Council Directive of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (89/117/EEC)

COUNCIL DIRECTIVE

of 13 February 1989

on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents

(89/117/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 the establishment of a European internal market presupposes that the branches of credit institutions and financial institutions having their head offices in other Member States should be treated in the same way as branches of credit institutions and financial institutions having their head offices in the same Member State; whereas this means that, with regard to the publication of annual accounting documents, it is sufficient for the branches of such institutions having their head offices in other Member States to publish the annual accounting documents of their institution as a whole;

Whereas, as part of a further instrument of coordination of the disclosure requirements in respect of branches, provision is made for certain documents and particulars relating to branches established in a Member State which certain types of companies governed by the law of another Member State, including banks and other financial institutions, have to publish; whereas, as regards disclosure of accounting documents, reference is made to specific provisions to be laid down for banks and other financial institutions;

Whereas the present practice of some Member States of requiring the branches of credit institutions and financial institutions having their head offices outside these Member States to publish annual accounts relating to their own activities is no longer justified following the adoption of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[(4)]; whereas the publication of annual branch accounts cannot in any case provide the public, and in particular creditors, with an adequate view of the financial situation of the undertaking, since part of a whole cannot be viewed in isolation;

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Whereas, on the other hand, in view of the present level of integration, the need for certain information on the activities of branches established in a Member State by credit institutions and financial institutions having their head offices outside that Member State cannot be disregarded; whereas, nevertheless, he extent of such information should be limited so as to prevent distortions of competition;

Whereas, however, this Directive affects only disclosure requirements concerning annual accounts, and does not in any way affect the obligations of branches of credit institutions and financial institutions to provide information pursuant to other requirements, deriving, for example, from social legislation, with regard to employees' rights to information, host countries' rights of supervision over credit institutions or financial institutions and fiscal legislation and also for statistical purposes;

Whereas equality of competition means, with regard to the branches of credit institutions and financial institutions having their head offices in non-member countries, that such branches must, on the one hand, in publishing annual accounting documents, adhere to a standard which is the same as, or equivalent to, that of the Community, but, on the other hand, that such branches should not have to publish annual accounts relating to their own activities if they fulfil the abovementioned condition;

Whereas the equivalence, required under this Directive, of annual accounting documents of credit institutions and financial institutions having their head offices in non-member countries may lead to problems of assessment; whereas it is therefore necessary for this and other problems in the area covered by the Directive, and in particular in its implementation, to be dealt with by representatives of the Member States and of the Commission jointly in a Contact Committee; whereas, in order to keep the number of such committees within limits, such cooperation should be carried out within the framework of the Committee set up under Article 52 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies[(5)], as last amended by Directive 84/569/EEC[(6)]; whereas, however, where problems relating to credit institutions are to be dealt with, the Committee should be appropriately constituted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1 The coordination measures prescribed by this Directive shall apply to branches established in a Member State by credit institutions and financial institutions within the meaning of Article 2 (1) (a) and (b) of Directive 86/635/EEC having their head offices outside that Member State. Where a credit institution or financial institution has its head office in a non-member country, this Directive shall apply in so far as the credit institution or financial institution has a legal form which is comparable to the legal forms specified in the above-mentioned Article 2 (1) (a) and (b).

2 The third indent of Article 1 of Directive 77/780/EEC[(7)] shall apply *mutatis mutandis* to branches of credit institutions and financial institutions covered by this Directive.

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Article 2

Provisions relating to branches of credit institutions and financial institutions having their head offices in other Member States

1 Member States shall require branches of credit institutions and financial institutions having their head offices in other Member States to publish, in accordance with Article 44 of Directive 86/635/EEC, the credit institution or financial institution documents referred to therein (annual accounts, consolidated accounts, annual report, consolidated annual report, opinions of the person responsible for auditing the annual accounts and consolidated accounts).

2 Such documents must be drawn up and audited in the manner required by the law of the Member State in which the credit institution or financial institution has its head office in accordance with Directive 86/635/EEC.

3 Branches may not be required to publish annual accounts relating to their own activities.

4 Member States may, pending further coordination, require branches to publish the following additional information:

— the income and costs of the branch deriving from items 1, 3, 4, 6, 7, 8 and 15 of Article 27 or from items A.4, A.9, B.1 to B.4 and B.7 of Article 28 of Directive 86/635/EEC,

— the average number of staff employed by the branch,

— the total claims and liabilities attributable to the branch, broken down into those in respect of credit institutions and those in respect of customers, together with the overall amount of such claims and liabilities expressed in the currency of the Member State in which the branch is established,

— the total assets and the amounts corresponding to items 2, 3, 4, 5 and 6 of the assets, 1, 2 and 3 of the liabilities and 1 and 2 of the off-balance sheet items defined in Article 4 and parallel Articles of Directive 86/635/EEC, and, in the case of items 2,-5 and 6 of the assets, a breakdown of securities according to whether they have or have not been regarded as financial fixed assets pursuant to Article 35 of Directive 86/635/EEC.

Where such information is required, its accuracy and its accordance with the annual accounts must be checked by one or more persons authorized to audit accounts under the law of the Member State in which the branch is established.

Article 3

Provisions relating to branches of credit institutions and financial institutions having their head offices in non-members countries

1 Member States shall require branches of credit institutions and financial institutions having their head offices in non-member countries to publish the documents specified in Article 2 (1), drawn up and audited in the manner required by the law of the country of the head office, in accordance with the provisions set out therein.

2 Where such documents are in conformity with, or equivalent to, documents drawn up in accordance with Directive 86/635/EEC and the condition of reciprocity, for Community credit institutions and financial institutions, is fulfilled in the non-member country in which the head office is situated, Article 2 (3) shall apply.