

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 561 final - SYN 158

Brussels, 29 November 1989

Amended 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 ecus

(presented by the Commission pursuant to Article 149 (3) of the EEC Treaty)

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I. Explanatory memorandum

1. This proposal for a Directive based on Article 54 of the Treaty was initially presented to the Council on 24 October 1988.¹

2. The Economic and Social Committee and the European Parliament delivered their Opinions on 31 March 1989² and 25 May 1989³ respectively.

3. While the Economic and Social Committee asked the Commission to undertake a substantial revision of the proposed amendments to the Fourth Directive, Parliament largely approved the proposal for a Directive subject to a few modifications. This amended proposal coincides for the most part with Parliament's Opinion, but on one specific point it draws on the Opinion of the Economic and Social Committee. The amendments concern the following points:

- in Article 1, with regard to the definition of small closely held companies, it is stated, in line with Parliament's Opinion, that the withholding of consent for a transfer of shares does not affect either the preferential purchase right of the company's shareholders or members, or the right of the person requesting the transfer to have his shares purchased by the company;
- in Article 2, in accordance with the Opinion of the Economic and Social Committee, the wording is amended so as to enable small companies to publish more information than they are required to do by the Fourth Directive;
- in Articles 4 and 5, in conformity with the Opinion of Parliament, the measure of flexibility Member States are allowed in fixing the thresholds for small and medium-sized companies is reduced from 50% to 25%.

1 OJ No C 287, 11.11.1988, p. 5.

2 ESC 437/89, 31.3.1989.

3 EP 133.158, 25.5.1989.

Amended 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 ecus (*)

COM(89) 561 final — SYN 158

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 4 December 1989)

(89/C 318/07)

(*) No C 287, 11. 11. 1988, p. 5.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,	unchanged
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 76/660/EEC (*), 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's resolution of 3 November 1986 (**) and with the Council's resolution of 30 June 1988 on the improvement of the business environment and the promotion of the development of enterprises, in particular SMEs, in the Community (†), which calls more especially for a substantial alleviation of the obligations arising from Directive 78/660/EEC;	

(*) OJ No L 222, 14. 8. 1978, p. 11.

(**) OJ No C 287, 14. 11. 1986, p. 1.

(†) OJ No C 197, 27. 7. 1988, p. 6.

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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 obligations to supply certain items of information that can be regarded as less important for the smaller company; whereas for 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;

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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 granted to him in the notes on the accounts;

unchanged

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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 ecus; 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 ecus 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.

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Exemptions for small and medium-sized companies*Article 1*

unchanged

- (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 **and always provided that the shareholders or members of the company have a preferential right of purchase and that, should consent be withheld, the person requesting the transfer has a right to have his shares purchased by the company;**

unchanged

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1.

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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 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: ECU 1 550 000,
- net turnover: ECU 3 200 000,
- 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 2

unchanged

'6. 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. **However, the possibility of requiring the disclosure of other information in the annual accounts shall not apply to companies falling within Article 11.**

Article 3

unchanged

Article 4

unchanged

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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.'

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: ECU 6 200 000,
- net turnover: ECU 12 800 000,
- 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.'

2. However, Member States may simultaneously and in like proportions increase or decrease by up to 25 % 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.'

Article 5

unchanged

2. However, for the application of this Directive, Member States may simultaneously and in like proportions increase by up to 25 % the thresholds concerning the balance sheet total and the net turnover referred to in paragraph 1.'

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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 tot\$ as one item in the profit and loss account before 'Other taxes not shown under the above items'. In that 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) (6) 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.

Article 6

unchanged

Article 7

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

Article 8

unchanged

unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
3. Article 12 shall apply.'	
<i>Article 9</i>	<i>Article 9</i>
The introductory phrase of Article 45 (1) of Directive 78/660/EEC is replaced by the following:	unchanged
<p>'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:'</p>	
<i>Article 10</i>	<i>Article 10</i>
The following paragraph is added to Article 46 of Directive 78/660/EEC:	unchanged
<p>'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.'</p>	
<i>Article 11</i>	<i>Article 11</i>
Article 47 of Directive 78/660/EEC is amended as follows:	unchanged
1. Paragraph 2 is replaced by the following:	
<p>'2. Notwithstanding paragraph 1, companies falling within Article 11 may publish:</p>	
(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.'	
2. The following paragraph 4 is added:	
<p>'4. Notwithstanding the first subparagraph of paragraph 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.</p>	

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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 paragraph 1.

Article 12 shall apply.'

SECTION 2

Drawing up and publication of accounts in ecus*Article 13*

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

'SECTION 11a

Drawing up and publication of accounts in ecus*Article 51a*

Companies may draw up and publish their accounts in ecus at the exchange rate prevailing on the balance sheet date. The method used for conversion into ecus shall be 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 ecus*Article 38a*

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

Article 12

unchanged

SECTION 2

Drawing up and publication of accounts in ecus*Article 13*

unchanged

Article 14

unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
SECTION 3	SECTION 3
Final positions	Final positions
<i>Article 15</i>	<i>Article 15</i>
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.	unchanged
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.	
<i>Article 16</i>	<i>Article 16</i>
This Directive is addressed to the Member States.	unchanged