakings.

AMENDMENT No. 5

8a. Participating interests.

Items 9 to 16 unchanged

Total assets

Unchanged

Liabilities

Liabilities

Items 1 to 13 unchanged



Article 5

1. The Member States shall prescribe that the following shall be shown separately in sub-items to the respective items:

- claims, whether or not represented by certificates, on affiliated undertakings and contained in 'Assets' items 3 to 7;
- claims, whether or not represented by certificates, on undertakings with which the credit institution is linked by virtue of a participating interest and contained in 'Assets' items 3 to 7;
- liabilities, whether or not, represented by certificates, to affiliated undertakings and contained in 'Liabilities' items 1, 2, 3 and 8;
- liabilities, whether or not represented by certificates, to undertakings with which the credit institution is linked by virtue of a participating interest and contained in 'Liabilities' items 1, 2, 3 and 8.

2. The Member States may, however, permit this information, broken down by the items referred to in paragraph 1, to be shown in the notes.

Article 5

AMENDMENT No. 6

1. The (six words deleted) following shall be shown separately in sub-items to the respective items:

- claims, whether or not represented by certificates, on affiliated undertakings and contained in 'Assets' items 3 to 7;
- claims, whether or not represented by certificates, on undertakings with which the credit institution is linked by virtue of a participating interest and contained in 'Assets' items 3 to 7;
- liabilities, whether or not represented by certificates, to affiliated undertakings and contained in 'Liabilities' items 1, 2, 3 and 8;
- liabilities, whether or not represented by certificates, to undertakings with which the credit institution is linked by virtue of a participating interest and contained in 'Liabilities' items 1, 2, 3 and 8.

2. Unchanged

Articles 6 and 7 unchanged

Article 8

1. Funds which a credit institution receives for retransmitting to third parties in its own name but for the account of third parties shall be shown in the balance sheet only if the credit institution acquires legal title to the claims thereby established.

The total amounts of such claims and liabilities shall be shown separately.

2. Loans granted in the name and for the account of third parties shall not be included in the balance sheet.

Article 9

5. The Member States may permit deviations from the provisions of paragraphs 2 to 4 provided that this is necessary to provide a true and fair view of the credit institution's assets, liabilities, financial position and profit or loss. In such cases, credit institutions shall indicate in the notes the extent to which they have deviated from these provisions.

Article 8

AMENDMENT No. 7

1. Funds which a credit institution receives for retransmitting to third parties in its own name but for the account of third parties shall be shown in the balance sheet only if the credit institution acquires legal title to and beneficial ownership of\* the claims thereby established.

The total amounts of such claims and liabilities shall be shown separately.

2. Unchanged

Article 9

Paragraphs 1 to 4 unchanged

AMENDMENT No. 8

5. Deleted

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\*Concerns only the English text of the proposal for a directive

Article 10

Article 10

Paragraphs 1 to 4 unchanged

5. In the case referred to in paragraph 3, however, the transferor is not entitled to enter in his balance sheet the assets transferred, and these items shall be carried as assets in the transferee's balance sheet. The transferor shall enter in item 3 below the line a contingent liability equal to the amount agreed in the event of repurchase.

AMENDMENT No. 9

5. In the case referred to in paragraph 3, however, the transferor is not entitled to enter in his balance sheet the assets transferred, and these items shall be carried as assets in the transferee's balance sheet. The transferor shall enter in item 3 below the line (5 words deleted) the amount agreed in the event of repurchase.

Paragraph 6 unchanged

Articles 11 to 27 unchanged

Article 28

Article 28

For the presentation of the profit and loss account, Member States shall prescribe one or both of the layouts contained in Articles 29 and 30. If a Member State prescribes both layouts it may allow credit institutions to choose between them.

AMENDMENT No. 10

For the presentation of the profit and loss account, the Member States shall prescribe the layout contained in Article 30. They may also authorize the layout contained in Article 29.

Article 29

Article 29

Vertical layout

Vertical layout

Items 1 to 7 unchanged

AMENDMENT No. 11

8. Charges for value adjustments in respect of loans and advances to credit institutions and customers and provisions for guarantees in credit transactions with credit institutions and customers. Income from the writing-up of loans and advances to credit institutions and customers and from the writing-back of provisions for guarantees in credit transactions, with credit institutions and customers.

8. Charges for value adjustments in respect of loans and advances to credit institutions and customers, provisions for guarantees in credit transactions with credit institutions and customers, and charges for value adjustments in respect of securities, participating interests and shares in affiliated undertakings / Income from the writing up of loans and advances to credit institutions and customers, the writing-back of provisions for guarantees in credit transactions with credit institutions and customers and the higher valuation and sale of securities.

AMENDMENT No. 12

9. Charges for value adjustments in respect of securities, participating interests and shares in affiliated undertakings/Income from value adjustments in respect of securities, participating interests and shares in affiliated undertakings.

9. Deleted

Items 10 to 19 unchanged

Article 30

Article 30

Horizontal layout

Horizontal layout

A. Charges

A. Charges

Items 1 to 3 unchanged

4. Charges for value adjustments in respect of loans and advances to credit institutions and customers and provisions for guarantees in credit transactions with credit institutions and customers.

AMENDMENT No. 13

4. Charges for value adjustments in respect of loans and advances to credit institutions and customers, provisions for guarantees in credit transactions with credit institutions and customers, and charges for value adjustments in respect of securities, participating interests, and shares in affiliated undertakings.

5. Charges for value adjustments in respect of securities, participating interests, and shares in affiliated undertakings.

AMENDMENT No. 14

5. Deleted

Items 6 to 12 unchanged

B. Income

B. INCOME

Items 1 to 3 unchanged

4. Income from the writing up of loans and advances to credit institutions and customers and from the writing-back of provisions for guarantees in credit transactions with credit institutions and customers

AMENDMENT No. 15

4. Income from the writing up of loans and advances to credit institutions and customers, the writing-back of provisions for guarantees in credit transactions with credit institutions and customers and income from the higher valuation of securities, participating interests and shares in affiliated undertakings.

5. Income from value adjustments in respect of securities, participating interests, and shares in affiliated undertakings.

AMENDMENT No. 16

5. Deleted

Items 6 to 9 unchanged

Article 31

Article 29, items 1 and 4 (vertical layout) and Article 30, items A. 1 and B.1 (horizontal layout)

Article 31

Unchanged

Interest receivable and interest payable

Unchanged

AMENDMENT No. 17

Interest receivable and interest payable may include, inter alia,

1. Interest receivable shall include all income arising from the assets shown in 'Assets', items 1 to 7, of the balance sheet regardless of the form in which such income is calculated. Interest receivable shall also include income arising,

1. (Four words deleted) All income arising from the assets shown in 'Assets', items 1 to 7, of the balance sheet regardless of the form in which such income is calculated. (Four words deleted) Also income arising, through the spreading of the discount on a time basis, in the case of assets

through the spreading of the discount on a time basis, in the case of assets acquired below par value.

2. Interest payable shall include all charges for liabilities shown under 'Liabilities', items 1 to 3, regardless of the form in which such charges are calculated. Interest payable shall also include charges arising, through the spreading of the premium on a time basis, in the case of liabilities entered into above par value.

3. Fees and commissions computed on a time basis and by reference to the amount of the claim or liability shall also be regarded as interest.

acquired below par value.

2. (four words deleted) All charges for liabilities shown under 'Liabilities', items 1 to 3, regardless of the form in which such charges are calculated. (four words deleted) Also charges arising, through the spreading of the premium on a time basis, in the case of liabilities entered into above par value.'

3. Unchanged

Article 32 unchanged

Article 33

Article 29, items 3 and 5 (vertical layout) and Article 30, items A.2 and B.3 (horizontal layout).

Commission receivable and  
commissions payable

Article 33

Unchanged

Unchanged

AMENDMENT No. 18

Commissions receivable shall include income in respect of all services supplied for the account of third parties, and commissions payable shall include charges for the use of services of third parties, notably:

- commissions for guarantees, loans administration for the account of other lenders and securities transactions for the account of third parties;
- commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities;
- commissions for foreign currency transactions and for the sale and purchase of coin and precious metals for the account of third parties;
- commissions earned for brokerage services in connection with loans, savings or insurance contracts.

Without prejudice to the provisions of Article 31, commissions receivable shall include income in respect of all services supplied for the account of third parties, and commissions payable shall include charges for the use of services of third parties, notably:

- Unchanged
- Unchanged
- Unchanged
- Unchanged

Articles 34 and 35 unchanged

Article 36

1. 'Assets', item 9, shall always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are

Article 36

1. Unchanged



intended for use on a continuing basis in the normal course of the credit institution's activities.

2. Where reference is made to 'Financial fixed assets' in Section 7 of Directive 78/660/EEC, this term shall in the case of credit institutions be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of the credit institution's activities.

2. Unchanged

AMENDMENT No. 19

3. In connection with the application of Section 7 (valuation rules) of Directive 78/660/EEC to the items referred to under Article 4 'Assets' items 2, 6, 7 and 8, the Member States may permit the valuation of these items at their stock exchange or market value. In this event the institution shall state the basis of valuation adopted in the notes.

Article 37

Article 39 of Directive 78/660/EEC shall be applied in the valuation of credit institutions' loans and advances subject to the following provisions:

Article 37

AMENDMENT No. 20

Article 39 of Directive 78/660/EEC shall be applied in the valuation of credit institutions' loans and advances. Member States may, however, permit the following derogations in respect of all or some of the institutions falling within Article 2 hereof:

TEXT PROPOSED BY THE COMMISSION  
OF THE EUROPEAN COMMUNITIES

1. Loans and advances to credit institutions and customers ('Assets', items 3 and 5), may be shown at a lower value than permitted under Article 39(1)(b) and (c) of Directive 78/660/EEC, where this is necessary in view of the prudence dictated by the particular risks attaching to banking business. Nevertheless, the difference between this lower value and that which would result from the application of the provisions mentioned above must not be greater than 5%.

2. The valuations thus established may be maintained until the credit institution drawing up the balance sheet wishes to write up the items in order to avoid undue fluctuations in value adjustment charges.

AMENDMENTS TABLED BY THE  
LEGAL AFFAIRS COMMITTEE

1. Assets items 3, 4, 5, 6, 7 and 8 and contingent liabilities below the line may be shown at a lower value than permitted under Article 39(1)(b) and (c) of Directive 78/660/EEC, where this is desirable in view of the prudence dictated by the particular risks attaching to particular types of banking business. Nevertheless, the difference between this lower value and that which would result from the application of the provisions mentioned above must not be greater than 5%.

2. Unchanged

AMENDMENT No. 21

3. The authorities in the Member States responsible for supervising banks and other financial institutions shall ensure that the application of the provisions of paragraphs 1 and 2 is not used to withhold from customers and other credit institutions the information they need to gain an accurate impression of the position of their business partners. The credit institutions shall supply the supervisory authorities with all the necessary data.

AMENDMENT No. 22

Article 37(a)

With prejudice to Article 7 of Directive  
78/660/EEC, assets and liabilities and  
related income and expenditure items in  
the balance sheet and profit-and-loss account  
shall be set off against each other where  
this is legally permissible.

Article 38 unchanged

Article 39

1. Article 43 of Directive 78/660/EEC shall apply subject to the following provisions.
2. In place of the information required under Article 43(1)(6) of Directive 78/660/EEC, credit institutions shall in the notes on the accounts provide an analysis of fixed term claims and liabilities in respect of credit institutions and customers other than credit institutions ('Assets', items 3(b)(bb), 5(b) and 7 and 'Liabilities', items 1(b)(bb), 2(b) and (c), 3(b) and 8) in accordance with the following periods:

- up to and including one year;

Article 39

1. Unchanged
2. Unchanged

Unchanged

AMENDMENT No. 23

- more than one year but less than five years;
- five years and over.

- one to two years;
- two to five years;
- five years and over.

Second, third and fourth subparagraphs unchanged

Paragraphs 3 to 5 unchanged

Articles 40 to 42 unchanged

Article 43

The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall, when constituted appropriately, also have the following functions:

- (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 43

AMENDMENT No. 24

1. The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall (three words deleted) also have the following functions:

(a) Unchanged

(b) Unchanged

2. In order to carry out this task, the representatives of the Member States in the 'contact' committee shall be appointed partly by the national authorities responsible for supervising banks and other financial institutions.

Articles 44 and 45 unchanged

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council concerning a directive on the annual accounts of banks and other financial institutions

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 Treaty establishing the EEC (Doc. 1-95/81),
  - having regard to the Council directives based on Article 54(3) (g) of the EEC Treaty and in particular to the First Directive of 9 March 1968<sup>2</sup> relating to compulsory disclosure by companies, and the Fourth Directive of 25 July 1978<sup>3</sup> on the annual accounts of certain types of companies,
  - having regard to the First Directive relating to the taking up and pursuit of the business of credit institutions<sup>4</sup>,
  - having regard to the report of the Legal Affairs Committee and the Committee on Economic and Monetary Affairs (Doc. 1-117/83 ),
  - having regard to the result of the vote on the Commission's proposal,
- (a) whereas the object of the Fourth Directive is to ensure equivalent and comparable presentation of the information which all companies with share capital in the Community are required to publish, and to give shareholders and third parties, through the harmonization of the rules on the layout and valuation of annual accounts, as true and as uniform a picture as possible of the assets, liabilities, financial position and profits and losses of companies established in the Member States of the European Communities,

<sup>1</sup> OJ C 130 of 1 June 1981, p. 1

<sup>2</sup> OJ L 65 of 14 March 1968, p. 8

<sup>3</sup> OJ L 222 of 14 August 1978, p. 11

<sup>4</sup> OJ L 322 of 17 December 1977, p. 30

- (b) whereas it was not considered feasible, when the Fourth Directive was adopted, to make its provisions applicable to the annual accounts of credit institutions and insurance companies because of the particular nature of their activities,
- (c) whereas Article 9 of the First Council Directive relating to the taking up and pursuit of the business of credit institutions states that Member States shall not apply to branches of credit institutions having their head office outside the Community provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community,
1. Welcomes the presentation of the proposal for a directive under consideration and accepts the method adopted by the Commission, the aim of which is to establish in an independent text the derogations from the Fourth Directive;
  2. Recommends that, failing the publication - for information purposes - of a consolidated text of all the provisions applicable to the annual accounts of banks and other financial institutions, the directive should be complemented by an annex listing explicitly the provisions of the Fourth Directive which are applicable to the accounts of credit institutions;
  3. Approves the proposal for a directive subject to the amendments which it has adopted;
  4. Invites the Commission to adopt these amendments pursuant to Article 149, second paragraph, of the EEC Treaty;
  5. Invites the Council and in particular its President-in-Office, to see to it that Article 54 of the EEC Treaty retains its full legal validity, by adopting this proposal by a qualified majority, should a unanimous decision not be taken within an appropriate period of time;
  6. Instructs its President to forward to the Council and the Commission of the European Communities, pursuant to Rule 32(5) of the Rules of Procedure, the text of the proposal for a directive as voted by Parliament and the present resolution.

## EXPLANATORY STATEMENT

### I. GENERAL CONSIDERATIONS

#### A - Subject and legal basis of the proposal for a directive

1. The proposal for a directive is designed - except where adjustments have been considered necessary - to make banks and financial institutions subject to the provisions of Directive 78/660/EEC of 25 July 1978, referred to as the 'Fourth Council Directive based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies'. This directive is referred to hereinafter as the 'Fourth Directive'.

2. The present proposal for a directive is firstly part of Community action<sup>1</sup> to coordinate 'to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community.'<sup>2</sup>

3. Secondly, it complements Community laws governing the conditions under which credit institutions carry out their operations and activities. In this connection, the Council has already adopted on 28 June 1973 a directive on the abolition of restrictions on freedom of establishment and freedom to provide services<sup>3</sup> and on 12 December 1977 a directive on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions<sup>4</sup>.

#### B - Freedom of establishment and the protection of interests of third parties

##### (a) the importance of the freedom of establishment

4. The authors of the Treaty attached considerable importance to attaining freedom of establishment, as evidenced by the fact that under Article 54(2), the Council has been acting by a qualified majority since the second phase, (that is, since 1 January 1962): so the measures to be adopted in this area of the 'foundations of the Community', must be adopted in the true Community spirit which should have emerged during the course of the first four years and not be dictated by attempts to achieve a unanimous, and therefore minimalist, consensus. Indeed, we know that the Fourth Directive was adopted by a majority<sup>5</sup>. The Council should be urged to follow the same procedure for the adoption of the directive under consideration.

<sup>1</sup> Community measures which have already been passed or are still under consideration by the institutions are listed in the Annex.

<sup>2</sup> The text of Article 54(3)(g) of the EEC Treaty

<sup>3</sup> OJ L 194 of 16 July 1973, page 1

<sup>4</sup> OJ L 322 of 17 December 1977, page 30

<sup>5</sup> cf. speech by Mr Narjes to the Legal Affairs Committee on 10 November 1981 (PE 76.494 point 1.3)

(b) Protection of the interests of third parties

5. However, safeguards which are required of companies or firms for the protection of the interests of members and third parties must be coordinated 'to the necessary extent' and 'with a view to making such safeguards equivalent (throughout the Community)'. This wording leaves room for interpretation as to whether Community action in a specified area is politically expedient, and, particularly, as to the degree of coordination that is acceptable to make the required safeguards 'equivalent'.

6. The different proposals for a directive based on Article 54(3)(g) appear in an order which can be seen as a reflection of the decreasing need for the Community to take action in the various areas involved; this assumption, must, of course, be modified by reference to the complexity of the task of finding a solution at Community level, as a result of the problems arising from the varying degrees of disparity between national laws.

7. If the problem is seen in these terms, it follows that the proposal for a directive on the annual accounts of banks and other financial institutions is necessary to the extent that it is linked to the Fourth Directive, which has already been adopted: this fact was recognized by the Community legislator who felt compelled to exclude credit institutions from the scope of this general directive since the particular nature of their activities required a number of special provisions covering the drawing up of accounts. These, in fact, already exist in most Member States.<sup>1</sup>

8. It had been ascertained that Community action was necessary, and implementation was quite simply postponed; the Legal Affairs Committee and Parliament did not express any reservations on the limitation imposed on the scope of the Fourth Directive.

9. The specific nature of the area to be legislated on meant that the preparatory work extended over a considerable period of time; the text which is now before Parliament comes almost ten years after the proposal for the Fourth Directive; almost three years after the adoption by the Council of the Fourth Directive the Commission has now submitted the proposal for a directive on the annual accounts of banks.

10. Given this situation, the provisions of the proposal for a directive should be seen in the context of the aim of making the annual accounts of these institutions 'equivalent' by rendering them more easily comparable. This has become all the more necessary since an increasing number of credit institutions carry out their operations beyond national frontiers.

<sup>1</sup> See Article 1(2) of the Fourth Directive  
OJ L 222 of 14 August 1978, page 11



C - The Community principle of the disclosure of annual accounts -  
its phased application

11. Article 2(1)(f) of the first Directive on company law<sup>1</sup> obliged Member States to 'take the measures required to ensure compulsory disclosure by companies of ... the balance sheet and the profit and loss account of each financial year', namely their annual accounts. As regards limited liability companies under German, Belgian, French, Italian and Luxembourg law and the 'besloten naamloze vennootschap' under Dutch law, this requirement was deferred until the entry into force of a directive concerning the coordination of the contents of balance sheets and the profit and loss accounts.

The pressing need for such coordination was acknowledged and confirmed by the proposal contained at the end of the above-mentioned article, according to which the Council undertook to issue a directive on annual accounts within two years of the adoption of the Directive on disclosure, the validity of the obligations of companies and the nullity of such companies.

12. As pointed out above, the directive on annual accounts was only adopted in 1978, namely 8 years behind schedule and under Article 1(2) of this Directive the application of its provisions to banks, other financial institutions and insurance companies, was deferred, pending subsequent coordination. In this respect it should be borne in mind that Commissioner Narjes, in his statement of 10 November 1981, informed the Legal Affairs Committee that the Commission had only just commenced work on the annual accounts of insurance companies<sup>2</sup>. The Commission actively pursued its work on this during 1982 (see the Sixteenth General Report, paragraph 251).

'D' - Proposal for a directive on the annual accounts of credit institutions  
and the Fourth Directive - methodology

13. On previous occasions, the Community legislator has invoked the phased coordination procedure; for example, as regards the taking up of the business of direct insurance other than life insurance, Article 7 of Directive 73/239/EEC provided that health, credit and suretyship and legal expenses insurance were beyond its scope, pending further coordination.

As regards legal expenses insurance, the Commission proposed that the planned coordination should be achieved by means of an independent directive (cf. Doc. 1-257/79); while, as far as credit and suretyship insurance was concerned, the Commission proposed amending the First Directive (cf. Doc. 373/79).

<sup>1</sup> OJ No. L 65, 14.3.1968, p. 8

<sup>2</sup> cf. speech by Mr Narjes to the Legal Affairs Committee on 10 November 1981 (PE 76.494, point 5.2.2)

14. In the present case, the Commission has opted for an independent text, even though it governs only the derogations from the First Directive.

There are grounds for adopting this solution, bearing in mind the following two considerations:

- the number of derogations apparently needed for credit institutions would make the directive very unwieldy;
- credit institutions are perfectly capable of assessing the obligations imposed on them by the application of the general rules which apply to them under the Fourth Directive, as well as the derogations contained in the specific Directive; furthermore, the national legislator can, if he considers it appropriate, group all the provisions which apply to the annual accounts of credit institutions into a single document.

15. The proposal for a directive on the annual accounts of banks and other financial institutions thus systematically complements the Fourth Directive as far as credit institutions are concerned; the two texts are also drawn up in the same way.<sup>2</sup>

16. The proposal for a Directive starts with a number of preliminary provisions (Section 1, Articles 1-2) and general provisions concerning the balance sheet and the profit and loss account (Section 2, Article 3).

The layout of the balance sheet is dealt with in Section 3 (Articles 4-10) and the profit and loss account in Section 5 (Articles 28-30).

The special provisions relating to the balance sheet are contained in Section 4 (Articles 11-27) and those relating to the profit and loss account in Section 6 (Articles 31-35).

These are followed by the valuation rules (Section 7, Articles 36 and 37), the provisions relating to the contents of the notes to the accounts (Section 8, Articles 39-40), the provisions relating to publication (Section 10, Article 42) and the final provisions (Section 11, Articles 43-45).

There is a manifest absence of special provisions regarding the annual report and the auditing of accounts which are covered, without derogation, by the provisions of Articles 46 and 51 of the Fourth Directive.

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## II. SPECIFIC REMARKS

17. As regards the provisions which your rapporteur considers require no special comment, reference is made to the explanatory statement that is annexed to the proposal for a Directive.

Nevertheless, it would seem appropriate to draw attention to the following points:

<sup>1</sup> It should be recommended that, failing the publication - for information purposes - of a consolidated text of all the provisions applicable to the annual accounts of banks and other financial institutions, the directive should be complemented by an annex listing explicitly the provisions of the Fourth Directive which are applicable to the accounts of credit institutions.

<sup>2</sup> See Annex II: Study of the applicability of the provisions of Directive 78/660/EEC to establishments covered by the proposal for a directive concerning the annual accounts of banks.

A - Scope of the Directive - the problem of branches of institutions  
which have their head office outside the Community

18. The Commission has, quite rightly, pointed out that 'in virtually all the Member States of the Community, institutions of differing legal forms are in competition with one another in the credit sector', (seventh recital). It is now proposing 'not to confine coordination to the legal forms covered by Directive 78/660/EEC (the 'Fourth Directive'), but to choose a scope which is in line with that of Council Directive 77/780/EEC relating to the taking-up and pursuit of the business of credit institutions (the 'First Directive')' (seventh recital, and Article 2(1) and (2)). Your rapporteur considers that this extended definition of the scope of the directive should be adopted.

19. Nevertheless, the extension of the Directive only applies to companies or firms within the meaning of Article 58, second paragraph, of the EEC Treaty; branches of credit institutions which have their registered office outside the Community are therefore beyond its scope.

The Committee on Economic and Monetary Affairs, in its opinion adopted on 25 November 1981, proposed that these branches should be subject to the same requirements as companies or firms established in the Community (cf. PE 74.050/fin., paragraph 2, item 3, of the conclusions).

20. The Commission replied on 8 December 1981 to a question raised on this subject by Mr Herman, draftsman of an opinion for the Committee on Economic and Monetary Affairs. The text of the question (1021/81) and of the answer, published in OJ No. C 333 of 21 December 1981, p. 29, are as follows:

Written Question No. 1021/81 by Mr Herman to the Commission of the European Communities (2 October 1981)

Subject: Annual accounts of credit institutions

- The principles of the First Council Directive of 12 December 1977, based on Article 57 of the Treaty, (77/780/EEC) concerned the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions.

- The Fourth Directive of 25 July 1978 (78/660/EEC) applies to the annual accounts of limited companies generally, and not to banks and other financial institutions, or to insurance companies.

- The proposal for a Directive concerning the annual accounts of banks and other financial institutions (COM(81) 84 final) of 9 March 1981 should be applied to all credit institutions since it is designed to protect all savers and create equal conditions of competition as between all credit institutions.

- However, the proposal for a Directive does not apply to branches of credit institutions which have their head office outside the Community. This is regrettable because these branches are sometimes more important than European credit institutions and can thus escape the information and publication requirements to which their European competitors are subject.

Could not the Commission submit to the Council a proposal for a Directive to make these branches subject to the same requirements as those which the recent proposal for a Directive imposes on institutions established in the Community?

Answer given by Mr Tugendhat on behalf of the Commission (20 November 1981)

It is correct that the proposal for a Directive concerning the annual accounts of banks and other financial institutions does not apply to branches of credit institutions which have their head offices outside the Community. The reason for this exclusion is that the proposal in question must have the same legal basis as the Fourth Directive, which it complements, namely Article 54(3)(g) of the EEC Treaty. As the branches of foreign banks cannot be regarded as companies or firms within the meaning of Article 58 of the Treaty, Article 54(3)(g) cannot be applied to them.

However, the Commission agrees that these branches should also be made subject to disclosure requirements precluding the situation described by the Honourable Member; it intends to transmit a proposal for a Directive along these lines to the Council as soon as possible.

21. Your rapporteur is prepared to accept the Commission's argument that Community legislation on annual accounts derives from Article 54(3)(g) of the EEC Treaty which only applies to companies or firms within the meaning of Article 58, namely 'companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community'. This is true whether they are companies or firms constituted under civil or commercial law, including cooperative societies, or other legal persons governed by public or private law, save for those which are non-profit-making.

22. Nevertheless, branches of companies or firms (whether credit institutions or industrial or commercial undertakings) which have their head office outside the Community, can escape the information requirements to which their European competitors are subject; members and third parties are therefore not afforded equivalent protection.

23. Article 9 of the First Council Directive relating to the taking-up and the pursuit of the business of credit institutions might offer an indirect solution. The text reads as follows:

'Member States shall not apply to branches of credit institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community.'

24. If Community rules did not apply to branches of credit institutions having their head office outside the Community, they would enjoy more favourable treatment than their European counterparts. In order to prevent the distortion of competition which would result from this legal situation, Member States can justifiably make these branches of non-Community institutions subject to the requirements which will derive from the directive at present under consideration, once it has been adopted.

25. Irrespective of whether the solution outlined above is considered feasible, the Commission should specify the legal basis, methods, and schedule it intends to adopt for submission to the Council of its planned proposal for a directive on 'branches of non-Community credit institutions'.

B - The layout of annual accounts - the question of combining items

26. Among the provisions which would seem to deserve our attention as a matter of priority are the general provisions concerning the balance sheet and profit and loss account set out in Article 3, (which itself constitutes the whole of Section 2).

Article 4(2) of the Fourth Directive makes provision for the layout, nomenclature and terminology of the annual accounts to be adapted when 'the special nature of an undertaking so requires'; since the proposal for a directive under consideration is restricted to the annual accounts of credit institutions only there is clearly no point in allowing for such adaptation here; this is the purport of Article 3(1) which should consequently be adopted.

27. Article 4(3) of the Fourth Directive authorizes certain items to be combined under specified conditions. The text reads as follows:

'The balance sheet and profit and loss account items that are preceded by Arabic numerals may be combined where:

- (a) they are immaterial in amount for the purposes of Article 2(3); or
- (b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.'

It should be borne in mind that the possibility of combining items was criticized by the Legal Affairs Committee when it considered the proposal for the Fourth Directive; Parliament, consequently, asked for the provision to be deleted (cf. paragraphs 8 and 9 of the resolution embodying Parliament's opinion: OJ No. C 129, 11.12.1972, p. 39).

28. The possibility of combining items in the balance sheet and the profit and loss account, even when limited to sub-items preceded by a small letter, would detract from the importance of the annual accounts and would be at variance with the objective laid down in Article 2(2) and (3) of the Fourth Directive (78/660/EEC), according to which the annual accounts must be drawn up 'clearly' and 'give a true and fair view of the company's assets, liabilities, financial position and profit or loss.'

Furthermore, the aim of this proposal for a directive of making annual accounts comparable (recitals 10 and 12) would become considerably reduced in scope, since Article 3, at the end of paragraph 2, lays down that the combinations of items should be authorized under regulations drawn up by the Member States for this purpose.

29. For this reason your rapporteur proposed an amendment to Article 3 making the combination of items inapplicable; this amendment was rejected by 9 votes to 6.

#### C - The layout of annual accounts - the question of set-off between items

30. Certain provisions of the proposal for a directive would seem to be incompatible with the Commission's declared objectives of having true, clear and comparable accounts. This is the case with Articles 34(2) and 35(2) which authorize certain charges to be set off against the corresponding income so that only the balance is shown. As the Committee on Economic and Monetary Affairs states in paragraph 6 of its opinion this provision is at variance with Article 7 of the Fourth Directive which expressly prohibits under its general provisions 'any set-off between asset and liability items, or between income and expenditure items'.

31. Your rapporteur pointed out that the arguments put forward by the Commission in its explanatory notes seemed to him to be unconvincing. The Commission, in fact, considers that this set-off would allow institutions to make the necessary modifications for value adjustments that are no longer required and consequently make it possible to mitigate the effects on the profit and loss account of extraordinarily high charges for value adjustments to be formed in the given year thus enabling some degree of steadiness to be achieved in the profit and loss situation in the interest of maintaining public confidence'.

32. Your rapporteur doubts whether a measure which undermines the clarity and veracity of accounts is the best method of maintaining public confidence. Surely the best method of fostering this climate of confidence would, instead, be to detail the charges for value adjustments on loans and advances and security reserves on one side, and, on the other, the income from the recovery of loans and advances and the cancellation of earlier value adjustments.

The Legal Affairs Committee accepted the possibility of compensation authorized under Articles 34 and 35.

D - Valuation Rules - the possible formation of concealed reserves.

- (x) 33. The Legal Affairs Committee examined the problems raised by the valuation rules laid down in Article 37 of the proposal for a directive under consideration.

It should be borne in mind that the mere application of the provisions of Article 39(1) (b) and (c) of the Fourth Directive to credit institutions would be sufficient authorization for them to carry out certain (downward) value adjustments. Parliament let this pass without criticism.

34. The Commission is now proposing that when it is 'necessary in view of the prudence dictated by the particular risks attached to banking business', an additional adjustment should be allowed, since the difference between the lower value resulting from the application of Article 37 and the value resulting from the application of Article 39 of the Fourth Directive must not be greater than 5%.

35. If loans and advances to credit institutions and customers can be shown at a lower value, this would allow concealed reserves to be formed, which would seem hard to reconcile with the principle of having fair and clearly drawn up balance sheets.

36. Credit institutions would, furthermore, have every reason to assume that the conditions of Article 37 had been met; consequently, any person reading the balance sheet would have good grounds for thinking that systematic use had been made of this option.

37. In the same line of thinking, your rapporteur does not consider that the committee should endorse the proposals from the Committee on Economic and Monetary Affairs (cf. PE 74.050/fin., point 4 of the conclusions), to the effect that value adjustments should be calculated in relation to all the assets, while keeping the margin of discretion under the 5% limit.

It is true that there is always an arbitrary element in fixing a particular rate. The Commission should justify the figure that has been chosen. A lower rate, while of course reducing the amount of concealed reserves, would not prevent them being formed; furthermore, the positive effects which a reduction of the rate would have in relation to the veracity of accounts would, in a way, be cancelled out by permitting value adjustments for all the assets.

38. Under these circumstances, your rapporteur first of all proposed that Article 37 of the proposal for a directive should be deleted; as far as credit institutions are concerned, value adjustments would then have been subject to the general provisions of Article 39 of the Fourth Directive, which are already very flexible; however, your rapporteur refrained from tabling an amendment to this effect as the Commission's representative undertook to reduce the margin of discretion below the 5% limit laid down by the present text of the proposal.

An amendment aiming to delete Article 37 was rejected by a very large majority.

In addition, the Legal Affairs Committee adopted, by 9 votes to 7 with 1 abstention, an amendment adding a third paragraph to Article 36; this amendment follows up point 5 of the opinion of the Committee on Economic and Monetary Affairs.

E - Application and adaptation of the directive - membership of the contact committee

39. Finally, your rapporteur wishes to suggest that more precise details should be given concerning membership of the committee which is responsible for monitoring the implementation of directives on annual accounts. Article 52 of the Fourth Directive provides for the creation of a contact committee, composed of representatives of Member States and of the Commission:

- (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.

It would seem logical, as the Commission suggests in Article 43 of the present proposal specifically to extend the terms of reference of the contact committee to include the application and adaptation of the directive on the annual accounts of banks.

It will be noted that the specific nature of the problems of this sector induced the Commission to propose that the contact committee should be 'constituted appropriately' when discussing such problems.

- (x) 40. Your committee considered it desirable to clarify this wording by adding a second paragraph to Article 43 which might be worded as follows:

'In order to carry out this task, the representatives of the Member States in the contact committee shall be appointed partly by the national authorities responsible for supervising banks and other financial institutions'.

In this way the membership of the contact committee for 'annual accounts' could, whenever the annual accounts of banks are involved, approximate to that of the advisory committee set up under Article 11 of the First Directive of 12 December 1977 on the taking up and pursuit of the business of credit institutions.

III - CONCLUSION

41. Bearing in mind the differences which exist at present between states with very strict legislation and those with relatively flexible legislation, your committee considers that the proposal for a directive under consideration constitutes a relatively satisfactory basis for coordination which would fully satisfy the requirements of Article 54(3) (g) of the EEC Treaty.



42. Your committee, however, proposes some amendments the essential aim of which is, first, to clarify or make more specific several provisions and, secondly, to make more flexible some of the rules contained in the text drawn up by the Commission; a minority expressed strong disagreement with this second category of amendments which, it felt, would, if adopted, limit the scope of the directive in such a way as to jeopardize the objectives of comparability and veracity in the presentation of the annual accounts of banks.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr HERMAN

On 13 May 1981 the Committee on Economic and Monetary Affairs appointed Mr Herman draftsman.

At its meetings on 1 and 2 October and 24 and 25 November 1981 the committee considered the draft opinion and adopted it unanimously on 25 November 1981.

Present: Mr MOREAU, chairman; Mr DELEAU, vice-chairman;  
Mr HERMAN, draftsman; Mr BEAZLEY, Mr BEUMER, Mr BONACCINI, Mrs DESOUCHES,  
Mr I. FRIEDRICH, Mr DE GOEDE, Mr HOPPER, Mr LANGE, Mr LEONARDI,  
Mr MOORHOUSE, Mr NIELSEN, Mr NYBORG, Mr PAPANTONIOU, Mr PRAG, Mr PURVIS,  
Sir Brandon RHYS WILLIAMS, Mr RUFFOLO and Mr VON WOGAU.

1. This proposal was requested by the Member States and will complement the fourth Council Directive of 25 July 1978 (OJ L 222, 14 August 1978) concerning the annual accounts of certain forms of limited companies, but excluding banks, financial institutions and insurance companies.

2. Banks and credit institutions have already been the subject of a first Council Directive, dated 12 December 1977 (77/780/EEC)<sup>1</sup>, the purpose of which was the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions.

It is important to bear this in mind, as the first directive laid down the basic principles which the present proposal is intended to apply.

As we shall see, there may well be some difference between the intention and reality.

3. Field of application

- The principles of Directive 77/780/EEC, based on Article 57 of the EEC Treaty, were intended to apply to all credit institutions, since the aim was to protect all savers and create conditions of equal competition between all credit institutions.
- The present directive, based on Article 54(3)(g) of the Treaty of Rome, does not apply to the branches of credit institutions whose registered office is established outside the Community.
- This exclusion is regrettable because many such branches, (e.g. subsidiaries of American or Japanese banks, or branches in tax havens) are larger than the European credit institutions covered by the proposed directive. They cater for a large number of depositors, grant large-scale loans and provide stiff competition for the European firms. Hence it is not right that these branches should not be subject to the requirements concerning information and disclosure by which their European competitors are bound.
- Moreover, under Article 54(3)(g) such branches benefit from more favourable arrangements than do branches of credit institutions established in the Community, which is strictly at variance with the principles laid down by Directive 77/780/EEC.

For this reason Article 2 of the present proposal should be amended so as to subject the branches of credit institutions whose registered office is established outside the Community to the same requirements as the proposal imposes on institutions established within the Community.

<sup>1</sup> OJ L 322/30, 17.12.1977

This could be done simply by deleting the last twenty words in Article 2(1).

4. The present directive is a compromise between relatively lenient and extremely restrictive legislation. Compared with the requirements of the fourth Directive, it falls a good way short of legitimate expectation.

The protection of savings, and particularly those of the small saver, deserves government attention. The Commission's timorousness on this point is therefore hard to understand. No major bank anywhere in the world is sparing in its disclosure of information when it is bent on gaining the confidence of depositors. Profit levels in the banking sector are such that these banks are seldom unable to afford it.

Looking through the balance sheets and profit and loss accounts, one inevitably finds that there are not all that many items and that they provide very little detail.

The Commission has taken a much more demanding line, relatively speaking, with the ordinary commercial companies, which invest and risk other people's money to a far lesser extent than the banks.

#### 5. Valuation rules

- Article 39(1) (b) and (c) of Directive 78/660/EEC already allows credit institutions a certain latitude in the valuation of loans and advances which must be shown in the balance sheet.
- Article 37 of this directive will facilitate the creation of large concealed reserves since the permissible difference between the lower value provided for in Article 39 of the directive and that resulting from the application of this proposal is 5%, which may in many cases seem high.

In this respect this article does not fully comply with the principles of rigour, objectivity and veracity embodied in the first directive of 1977.

In addition, it disregards to a large extent the principle of prudence also enshrined in the 1977 directive.

So as better to meet these two objectives, which are to some extent contradictory, we propose, first, that the margin of discretion should be made narrower but that on the other hand it should be possible to calculate it on all the assets which are subject to risks and fluctuations.

6. This directive is also at variance with Article 7 of Directive 78/660/EEC in allowing credit institutions to indicate in the profit and loss account only the balance from setting off charges arising from adjustments in the valuation of certain items in the balance sheet against income resulting from the cancellation of these adjustments.

### Conclusions

1. Points out that the intention of the Directive of 25 July 1978 on the annual accounts of certain types of companies was to create equivalent financial requirements for credit institutions, so as to provide similar guarantees to savers throughout the Community and ensure fair conditions of competition between institutions in the same category;
2. Doubts whether, in view of the enormous differences that would still exist after adoption of this directive between countries with exacting requirements and those with more lenient provisions, the purpose of the directive can be fulfilled by the proposal as it stands;
3. Proposes accordingly that Article 2 be amended so that the branches of credit institutions whose registered office is established outside the Community are covered by the directive and are therefore subject to the same requirements as this proposal imposes on institutions established within the Community;
4. Considers also that with regard to the rules on the valuation of credit institutions' loans and advances the method recommended in Article 37 is not in accordance with the stated objectives of rigour, clarity and veracity; proposes, on the one hand, that the margins of discretion should be reduced below the suggested 5% limits but that, on the other, it should be possible to calculate those margins in relation to all the assets whose value is subject to fluctuation and not only in relation to loans and advances;
5. Requests the Legal Affairs Committee to propose the adoption of a new Article 37a between Articles 37 and 38 of the proposal for a directive on the accounts of banks, worded as follows:  
  
'In connection with the application of the provisions of Article 39 of Directive 78/660/EEC to the securities referred to under the heading "Assets" in points 2, 6, 7 and 8 of Article 4, the Member States may decide to value these securities at their stock exchange value if they are officially quoted on the stock exchange.';
6. Approves the proposal for a directive, subject to these amendments.

A. Acts adopted relating to company law

- (a) First Council Directive (1968, OJ L 65); Article 2 of this directive requires the disclosure of certain particulars and documents such as the statutes of the company and any amendments to them, the company's officers and auditors). Article 9 stipulates that the limits on the powers of the organs of the company may not be relied on as against third parties, even if they have been disclosed.
- (b) Second Council Directive (1977, OJ L 26); this directive specifies the information which must be given in the statutes and in any document amending them. The directive lays down a set of rules concerning the capital of the company, and in particular any increase or reduction in that capital.
- (c) Third Council Directive (1978, OJ L 295) concerning mergers between sociétés anonymes.
- (d) Fourth Council Directive (1978, OJ L 222); this directive lays down detailed rules governing the annual accounts of certain types of companies.
- (e) Council Directive (1979, OJ L 66) coordinating the conditions for the admission of securities to official stock exchange listing.
- (f) Sixth Directive coordinating the requirements for the drawing-up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing.
- (g) EEC Convention on the mutual recognition of companies and bodies corporate (Supplement No. 2/69 to the Bulletin of the European Communities).

B. Commission proposals relating to company law currently before the Council

- (a) Proposal for a Third Directive to coordinate the safeguards which, for the protection of members and others, are required by the Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty in connection with mergers between sociétés anonymes. (1970, OJ C 89, amended by COM(75) 671 final - proposal partially adopted, see above).

- (b) Proposal for a Fifth Directive to coordinate the safeguards which, for the protection of members and others, are required by the Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty as regards the structure of sociétés anonymes and the powers and obligations of their organs (1972, OJ C 131).
- (c) Proposal for a Seventh Directive concerning group accounts (1976, OJ C 14).
- (d) Proposal for an Eighth Directive concerning the approval of persons responsible for carrying out statutory audits of limited liability companies (1978, OJ C 112, amended: OJ C 317, 1979).
- (e) Proposal for a Directive on information to be published on a regular basis by companies whose transferable securities are admitted to official stock exchange listing (1979, OJ C 29, amended: 1980, OJ C 210).
- (f) Proposal for a Regulation on the statute for European companies (1970, OJ C 124, amended: COM(75) 150).
- (g) Proposal for a Regulation on the European Cooperation Grouping. (1974, OJ C 14, amended: COM(78) 139).
- (h) Proposal for a Regulation on the control of concentrations between undertakings (1974, OJ C 92, amended: COM(81) 773).

Working Paper

Study of the applicability of the provisions of Directive 78/660/EEC to establishments covered by the Proposal for a Directive concerning the annual accounts of banks and other financial institutions, prepared by the responsible departments of DG III and DG XV

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SCOPE

- Article 1, paragraph 1, of the 4th Directive: not applicable, replaced by Article 2, para. 1 and 2, of the Directive on annual accounts of banks
- Article 1, paragraph 2, of the 4th Directive: not applicable, replaced by Article 1, para.1, of the Directive on annual accounts of banks
- Section 1 - General provisions (Article 2) applies to banks
- Section 2 - General provisions concerning the balance sheet and the profit and loss account (Art. 3-7)
- Article 3 - applies
- Article 4.1 - applies (the references to Articles 9, 10, and 23 to 26 should be deemed to apply to the balance sheet and profit and loss account of the Directive on annual accounts of banks, as provided in Art. 1.2 of the above-mentioned Directive)
- Article 4.2 - not applicable (cf. Art. 3.1 of the Directive on annual accounts of banks)
- Article 4.3 - applies subject to the restrictions laid down in Art. 3.2 of the Directive on annual accounts of banks
- Article 4.4 - applies
- Article 4.5 - applies
- Article 5 - not applicable (outside the scope of the Directive on annual accounts of banks)
- Article 6 - applies
- Article 7 - applies, except where Arts. 34.2 and 35.2 of the Directive on annual accounts of banks provide otherwise.



Section 3 - Layout of the balance sheet (Art. 8-14)

Articles 8-10 (presentation of balance sheet)

- do not apply. Replaced by Art. 4 of the Directive on annual accounts of banks.

Articles 11 and 12 (provisions for small companies)

- do not apply (specifically excluded by Art. 41 of the Directive on annual accounts of banks);

Article 13 - applies. Article 18 of the "Bank accounts Directive" adds details concerning these items taken from Arts. 9 and 10 of the 4th Directive (the complete text of these two Articles does not apply).

Article 14 - applies, insofar as the guarantees concerned are not covered by Article 25.

Section 4 - Special provisions relating to certain balance sheet items (Art. 15-21)

Article 15 - does not apply, as the distinction between fixed and current assets is irrelevant to the structure of banks' accounts.

Article 15.3 - specifically made to apply by Art. 40.1 of the Directive on annual accounts of banks to fixed assets (as defined in Art. 36 of the same Directive.)

Article 15.4 - applies (to first sub-heading under "Assets - 9" of the balance sheet for "Banks").

Article 16 - applies (heading "Assets - 10", "Banks")

Article 17 - applies (especially first sub-heading "Assets - 8", "Banks"; also for the application of Arts. 5, 29 items 2b) and 9; 30 items A 5, B 2b) and B 5; 32; 35; 36.2; 40.1 and 2a)).

- Article 18 - applies (heading "Assets - 15", "Banks")
- Article 19 - applies
- Article 20 - applies (heading "Liabilities - 7", "Banks")
- Article 21 - applies (heading "Liabilities - 5", "Banks")

**Section 5 - Layout of the profit and loss account (Art. 22 - 27)**

- Articles 22-26 - do not apply (replaced by Arts. 28-30 of the Directive on annual accounts of banks).
- Article 27 - does not apply (provisions for small and medium-sized companies). Specifically excluded by Art. 41 of the Directive on annual accounts of banks.

**Section 6 - Special provisions relating to certain items in the profit and loss account (Art. 28-30)**

- Article 28 - does not apply to bank book-keeping, as there is no item "Net turnover".
- Article 29 - applies (for Art. 29, points 14 and 15, and Art. 30, A 9 and B 8).
- Article 30 - applies (the references should be deemed to apply to the Profit and Loss Accounts in the Directive on annual accounts of banks).

**Section 7 - Valuation rules (Art. 31-42)**

- Article 31 - applies
- Article 32 - applies
- Article 33 - applies
- Article 34 - applies
- Article 35 - applies, in accordance with Art. 36 of the Directive on annual accounts of banks.

- Article 36 - not applicable (outside the scope of the Directive on annual accounts of banks).
- Article 37.1 - Although there is no special "R & D costs" heading in the sample balance sheet for banks, Article 37.1. does apply, since such costs would be included in item 9 of the "Assets" heading of the Directive on bank accounts through the application of Article 1.3.
- Article 38 - applies
- Article 39 - applies (specific provision of Art. 37 of the Directive on bank accounts, in accordance with Art. 37.1. and 2. of the Directive on annual accounts of banks.
- Article 40 - applies
- Article 41 - applies
- Article 42 - applies
- Section 8 - Contents of the notes on the accounts (Art. 43 - 45)
- Article 43.1 - applies (specific provision of Art. 39.1 of the Directive on annual accounts of banks) amended as follows:
- Article 43.(1) to (5) - apply
- Article 43.(6) - does not apply (replaced by Art. 39.2 of the Directive on annual accounts of banks)
- Article 43.(7) - applies in accordance with Art. 39.3 of the Directive on bank accounts
- Article 43.(8) - does not apply (replaced by Art. 39.3 of the Directive on bank accounts)
- Article 43.(9)-(12) - applies
- Article 43.(13) - partial application (set out and delimited in Art. 39.5 of the Directive on bank accounts).

Article 43.2 - does not apply (outside the scope of the Directive on annual accounts of banks).

Article 44 - does not apply (specific provision of Art. 41 of the Directive on bank accounts).

Article 45.1 - applies.

Article 45.2 - first paragraph: applies to the information replacing that prescribed by Art. 43.1(8) of the Fourth Directive, i.e. that prescribed in Art. 39.4 of the Directive on bank accounts.

second paragraph: does not apply (specific provision of Art. 41 of the Directive on bank accounts).

Section 9 - Contents of the annual report (Art. 46) - applies

Section 10 - Publication (Art. 47 - 50)

Article 47.1 - applies (the first paragraph is set out in full in Art. 42.1 of the Directive on annual accounts of banks; the second paragraph shall also apply).

Article 47.2 and 47.3 - do not apply (specific provision of Art. 41 of the Directive on annual accounts of banks).

Article 48 - applies (since the publication referred to in this Article covers all publication, and not only statutory publication).

Article 49 - applies (comment same as above).

Article 50 - applies.

Section 11 - Auditing (Art. 51)

Article 51.1 - applies

Article 51.2 and 51.3 - do not apply (specific provision of Art. 41 of the Directive on bank accounts).

**Section 12 - Final provisions (Art. 52 - 62)**

- Article 52 - applies, in that the powers of the Contact Committee, when constituted appropriately, are extended by Art. 43 of the Directive on bank accounts to cover that Directive.
- Article 53 - does not apply (as the Article is only relevant with reference to Art. 11 and 27 of the 4th Directive, which do not apply).
- Article 54 - applies
- Article 55 - does not apply (specific provisions of Art. 44 of the Directive on annual accounts of banks).
- Article 56 - applies (the references to Arts. 9, 10 and 23 - 26 should be deemed to apply to the balance sheet and profit and loss accounts in the Directive on bank accounts, as provided in Art. 1.2 of this Directive. The reference to Art. 43.1(7) shall be applicable with the corrective mechanism laid down in Art. 39.3 of the Directive on bank accounts).
- Article 57.1 - applies.
- Article 57.2 - applies. However, the references to Art. 47 and 51 can only refer to 47.1 and 51.1, as the other paragraphs are irrelevant.
- Article 57.3 - applies, with the inclusion of the special provisions of the Directive on annual accounts of banks.
- Article 58.1 - applies.
- Article 58.2 - applies. (Same comment as for 57.2 above).
- Article 58.3 - applies, with the inclusion of the special provisions of the Directive on bank accounts.
- Article 59 - applies.
- Article 60 - does not apply (outside the scope of the Directive).
- Article 61 - applies.
- Article 62 - replaced by Art. 45 of the Directive on annual accounts of banks.

