DIRECTIVE 2001/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 September 2001

amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(2)(g),

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Article 32 of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies [4] requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.

(2) Article 33 of Directive 78/660/EEC authorises Member States to permit or require companies to revalue certain assets, to value certain assets at replacement cost or to apply other methods that take into account the effects of inflation on the items shown in the annual accounts.

(3) Article 29 of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [5] requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and Article 60 of Directive 78/660/EEC.

(4) Article 1 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [6] requires assets and liabilities to be valued in accordance with Articles 31 to 42 of Directive 78/660/EEC, except when Directive 86/635/EEC provides otherwise.

(5) The annual and consolidated accounts of insurance undertakings are prepared in accordance with Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings [7]. The amendments to Directives 78/660/EEC and 83/349/EEC do not concern the provisions of Directive 91/674/EEC, but the Commission may bring forward similar proposals to amend that Directive after having consulted the relevant advisory committee.

(6) The dynamic nature of international financial markets has resulted in the widespread use of not only traditional primary financial instruments such as shares and bonds, but also various forms of derivative financial instruments such as futures, options, forward contracts and swaps.

(7) Leading accounting standard setters in the world are moving away from the historical cost model for the valuation of these financial instruments towards a model of fair value accounting.

(8) The Communication of the Commission on Accounting harmonisation: a new strategy vis-à-vis international harmonisation called for the European Union to work to maintain consistency between Community accounting directives and developments in international accounting standard setting, in particular within the International Accounting Standards Committee (IASC).

(9) In order to maintain such consistency between internationally recognised accounting standards and Directives 78/660/EEC, 83/349/EEC and 86/635/EEC, it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report in conformity with current international developments.

(10) This amendment to Directives 78/660/EEC, 83/349/EEC and 86/635/EEC is in line with the Commission's communication to the European Parliament and the Council of 13 June 2000 on the EU financial reporting strategy which proposes the use of recognised international accounting standards for the preparation of consolidated financial statements by listed companies. The purpose of this amendment is to allow the application of the international accounting standard dealing with the recognition and measurement of financial instruments.

[1] OJ C 311, 31.10.2000, p. 1.
[2] OJ C 268, 19.9.2000, p. 1.
[3] Opinion of the European Parliament of 15 May 2001 (not yet published in the Official Journal) and Council Decision of 30 May 2001.
[4] OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 1999/60/EC (OJ L 162, 26.6.1999, p. 65).
[5] OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.
[6] OJ L 372, 31.12.1986, p. 1.
[7] OJ L 374, 31.12.1991, p. 7.

(11) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting for certain financial instruments. Member States should permit the adoption of that system by all companies or any classes of companies subject to the Directives 78/660/EEC, 83/349/EEC and 86/635/EEC in respect of both the annual and consolidated accounts or in respect of consolidated accounts only. Further, Member States should be permitted to require the adoption of that system in respect of all companies or any classes of companies for both the annual and consolidated accounts or for the consolidated accounts only.

(12) Fair value accounting should only be possible for those items where there is a well-developed international consensus that fair value accounting is appropriate. The current consensus is that fair value accounting should not be applied to all financial assets and liabilities, for instance not to most of those relating to the banking book.

(13) The notes on the accounts should include certain information concerning financial instruments in the balance sheet, which have been measured at fair value. The annual report should give an indication of the company's risk management objectives and policies in relation to its use of financial instruments.

(14) Derivative financial instruments can have a significant impact on the financial position of companies. Disclosures on derivative financial instruments and their fair value are considered appropriate even if the company does not use fair value accounting. In order to limit the administrative burden for small companies, Member States should be allowed to exempt small companies from this disclosure requirement.

(15) Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a review by the Commission based on the experiences of Member States with fair value accounting in practice,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. the following section shall be inserted:

'SECTION 7a

Valuation at fair value

Article 42a

1. By way of derogation from Article 32 and subject to the conditions set out in paragraphs 2 to 4 of this Article, Member States shall permit or require in respect of all companies or any classes of companies valuation at fair value of financial instruments, including derivatives.

Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.

2. For the purpose of this Directive commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when:

(a) they were entered into and continue to meet the company's expected purchase, sale or usage requirements;

(b) they were designated for such purpose at their inception; and

(c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1 shall apply only to liabilities that are:

(a) held as part of a trading portfolio; or

(b) derivative financial instruments.

4. Valuation according to paragraph 1 shall not apply to:

(a) to non-derivative financial instruments held to maturity;

(b) to loans and receivables originated by the company and not held for trading purposes; and

(c) to interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the company, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, should be accounted for differently from other financial instruments.

5. By way of derogation from Article 32, Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.