COUNCIL DIRECTIVE

of 8 November 1990

amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives

(90/605/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 Directive 78/660/EEC (4), as last amended by Directive 90/604/EEC (5), applies to the annual accounts of public and private limited liability companies in particular because those types of company offer no safeguards to third parties beyond the amounts of their net assets;

Whereas, in accordance with Directive 83/349/EEC (6), as last amended by Directive 90/604/EEC, Member States need require only companies covered by Directive 78/660/EEC to draw up consolidated accounts;

Whereas, within the Community, there is a substantial and constantly growing number of partnerships and limited partnerships all of the fully liable members of which are constituted either as public or as private limited liability companies;

Whereas these fully liable members may also be companies which do not fall within the law of a Member State but which have a legal status comparable to that referred to in Directive 68/151/EEC (7);

Whereas it would run counter to the spirit and aims of those Directives to allow such partnerships and partnerships with limited liability not to be subject to Community rules;

Whereas the provisions covering the scope of the two Directives in question should therefore be explicitly supplemented;

Whereas it is of importance that the name, head office and legal status of any undertaking of which a limited liability company is a fully liable member should be indicated in the notes to the accounts of such member;

Whereas the obligation to draw up, publish and to have audited the accounts of partnerships and limited liability partnerships may also be imposed on the fully liable member; whereas it should also be possible to include these companies in consolidated accounts, drawn up by such member or established at a higher level;

Whereas some of the partnerships covered by this Directive are not subject, in the Member State where they have their head office, to entry in a register, which makes it difficult to apply accounting obligations to them; whereas, in particular in these cases, special rules are necessary according to whether the fully liable members are undertakings which fall within the law of the same Member State, another Member State or a third country,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. the following subparagraphs are added to Article 1 (1):

'The coordination measures prescribed by this Directive shall also apply to the Member States' laws, regulations and administrative provisions relating to the following types of company:

(a) in Germany:

die offene Handelsgesellschaft, die Kommanditgesellschaft;

(b) in Belgium:

la société en nom collectif/de vennootschap onder firma,
la société en commandité simple/de gewone commanditaire vennootschap;

(c) in Denmark:

interessentskaber, kommanditselskaber;

(d) in France:

la société en nom collectif, la société en commandite simple;

(e) in Greece:

η ομόρρυθμος εταιρεία, η ετερόρρυθμος εταιρεία;

(f) in Spain:

sociedad colectiva, sociedad en comandita simple;

(g) in Ireland:

partnerships, limited partnerships, unlimited companies;

(1) OJ No C 144, 11. 6. 1986, p. 10.
(2) OJ No C 125, 11. 5. 1987, p. 140.
(3) OJ No C 328, 22. 12. 1986, p. 43.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) See page 57 of this Official Journal.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 65, 14. 3. 1968, p. 8.