Council Directive of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (91/674/EEC)

COUNCIL DIRECTIVE

of 19 December 1991

on the annual accounts and consolidated accounts of insurance undertakings

(91/674/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament[(2)],

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

Whereas Article 54 (3) (g) of the Treaty requires coordination to the necessary extent of the safeguards which, for the protection of the interests of members and others, are required by Member States of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community;

Whereas Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies[(4)], as last amended by Directive 90/605/EEC[(5)], need not be applied to insurance companies, hereinafter referred to as 'insurance undertakings', pending further coordination; whereas, in view of the major importance of insurance undertakings in the Community, such coordination cannot be delayed any longer following the implementation of Directive 78/660/EEC;

Whereas Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts[(6)], as last amended by Directive 90/605/EEC, provides for derogations for insurance undertakings only until the expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also include provisions specific to insurance undertakings in respect of consolidated accounts;

Whereas such coordination is also urgently required because insurance undertakings operate across borders; whereas for creditors, debtors, members, policyholders and their advisers and for the general public, improved comparability of the annual accounts and consolidated accounts of such undertakings is of crucial importance;

Whereas in the Member States insurance undertakings of different legal forms are in competition with each other; whereas undertakings engaged in the business of direct insurance customarily engage in the business of reinsurance as well and are therefore in competition with specialist reinsurance undertakings; whereas it is therefore appropriate not to confine coordination to

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the legal forms covered by Directive 78/660/EEC, but to choose a scope that corresponds to that of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance[(7)], as last amended by Directive 90/618/EEC[(8)], and to that of Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance[(9)], as last amended by Directive 90/619/EEC[(10)], but which also includes certain undertakings that are excluded from the scope of those Directives and companies and firms which are reinsurance undertakings;

Whereas, although in view of the specific characteristics of insurance undertakings it would appear appropriate to propose a separate Directive on the annual accounts and consolidated accounts of such undertakings, that does not necessarily require the establishment of a set of standards different from those of Directive 78/660/EEC and 83/349/EEC; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law since, given the important position they occupy in the Community economy, insurance undertakings cannot be excluded from a framework of rules devised for undertakings generally; whereas, for this reason, only the particular characteristics of insurance undertakings have been taken into account and this Directive deals only with derogations from the rules laid down in Directives 78/660/EEC and 83/349/EEC;

Whereas there are major differences in the structure and content of the balance sheets of insurance undertakings in different Member States; whereas this Directive must therefore lay down the same structure and the same item designations for the balance sheets of all Community insurance undertakings;

Whereas, if annual accounts and consolidated accounts are to be comparable, a number of basic questions regarding the disclosure of certain transactions in the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of the various balance sheet items be determined precisely;

Whereas it may be useful to distinguish between the commitments of the insurer and those of the reinsurer by showing in the assets the reinsurer's share of technical provisions as an asset;

Whereas the structure of the profit and loss account should also be determined and certain items in it should be defined;

Whereas, given the specific nature of the insurance industry, it may be useful for unrealized gains and losses to be dealt with in the profit and loss account;

Whereas the comparability of figures in the balance sheet and profit and loss account also depends basically on the values at which assets and liabilities are shown in the balance sheet; whereas for a proper understanding of the financial situation of an insurance undertaking the current value of investments as well as their value based upon the principle of purchase price or production cost must be disclosed; whereas, however, the compulsory disclosure of the current value of investments, at least in the notes on the accounts, is prescribed solely for purposes of comparability and transparency and is not intended to lead to changes in the tax treatment of insurance undertakings;

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Whereas in the calculation of life assurance provisions use may be made of actuarial methods customarily applied on the market or accepted by the insurance-monitoring authorities; whereas those methods may be implemented by any actuary or expert in accordance with the conditions which may be laid down in national law and with due regard for the actuarial principles recognized in the framework of the present and future coordination of the fundamental rules for the prudential and financial monitoring of direct life assurance business;

Whereas, in the calculation of the provision for claims outstanding, on the one hand, any implicit discounting or deduction should be prohibited, and, on the other hand, precise conditions for recourse to explicit discounting or deduction should be defined, for the sake of prudence and transparency;

Whereas, in view of the special nature of insurance undertakings, certain changes are necessary with regard to the notes on annual accounts and on consolidated accounts;

Whereas, in line with the intention of covering all insurance undertakings that come within the scope of Directive 73/239/EEC and 79/267/EEC as well as certain others, derogations such as those for small and medium-sized insurance undertakings in Directive 78/660/EEC are not provided for, but certain small mutual associations which are excluded from the scope of Directives 73/239/EEC and 79/267/EEC should not be covered;

Whereas for the same reasons the scope allowed Member States pursuant to Directive 83/349/EEC to exempt parent undertakings of groups from compulsory consolidation if the undertakings to be consolidated do not together exceed a certain size has not been extended to insurance undertakings;

Whereas in view of its particular nature special provisions are needed for the association of underwriters known as Lloyd's;

Whereas the provisions of this Directive also apply to the consolidated accounts drawn up by a parent undertaking which is a financial holding company where its subsidiary undertakings are eiher exclusively or mainly insurance undertakings;

Whereas the examination of problems which arise in connection with this Directive, in particular regarding its application, requires cooperation by representatives of the Member States and the Commission in a contact committee; whereas, in order to avoid the proliferation of such committees, it is desirable that such cooperation take place in the committee provided for in Article 52 of Directive 78/660/EEC; whereas, however, when examining problems concerning insurance undertakings, the committee must be appropriately constituted;

Whereas, in view of the complexity of the matter, the insurance undertakings covered by this Directive must be allowed an appropriate period to implement its provisions; whereas that period must be extended to allow the necessary adjustments to be made concerning, on the one hand, the association of underwriters known as Lloyd's and, on the other, those undertakings which, when this Directive becomes applicable, show their investments at historical cost;

Whereas provision should be made for the review of certain provisions of this Directive after five years' experience of its application, in the light of the aims of greater transparency and harmonization.

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HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Preliminary provisions and scope

Article 1

[[F1]1 **[**[F2]Articles 2, 3, 4(1), (3) to (6), Articles 6, 7, 13, 14, 15(3) and (4), Articles 16 to 21, 29 to 35, 37 to 41, 42, 42a to 42f, 43 (1), points 1 to 7b and 9 to 14, 45(1), 46(1) and (2), 46a, 48 to 50, 50a, 50b, 50c, 51(1), 51a, 56 to 59, 60a, 61 and 61a of Directive 78/660/EEC shall apply to the undertakings mentioned in Article 2 of this Directive, except where this Directive provides otherwise.**]** Articles 46, 47, 48, 51 and 53 of this Directive shall not apply in respect of assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.

2 Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9, 10 and 10a (balance sheet) or to Articles 22 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Article 6 (balance sheet) or to Article 34 (profit and loss account) of this Directive as appropriate.**]**

3 References in Directives 78/660/EEC and 83/349/EEC to Articles 31 to 42 of Directive 78/660/EEC shall be deemed to be references to those Articles, taking account of Articles 45 to 62 of this Directive.

4 Where the aforementioned provisions of Directive 78/660/EEC relate to balance-sheet items for which this Directive lays down no equivalent, they shall be deemed to be references to the items in Article 6 of this Directive where the corresponding assets and liabilities items are listed.

Textual Amendments

F1 Substituted by Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (Text with EEA relevance).

F2 Substituted by Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance).

Article 2

1 The coordination measures prescribed by this Directive shall apply to companies and firms within the meaning of the second paragraph of Article 58 of the Treaty which are:

a undertakings within the meaning of Article 1 of Directive 73/239/EEC, excluding those mutual associations which are excluded from the scope of that Directive by virtue of Article 3 thereof but including those bodies referred to in Article 4 (a), (b), (c) and (e) thereof except where their activity does not consist wholly or mainly in carrying on insurance business;

b undertakings within the meaning of Article 1 of Directive 79/267/EEC, excluding those bodies and mutual associations referred to in Articles 2 (2) and (3) and 3 of that Directive; or

c undertakings carrying on reinsurance business.

In this Directive, such undertakings shall be referred to as insurance undertakings.

2 Funds of a group pension fund within the meaning of Article 1 (2) (c) and (d) of Directive 79/267/EEC which an insurance undertaking administers in its own name but on behalf of third parties must be shown in the balance sheet if the undertaking acquires legal title to the assets concerned. The total amount of such assets and liabilities shall be shown separately or in the notes on the accounts, broken down according to the various assets and liabilities items. However, the Member States may permit the disclosure of such funds as off-balance-sheet items provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding up of an insurance undertaking (or similar proceedings).

Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Article 3

Those provisions of this Directive which relate to life assurance shall apply *mutatis mutandis* to insurance undertakings which underwrite only health insurance and which do so exclusively or principally according to the technical principles of life assurance.

Member States may apply the first paragraph to health insurance underwritten by joint undertakings according to the technical principles of life assurance where such activity is significant.

[F1 Article 4

1 This Directive shall apply to the association of underwriters known as Lloyd's. For the purpose of this Directive both Lloyd's and Lloyd's syndicates shall be deemed to be insurance undertakings.

2 By way of derogation from Article 65(1), Lloyd's shall prepare aggregate accounts instead of consolidated accounts required by Directive 83/349/EEC. Aggregate accounts shall be prepared by cumulation of all syndicate accounts.**]**

Textual Amendments

F1 Substituted by Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (Text with EEA relevance).

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 5

The combination of items under the conditions laid down in Article 4 (3) (a) or (b) of Directive 78/660/EEC shall be restricted in the case of insurance undertakings,

— as regards the balance sheet, to items preceded by arabic numerals, except for items concerning technical provisions, and