COMMISSION OF THE EUROPEAN COMMUNITIES

COM(88) 292 final - SYN 158

Brussels, 14 October 1988

Proposal for a

COUNCIL DIRECTIVE

amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts with respect to the exemptions for small and medium-sized companies and to the drawing up and publication of accounts in ECU

(presented by the Commission)

Explanatory memorandum

I. Introduction

Exemptions for small and medium-sized companies

The 4th company law Directive of 25 July 1978[1] introduced equivalent rules for the drawing up, publication and auditing of the annual accounts and annual reports of limited liability companies. Although the Directive applied to all limited liability companies, it allowed the Member States to grant exemptions for certain companies of minor economic or social importance.

The thresholds for the definition of these companies are stated in Articles 11 and 27 of the Directive. There are three: balance sheet total, net turnover and number of employees.

The two financial thresholds were raised by a Council Directive of 27 November 1984[2] in the light of economic and monetary trends in the Community. The national currency equivalents of the thresholds are calculated at the ECU exchange rate prevailing on a certain date, which under the 1984 revision is 25 July 1983, and may be rounded up by up to 10 % of the basic ECU amount.

Small companies are at present defined (in Article 11) as those which on their balance sheet dates do not exceed two of the following three thresholds:

- balance sheet total: 1 550 000 ECU,
- net turnover: 3 200 000 ECU,
- average number of employees during the financial year: 50.

The current thresholds for medium-sized companies (Article 27), two of which must again be met, are:

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(1) Directive 78/660/EEC, OJ No. L 222, 14.8.78.

(2) OJ No. L 314, 4.12.84

- balance sheet total: 6 200 000 ECU,
- net turnover: 12 800 000 ECU,
- average number of employees during the financial year: 250.

The exemptions which Member States can grant for small, or for small and medium-sized companies, cover the content and form of the accounts, (Articles 11, 27 and 44), publication of the annual accounts and annual report (Article 47) and auditing (Article 51).

(1) For small companies the exemptions Member States may grant are:

- to draw up only an abridged balance sheet (Article 11) and profit and loss account (Article 27) and abridged notes on the accounts (Article 44);

- to publish only an abridged balance sheet and abridged notes (Article 47(2));

- not to publish the profit and loss account, annual report and auditors' report (Article 47(2));

- not to have their accounts audited (Article 51 (2)).

(2) For medium-sized companies the permissible exemptions are:

- to draw up only an abridged profit and loss account (Article 27);

- to publish only an abridged balance sheet and profit and loss account and abridged notes (Article 47(3)).

The Member States vary in the extent to which they have used the scope the Directive allows for simplifying their accounting requirements for small and medium-sized companies. This variation runs counter to the objective of establishing similar requirements for companies throughout the Community, which is a major purpose of the EC accounting rules. Also in the Commission's programme for small and medium-sized enterprises which the Council approved on 3

November 1986, the possibility was raised of going beyond periodical revision of the thresholds for small and medium-sized companies and reviewing the exemption provisions themselves, so as both to harmonize the accounting requirements placed on small and medium-sized companies to a greater extent and to further simplify those requirements. Several ideas were put forward and have been thoroughly discussed in the Accounting Directives Contact Committee set up under Article 52 of the 4th Directive.

One of the ideas that was advanced for further harmonizing the accounting requirements faced by small companies was to make the exemptions allowed by the Directive compulsory. Instead of being offered at the option of Member States, the simplified requirements would be an option automatically available to all small companies in the EC. This suggestion has been adopted in the present directive. Its advantage is that in future small companies anywhere in the EC will be able to claim the exemptions as of right. The result will be both greater standardization of accounting requirements and a practical step to making life easier for small companies, a goal generally supported by the Member states and the Commission.

Various ideas were also put forward for extending the scope of the exemptions. Far the most radical was that of exempting all small and medium-sized companies from the rules of the 4th Directive. This proposal had the merit of simplicity. But there was a danger that it would undermine the whole process of harmonization of accounting standards begun by the 4th Directive. It would mean that 2.5 million of the 3 million companies in the Community would be taken out of the scope of the 4th Directive, nullifying the considerable effort the Member States in which the Directive had been effective for several years had invested in getting all companies to accept the new accounting rules.

The present Directive does not go so far as this radical proposal. It confines itself to removing from the scope of the 4th Directive some small closely held companies in which the protection of members and others is not such an issue. The criteria for these companies are drafted to ensure that there are no minority shareholders, while the interests of creditors are safeguarded by requiring the Member States to provide for appropriate penalties for failure by such companies to keep proper accounts. The exemption is nevertheless important as it will cover a large number of companies in the Community. There can be no objection to it from the point of view of the internal market programme as firms of this type are unlikely to engage in intra-Community trade.

Another idea put forward was to review the list of exemptions allowed for small and medium-sized companies with a view to exempting them from any further requirements of the 4th Directive that were not absolutely necessary. This suggestion has been taken up in the present Directive as far as small companies are concerned, which will in future be exempt from providing certain further items of information in the notes on the accounts. Another simplification is introduced for companies with single-member boards. To protect the privacy of the directors of such companies, the proposal allows Member States to waive the requirement to provide details of the director's remuneration or loans and advances to him in the notes on the accounts.

As far as the definition of small and medium-sized companies is concerned, the present Directive introduces a certain flexibility for the two financial thresholds: balance sheet total and net turnover. For the definition of small companies, Member States may descend below the number of 50 employees to a minimum of 25. Concerning the publication of the accounting documents, the present Directive does not deviate from the basic principle introduced by the 4th Directive, i.e. that all limited liability companies must publish accounts and that these accounts must be available without restrictions to any interested party. However, in order to simplify the administrative procedure for small and medium-sized companies, the Directive allows these companies under certain conditions to keep the accounting documents available to the public at the registered office of the company instead of having to file these documents with a register as provided for by the First company law Directive (68/151/EEC).

Drawing up and publication of accounts in ECU

Firms operating in several countries of the Community may wish to use the ECU instead of the national currency of the country in which they have their registered office to draw up their accounts. At present, however, the use of the ECU as an accounting unit is not possible in the majority of Community countries. Although the 4th and 7th (consolidated accounts) Directives do not explicitly prohibit the drawing up and publication of accounts in ECU, several Member States require companies to draw up and publish their accounts in the national currency. The amending Directive will make it possible for companies to use the ECU if they so wish. This move is in line with the Commission's policy of encouraging use of the ECU in order to help increase European monetary integration.

II. Comments on the articles

Article 1

This Article completely exempts certain small closely held companies from the accounting rules prescribed by the Directive. The Article first of all states that it applies only to companies falling within Article 11 of the 4th Directive, subject to certain amendments as provided for in Article 4 of the present Directive.

As well as being small, the exempted companies may not belong to a group, they must be managed by their shareholders, none of whom may be a legal person, they must be closely held in the sense that their shares are not freely transferable, and the fact that the company avails itself of the exemption must be made public in accordance with the disclosure requirements of the 1st company law Directive of 9 March 1968.[1]

To protect the interests of third parties who have dealings with such companies, the Directive requires Member States to provide appropriate penalties in their law for those which fail to keep proper accounts. The exempted companies are of course free to follow the rules set by the 4th Directive which constitute the basic framework of accounting, if they wish. As for the penalties the Member States are required to provide for failure to keep proper accounts, this is left to the Member States. They may be civil or criminal.

When Member States require these companies to present their annual accounts to the shareholders or members of the company using a specific layout, such layout may not go beyond that which is prescribed by the 4th Directive for small companies.

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[1] Directive 68/151/EEC, OJ No. L 65, 14.3.1968.

Articles 2 and 3

These Articles are a corollary of making the exemptions provided for by the 4th Directive for small companies mandatory. The harmonization of requirements achieved by making the exemptions mandatory must not be undermined by the possibility for Member States to require additional information or subdivisions of items in the balance sheet and profit and loss account lay-outs.

Article 4

The first paragraph means that all small companies will in future be allowed to present abridged balance sheets. Such companies will also no longer have to show in their balance sheets movements in the various fixed asset items or formation expenses.

The second paragraph gives Member States a certain flexibility in the definition of small companies by allowing them to increase or to decrease the financial thresholds (balance sheet total and net turnover) by up to 50 % and to state the number of employees between 25 and 50.

Article 5

This Article permits all small companies to present an abridged profit and loss account.
Member States are also given the possibility to increase the financial thresholds (balance sheet total and net turnover) by up to 50%.

Article 6

By virtue of this amendment small companies will no longer be required to distinguish in their profit and loss account or in the notes on the accounts between tax on the profit or loss on ordinary and on extraordinary activities.

Article 7

Under Article 43(1) points 12 and 13 of the 4th Directive, companies are required to show in the notes the amount of the emoluments granted to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities as well as the amount of any advances and credits granted to them. The figures may be given as totals for each category. Such disclosures may be sensitive if the recipient of the payments is identifiable. For this reason Article 11 allows Member States to waive the requirement to supply this information where the company has only one director.

Article 8

This article represents a considerable relaxation of accounting requirements for small companies. They will no longer be required to show in the notes certain items of information regarded as less important for small companies. These items are:

- the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies (Article 43 (1) point 13);

- movements in the various fixed asset items and formation expenses (Article 15(3)(a) and (4));

- details of income and charges falling under the balance sheet headings of "prepayments and accrued income" or "accurals and deferred income" which may also be included under "creditors" and "debtors" (Articles 18 and 21);

- details of extraordinary income and charges and income and charges attributable to another financial year, where they are material to an assessment of the results (Article 29(2));

- an explanation of amounts entered under "formation expenses" (Article 34(2));

- the difference between the book value of stocks and their value on the basis of the last known market price prior to the balance sheet date (Article 40(2));

- provisions shown in the balance sheet under "other provisions", if they are material (Article 42 subparagraph 2);

Article 9

This Article permits small companies to file the statement of information concerning each of the undertakings in which the company holds a participating interest with a register instead of including this information in the notes on the accounts.

Article 10

Small companies will no longer be required to present an annual report provided they state in the notes on the accounts information of two kinds normally supplied in annual reports, namely any important events that have occurred since the end of the financial year and information about acquisitions of their own shares, as required by the Second company law Directive of 13 December 1976.(1)

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(1) Directive 77/91/EEC, OJ No. L 26, 31.1.1977

Article 11

This Article allows small companies to publish abridged balance sheets and abridged notes on the accounts and dispenses them from publication of their profit and loss account.

This Article also introduces the possibility for small and medium-sized companies to keep the accounting documents available for the public at the registered office of the company. Small companies can always choose this option. Medium-sized companies can only do so, if Member States allow them to do so. Any interested party must be able to obtain a copy of these documents, without restrictions. The company must also indicate the place where copies of the documents can be obtained. Member States must take appropriate measures to ensure that the accounting documents are effectively available to the public. However, companies which have made a public issue of securities, cannot elect this alternative procedure for the publication of the accounting documents.

Article 12

All small companies will in future be exempt from having their accounts audited by a qualified auditor.

Article 13

This article allows companies to draw up and publish their accounts in ECU. The method used for this purpose must be described in the notes on the accounts.

Article 14

This Article also allows consolidated accounts to be drawn up and published in ECU. The method used must be shown in the notes on the accounts.

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Task Force PME

FICHE D'IMPACT SUR LA COMPETITIVITE ET L'EMPLOI

I. Quelle est la justification principale de la mesure ?

1. Alléger sensiblement les obligations comptables des PME.
2. Permettre aux sociétés qui le désirent de libeller leurs comptes en Ecus.

II. Caractéristiques des entreprises concernées. En particulier :

a) Y a-t-il un grand nombre de PME ? Les mesures proposées, à l'exception de celles relatives à l'utilisation de l'Ecu, concernent exclusivement les PME. La définition des "petites" et "moyennes" sociétés est révisée de manière à permettre une flexibilité accrue aux Etats membres, tant à la hausse qu'à la baisse (articles 4 et 5 de la proposition).

b) Note-t-on des concentrations dans des régions ? Non
I. éligibles aux aides régionales des Etats membres ?
II. éligibles au FEDER ?

III. Quelles sont les obligations imposées directement aux entreprises ?

Nulles, puisque la mesure vise à supprimer une partie des obligations imposées actuellement.

IV. Quelles sont les obligations susceptibles d'être imposées indirectement aux entreprises via les autorités locales ?

Pour les petites sociétés définies à l'Article 1, les Etats membres définiront eux-mêmes le régime comptable applicable, qui ne pourra cependant être plus lourd que le régime découlant du droit communautaire.

V. Y a-t-il des mesures spéciales pour les PME ? Lesquelles ?

- L'article 1 permet une exemption totale de certaines petites sociétés "fermées";
- Concernant les autres "petites" sociétés, les simplifications jusqu'alors optionnelles pour les Etats membres deviennent obligatoires, et de nouvelles simplifications sont proposées concernant l'établissement et la publicité des comptes;
- Concernant les sociétés "moyennes", la possibilité de réviser les seuils à la hausse permet d'étendre certaines simplifications optionnelles à un plus grand nombre d'entreprises; de plus, des simplifications optionnelles en matière de publicité sont introduites.

VI. Quel est l'effet prévisible
a) sur la compétitivité des entreprises ?

Effet positif résultant d'une réduction des charges administratives.

b) sur l'emploi ?

Pas d'effet direct

VII. Les partenaires sociaux ont-ils été consultés ? Quels sont leurs avis ?

La réflexion de la Commission a été menée depuis de longs mois en liaison avec les milieux concernés dont les avis ont été recueillis grâce à leurs notes écrites, par la diffusion de questionnaires ainsi que via le comité de contact "Directives Comptables".

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II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts with respect to the exemptions for small and medium-sized companies and to the drawing up and publication of accounts in ECU

COM(88) 292 final — SYN 158

(Submitted by the Commission to the Council on 24 October 1988)

(88/C 287/06)

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,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas national provisions concerning the presentation and content of annual accounts and annual reports of public and private limited companies, concerning the valuation methods used therein and concerning the publication of such accounts and reports have been harmonized by Council Directive 78/660/EEC (1), as last amended by the Act of Accession of Spain and Portugal;

Whereas the administrative burdens on small and medium-sized companies should be reduced in accordance with the Council resolution of 3 November 1986 (2) and with the Council resolution of 30 June 1988 on the improvement of the business environment and the promotion of the development of enterprises, in particular SME's, in the Community (3), which calls more especially for a substantial alleviation of the obligations arising from Directive 78/660/EEC;

Whereas Directive 78/660/EEC allows Member States to grant exemptions for certain companies of minor economic and social importance; whereas Member States have made widely-varying use of this possibility; whereas this variation in requirements may cause distortions of competition between small companies in different Member States, depending on whether or not the exemptions are available there, and undermines the objective of ensuring the comparability and equivalence of the information given in company accounts;

Whereas, in order to simplify and harmonize the accounting obligations for small companies, the exemptions provided for in Directive 78/660/EEC in favour of small companies and relating to the drawing up, auditing and publication of accounts should be made mandatory;

Whereas it is desirable for this purpose that some small closely-held companies should be completely exempt from the rules prescribed by Directive 78/660/EEC, subject to appropriate safeguards for the interests of shareholders and third parties; whereas an exemption for such companies is justified from the point of view of the single European market because they are unlikely to engage in intra-Community trade;

Whereas a certain flexibility in the definition of small and medium-sized companies is justified by a different economic environment in Member States;

Whereas provision should be made for exempting companies whose administrative or management body consists of only one person from the requirement of including details of the director's remuneration and any advances or credits granted to him in the notes on the accounts;

Whereas it is also necessary to simplify the requirements imposed on small companies for drawing up and publishing notes on the accounts; whereas such companies should be exempt from the obligation to supply certain items of information that can be regarded as less important for the smaller company; whereas for

(1) OJ No L 222, 14. 8. 1978, p. 11.
(2) OJ No C 287, 14. 11. 1986, p. 1.
(3) OJ No C 197, 27. 7. 1988, p. 6.

the same reason such companies should be exempt from the requirement to present an annual report, provided that certain important items of information normally given in the report are supplied in the notes on the accounts;

Whereas small and medium-sized companies should be allowed to keep the accounting documents available to the public at the registered office of the company without disregarding the basic idea that these documents should be available to the public without restriction;

Whereas it is important to promote European monetary integration by allowing companies to draw up and publish their accounts in ECU; and whereas Council Directives 78/660/EEC and 83/349/EEC (1), as amended by the Act of Accession of Spain and Portugal, should be clarified in this respect so as to require companies availing themselves of this possibility to state the method they have used for conversion into ECU in the notes on the accounts,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Exemptions for small and medium-sized companies

Article 1

The following Article is inserted in Directive 78/660/EEC:

'Article 1a

1. This Directive shall not apply to companies falling within Article 11 where the following additional conditions are fulfilled:

(a) the company is not affiliated with other undertakings within the meaning of Article 41 of Directive 83/349/EEC and is not linked to another undertaking by virtue of a participating interest;

(b) the shareholders or members of the company are the same persons as the members of its administrative or management body and are natural persons;

(c) the shares of the company are registered and under its statutes or instrument of incorporation may not be transferred without the company's consent;

(d) the exemption is disclosed in accordance with Article 3 of Directive 68/151/EEC.

2. The Member States shall provide appropriate penalties for failure by such companies to keep proper accounts.

3. When Member States require such companies to present their annual accounts to the shareholders or members of the company using a layout, such layout may not go beyond that which is prescribed by this Directive for companies falling within Article 11.'

Article 2

Article 2 (6) of Directive 78/660/EEC is replaced by the following:

'6. Except in relation to companies falling within Article 11, the Member States may authorize or require the disclosure in the annual accounts of other information as well as that which must be disclosed in accordance with this Directive.'

Article 3

The last sentence of Article 4 (1) of Directive 78/660/EEC is replaced by the following:

'Except in relation to companies falling within Article 11, such subdivision or new items may be required by the Member States.'

Article 4

Article 11 of the Directive 78/660/EEC is replaced by the following:

'Article 11

1. Companies which on their balance sheet dates do not exceed the limits of two of the following three criteria:

— balance sheet total: 1 550 000 ECU,
— net turnover: 3 200 000 ECU,
— average number of employees during the financial year: 50

may draw up abridged balance sheets showing only those items preceded by letters and Roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under "Assets" and C under "Liabilities" in Article 9 and in D (II) in Article 10, but in total for each.

Article 15 (3) (a) and (4) shall not apply to abridged balance sheets.

2. However, Member States may simultaneously and in like proportions increase or decrease by up to 50 % the thresholds concerning the balance sheet total and the net turnover referred to in paragraph 1. As to the average number of employees referred to in paragraph 1, Member States may adopt a lower figure with a minimum number of 25.'

(1) OJ No L 193, 18. 7. 1983, p. 1.

Article 5

Article 27 of Directive 78/660/EEC is replaced by the following:

'*Article 27*

1. Member States shall permit companies falling within Article 11, and may permit other companies which on their balance sheet dates do not exceed the limits of two of the following three criteria:

- balance sheet total: 6 200 000 ECU,
- net turnover: 12 800 000 ECU,
- average number of employees during the financial year: 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits:

(a) in Article 23: 1 to 5 inclusive may be combined under one item called "Gross profit or loss";

(b) in Article 24: A (1), A (2) and B (1) to B (4) inclusive may be combined under one item called "Gross profit or loss";

(c) in Article 25: (1), (2), (3) and (6) may be combined under one item called "Gross profit or loss";

(d) in Article 26: A (1), B (1) and B (2) may be combined under one item called "Gross profit or loss".

Article 12 shall apply.

2. However, for the application of this Directive, Member States may simultaneously and in like proportions increase by up to 50 % the thresholds concerning the balance sheet total and the net turnover referred to in paragraph 1.'

Article 6

Article 30 of Directive 78/660/EEC is replaced by the following:

'*Article 30*

Member States shall permit companies falling within Article 11, and may permit other companies, to show taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss in total as one item in the profit and loss account before "Other taxes not shown under the above items". In the case, "profit or loss on ordinary activities after taxation" shall be omitted from the layouts prescribed in Articles 23 to 26.

Where this waiver is applied, companies other than those falling within Article 11 must disclose in the notes on the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the "Extraordinary profit or loss".'

Article 7

The following paragraph is added to Article 43 of Directive 78/660/EEC:

'3. Member States may waive the requirement to provide the information referred to in paragraph 1 (12) and (13) for companies whose administrative or management body consists of only one person.'

Article 8

Article 44 of Directive 78/660/EEC is replaced by the following:

'*Article 44*

1. Companies falling within Article 11 may draw up abridged notes on their accounts without the information referred to in Article 43 (1) (5) to (13). However, the notes must disclose the information referred to in Article 43 (1) in total for all the items concerned.

2. The companies referred to in paragraph 1 shall also be exempt from the obligation to disclose in the notes on the accounts the information referred to in Article 15 (3) (a) and (4), Articles 18, 21 and 29 (2), Article 34 (2), Article 40 (2), and the second subparagraph of Article 42.

3. Article 12 shall apply.'

Article 9

The introductory phase of Article 45 (1) of Directive 78/660/EEC is replaced by the following:

'1. Member States shall permit companies falling within Article 11 and may permit other companies to treat the disclosures prescribed in Article 43 (1) (2) in such a way as:'

Article 10

The following paragraph is added to Article 46 of Directive 78/660/EEC:

'3. Companies falling within Article 11 shall not be required to prepare an annual report, provided that the information referred to in paragraph 2 (a) and (d) is given in the notes on the accounts.'

Article 11

Article 47 of Directive 78/660/EEC is amended as follows:

1. Paragraph 2 is replaced by the following:

'2. Notwithstanding paragraph 1, companies falling within Article 11 may publish:

(a) abridged balance sheets in accordance with Article 11;

(b) abridged notes on the accounts in accordance with Article 44.

Article 12 shall apply.

Such companies shall not be required to publish their profit and loss account or their annual report.'

2. The following paragraph 4 is inserted:

'4. Notwithstanding paragraph 1, subparagraph 1, Member States shall permit companies falling within Article 11 and may permit companies falling within Article 27 to make the accounting documents which must be published in accordance with the present Directive available to the public at the company's registered office. It must be possible for anyone to obtain a copy of these documents upon request, including by mail. The price of such a copy must not exceed its administrative cost.

Member States shall provide that the place where the public can obtain these documents is published by means of a reference, in accordance with Article 3 (4) of Directive 68/151/EEC. Member States shall also provide appropriate sanctions for failure by companies to publish these documents in accordance with the present paragraph.

This paragraph shall not apply to companies having made a public issue of securities.'

Article 12

Article 51 (2) of Directive 78/660/EEC is replaced by the following:

'2. Companies falling within Article 11 shall be exempt from the requirement referred to in paragraphe 1.

Article 12 shall apply.'

SECTION 2

Drawing up and publication of accounts in ECU

Article 13

The following section 11a is inserted in Directive 78/660/EEC:

'SECTION 11a

Drawing up and publication of accounts in ECU

Article 51a

Companies may draw up and publish their accounts in ECU at the exchange rate prevailing on the balance sheet date. The method to be used for conversion into ECU is described in the notes on the accounts.'

Article 14

The following section 5a is inserted in Directive 83/349/EEC:

'SECTION 5a

Drawing up and publication of consolidated accounts in ECU

Article 38a

Consolidated accounts may be drawn up and published in ECU at the exchange rate prevailing on the balance sheet date. The method to be used for conversion into ECU is described in the notes on the consolidated accounts.'

SECTION 3

final provisions

Article 15

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions of this Directive shall first apply to accounts for financial years beginning on 1 January 1992 or during the calendar year 1992.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 16

This Directive is addressed to the Member States.