Council Directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (86/635/EEC)

COUNCIL DIRECTIVE

of 8 December 1986

on the annual accounts and consolidated accounts of banks and other financial institutions

(86/635/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 54 (3) (g) thereof,

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

Having regard to the opinion of the European Parliament[(2)],

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

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 84/569/EEC[(5)], need not be applied to banks and other financial institutions, hereafter referred to as 'credit institutions', pending subsequent coordination; whereas in view of the central importance of these undertakings in the Community, such coordination is necessary;

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

Whereas such coordination has also become urgent because more and more credit institutions are operating across national borders; whereas for creditors, debtors and members and for the general public improved comparability of the annual accounts and consolidated accounts of these institutions is of crucial importance;

Whereas in virtually all the Member States of the Community credit institutions within the meaning of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions[(7)], having many different legal forms, are in competition with one another in the banking sector; whereas it therefore seems advisable not to confine coordination in respect of these credit institutions to the legal forms covered by Directive 78/660/EEC but rather to opt for a scope which includes all companies and firms as defined in the second paragraph of Article 58 of the Treaty;

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Whereas as far as financial institutions are concerned the scope of this Directive should however be confined to those financial institutions taking one of the legal forms referred to in Directive 78/660/EEC; whereas financial institutions which are not subject to that Directive must automatically come under this Directive;

Whereas a link with coordination in respect of credit institutions is necessary because aspects of the provisions governing annual accounts and consolidated accounts will have an impact on other areas of that coordination, such as authorization requirements and the indicators used for supervisory purposes;

Whereas although, in view of the specific characteristics of credit institutions, it would appear appropriate to adopt a separate Directive on the annual accounts and consolidated accounts of such institutions, this does not imply a new set of rules separate from those under Directives 78/660/EEC and 83/349/EEC; whereas such separate rules would be neither appropriate nor consistent with the principles underlying the coordination of company law since, given the important role which they play in the Community economy, credit institutions cannot be excluded from a framework of rules devised for undertakings generally; whereas, for this reason, only the particular characteristics of credit institutions have been taken into account and this Directive deals only with exceptions to the rules contained in Directives 78/660/EEC and 83/349/EEC;

Whereas the structure and content of the balance sheets of credit institutions differ in each Member State; whereas this Directive must therefore prescribe the same layout, nomenclature and terminology for the balance sheets of all credit institutions in the Community; whereas derogations should be allowed if necessitated by the legal form of an institution or by the special nature of its business;

Whereas, if the annual accounts and consolidated accounts are to be comparable, a number of basic questions regarding the disclosure of various transactions in the balance sheet and off 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 and off-balance sheet items be determined precisely;

Whereas the same applies to the layout and definition of the items in the profit and loss account;

Whereas the comparability of figures in the balance sheet and profit and loss account also depends crucially on the values at which assets and liabilities are entered in the balance sheet;

Whereas, in view of the particular risks associated with banking and of the need to maintain confidence, provision should be made for the possibility of introducing a liabilities item in the balance sheet entitled ‘Fund for general banking risks’; whereas it would appear advisable for the same reasons that the Member States be permitted, pending subsequent coordination, to allow credit institutions some discretion, especially in the valuation of loans and advances and of certain securities; whereas, however, in this last case the Member States should allow these same credit institutions to create the ‘Fund for general banking risks’ mentioned above; whereas it would also appear appropriate to permit the Member States to allow credit institutions to set of certain charges and income in the profit and loss account;

Whereas, in view of the special nature of credit institutions, certain changes are also necessary with regard to the notes on the accounts;

Whereas, in the desire to place on the same footing as many credit institutions as possible, as was the case with Directive 77/780/EEC, the relief under Directive 78/660/EEC is not provided for in the case of small and medium-sized credit institutions; whereas, nevertheless, if in the light of experience such relief were to prove necessary it would be possible to provide for it in subsequent coordination; whereas for the same reasons the scope allowed the Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirement if the undertakings to be consolidated do not together exceed a certain size has not been extended to credit institutions;

Whereas the application of the provisions on consolidated accounts to credit institutions requires certain adjustments to some of the rules applicable to all industrial and commercial companies; whereas explicit rules have been provided for in the case of mixed groups and exemption from subconsolidation may be made subject to additional conditions;

Whereas, given the scale on which banking networks extend beyond national borders and their constant development, the annual accounts and consolidated accounts of a credit institution having its head office in one Member State should be published in all the Member States in which it is established;

Whereas the examination of problems which arise in connection with the subject matter of this Directive, notably concerning its application, requires the cooperation of 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, nevertheless, when examining problems concerning credit institutions, the Committee will have to be appropriately constituted;

Whereas, in view of the complexity of the matter, the credit institutions covered by this Directive must be allowed a longer period than usual to implement its provisions;

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,

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 first sentence, 42a to 42f, 45(1), 46(1) and (2), 46a, Articles 48 to 50, 50a, 50b, 50c, 51(1) and 51a, 56 to 59, 60a, 61 and 61a of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise.**]** However, Articles 35(3), 36, 37 and 39(1) to (4) of this Directive shall not apply

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with respect to 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 Articles 4 and 4a (balance sheet) or to Articles 26, 27 and 28 (profit and loss account) of this Directive.**]**

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 35 to 39 of this Directive.

4 Where reference is made in the aforementioned provisions of Directive 78/660/EEC to balance sheet items for which this Directive makes no equivalent provision, such references shall be deemed to be references to the items in Article 4 of this Directive which include the assets and liabilities in question.

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

a credit institutions within the meaning of the first indent of Article 1 of Directive 77/780/EEC which are companies or firms as defined in the second paragraph of Article 58 of the Treaty;

b financial institutions having one of the legal forms referred to in Article 1 (1) of Directive 78/660/EEC which, on the basis of paragraph 2 of that Article, are not subject to that Directive.

For the purposes of this Directive ‘credit institutions’ shall also include financial institutions unless the context requires otherwise.

2 The Member States need not apply this Directive to:

a the credit institutions listed in Article 2 (2) of Directive 77/780/EEC;

b institutions of the same Member State which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, are affiliated to a central body in that Member State. In that case, without prejudice to the application of this Directive to the central body, the whole constituted by the central body and its affiliated institutions must be the subject of consolidated accounts including an annual report which shall be drawn up, audited and published in accordance with this Directive;

c the following credit institutions:

— in Greece: ETEBA (National Investment Bank for Industrial Development) and Τράπεζα Επενδύσεων (Investment Bank),

— in Ireland: Industrial and Provident Societies,

— in the United Kingdom: Friendly Societies and Industrial and Provident Societies.

4 Without prejudice to Article 2 (3) of Directive 78/660/EEC and pending subsequent coordination, the Member States may:

a in the case of the credit institutions referred to in Article 2 (1) (a) of this Directive which are not companies of any of the types listed in Article 1 (1) of Directive 78/660/EEC, lay down rules derogating from this Directive where derogating rules are necessary because of such institutions' legal form;

b in the case of specialized credit institutions, lay down rules derogating from this Directive where derogating rules are necessary because of the special nature of such institutions' business.

Such derogating rules may provide only for adaptations to the layout, nomenclature, terminology and content of items in the balance sheet and the profit and loss account; they may not have the effect of permitting the institutions to which they apply to provide less information in their annual accounts than other institutions subject to this Directive.

The Member States shall inform the Commission of those credit institutions, possibly by category, within six months of the end of the period stipulated in Article 47 (2). They shall inform the Commission of the derogations laid down to that end.

These derogations shall be reviewed within 10 years of the notification of this Directive. The Commission shall, if appropriate, submit suitable proposals. It shall also submit an interim report within five years of the notification of this Directive.

SECTION 2

GENERAL PROVISIONS CONCERNING THE BALANCE SHEET AND THE PROFIT AND LOSS ACCOUNT

Article 3

In the case of credit institutions the possibility of combining items pursuant to Article 4 (3) (a) or (b) of Directive 78/660/EEC shall be restricted to balance sheet and profit and loss account sub-items preceded by lower-case letters and shall be authorized only under the rules laid down by the Member States to that end.

SECTION 3

LAYOUT OF THE BALANCE SHEET

Article 4

[[F1]The Member States shall prescribe the following layout for the balance sheet. As an alternative, Member States may permit or require credit institutions to adopt the presentation of the balance sheet set out in Article 4a.**]**

1. Cash in hand, balances with central banks and post office banks

2. Treasury bills and other bills eligible for refinancing with central banks:

   (a) Treasury bills and similar securities