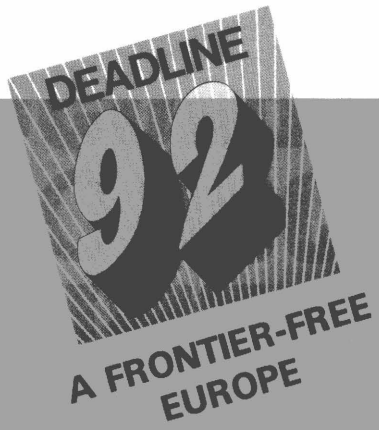
HARMONIZATION OF COMPANY LAW IN THE EUROPEAN COMMUNITY

Measures adopted and proposed

Situation as at 1 January 1989



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(68/151/EEC)
OJ No L 65 of 14.3.1968, p. 8-12)

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FIRST COUNCIL DIRECTIVE

of 9 March 1968

on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community

(68/151/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the General Programme for the abolition of restrictions on freedom of establishment[1], and in particular Title VI thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[2];

Having regard to the Opinion of the Economic and Social Committee[3];

Whereas the co-ordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment is a matter of urgency, especially in regard to companies limited by shares or otherwise having limited liability, since the activities of such companies often extend beyond the frontiers of national territories;

Whereas the co-ordination of national provisions concerning disclosure, the validity of obligations entered into by, and the nullity of, such companies is of special importance, particularly for the purpose of protecting the interests of third parties;

Whereas in these matters Community provisions must be adopted in respect of such companies simultaneously, since the only safeguards they offer to third parties are their assets;

Whereas the basic documents of the company should be disclosed in order that third parties may be able to ascertain their contents and other information concerning the company, especially particulars of the persons who are authorised to bind the company;

Whereas the protection of third parties must be ensured by provisions which restrict to the greatest possible extent the grounds on which obligations entered into in the name of the company are not valid;

Whereas it is necessary, in order to ensure certainty in the law as regards relations between the company and third parties, and also between members, to limit the cases in which nullity can arise and the retroactive effect of a declaration of nullity, and to fix a short time limit within which third parties may enter objection to any such declaration;

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

— *In Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— *In Belgium:*

de naamloze vennootschap, la société anonyme,

de commanditaire vennootschap op aandelen	la société en commandite par actions,
de personenvennootschap met beperkte aansprakelijkheid;	la société de personnes à responsabilité limitée;

[1] OJ No 2, 15.1.1962, p. 36/62.
[2] OJ No 96, 28.5.1966, p. 1519/66.
[3] OJ No 194, 27.11.1964, p. 3248/64.

— *In France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— *In Italy:*

società per azioni, società in accomandita per azioni, società a responsabilità limitata;

— *In Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— *In the Netherlands:*

de naamloze vennootschap, de commanditaire vennootschap op aandelen.

SECTION I

Disclosure

Article 2

1. Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars:

(a) The instrument of constitution, and the statutes if they are contained in a separate instrument;

(b) Any amendments to the instruments mentioned in (a), including any extension of the duration of the company;

(c) After every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date;

(d) The appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:

(i) are authorised to represent the company in dealings with third parties and in legal proceedings;

(ii) take part in the administration, supervision or control of the company.

It must appear from the disclosure whether the persons authorised to represent the company may do so alone or must act jointly;

(e) At least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes;

(f) The balance sheet and the profit and loss account for each financial year. The document containing the balance sheet shall give particulars of the persons who are required by law to certify it.

However, in respect of the *Gesellschaft mit beschränkter Haftung, société de personnes à responsabilité limitée, personenvennootschap met beperkte aansprakelijkheid, société à responsabilité limitée and società a responsabilità limitata* under German, Belgian, French, Italian or Luxembourg law, referred to in Article 1, and the *besloten naamloze vennootschap* under Netherlands law, the compulory application of this provision shall be postponed until the date of implementation of a Directive concerning co-ordination of the contents of balance sheets and of profit and loss accounts and concerning exemption of such of those companies whose balance sheet total is less than specified in the Directive from the obligation to make disclosure, in full or in part, of the said documents. The Council will adopt such a Directive within two years following the adoption of the present Directive;

(g) Any transfer of the seat of the company;

(h) The winding up of the company;

(i) Any declaration of nullity of the company by the courts;

(j) The appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;

(k) The termination of the liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

2. For purposes of paragraph 1 (f), companies which fulfil the following conditions shall be considered as *besloten naamloze vennootschappen:*

(a) They cannot issue bearer shares;

(b) No bearer certificate of registered shares within the meaning of Article 42 (c) of the Netherlands Commercial Code can be issued by any person whatsoever;

(c) Their shares cannot be quoted on a stock exchange;

(d) Their statutes contain a clause requiring approval by the company before the transfer of shares to third parties, except in the case of transfer in the event of death and, if the statutes so provide, in the case of transfer to a spouse, forebears or issue; transfers shall not be in blank, but otherwise each transfer shall be in writing under hand, signed by the transferor and transferee or by notarial act;

(e) Their statutes specify that the company is a *besloten naamloze vennootschap;* the name of the company includes the words *'Besloten Naamloze Vennootschap'* or the initials *'BNV'*.

Article 3

1. In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof.

Copies supplied shall be certified as 'true copies', unless the applicant dispenses with such certification.

4. Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register.

5. The documents and particulars may be relied on by the company as against third parties only after they have been published in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof. However, with regard to transactions taking place before the sixteenth day following the publication, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

6. Member States shall take the necessary measures to avoid any discrepancy between what is disclosed by publication in the press and what appears in the register or file.

However, in cases of discrepancy, the text published in the press may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

7. Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

Article 4

Member States shall prescribe that letters and order forms shall state the following particulars:

— the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register;

— the legal form of the company, the location of its seat and, where appropriate, the fact that the company is being wound up.

Where in these documents mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Article 5

Each Member State shall determine by which persons the disclosure formalities are to be carried out.

Article 6

Member States shall provide for appropriate penalties in case of:

— failure to disclose the balance sheet and profit and loss account as required by Article 2 (1) (f);

— omission from commercial documents of the compulsory particulars provided for in Article 4.

SECTION II

Validity of obligations entered into by a company

Article 7

If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.

Article 8

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorised to represent it shall constitute a bar to any irregularity in their appointment being relied upon as against third parties unless the company proves that such third parties had knowledge thereof.

Article 9

1. Acts done by the organs of the company shall be binding upon it even if those acts are not within

the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

2. The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

3. If the national law provides that authority to represent a company may, in derogation from the legal rules governing the subject, be conferred by the statutes on a single person or on several persons acting jointly, that law may provide that such a provision in the statutes may be relied on as against third parties on condition that it relates to the general power of representation; the question whether such a provision in the statutes can be relied on as against third parties shall be governed by Article 3.

SECTION III

Nullity of the company

Article 10

In all Member States whose laws do not provide for preventive control, administrative or judicial, at the time of formation of a company, the instrument of constitution, the company statutes and any amendments to those documents shall be drawn up and certified in due legal form.

Article 11

The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:

1. Nullity must be ordered by decision of a court of law;

2. Nullity may be ordered only on the following grounds:

   (a) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;

   (b) that the objects of the company are unlawful or contrary to public policy;

   (c) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;

   (d) failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;

   (e) the incapacity of all the founder members;

   (f) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, nullity absolute, nullity relative or declaration of nullity.

Article 12

1. The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 3. Where the national law entitles a third party to challenge the decision, he may do so only within six months of public notice of the decision of the court being given.

2. Nullity shall entail the winding up of the company, as may dissolution.

3. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.

4. The laws of each Member State may make provision for the consequences of nullity as between members of the company.

5. Holders of shares in the capital shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.

SECTION IV

General provisions

Article 13

Member States shall put into force, within eighteen months following notification of this Directive, all

amendments to their laws, regulations or administrative provisions required in order to comply with provisions of this Directive and shall forthwith inform the Commission thereof.

The obligation of disclosure provided for in Article 2 (1) (f) shall not enter into force until thirty months after notification of this Directive in respect of *naamloze vennootschappen* under Netherlands law other than those referred to in the present Article 42 (c) of the Netherlands Commercial Code.

Member States may provide that initial disclosure of the full text of the statutes as amended since the formation of the company shall not be required until the statutes are next amended or until 31 December 1970, whichever shall be the earlier.

Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 9 March 1968.

For the Council

The President

M. COUVE de MURVILLE

Second Council Directive of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (77/91/EEC)
(OJ No L 26 of 31.1.1977, p. 1 - 13)

II

(Acts whose publication is not obligatory)

COUNCIL

SECOND COUNCIL DIRECTIVE

of 13 December 1976

on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

(77/91/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the coordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment, which was begun by Directive 68/151/EEC (3), is especially important in relation to public limited liability companies, because their activities predominate in the economy of the Member States and frequently extend beyond their national boundaries;

Whereas in order to ensure minimum equivalent protection for both shareholders and creditors of public limited liability companies, the coordination of national provisions relating to their formation and to the maintenance, increase or reduction of their capital is particularly important;

Whereas in the territory of the Community, the statutes or instrument of incorporation of a public limited liability company must make it possible for any interested person to acquaint himself with the basic particulars of the company, including the exact composition of its capital;

Whereas Community provisions should be adopted for maintaining the capital, which constitutes the creditors' security, in particular by prohibiting any reduction thereof by distribution to shareholders where the latter are not entitled to it and by imposing limits on the company's right to acquire its own shares;

Whereas it is necessary, having regard to the objectives of Article 54 (3) (g), that the Member States' laws relating to the increase or reduction of capital ensure that the principles of equal treatment of shareholders in the same position and of protection of creditors whose claims exist prior to the decision on reduction are observed and harmonized,

(1) OJ No C 114, 11. 11. 1971, p. 18.
(2) OJ No C 88, 6. 9. 1971, p. 1.
(3) OJ No L 65, 14. 3. 1968, p. 8.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the provisions laid down by law, regulation or administrative action in Member States relating to the following types of company:

— *in Belgium:*
la société anonyme / de naamloze vennootschap;

— *in Denmark:*
aktieselskabet;

— *in France:*
la société anonyme;

— *in Germany:*
die Aktiengesellschaft;

— *in Ireland:*
the public company limited by shares,
the public company limited by guarantee and having a share capital;

— *in Italy:*
la società per azioni;

— *in Luxembourg:*
la société anonyme;

— *in the Netherlands:*
de naamloze vennootschap;

— *in the United Kingdom:*
the public company limited by shares,
the public company limited by guarantee and having a share capital.

The name for any company of the above types shall comprise or be accompanied by a description which is distinct from the description required of other types of companies.

2. The Member States may decide not to apply this Directive to investment companies with variable capital and to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the words 'investment company with variable capital' or 'cooperative' in all documents indicated in Article 4 of Directive 68/151/EEC.

The expression 'investment company with variable capital', within the meaning of this Directive, means only those companies:

— the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets,

— which offer their own shares for subscription by the public, and

— the statutes of which provide that, within the limits of a minimum and maximum capital, they may at any time issue, redeem or resell their shares.

Article 2

The statutes or the instrument of incorporation of the company shall always give at least the following information:

(a) the type and name of the company;

(b) the objects of the company;

(c) — when the company has no authorized capital, the amount of the subscribed capital,

— when the company has an authorized capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorized to commence business, and at the time of any change in the authorized capital, without prejudice to Article 2 (1) (e) of Directive 68/151/EEC;

(d) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;

(e) the duration of the company, except where this is indefinite.

Article 3

The following information at least must appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC:

(a) the registered office;

(b) the nominal value of the shares subscribed and, at least once a year, the number thereof;

(c) the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;

(d) the special conditions if any limiting the transfer of shares;

(e) where there are several classes of shares, the information under (b), (c) and (d) for each class and the rights attaching to the shares of each class;

(f) whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;

(g) the amount of the subscribed capital paid up at the time the company is incorporated or is authorized to commence business;

(h) the nominal value of the shares or, where there is not nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing this consideration;

(i) the identity of the natural or legal persons or companies or firms by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of these documents, have been signed;

(j) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorized to commence business;

(k) any special advantage granted, at the time the company is formed or up to the time it receives authorization to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorization.

Article 4

1. Where the laws of a Member State prescribe that a company may not commence business without authorization, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorization is granted or refused.

2. Paragraph 1 shall not apply to liabilities under contracts concluded by the company conditionally upon its being granted authorization to commence business.

Article 5

1. Where the laws of a Member State require a company to be formed by more than one member, the fact that all the shares are held by one person or that the number of members has fallen below the legal minimum after incorporation of the company shall not lead to the automatic dissolution of the company.

2. If in the cases referred to in paragraph 1, the laws of a Member State permit the company to be wound up by order of the court, the judge having jurisdiction must be able to give the company sufficient time to regularize its position.

3. Where such a winding up order is made the company shall enter into liquidation.

Article 6

1. The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorization to commence business, a minimum capital shall be subscribed the amount of which shall be not less than 25 000 European units of account.

The European unit of account shall be that defined by Commission Decision No 3289/75/ECSC (1). The equivalent in national currency shall be calculated initially at the rate applicable on the date of adoption of this Directive.

2. If the equivalent of the European unit of account in national currency is altered so that the value of the minimum capital in national currency remains less than 22 500 European units of account for a period of one year, the Commission shall inform the Member State concerned that it must amend its legislation to comply with paragraph 1

(1) OJ No L 327, 19. 12. 1975, p. 4.

within 12 months following the expiry of that period. However, the Member State may provide that the amended legislation shall not apply to companies already in existence until 18 months after its entry into force.

3. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in this Article in European units of account in the light of economic and monetary trends in the Community and of the tendency towards allowing only large and medium-sized undertakings to opt for the types of company listed in Article 1 (1).

Article 7

The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of these assets.

Article 8

1. Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.

2. However, Member States may allow those who undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of this transaction.

Article 9

1. Shares issued for a consideration must be paid up at the time the company is incorporated or is authorized to commence business at not less than 25 % of their nominal value or, in the absence of a nominal value, their accountable par.

2. However, where shares are issued for a consideration other than in cash at the time the company is incorporated or is authorized to commence business, the consideration must be transferred in full within five years of that time.

Article 10

1. A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorized to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.

2. The experts' report shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.

3. The expert's report shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

4. Member States may decide not to apply this Article where 90 % of the nominal value, or where there is no nominal value, of the accountable par, of all the shares is issued to one or more companies for a consideration other than in cash, and where the following requirements are met:

(a) with regard to the company in receipt of such consideration, the persons referred to in Article 3 (i) have agreed to dispense with the expert's report;

(b) such agreement has been published as provided for in paragraph 3;

(c) the companies furnishing such consideration have reserves which may not be distributed under the law or the statutes and which are at least equal to the nominal value or, where there is no nominal value, the accountable par of the shares issued for consideration other than in cash;

(d) the companies furnishing such consideration guarantee, up to an amount equal to that indicated in paragraph (c), the debts of the recipient company arising between the time the shares are issued for a consideration other than in cash and one year after the publication of that company's annual accounts for the financial year during which such consideration was furnished. Any transfer of these shares is prohibited within this period;

(e) the guarantee referred to in (d) has been published as provided for in paragraph 3;

(f) the companies furnishing such consideration shall place a sum equal to that indicated in (c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which such consideration was furnished or, if necessary, until such later date as all claims relating to the guarantee referred to in (d) which are submitted during this period have been settled.

Article 11

1. If, before the expiry of a time limit laid down by national law of at least two years from the time the company is incorporated or is authorized to commence business, the company acquires any asset belonging to a person or company or firm referred to in Article 3 (i) for a consideration of not less than one-tenth of the subscribed capital, the acquisition shall be examined and details of it published in the manner provided for in Article 10 and it shall be submitted for the approval of the general meeting.

Member States may also require these provisions to be applied when the assets belong to a shareholder or to any other person.

2. Paragraph 1 shall not apply to acquisitions effected in the normal course of the company's business, to acquisitions effected at the instance or under the supervision of an administrative or judicial authority, or to stock exchange acquisitions.

Article 12

Subject to the provisions relating to the reduction of subscribed capital, the shareholders may not be released from the obligation to pay up their contributions.

Article 13

Pending coordination of national laws at a subsequent date, Member States shall adopt the measures necessary to require provision of at least the same safeguards as are laid down in Articles 2 to 12 in the event of the conversion of another type of company into a public limited liability company.

Article 14

Articles 2 to 13 shall not prejudice the provisions of Member States on competence and procedure relating to the modification of the statutes or of the instrument of incorporation.

Article 15

1. (a) Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes.

(b) Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital referred to in paragraph (a).

(c) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.

(d) The expression 'distribution' used in subparagraphs (a) and (c) includes in particular the payment of dividends and of interest relating to shares.

2. When the laws of a Member State allow the payment of interim dividends, the following conditions at least shall apply:

(a) interim accounts shall be drawn up showing that the funds available for distribution are sufficient,

(b) the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.

3. Paragraphs 1 and 2 shall not affect the provisions of the Member States as regards increases in subscribed capital by capitalization of reserves.

4. The laws of a Member State may provide for derogations from paragraph 1 (a) in the case of investment companies with fixed capital.

The expression 'investment company with fixed capital', within the meaning of this paragraph means only those companies:

— the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets, and

— which offer their own shares for subscription by the public.

In so far as the laws of Member States make use of this option they shall:

(a) require such companies to include the expression 'investment company' in all documents indicated in Article 4 of Directive 68/151/EEC;

(b) not permit any such company whose net assets fall below the amount specified in paragraph 1 (a) to make a distribution to shareholders when on the closing date of the last financial year the company's total assets as set out in the annual accounts are, or following such distribution would become, less than one-and-a-half times the amount of the company's total liabilities to creditors as set out in the annual accounts;

(c) require any such company which makes a distribution when its net assets fall below the amount specified in paragraph 1 (a) to include in its annual accounts a note to that effect.

Article 16

Any distribution made contrary to Article 15 must be returned by shareholders who have received it if the company proves that these shareholders knew of the irregularity of the distributions made to them, or could not in view of the circumstances have been unaware of it.

Article 17

1. In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken.

2. The amount of a loss deemed to be serious within the meaning of paragraph 1 may not be set by the laws of Member States at a figure higher than half the subscribed capital.

Article 18

1. The shares of a company may not be subscribed for by the company itself.

2. If the shares of a company have been subscribed for by a person acting in his own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.

3. The persons or companies or firms referred to in Article 3 (i) or, in cases of an increase in subscribed capital, the members of the administrative or management body shall be liable to pay for shares subscribed in contravention of this Article.

However, the laws of a Member State may provide that any such person may be released from his obligation if he proves that no fault is attributable to him personally.

Article 19

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make such acquisitions subject to at least the following conditions:

(a) authorization shall be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and in particular the maximum number of shares to be acquired, the duration of the period for which the authorization is given and which may not exceed 18 months, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body shall be required to satisfy themselves that at the time when each authorized acquisition is effected the conditions referred to in subparagraphs (b), (c) and (d) are respected;

(b) the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed 10 % of the subscribed capital;

(c) the acquisitions may not have the effect of reducing the net assets below the amount mentioned in Article 15 (1) (a);

(d) only fully paid-up shares may be included in the transaction.

2. The laws of a Member State may provide for derogations from the first sentence of paragraph 1 (a) where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company. In such a case, the next general meeting must be informed by the administrative or management body of the reasons for and nature of the acquisitions effected, of the number and nominal value or, in the absence of a nominal value, the accountable par, of the shares acquired, of the proportion of the subscribed capital which they represent, and of the consideration for these shares.

3. Member States may decide not to apply the first sentence of paragraph 1 (a) to shares acquired by either the company itself or by a person acting in his own name but on the company's behalf, for distribution to that company's employees or to the employees of an associate company. Such shares must be distributed within 12 months of their acquisition.

Article 20

1. Member States may decide not to apply Article 19 to:

(a) shares acquired in carrying out a decision to reduce capital, or in the circumstances referred to in Article 39;

(b) shares acquired as a result of a universal transfer of assets;

(c) fully paid-up shares acquired free of charge or by banks and other financial institutions as purchasing commission;

(d) shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company's object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;

(e) shares acquired from a shareholder in the event of failure to pay them up;

(f) shares acquired in order to indemnify minority shareholders in associated companies;

(g) fully paid-up shares acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares;

(h) fully paid-up shares issued by an investment company with fixed capital, as defined in the second subparagraph of Article 15 (4), and acquired at the investor's request by that company or by an associate company. Article 15 (4) (a) shall apply. These acquisitions may not have the effect of reducing the net assets below the amount of the subscribed capital plus any reserves the distribution of which is forbidden by law.

2. Shares acquired in the cases listed in paragraph 1 (b) to (g) above must, however, be disposed of within not more than three years of their acquisition unless the nominal value or, in the absence of a nominal value, the accountable par of the shares acquired, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10 % of the subscribed capital.

3. If the shares are not disposed of within the period laid down in paragraph 2, they must be cancelled. The laws of a Member State may make this cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction must be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in Article 15 (1) (a).

Article 21

Shares acquired in contravention of Articles 19 and 20 shall be disposed of within one year of their acquisition. Should they not be disposed of within that period, Article 20 (3) shall apply.

Article 22

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make the holding of these shares at all times subject to at least the following conditions:

(a) among the rights attaching to the shares, the right to vote attaching to the company's own shares shall in any event be suspended;

(b) if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall require the annual report to state at least:

(a) the reasons for acquisitions made during the financial year;

(b) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

(c) in the case of acquisition or disposal for a value, the consideration for the shares;

(d) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

Article 23

1. A company may not advance funds, nor make loans, nor provide security, with a view to the acquisition of its shares by a third party.

2. Paragraph 1 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company. However, these transactions may not have the effect of reducing the net assets below the amount specified in Article 15 (1) (a).

3. Paragraph 1 shall not apply to transactions effected with a view to acquisition of shares as described in Article 20 (1) (h).

Article 24

1. The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Articles 19, 20 (1), 22 and 23.

2. The Member States may decide not to apply paragraph 1 to transactions concluded by banks and other financial institutions in the normal course of business.

Article 25

1. Any increase in capital must be decided upon by the general meeting. Both this decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

2. Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with the rules referred to in paragraph 1, may authorize an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed, by the company body empowered to do so. The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.

3. Where there are several classes of shares, the decision by the general meeting concerning the increase in capital referred to in paragraph 1 or the authorization to increase the capital referred to in paragraph 2, shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction.

4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

Article 26

Shares issued for a consideration, in the course of an increase in subscribed capital, must be paid up to at

least 25% of their nominal value or, in the absence of a nominal value, of their accountable par. Where provision is made for an issue premium, it must be paid in full.

Article 27

1. Where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital the consideration must be transferred in full within a period of five years from the decision to increase the subscribed capital.

2. The consideration referred to in paragraph 1 shall be the subject of a report drawn up before the increase in capital is made by one or more experts who are independent of the company and appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies and firms under the laws of each Member State.

Article 10 (2) and (3) shall apply.

3. Member States may decide not to apply paragraph 2 in the event of an increase in subscribed capital made in order to give effect to a merger or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or which is the object of the public offer for the purchase or exchange of shares.

4. Member States may decide not to apply paragraph 2 if all the shares issued in the course of an increase in subscribed capital are issued for a consideration other than in cash to one or more companies, on condition that all the shareholders in the company which receive the consideration have agreed not to have an experts' report drawn up and that the requirements of Article 10 (4) (b) to (f) are met.

Article 28

Where an increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide.

Article 29

1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.

2. The laws of a Member State:

(a) need not apply paragraph 1 above to shares which carry a limited right to participate in distributions within the meaning of Article 15 and/or in the company's assets in the event of liquidation; or

(b) may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 15 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of shareholders of the other classes to be exercised only after the exercise of this right by the shareholders of the class in which the new shares are being issued.

3. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in the national gazette appointed in accordance with Directive 68/151/EEC. However, the laws of a Member State need not provide for such publication where all a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.

4. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

5. The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or

withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limits of the authorized capital. This power may not be granted for a longer period than the power for which provision is made in Article 25 (2).

6. Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercice of the right to subscribe.

7. The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.

Article 30

Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 40 without prejudice to Articles 36 and 37. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The notice convening the meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.

Article 31

Where there are several classes of shares, the decision by the general meeting concerning a reduction in the subscribed capital shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

Article 32

1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision to make the reduction shall be entitled at least to have the right to obtain security for claims which have not fallen due by the date of that publication. The laws of a Member State shall lay down the conditions for the exercise of this right. They may not set aside such right unless the creditor has adequate safeguards, or unless the latter are not necessary in view of the assets of the company.

2. The laws of the Member States shall also stipulate at least that the reduction shall be void or that no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

3. This Article shall apply where the reduction in the subscribed capital is brought about by the total or partial waiving of the payment of the balance of the shareholders' contributions.

Article 33

1. Member States need not apply Article 32 to a reduction in the subscribed capital whose purpose is to offset losses incurred or to include sums of money in a reserve provided that, following this operation, the amount of such reserve is not more than 10% of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders; it may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

2. In the cases referred to in paragraph 1 the laws of the Member States must at least provide for the measures necessary to ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders or discharging shareholders from the obligation to make their contributions.

Article 34

The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 6. However, Member States may permit such a reduction if they also provide that the decision to reduce the subscribed capital may take effect only when the subscribed capital is increased to an amount at least equal to the prescribed minimum.

Article 35

Where the laws of a Member State authorize total or partial redemption of the subscribed capital without

reduction of the latter, they shall at least require that the following conditions are observed:

(a) where the statutes or instrument of incorporation provide for redemption, the latter shall be decided on by the general meeting voting at least under the usual conditions of quorum and majority. Where the statutes or instrument of incorporation do not provide for redemption, the latter shall be decided upon by the general meeting acting at least under the conditions of quorum and majority laid down in Article 40. The decision must be published in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC;

(b) only sums which are available for distribution within the meaning of Article 15 (1) may be used for redemption purposes;

(c) shareholders whose shares are redeemed shall retain their rights in the company, with the exception of their rights to the repayment of their investment and participation in the distribution of an initial dividend on unredeemed shares.

Article 36

1. Where the laws of a Member State may allow companies to reduce their subscribed capital by compulsory withdrawal of shares, they shall require that at least the following conditions are observed:

(a) compulsory withdrawal must be prescribed or authorized by the statutes or instrument of incorporation before subscription of the shares which are to be withdrawn are subscribed for;

(b) where the compulsory withdrawal is merely authorized by the statutes or instrument of incorporation, it shall be decided upon by the general meeting unless it has been unanimously approved by the shareholders concerned;

(c) the company body deciding on the compulsory withdrawal shall fix the terms and manner thereof, where they have not already been fixed by the statutes or instrument of incorporation;

(d) Article 32 shall apply except in the case of fully paid-up shares which are made available to the company free of charge or are withdrawn using sums available for distribution in accordance with Article 15 (1); in these cases, an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the withdrawn shares must be included in a reserve. Except in the event of a reduction in the subscribed capital this reserve may not be distributed to shareholders. It can be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as Member States permit such an operation;

(e) the decision on compulsory withdrawal shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

2. Articles 30 (1), 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

Article 37

1. In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in his own name but on behalf of the company, the withdrawal must always be decided on by the general meeting.

2. Article 32 shall apply unless the shares are fully paid up and are acquired free of charge or using sums available for distribution in accordance with Article 15 (1); in these cases an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the shares withdrawn must be included in a reserve. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders. It may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

3. Articles 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

Article 38

In the cases covered by Articles 35, 36 (1) (b) and 37 (1), when there are several classes of shares, the decision by the general meeting concerning redemption of the subscribed capital or its reduction by withdrawal of shares shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

Article 39

Where the laws of a Member State authorize companies to issue redeemable shares, they shall require that the following conditions, at least, are complied with for the redemption of such shares:

(a) redemption must be authorized by the company's statutes or instrument of incorporation before the redeemable shares are subscribed for;

(b) the shares must be fully paid up;

(c) the terms and the manner of redemption must be laid down in the company's statutes or instrument of incorporation;

(d) redemption can be only effected by using sums available for distribution in accordance with Article 15 (1) or the proceeds of a new issue made with a view to effecting such redemption;

(e) an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the redeemed shares must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; it may be used only for the purpose of increasing the subscribed capital by the capitalization of reserves;

(f) subparagraph (e) shall not apply to redemption using the proceeds of a new issue made with a view to effecting such redemption;

(g) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums available for distribution in accordance with Article 15 (1), or from a reserve other than that referred to in (e) which may not be distributed to shareholders except in the event of a reduction in the subscribed capital; this reserve may be used only for the purposes of increasing the subscribed capital by the capitalization of reserves or for covering the costs referred to in Article 3 (j) or the cost of issuing shares or debentures or for the payment of a premium to holders of redeemable shares or debentures;

(h) notification of redemption shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

Article 40

1. The laws of the Member States shall provide that the decisions referred to in Articles 29 (4) and (5), 30, 31, 35 and 38 must be taken at least by a majority of not less than two-thirds of the votes attaching to the securities or the subscribed capital represented.

2. The laws of the Member States may, however, lay down that a simple majority of the votes specified in paragraph 1 is sufficient when at least half the subscribed capital is represented.

Article 41

1. Member States may derogate from Article 9 (1), Article 19 (1) (a), first sentence, and (b) and from Articles 25, 26 and 29 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.

2. Member States may decide not to apply Article 19 (1) (a), first sentence, and Articles 30, 31, 36, 37, 38 and 39 to companies incorporated under a special law which issue both capital shares and workers' shares, the latter being issued to the company's employees as a body, who are represented at general meetings of shareholders by delegates having the right to vote.

Article 42

For the purposes of the implementation of this Directive, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position.

Article 43

1. Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States may decide not to apply Article 3 (g), (i), (j) and (k) to companies already in existence at the date of entry into force of the provisions referred to in paragraph 1.

They may provide that the other provisions of this Directive shall not apply to such companies until 18 months after that date.

However, this time limit may be three years in the case of Articles 6 and 9 and five years in the case of unregistered companies in the United Kingdom and Ireland.

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

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1976.

For the Council

The President

M. van der STOEL

Third Council Directive of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies (78/855/EEC)
(OJ No L 295 of 20.10.1978, p. 36 - 43)

No L 295/36 Official Journal of the European Communities 20. 10. 78

II

(Acts whose publication is not obligatory)

COUNCIL

THIRD COUNCIL DIRECTIVE

of 9 October 1978

based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies

(78/855/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment (4) was begun with Directive 68/151/EEC (5);

Whereas this coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC (6), and as regards the annual accounts of certain types of companies with Directive 78/660/EEC (7);

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to mergers of public limited liability companies be coordinated and that provision for mergers should be made in the laws of all the Member States;

Whereas in the context of such coordination it is particularly important that the shareholders of merging companies be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC (8);

Whereas creditors, including debenture holders, and persons having other claims on the merging companies must be protected so that the merger does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include mergers so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with mergers must be extended to cover certain legal practices which in important respects are similar to merger, so that the obligation to provide such protection cannot be evaded;

(1) OJ No C 89, 14. 7. 1970, p. 20.
(2) OJ No C 129, 11. 12. 1972, p. 50; OJ No C 95, 28. 4. 1975, p. 12.
(3) OJ No C 88, 6. 9. 1971, p. 18.
(4) OJ No 2, 15. 1. 1962, p. 36/62.
(5) OJ No L 65, 14. 3. 1968, p. 8.
(6) OJ No L 26, 31. 1. 1977, p. 1.
(7) OJ No L 222, 14. 8. 1978, p. 11.
(8) OJ No L 61, 5. 3. 1977, p. 26.

Whereas to ensure certainty in the law as regards relations between the companies concerned, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

— Germany:
die Aktiengesellschaft,

— Belgium:
la société anonyme / de naamloze vennootschap,

— Denmark:
aktieselskaber,

— France:
la société anonyme,

— Ireland:
public companies limited by shares, and public companies limited by guarantee having a share capital,

— Italy:
la società per azioni,

— Luxembourg:
la société anonyme,

— the Netherlands:
de naamloze vennootschap,

— the United Kingdom:
public companies limited by shares, and public companies limited by guarantee having a share capital.

2. The Member States need not apply this Directive to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the word 'cooperative' in all the documents referred to in Article 4 of Directive 68/151/EEC.

3. The Member States need not apply this Directive in cases where the company or companies which are being acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings.

CHAPTER I

Regulation of merger by the acquisition of one or more companies by another and of merger by the formation of a new company

Article 2

The Member States shall, as regards companies governed by their national laws, make provision for rules governing merger by the acquisition of one or more companies by another and merger by the formation of a new company.

Article 3

1. For the purposes of this Directive, 'merger by acquisition' shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

Article 4

1. For the purposes of this Directive, 'merger by the formation of a new company' shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

CHAPTER II

Merger by acquisition

Article 5

1. The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.

2. Draft terms of merger shall specify at least:

(a) the type, name and registered office of each of the merging companies;

(b) the share exchange ratio and the amount of any cash payment;

(c) the terms relating to the allotment of shares in the acquiring company;

(d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

(e) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;

(f) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts referred to in Article 10 (1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

Article 6

Draft terms of merger must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

Article 7

1. A merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this decision shall require a majority of not less than two thirds of the votes attaching either to the shares or to the subscribed capital represented.

The laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented. Moreover, where appropriate, the rules governing alterations to the memorandum and articles of association shall apply.

2. Where there is more than one class of shares, the decision concerning a merger shall be subject to a separate vote by at least each class of shareholders whose rights are affected by the transaction.

3. The decision shall cover both the approval of the draft terms of merger and any alterations to the memorandum and articles of association necessitated by the merger.

Article 8

The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the following conditions are fulfilled:

(a) the publication provided for in Article 6 must be effected, for the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which are to decide on the draft terms of merger;

(b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) at the registered office of the acquiring company;

(c) one or more shareholders of the acquiring company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger. This minimum percentage may not be fixed at more than 5 %. The Member States may, however, provide for the exclusion of non-voting shares from this calculation.

Article 9

The administration or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

The report shall also describe any special valuation difficulties which have arisen.

Article 10

1. One or more experts, acting on behalf of each of the merging companies but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. However,

the laws of a Member State may provide for the appointment of one or more independent experts for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. In the report mentioned in paragraph 1 the experts must in any case state whether in their opinion the share exchange ratio is fair and reasonable. Their statement must at least:

(a) indicate the method or methods used to arrive at the share exchange ratio proposed;

(b) state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such method and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also describe any special valuation difficulties which have arisen.

3. Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.

Article 11

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger:

(a) the draft terms of merger;

(b) the annual accounts and annual reports of the merging companies for the preceding three financial years;

(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date;

(d) the reports of the administrative or management bodies of the merging companies provided for in Article 9;

(e) the reports provided for in Article 10.

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

(a) it shall not be necessary to take a fresh physical inventory;

(b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:

— interim depreciation and provisions,

— material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

Article 12

Protection of the rights of the employees of each of the merging companies shall be regulated in accordance with Directive 77/187/EEC.

Article 13

1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2. To this end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

Article 14

Without prejudice to the rules governing the collective exercise of their rights, Article 13 shall apply to the debenture holders of the merging companies, except where the merger has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

Article 15

Holders of securities, other than shares, to which special rights are attached, must be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased by the acquiring company.

Article 16

1. Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the minutes of the general meetings which decide on the merger and, where appropriate, the merger contract subsequent to such general meetings shall be drawn up and certified in due legal form. In cases where the merger need not be approved by the general meetings of all the merging companies, the draft terms of merger must be drawn up and certified in due legal form.

2. The notary or the authority competent to draw up and certify the document in due legal form must check and certify the existence and validity of the legal acts and formalities required of the company for which he or it is acting and of the draft terms of merger.

Article 17

The laws of the Member States shall determine the date on which a merger takes effect.

Article 18

1. A merger must be publicized in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC, in respect of each of the merging companies.

2. The acquiring company may itself carry out the publication formalities relating to the company or companies being acquired.

Article 19

1. A merger shall have the following consequences *ipso jure* and simultaneously:

(a) the transfer, both as between the company being acquired and the acquiring company and as regards third parties, to the acquiring company of all the assets and liabilities of the company being acquired;

(b) the shareholders of the company being acquired become shareholders of the acquiring company;

(c) the company being acquired ceases to exist.

2. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

(a) by the acquiring company itself or through a person acting in his own name but on its behalf;

or

(b) by the company being acquired itself or through a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by the acquired company to be effective as against third parties. The acquiring company may carry out these formalities itself; however, the laws of the Member States may permit the company being acquired to continue to carry out these formalities for a limited period which cannot, save in exceptional cases, be fixed at more than six months from the date on which the merger takes effect.

Article 20

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.

Article 21

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the experts responsible for drawing up on behalf of that company the report referred to in Article 10 (1) in respect of misconduct on the part of those experts in the performance of their duties.

Article 22

1. The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only:

(a) nullity must be ordered in a court judgment;

(b) mergers which have taken effect pursuant to Article 17 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

(c) nullification proceedings may not be initiated more than six months after the date on which the merger becomes effective as against the person alleging nullity or if the situation has been rectified;

(d) where it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation;

(e) a judgment declaring a merger void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;

(f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;

(g) a judgment declaring a merger void shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date referred to in Article 17;

(h) companies which have been parties to a merger shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in (g).

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a merger to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g) and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 17.

3. The foregoing shall not affect the laws of the Member States on the nullity of a merger pronounced following any supervision other than judicial or administrative preventive supervision of legality.

CHAPTER III

Merger by formation of a new company

Article 23

1. Articles 5, 6, 7 and 9 to 22 shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to merger by formation of a new company. For this purpose, 'merging companies' and 'company being acquired' shall mean the companies which will cease to exist, and 'acquiring company' shall mean the new company.

2. Article 5 (2) (a) shall also apply to the new company.

3. The draft terms of merger and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

4. The Member States need not apply to the formation of a new company the rules governing the verification of any consideration other than cash which are laid down in Article 10 of Directive 77/91/EEC.

CHAPTER IV

Acquisition of one company by another which holds 90 % or more of its shares

Article 24

The Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Chapter II, with the exception of Articles 5 (2) (b), (c) and (d), 9, 10, 11 (1) (d) and (e), 19 (1) (b), 20 and 21.

Article 25

The Member States need not apply Article 7 to the operations specified in Article 24 if the following conditions at least are fulfilled:

(a) the publication provided for in Article 6 must be effected, as regards each company involved in the operation, at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;

(c) Article 8 (c) must apply.

Article 26

The Member States may apply Articles 24 and 25 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if

all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

Article 27

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States need not require approval of the merger by the general meeting of the acquiring company, provided that the following conditions at least are fulfilled:

(a) the publication provided for in Article 6 must be effected, as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;

(b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;

(c) Article 8 (c) must apply.

Article 28

The Member States need not apply Articles 9 to 11 to a merger within the meaning of Article 27 if the following conditions at least are fulfilled:

(a) the minority shareholders of the company being acquired must be entitled to have their shares acquired by the acquiring company;

(b) if they exercise that right, they must be entitled to receive consideration corresponding to the value of their shares;

(c) in the event of disagreement regarding such consideration, it must be possible for the value of the consideration to be determined by a court.

Article 29

The Member States may apply Articles 27 and 28 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company if 90 % or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

CHAPTER V

Other operations treated as mergers

Article 30

Where in the case of one of the operations referred to in Article 2 the laws of a Member State permit a cash payment to exceed 10 %, Chapters II and III and Articles 27, 28 and 29 shall apply.

Article 31

Where the laws of a Member State permit one of the operations referred to in Articles 2, 24 and 30, without all of the transferring companies thereby ceasing to exist, Chapter II, except for Article 19 (1) (c), Chapter III or Chapter IV shall apply as appropriate.

CHAPTER VI

Final provisions

Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within three years of its notification. They shall forthwith inform the Commission thereof.

2. However, provision may be made for a delay of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

3. The Member States need not apply Articles 13, 14 and 15 as regards the holders of convertible debentures and other convertible securities if, at the time when the laws, regulations and administrative provisions referred to in paragraph 1 come into force, the position of these holders in the event of a merger has previously been determined by the conditions of issue.

4. The Member States need not apply this Directive to mergers or to operations treated as mergers for the preparation or execution of which an act or formality

required by national law has already been completed when the provisions referred to in paragraph 1 enter into force.

Article 33

This Directive is addressed to the Member States.

Done at Luxembourg, 9 October 1978.

For the Council

The President

H.-J. VOGEL

Fourth Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC)
(OJ No L 222 of 14.8.1978, p. 11 - 31)

FOURTH COUNCIL DIRECTIVE

of 25 July 1978

based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies

(78/660/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the coordination of national provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used therein and their publication in respect of certain companies with limited liability is of special importance for the protection of members and third parties;

Whereas simultaneous coordination is necessary in these fields for these forms of company because, on the one hand, these companies' activities frequently extend beyond the frontiers of their national territories and, on the other, they offer no safeguards to third parties beyond the amounts of their net assets; whereas, moreover, the necessity for and the urgency of such coordination have been recognized and confirmed by Article 2 (1) (f) of Directive 68/151/EEC (3);

Whereas it is necessary, moreover, to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another;

Whereas annual accounts must give a true and fair view of a company's assets and liabilities, financial position and profit or loss; whereas to this end a mandatory layout must be prescribed for the balance sheet and the profit and loss account and whereas the minimum content of the notes on the accounts and the annual report must be laid down; whereas, however, derogations may be granted for certain companies of minor economic or social importance;

Whereas the different methods for the valuation of assets and liabilities must be coordinated to the extent necessary to ensure that annual accounts disclose comparable and equivalent information;

Whereas the annual accounts of all companies to which this Directive applies must be published in accordance with Directive 68/151/EEC; whereas, however, certain derogations may likewise be granted in this area for small and medium-sized companies;

Whereas annual accounts must be audited by authorized persons whose minimum qualifications will be the subject of subsequent coordination; whereas only small companies may be relieved of this audit obligation;

Whereas, when a company belongs to a group, it is desirable that group accounts giving a true and fair view of the activities of the group as a whole be published; whereas, however, pending the entry into force of a Council Directive on consolidated accounts, derogations from certain provisions of this Directive are necessary;

Whereas, in order to meet the difficulties arising from the present position regarding legislation in certain Member States, the period allowed for the implementation of certain provisions of this Directive must be longer than the period generally laid down in such cases,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and

(1) OJ No C 129, 11. 12. 1972, p. 38.
(2) OJ No C 39, 7. 6. 1973, p. 31.
(3) OJ No L 65, 14. 3. 1968, p. 8.

administrative provisions of the Member States relating to the following types of companies:

— in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— in Belgium:

la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap' op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;

— in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

— in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

— in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

— in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

— in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. Pending subsequent coordination, the Member States need not apply the provisions of this Directive to banks and other financial institutions or to insurance companies.

SECTION 1

General provisions

Article 2

1. The annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. They shall be drawn up clearly and in accordance with the provisions of this Directive.

3. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3, additional information must be given.

5. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

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.

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 3

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons therefor.

Article 4

1. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 10 and 23 to 26 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. Such subdivision or new items may be required by the Member States.

2. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals must be adapted where the special nature of an undertaking so requires. Such adaptations may be required by the Member States of undertakings forming part of a particular economic sector.

3. The balance sheet and profit and loss account items that are preceded by Arabic numerals may be combined where:

(a) they are immaterial in amount for the purposes of Article 2 (3); or

(b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.

4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. The Member States may provide that, where these figures are not comparable, the figure for the preceding financial year must be adjusted. In any case, non-comparability and any adjustment of the figures must be disclosed in the notes on the accounts, with relevant comments.

5. Save where there is a corresponding item for the preceding financial year within the meaning of paragraph 4, a balance sheet or profit and loss account item for which there is no amount shall not be shown.

Article 5

1. By way of derogation from Article 4 (1) and (2), the Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that these layouts give a view of these companies equivalent to that provided for in Article 2 (3).

2. For the purposes of this Directive, 'investment companies' shall mean only:

(a) those companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets;

(b) those companies associated with investment companies with fixed capital if the sole object of the companies so associated is to acquire fully paid shares issued by those investment companies without prejudice to the provisions of Article 20 (1) (h) of Directive 77/91/EEC [1].

3. For the purposes of this Directive, 'financial holding companies' shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the aforegoing without prejudice to their rights as shareholders. The limitations imposed on the activities of these companies must be such that compliance with them can be supervised by an administrative or judicial authority.

Article 6

The Member States may authorize or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

Article 7

Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

SECTION 3

Layout of the balance sheet

Article 8

For the presentation of the balance sheet, the Member States shall prescribe one or both of the

[1] OJ No L 26, 31. 1. 1977, p. 1.

layouts prescribed by Articles 9 and 10. If a Member State prescribes both, it may allow companies to choose between them.

Article 9

Assets

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under 'Liabilities'. In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown as an asset under D (II) (6)).

F. **Loss for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Liabilities

A. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

(unless national law requires that this item be shown under F under 'Assets' or under E under 'Liabilities').

B. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

C. **Creditors**

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year must be shown separately for each item and for the aggregate of these items.)

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under D under 'Liabilities').

D. **Accruals and deferred income**

(unless national law provides for such items to be shown under C (9) under 'Liabilities').

E. **Profit for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Article 10

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under L. In that case, the part of the capital called but not yet paid must appear either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).
6. Prepayments and accrued income (unless national law provides that such items be shown under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand.*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown under D (II) (6)).

F. **Creditors: amounts becoming due and payable within one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

G. **Net current assets/liabilities (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).**

H. **Total assets less current liabilities**

I. **Creditors: amounts becoming due and payable after more than one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

J. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

K. **Accruals and deferred income**

(unless national law provides for such items to be shown under F (9) or I (9) or both).

L. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

Article 11

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 1 000 000 EUA,

— net turnover: 2 000 000 EUA,

— average number of employees during the financial year: 50

to 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 12

1. Where on its balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 11, that fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.

2. For the purposes of translation into national currencies, the amounts in European units of account specified in Article 11 may be increased by not more than 10 %.

3. The balance sheet total referred to in Article 11 shall consist of the assets in A to E under 'Assets' in the layout prescribed in Article 9 or those in A to E in the layout prescribed in Article 10.

Article 13

1. Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts, if such disclosure is essential to the comprehension of the annual accounts.

2. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

Article 14

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee which national law recognizes; specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

SECTION 4

Special provisions relating to certain balance sheet items

Article 15

1. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

2. Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities.

3. (a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes on the accounts.

(b) If, when annual accounts are drawn up in accordance with this Directive for the first

time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this provision must be disclosed in the notes on the accounts.

(c) Where Article 33 is applied, the movements in the various fixed asset items referred to in subparagraph (a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.

4. Paragraph 3 (a) and (b) shall apply to the presentation of 'Formation expenses'.

Article 16

Rights to immovables and other similar rights as defined by national law must be shown under 'Land and buildings'.

Article 17

For the purposes of this Directive, 'participating interest' shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which may not exceed 20 %.

Article 18

Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under 'Prepayments and accrued income'. The Member States may, however, provide that such income shall be included in 'Debtors'. Where such income is material, it must be disclosed in the notes on the accounts.

Article 19

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.

Article 20

1. Provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

2. The Member States may also authorize the creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

3. Provisions for liabilities and charges may not be used to adjust the values of assets.

Article 21

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under 'Accruals and deferred income'. The Member States may, however, provide that such charges shall be included in 'Creditors'. Where such charges are material, they must be disclosed in the notes on the accounts.

SECTION 5

Layout of the profit and loss account

Article 22

For the presentation of the profit and loss account, the Member States shall prescribe one or more of the layouts provided for in Articles 23 to 26. If a Member State prescribes more than one layout, it may allow companies to choose from among them.

Article 23

1. Net turnover.

2. Variation in stocks of finished goods and in work in progress.

3. Work performed by the undertaking for its own purposes and capitalized.

4. Other operating income.
5. (a) Raw materials and consumables.
   (b) Other external charges.
6. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating charges.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
14. Tax on profit or loss on ordinary activities.
15. Profit or loss on ordinary activities after taxation.
16. Extraordinary income.
17. Extraordinary charges.
18. Extraordinary profit or loss.
19. Tax on extraordinary profit or loss.
20. Other taxes not shown under the above items.
21. Profit or loss for the financial year.

Article 24

A. Charges

1. Reduction in stocks of finished goods and in work in progress:
2. (a) raw materials and consumables;
   (b) other external charges.
3. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
4. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
5. Other operating charges.
6. Value adjustments in respect of financial assets and of investments held as current assets.
7. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Increase in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
6. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
7. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
8. Profit or loss on ordinary activities after taxation.
9. Extraordinary income.
10. Profit or loss for the financial year.

Article 25

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
12. Tax on profit or loss on ordinary activities.
13. Profit or loss on ordinary activities after taxation.
14. Extraordinary income.
15. Extraordinary charges.
16. Extraordinary profit or loss.
17. Tax on extraordinary profit or loss.
18. Other taxes not shown under the above items.
19. Profit or loss for the financial year.

Article 26

A. Charges

1. Cost of sales (including value adjustments).
2. Distribution costs (including value adjustments).
3. Administrative expenses (including value adjustments).
4. Value adjustments in respect of financial assets and of investments held as current assets.
5. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Other operating income.
3. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
4. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
5. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
6. Profit or loss on ordinary activities after taxation.
7. Extraordinary income.
8. Profit or loss for the financial year.

Article 27

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 4 million EUA,

— net turnover: 8 million EUA,

— 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.

SECTION 6

Special provisions relating to certain items in the profit and loss account

Article 28

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover.

Article 29

1. Income and charges that arise otherwise than in the course of the company's ordinary activities must be shown under 'Extraordinary income and extraordinary charges'.

2. Unless the income and charges referred to in paragraph 1 are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes on the accounts. The same shall apply to income and charges relating to another financial year.

Article 30

The Member States may permit taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss to be shown in total 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 derogation is applied, companies 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'.

SECTION 7

Valuation rules

Article 31

1. The Member States shall ensure that the items shown in the annual accounts are valued in accordance with the following general principles:

(a) the company must be presumed to be carrying on its business as a going concern;

(b) the methods of valuation must be applied consistently from one financial year to another;

(c) valuation must be made on a prudent basis, and in particular:

(aa) only profits made at the balance sheet date may be included,

(bb) account must be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,

(cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;

(d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;

(e) the components of asset and liability items must be valued separately;

(f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

Article 32

The items shown in the annual accounts shall be valued in accordance with Articles 34 to 42, which are based on the principle of purchase price or production cost.

Article 33

1. The Member States may declare to the Commission that they reserve the power, by way of

derogation from Article 32 and pending subsequent coordination, to permit or require in respect of all companies or any classes of companies:

(a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;

(b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including capital and reserves;

(c) revaluation of tangible fixed assets and financial fixed assets.

Where national law provides for valuation methods as indicated in (a), (b) and (c), it must define their content and limits and the rules for their application.

The application of any such method, the balance sheet and profit and loss account items concerned and the method by which the values shown are calculated shall be disclosed in the notes on the accounts.

2. (a) Where paragraph 1 is applied, the amount of the difference between valuation by the method used and valuation in accordance with the general rule laid down in Article 32 must be entered in the revaluation reserve under 'Liabilities'. The treatment of this item for taxation purposes must be explained either in the balance sheet or in the notes on the accounts.

For purposes of the application of the last subparagraph of paragraph 1, companies shall, whenever the amount of the reserve has been changed in the course of the financial year, publish in the notes on the accounts *inter alia* a table showing:

— the amount of the revaluation reserve at the beginning of the financial year,

— the revaluation differences transferred to the revaluation reserve during the financial year,

— the amounts capitalized or otherwise transferred from the revaluation reserve during the financial year, the nature of any such transfer being disclosed,

— the amount of the revaluation reserve at the end of the financial year.

(b) The revaluation reserve may be capitalized in whole or in part at any time.

(c) The revaluation reserve must be reduced to the extent that the amounts transferred thereto are no longer necessary for the implementation of the valuation method used and the achievement of its purpose.

The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only to the extent that the amounts transferred have been entered as charges in the profit and loss account or reflect increases in value which have been actually realized. These amounts must be disclosed separately in the profit and loss account. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents gains actually realized.

(d) Save as provided under (b) and (c) the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the value adopted for the financial year in question, save that by way of derogation from Articles 4 and 22, the Member States may permit or require that only the amount of the value adjustments arising as a result of the application of the general rule laid down in Article 32 be shown under the relevant items in the layouts prescribed in Articles 23 to 26 and that the difference arising as a result of the valuation method adopted under this Article be shown separately in the layouts. Furthermore, Articles 34 to 42 shall apply *mutatis mutandis*.

4. Where paragraph 1 is applied, the following must be disclosed, either in the balance sheet or in the notes on the accounts, separately for each balance sheet item as provided for in the layouts prescribed in Articles 9 and 10, except for stocks, either:

(a) the amount at the balance sheet date of the valuation made in accordance with the general rule laid down in Article 32 and the amount of the cumulative value adjustments; or

(b) the amount at the balance sheet date of the difference between the valuation made in accordance with this Article and that resulting from the application of Article 32 and, where appropriate, the cumulative amount of the additional value adjustments.

5. Without prejudice to Article 52 the Council shall, on a proposal from the Commission and within seven years of the notification of this Directive, examine and, where necessary, amend this Article in the light of economic and monetary trends in the Community.

Article 34

1. (a) Where national law authorizes the inclusion of formation expenses under 'Assets', they must be written off within a maximum period of five years.

(b) In so far as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.

2. The amounts entered under 'Formation expenses' must be explained in the notes on the accounts.

Article 35

1. (a) Fixed assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.

(c) (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.

(bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.

(cc) The value adjustments referred to in (aa) and (bb) must be charged to the profit and loss account and disclosed separately in the notes on the accounts if they have not been shown separately in the profit and loss account.

(dd) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes on the accounts.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.

(b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.

4. Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under 'Assets' must be disclosed in the notes on the accounts.

Article 36

By way of derogation from Article 35 (1) (c) (cc), the Member States may allow investment companies within the meaning of Article 5 (2) to set off value adjustments to investments directly against 'Capital and reserves'. The amounts in question must be shown separately under 'Liabilities' in the balance sheet.

Article 37

1. Article 34 shall apply to costs of research and development. In exceptional cases, however, the Member States may permit derogations from Article 34 (1) (a). In that case, they may also provide for derogations from Article 34 (1) (b). Such derogations and the reasons for them must be disclosed in the notes on the accounts.

2. Article 34 (1) (a) shall apply to goodwill. The Member States may, however, permit companies to write goodwill off systematically over a limited period exceeding five years provided that this period does not exceed the useful economic life of the asset and is disclosed in the notes on the accounts together with the supporting reasons therefore.

Article 38

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall

value of which is of secondary importance to the undertaking may be shown under 'Assets' at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

Article 39

1. (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.

(c) The Member States may permit exceptional value adjustments where, on the basis of a reasonable commercial assessment, these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes on the accounts.

(d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes on the accounts.

2. The definitions of purchase price and of production cost given in Article 35 (2) and (3) shall apply. The Member States may also apply Article 35 (4). Distribution costs may not be included in production costs.

Article 40

1. The Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or by the 'first in, first out' (FIFO) method, the 'last in, first out' (LIFO) method, or some similar method.

2. Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph 1, differs materially, at the balance sheet date, from the value on the basis of the last known market value prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes on the accounts.

Article 41

1. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes on the accounts.

2. The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

Article 42

Provisions for liabilities and charges may not exceed in amount the sums which are necessary.

The provisions shown in the balance sheet under 'Other provisions' must be disclosed in the notes on the accounts if they are material.

SECTION 8

Contents of the notes on the accounts

Article 43

1. In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

(1) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;

(2) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only. The information

concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50 % of its capital is held (directly or indirectly) by the company;

(3) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of this capital is concerned to Article 2 (1) (e) of Directive 68/151/EEC or to Article 2 (c) of Directive 77/91/EEC;

(4) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;

(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;

(6) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in Articles 9 and 10;

(7) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;

(8) the net turnover within the meaning of Article 28, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;

(9) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in Article 23 (6);

(10) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;

(11) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

(12) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category;

(13) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category.

2. Pending subsequent coordination, the Member States need not apply paragraph 1 (2) to financial holding companies within the meaning of Article 5 (3).

Article 44

The Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

Article 45

1. The Member States may allow the disclosures prescribed in Article 43 (1) (2):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 43 (1) (2) relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed by Article 43 (1) (8).

The Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed by Article 43 (1) (8). Article 12 shall apply.

SECTION 9

Contents of the annual report

Article 46

1. The annual report must include at least a fair review of the development of the company's business and of its position.

2. The report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development;

(c) activities in the field of research and development;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

SECTION 10

Publication

Article 47

1. The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report free of charge upon request.

2. By way of derogation from paragraph 1, the Member States may permit the companies referred to in Article 11 to publish:

(a) 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 all the items concerned; and

(b) abridged notes on their accounts without the explanations required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

In addition, the Member States may relieve such companies from the obligation to publish their profit and loss accounts and annual reports and the opinions of the persons responsible for auditing the accounts.

3. The Member States may permit the companies mentioned in Article 27 to publish:

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10 disclosing separately, either in the balance sheet or in the notes on the accounts:

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6) and D (III) (1) and (2) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities' in Article 9,

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 10,

— the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9, in total for all the items concerned and separately for D (II) (2) and (3) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities',

— the information required in brackets in D (II) in Article 10, in total for all the items

concerned, and separately for D (II) (2) and (3);

(b) abridged notes on their accounts without the information required in Article 43 (1) (5), (6), (8), (10) and (11). However, the notes on the accounts must give the information specified in Article 43 (1) (6) in total for all the items concerned.

This paragraph shall be without prejudice to paragraph 1 in so far as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts.

Article 12 shall apply.

Article 48

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report. If the person responsible for auditing the accounts has made any qualifications or refused to report upon the accounts, that fact must be disclosed and the reasons given.

Article 49

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. The report issued by the person responsible for auditing the accounts may not accompany this publication, but it must be disclosed whether the report was issued with or without qualification, or was refused.

Article 50

The following must be published together with the annual accounts, and in like manner:

— the proposed appropriation of the profit or treatment of the loss,

— the appropriation of the profit or treatment of the loss,

where these items do not appear in the annual accounts.

SECTION 11

Auditing

Article 51

1. (a) Companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts.

(b) The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the same financial year.

2. The Member States may relieve the companies referred to in Article 11 from the obligation imposed by paragraph 1.

Article 12 shall apply.

3. Where the exemption provided for in paragraph 2 is granted the Member States shall introduce appropriate sanctions into their laws for cases in which the annual accounts or the annual reports of such companies are not drawn up in accordance with the requirements of this Directive.

SECTION 12

Final provisions

Article 52

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

Article 53

1. For the purposes of this Directive, the European unit of account shall be that defined by Commission Decision No 3289/75/ECSC of 18 December 1975 (1). The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in European units of account in this Directive, in the light of economic and monetary trends in the Community.

Article 54

This Directive shall not affect laws in the Member States requiring that the annual accounts of companies not falling within their jurisdiction be filed in a register in which branches of such companies are listed.

Article 55

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. The Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 18 months after the end of the period provided for in that paragraph.

That period of 18 months may, however, be five years:

(a) in the case of unregistered companies in the United Kingdom and Ireland;

(b) for purposes of the application of Articles 9 and 10 and Articles 23 to 26 concerning the layouts for the balance sheet and the profit and loss account, where a Member State has brought other layouts for these documents into force not more than three years before the notification of this Directive;

(c) for purposes of the application of this Directive as regards the calculation and disclosure in balance sheets of depreciation relating to assets covered by the asset items mentioned in Article 9, C (II) (2) and (3), and Article 10, C (II) (2) and (3);

(d) for purposes of the application of Article 47 (1) of this Directive except as regards companies already under an obligation of publication under Article 2 (1) (f) of Directive 68/151/EEC. In this case the second subparagraph of Article 47 (1) of this Directive shall apply to the annual accounts and to the opinion drawn up by the person responsible for auditing the accounts;

(e) for purposes of the application of Article 51 (1) of this Directive.

Furthermore, this period of 18 months may be extended to eight years for companies the principal object of which is shipping and which are already in existence on the entry into force of the provisions referred to in paragraph 1.

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

Article 56

The obligation to show in the annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, and the obligation to provide information concerning these undertakings in accordance with Article 13 (2), 14 or 43 (1) (7), shall enter into force at the same time as a Council Directive on consolidated accounts.

Article 57

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directives 68/151/EEC and 77/91/EEC, the Member States need not apply to the dependent companies of any group governed by their national laws the provisions of this Directive concerning the content, auditing and publication of the annual accounts of such dependent companies where the following conditions are fulfilled:

(a) the dominant company must be subject to the laws of a Member State;

(b) all shareholders or members of the dependent company must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the dominant company must have declared that it guarantees the commitments entered into by the dependent company;

(d) the declarations referred to in (b) and (c) must be published by the dependent company in accordance with the first subparagraph of Article 47 (1);

(e) the annual accounts of the dependent company must be consolidated in the group's annual accounts;

(1) OJ No L 327, 19. 12. 1975, p. 4.

(f) the exemption concerning the preparation, auditing and publication of the annual accounts of the dependent company must be disclosed in the notes on the group's annual accounts.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 58

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directive 77/91/EEC, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of this Directive concerning the auditing and publication of the profit and loss accounts of such dominant companies where the following conditions are fulfilled:

(a) this exemption must be published by the dominant company in accordance with Article 47 (1);

(b) the annual accounts of the dominant company must be consolidated in the group's annual accounts;

(c) the exemption concerning the auditing and publication of the profit and loss account of the dominant company must be mentioned in the notes on the group's annual accounts;

(d) the profit or loss of the dominant company, determined in accordance with the principles of this Directive, must be shown in the balance sheet of the dominant company.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 59

Pending subsequent coordination, the Member States may permit the valuation of holdings in affiliated undertakings by the equity method provided the following conditions are fulfilled:

(a) the use of this method of valuation must be disclosed in the notes on the accounts of a company having such holdings;

(b) the amount of any differences existing when such holdings were acquired between their purchase price and the percentage of the capital which they represent, including the affiliated undertaking's reserves, profit and loss and profits and losses brought forward, must be shown separately in the balance sheet or in the notes on the accounts of a company having such holdings;

(c) the purchase price of these holdings shall be increased or reduced in the balance sheet of a company having such holdings by the profits or losses realized by the affiliated undertaking according to the percentage of capital held;

(d) the amounts specified in subparagraph (c) shall be shown each year in the profit and loss account of a company having such holdings as a separate item with an appropriate heading;

(e) when an affiliated undertaking distributes dividends to a company having such holdings, their book values shall be reduced accordingly;

(f) when the amounts shown in the profit and loss account in accordance with subparagraph (d) exceed the amounts of dividends already received or the payment of which can be claimed, the amount of the differences must be placed in a reserve which cannot be distributed to shareholders.

Article 60

Pending subsequent coordination, the Member States may prescribe that investments in which investment companies within the meaning of Article 5 (2) have invested their funds shall be valued on the basis of their market value.

In that case, the Member States may also waive the obligation on investment companies with variable capital to show separately the value adjustments referred to in Article 36.

Article 61

Until the entry into force of a Council Directive on consolidated accounts, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of Article 43 (1) (2) concerning the amount of capital and reserves and the profits and losses of the undertakings concerned if the annual accounts of such undertakings are

consolidated into the group's annual accounts or if the holdings in those undertakings are valued by the equity method.

Article 62

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1978.

For the Council

The President

K. von DOHNANYI

Council Directive of 27 November 1984 revising the amounts expressed in ECU in Directive 78/660/EEC
(84/569/EEC)
(OJ No L 314 of 4.12.1984, p. 28)

COUNCIL DIRECTIVE

of 27 November 1984

revising the amounts expressed in ECU in Directive 78/660/EEC

(84/569/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 (1), and in particular Article 53 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3180/78 (2), as amended by Regulation (EEC) No 2626/84 (3), defined a new unit of account, known as the ECU;

Whereas Regulation (EEC, Euratom) No 3308/80 (4) replaced 'European unit of account' by 'ECU' in all Community legal instruments applying at the time of its entry into force;

Whereas Articles 11 and 27 of Directive 78/660/EEC and, by reference thereto, Article 6 of Directive 83/349/EEC (5) and Articles 20 and 21 of Directive 84/253/EEC (6) lay down limits in ECU for the balance sheet total and net turnover within which the Member States may grant certain derogations from the provisions of those Directives;

Whereas Article 53 (2) of Directive 78/660/EEC stipulates that every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in ECU in that Directive, in the light of economic and monetary trends in the Community;

Whereas, when measured in real terms, the ECU has not retained the value it had at the time of the adoption of Directive 78/660/EEC;

Whereas, to take account of monetary trends with relation to the ECU since that time, equivalents in national currency should be recalculated on the date fixed in Article 53 (2) of Directive 78/660/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. In Article 11:
   - the first indent: 'balance sheet total: 1 000 000 ECU' is replaced by: 'balance sheet total: 1 550 000 ECU';
   - the second indent: 'net turnover: 2 000 000 ECU' is replaced by 'net turnover: 3 200 000 ECU';
2. In Article 27:
   - the first indent: 'balance sheet total: 4 000 000 ECU' is replaced by 'balance sheet total: 6 200 000 ECU';
   - the second indent: 'net turnover: 8 000 000 ECU' is replaced by 'net turnover: 12 800 000 ECU'.
3. (a) Article 53 (1) is replaced by the following:

   '1. For the purpose of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78 (1), as amended by Regulation (EEC) No 2626/84 (2). The equivalent in national currency shall be calculated at the rate obtaining on 25 July 1983.';

   (b) Footnote (1) shall be replaced by the following footnotes:

   '(1) OJ No L 379, 30. 12. 1978, p. 1.
   (2) OJ No L 247, 16. 9. 1984, p. 1.'

Article 2

Member States shall forthwith inform the Commission of any laws, regulations or administrative provisions which they bring into force pursuant to this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 27 November 1984.

For the Council

The President

P. BARRY

(1) OJ No L 222, 14. 8. 1978, p. 11.
(2) OJ No L 379, 30. 12. 1978, p. 1.
(3) OJ No L 247, 16. 9. 1984, p. 1.
(4) OJ No L 345, 20. 12. 1980, p. 1.
(5) OJ No L 193, 18. 7. 1983, p. 1.
(6) OJ No L 126, 12. 5. 1984, p. 20.

Sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty concerning the division of public limited liability companies
(82/891/EEC)
(OJ No L 378 of 31.12.1982, p. 47 - 54)

SIXTH COUNCIL DIRECTIVE

of 17 December 1982

based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies

(82/891/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment (4) was begun with Directive 68/151/EEC (5);

Whereas that coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC (6), as regards the annual accounts of certain types of companies with Directive 78/660/EEC (7), and as regards mergers of public limited liability companies with Directive 78/855/EEC (8);

Whereas Directive 78/855/EEC dealt only with mergers of public limited liability companies and certain operations treated as mergers; whereas, however, the Commission proposal also covered division operations; whereas the opinions of the European Parliament and of the Economic and Social Committee were in favour of the regulation of such operation;

Whereas, because of the similarities which exist between merger and division operations, the risk of the guarantees given with regard to mergers by Directive 78/855/EEC being circumvented can be avoided only if provision is made for equivalent protection in the event of division;

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to divisions of public limited liability companies be coordinated where the Member States permit such operations;

Whereas, in the context of such coordination, it is particularly important that the shareholders of the companies involved in a division be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC (9);

Whereas creditors, including debenture holders, and persons having other claims on the companies involved in a division, must be protected so that the division does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include divisions so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with divisions must be extended to cover certain legal practices which in important respects are similar to division, so that the obligation to provide such protection cannot be evaded;

Whereas to ensure certainty in the law as regards relations between the companies involved in the division, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be

(1) OJ No C 89, 14. 7. 1970, p. 20.
(2) OJ No C 129, 11. 12. 1972, p. 50 and OJ No C 95, 28. 4. 1975, p. 12.
(3) OJ No C 88, 6. 9. 1971, p. 18.
(4) OJ No 2, 15. 1. 1962, p. 36/62.
(5) OJ No L 65, 14. 3. 1968, p. 8.
(6) OJ No L 26, 31. 1. 1977, p. 1.
(7) OJ No L 222, 14. 8. 1978, p. 11.
(8) OJ No L 295, 20. 10. 1978, p. 36.
(9) OJ No L 61, 5. 3. 1977, p. 26.

remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Where Member States permit the companies referred to in Article 1 (1) of Directive 78/855/EEC coming under their laws to carry out division operations by acquisition as defined in Article 2 of this Directive, they shall subject those operations to the provisions of Chapter I of this Directive.

2. Where Member States permit the companies referred to in paragraph 1 to carry out division operations by the formation of new companies as defined in Article 21, they shall subject those operations to the provisions of Chapter II of this Directive.

3. Where Member States permit the companies referred to in paragraph 1 to carry out operations, whereby a division by acquisition as defined in Article 2 (1) is combined with a division by the formation of one or more new companies as defined in Article 21 (1), they shall subject operation to the provisions of Chapter I and Article 22.

4. Article 1 (2) and (3) of Directive 78/855/EEC shall apply.

CHAPTER I

Division by acquisition

Article 2

1. For the purposes of this Directive, 'division by acquisition' shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as 'recipient companies') and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 3 (2) of Directive 78/855/EEC shall apply.

3. In so far as this Directive refers to Directive 78/855/EEC, the expression 'merging companies' shall mean 'the companies involved in a division', the expression 'company being acquired' shall mean 'the company being divided', the expression 'acquiring company' shall mean 'each of the recipient companies' and the expression 'draft terms of merger' shall mean 'draft terms of division'.

Article 3

1. The administrative or management bodies of the companies involved in a division shall draw up draft terms of division in writing.

2. Draft terms of division shall specify at least:

(a) the type, name and registered office of each of the companies involved in the division;

(b) the share exchange ratio and the amount of any cash payment;

(c) the terms relating to the allotment of shares in the recipient companies;

(d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

(e) the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies;

(f) the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts referred to in Article 8 (1) and members of the administrative, management, supervisory or controlling bodies of the companies involved in the division;

(h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;

(i) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based.

3. (a) Where an asset is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or

the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.

(b) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.

Article 4

Draft terms of division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC [1] for each of the companies involved in a division, at least one month before the date of the general meeting which is to decide thereon.

Article 5

1. A division shall require at least the approval of a general meeting of each company involved in the division. Article 7 of Directive 78/855/EEC shall apply with regard to the majority required for such decisions, their scope and the need for separate votes.

2. Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased. In such case, they shall be entitled to receive consideration corresponding to the value of their shares. In the event of a dispute concerning such consideration, it must be possible for the consideration to be determined by a court.

Article 6

The laws of a Member State need not require approval of a division by a general meeting of a recipient company if the following conditions are fulfilled:

(a) the publication provided for in Article 4 must be effected, for each recipient company, at least one month before the date fixed for the general meeting of the company being divided which is to decide on the draft terms of division;

(b) at least one month before the date specified in point (a), all shareholders of each recipient company must be entitled to inspect the documents specified in Article 9 (1) at the registered office of that company;

(c) one or more shareholders of any recipient company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of such recipient company be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of non-voting shares from this calculation.

Article 7

1. This administration or management bodies of each of the companies involved in the division shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares.

2. The report shall also describe any special valuation difficulties which have arisen.

It shall disclose the preparation of the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC [2] for recipient companies and the register where that report must be lodged.

3. The administrative or management bodies of a company being divided must inform the general meeting of that company and the administrative or management bodies of the recipient companies so that they can inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company being divided which is to decide on the draft terms of division.

(1) OJ No L 65, 14. 3. 1968, p. 9.

(2) OJ No L 26, 31. 1. 1977, p. 1.

Article 8

1. One or more experts acting on behalf of each of the companies involved in the division but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of division and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all of the companies involved in a division if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. Article 10 (2) and (3) of Directive 78/855/EEC shall apply.

3. Member States may provide that the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC and the report on the draft terms of division drawn up in accordance with paragraph 1 shall be drawn up by the same expert or experts.

Article 9

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date of the general meeting which is to decide on the draft terms of division:

(a) the draft terms of division;

(b) the annual accounts and annual reports of the companies involved in the division for the preceding three financial years;

(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division, if the latest annual accounts relate to a financial year which ended more than six months before that date;

(d) the reports of the administrative or management bodies of the companies involved in the division provided for in Article 7 (1);

(e) the reports provided for in Article 8.

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

(a) it shall not be necessary to take a fresh physical inventory;

(b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:

— interim depreciation and provisions,

— material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

Article 10

Member States may permit the non-application of Articles 7 and 8 (1) and (2), and of Article 9 (1) (c), (d) and (e) if all the shareholders and the holders of other securities giving the right to vote of the companies involved in a division have so agreed.

Article 11

Protection of the rights of the employees of each of the companies involved in a division shall be regulated in accordance with Directive 77/187/EEC (1).

Article 12

1. The laws of Member States must provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate publication of the draft terms of division and have not yet fallen due at the time of such publication.

2. To that end, the laws of Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided and that of the company to which the obligation will be transferred in accordance with the draft terms of division make such protection necessary and where those creditors do not already have such safeguards.

(1) OJ No L 61, 5. 3. 1977, p. 26.

3. In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph where the division operation is subject to the supervision of a judicial authority in accordance with Article 23 and a majority in number representing three-fourths in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to Article 23 (1) (c).

4. Article 13 (3) of Directive 78/855/EEC shall apply.

5. Without prejudice to the rules governing the collective exercise of their rights, paragraphs 1 to 4 shall apply to the debenture holders of the companies involved in the division except where the division has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

6. Member States may provide that the recipient companies shall be jointly and severally liable for the obligations of the company being divided. In such case they need not apply the foregoing paragraphs.

7. Where a Member State combines the system of creditor protection set out in paragraph 1 to 5 with the joint and several liability of the recipient companies as referred to in paragraph 6, it may limit such joint and several liability to the net assets allocated to each of those companies.

Article 13

Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.

Article 14

Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of divisions or where such supervision does not extend to all the legal acts required for a division, Article 16 of Directive 78/855/EEC shall apply.

Article 15

The laws of Member States shall determine the date on which a division takes effect.

Article 16

1. A division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC in respect of each of the companies involved in a division.

2. Any recipient company may itself carry out the publication formalities relating to the company being divided.

Article 17

1. A division shall have the following consequences *ipso jure* and simultaneously:

(a) the transfer, both as between the company being divided and the recipient companies and as regards third parties, to each of the recipient companies of all the assets and liabilities of the company being divided; such transfer shall take effect with the assets and liabilities being divided in accordance with the allocation laid down in the draft terms of division or in Article 3 (3);

(b) the shareholders of the company being divided become shareholders of one or more of the recipient companies in accordance with the allocation laid down in the draft terms of division;

(c) the company being divided ceases to exist.

2. No shares in a recipient company shall be exchanged for shares held in the company being divided either:

(a) by that recipient company itself or by a person acting in his own name but on its behalf; or

(b) by the company being divided itself or by a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by a company being divided to be effective as against third parties. The recipient company or companies to which such assets, rights or obligations are transferred in accordance with the draft terms of division or with Article 3 (3) may carry out these formalities themselves; however, the laws of Member States may permit a company being divided to continue to carry out these formalities for a limited period which may not, save in exceptional circumstances, be fixed at more than six months from the date on which the division takes effect.

Article 18

The laws of Member States shall at least lay down rules governing the civil liability of members of the administrative or management bodies of a company being divided towards the shareholders of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division and the civil liability of the experts responsible for drawing up for that company the report provided for in Article 8 in respect of misconduct on the part of those experts in the performance of their duties.

Article 19

1. The laws of Member States may lay down nullity rules for divisions in accordance with the following conditions only:

(a) nullity must be ordered in a court judgment;

(b) divisions which have taken effect pursuant to Article 15 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

(c) nullification proceedings may not be initiated more than six months after the date on which the division becomes effective as against the person alleging nullity or if the situation has been rectified;

(d) where it is possible to remedy a defect liable to render a division void, the competent court shall grant the companies involved a period of time within which to rectify the situation;

(e) a judgment declaring a division void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;

(f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;

(g) a judgment declaring a division void shall not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was published and after the date referred to in Article 15;

(h) each of the recipient companies shall be liable for its obligations arising after the date on which the division took effect and before the date on which the decision pronouncing the nullity of the division was published. The company being divided shall also be liable for such obligations; Member States may provide that this liability be limited to the share of net assets transferred to the recipient company on whose account such obligations arose.

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a division to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g), and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 15.

3. The foregoing shall not affect the laws of the Member States on the nullity of a division pronounced following any supervision of legality.

Article 20

Without prejudice to Article 6, Member States need not require the division to be approved by the general meeting of the company being divided where

the recipient companies together hold all the shares of the company being divided and all other securities conferring the right to vote at general meetings of the company being divided, and the following conditions, at least, are fulfilled:

(a) each of the companies involved in the operation must carry out the publication provided for in Article 4 at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of companies involved in the operation must be entitled to inspect the documents specified in Article 9 (1), at their company's registered office. Article 9 (2) and (3) shall also apply;

(c) one or more shareholders of the company being divided holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the company being divided be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of non-voting shares from this calculation;

(d) where a general meeting of the company being divided, required for the approval of the division, is not summoned, the information provided for by Article 7 (3) covers any material change in the asset and liabilities after the date of preparation of the draft terms of division.

CHAPTER II

Division by the formation of new companies

Article 21

1. For the purposes of this Directive, 'division by the formation of new companies' means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 4 (2) of Directive 78/855/EEC shall apply.

Article 22

1. Articles 3, 4, 5 and 7, 8 (1) and (2) and 9 to 19 of this Directive shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to division by the formation of new companies. For this purpose, the expression 'companies involved in a division' shall refer to the company being divided and the expression 'recipient companies' shall refer to each of the new companies.

2. In addition to the information specified in Article 3 (2), the draft terms of division shall indicate the form, name and registered office of each of the new companies.

3. The draft terms of division and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of each of the new companies shall be approved at a general meeting of the company being divided.

4. Member States may provide that the report on the consideration other than in cash as referred to in Article 10 of Directive 77/91/EEC and the report on the draft terms of division as referred to in Article 8 (1) shall be drawn up by the same expert or experts.

5. Member States may provide that neither Article 8, nor Article 9 as regards the expert's report, shall apply where the shares in each of the new companies are allocated to the shareholders of the company being divided in proportion to their rights in the capital of that company.

CHAPTER III

Division under the supervision of a judicial authority

Article 23

1. Member States may apply paragraph 2 where division operations are subject to the supervision of a judicial authority having the power:

(a) to call a general meeting of the shareholders of the company being divided in order to decide upon the division;

(b) to ensure that the shareholders of each of the companies involved in a division have received or can obtain at least the documents referred to in Article 9 in time to examine them before the

date of the general meeting of their company called to decide upon the division. Where a Member State makes use of the option provided for in Article 6 the period must be long enough for the shareholders of the recipient companies to be able to exercise the rights conferred on them by that Article;

(c) to call any meeting of creditors of each of the companies involved in a division in order to decide upon the division;

(d) to ensure that the creditors of each of the companies involved in a division have received or can obtain at least the draft terms of division in time to examine them before the date referred to in (b);

(e) to approve the draft terms of division.

2. Where the judicial authority establishes that the conditions referred to in paragraph 1 (b) and (d) have been fulfilled and that no prejudice would be caused to shareholders or creditors, it may relieve the companies involved in the division from applying:

(a) Article 4, on condition that the adequate system of protection of the interest of the creditors referred to in Article 12 (1) covers all claims regardless of their date;

(b) the conditions referred to in Article 6 (a) and (b) where a Member State makes use of the option provided for in Article 6;

(c) Article 9, as regards the period and the manner prescribed for the inspection of the documents referred to therein.

CHAPTER IV

Other operations treated as divisions

Article 24

Where, in the case of one of the operations specified in Article 1, the laws of a Member State permit the cash payment to exceed 10 %, Chapters I, II and III shall apply.

Article 25

Where the laws of a Member State permit one of the operations specified in Article 1 without the company being divided ceasing to exist, Chapters I, II and III shall apply, except for Article 17 (1) (c).

CHAPTER V

Final provisions

Article 26

1. The Member States shall bring into force before 1 January 1986, the laws, regulations and administrative provisions necessary for them to comply with this Directive provided that on that date they permit the operations to which this Directive applies. They shall immediately inform the Commission thereof.

2. Where, after the date mentioned in paragraph 1, a Member State permits division operations, it shall bring into force the provisions mentioned in that paragraph on the date on which it permits such operations. It shall immediately inform the Commission thereof.

3. However, provision may be made for a period of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

4. Member States need not apply Articles 12 and 13 as regards the holders of convertible debentures and other securities convertible into shares if, at the time when the provisions referred to in paragraph 1 or 2 come into force, the position of these holders in the event of a division has previously been determined by the conditions of issue.

5. Member States need not apply this Directive to divisions or to operations treated as divisions for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 or 2 enter into force.

Article 27

This Directive is addressed to the Member States.

Done at Brussels, 17 December 1982.

For the Council

The President

H. CHRISTOPHERSEN

Seventh Council Directive of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts
(83/349/EEC)
(OJ No L 193 of 18.7.1983, p. 1 - 17)

II

(Acts whose publication is not obligatory)

COUNCIL

SEVENTH COUNCIL DIRECTIVE
of 13 June 1983
based on the Article 54 (3) (g) of the Treaty on consolidated accounts

(83/349/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national

which the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it is sufficient to exceed the limit of one only of the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive;

(1) OJ No C 121, 2. 6. 1976, p. 2.
(2) OJ No C 163, 10. 7. 1978, p. 60.
(3) OJ No C 75, 26. 3. 1977, p. 5.
(4) OJ No L 222, 14. 8. 1978, p. 11.

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole; whereas, therefore, consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Conditions for the preparation of consolidated accounts

Article 1

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

(a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or

(d) is a shareholder in or member of an undertaking, and:

(aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

(bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

2. Apart from the cases mentioned in paragraph 1 above and pending subsequent coordination, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking) holds a participating interest as defined in Article 17 of Directive 78/660/EEC in another undertaking (a subsidiary undertaking), and:

(a) it actually exercises a dominant influence over it; or

(b) it and the subsidiary undertaking are managed on a unified basis by the parent undertaking.

Article 2

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

(a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or

(b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

Article 3

1. Without prejudice to Articles 13, 14 and 15, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

2. For the purposes of paragraph 1 above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

Article 4

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) *in Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) *in Belgium:*

la société anonyme / de naamloze vennootschap – la société en commandite par actions / de commanditaire vennootschap op aandelen – la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) *in Denmark:*

aktieselskaber, kommanditaktieselskaber, anparts-selskaber;

(d) *in France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(e) *in Greece:*

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) *in Ireland:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) *in Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) *in Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(i) *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) *in the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. A Member State may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not established as one of the types of company listed in paragraph 1 above.

Article 5

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent

undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:

(a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;

(b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;

(c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and

(d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.

2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).

(b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

Article 6

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.

2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.

3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

4. This Article shall not apply where one of the undertakings to be consolidated is a company the securities of which have been admitted to official listing on a stock exchange established in a Member State.

5. For 10 years after the date referred to in Article 49 (2), the Member States may multiply the criteria expressed in ECU by up to 2,5 and may increase the average number of persons employed during the financial year to a maximum of 500.

Article 7

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

(a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or

(b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

In so far as the laws of a Member State prescribe consolidation in this case at the time of the adoption of this Directive, that Member State need not apply this provision for 10 years after the date referred to in Article 49 (2).

2. Exemption shall be conditional upon compliance with all of the following conditions:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;

(b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;

(bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;

(c) the notes on the annual accounts of the exempted undertaking must disclose:

(aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and

(bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

3. A Member State need not, however, apply this Article to companies the securities of which have been admitted to official listing on a stock exchange established in a Member State.

Article 8

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10% for public limited liability companies and for limited partnerships with share capital, and at not more than 20% for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

Article 9

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

— the amount of the fixed assets,

— the net turnover,

— the profit or loss for the financial year and the amount of the capital and reserves,

— the average number of persons employed during the financial year.

Article 10

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

— for the information of employees or their representatives, or

— by an administrative or judicial authority for its own purposes.

Article 11

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;

(b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;

(c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.

2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

Article 12

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

(a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or

(b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

Article 13

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).

2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 16 (3).

3. In addition, an undertaking need not be included in consolidated accounts where:

(a) severe long-term restrictions substantially hinder:

(aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or

(bb) the exercise of unified management of that undertaking where it is one of the relationships defined in Article 12 (1); or

(b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or

(c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

Article 14

1. Where the activities of one or more undertakings to be consolidated are so different that their inclusion in the consolidated accounts would be incompatible with the obligation imposed in Article 16 (3), such undertakings must, without prejudice to Article 33 of this Directive, be excluded from the consolidation.

2. Paragraph 1 above shall not be applicable merely by virtue of the fact that the undertakings to be consolidated

are partly industrial, partly commercial, and partly provide services, or because such undertakings carry on industrial or commercial activities involving different products or provide different services.

3. Any application of paragraph 1 above and the reasons therefor must be disclosed in the notes on the accounts. Where the annual or consolidated accounts of the undertakings thus excluded from the consolidation are not published in the same Member State in accordance with Directive 68/151/EEC (1), they must be attached to the consolidated accounts or made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 15

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.

2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.

3. Where use is made of this derogation, either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

SECTION 2

The preparation of consolidated accounts

Article 16

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.

3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.

5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

Article 17

1. Articles 3 to 10, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.

2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

Article 18

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

Article 19

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:

(a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as

(1) OJ No L 65, 14. 3. 1968, p. 8.

possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

(b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.

(c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.

2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

Article 20

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:

(a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91/EEC (1);

(b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and

(c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares issued.

2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.

3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

Article 21

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

Article 22

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

Article 23

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

Article 24

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

Article 25

1. The methods of consolidation must be applied consistently from one financial year to another.

2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

Article 26

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:

(1) OJ No L 26, 31. 1. 1977, p. 1.

(a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.

2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.

3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

Article 27

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.

2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.

3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

Article 28

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

Article 29

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.

2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.

(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given

3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.

4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

Article 30

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item 'goodwill'.

2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

Article 31

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

(a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or

(b) in so far as such a difference corresponds to a realized gain.

Article 32

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.

2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.

3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

Article 33

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.

2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:

(a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or

(b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.

(c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.

(d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2),

they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes on the accounts. A Member State may require such revaluation.

4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.

5. In so far as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).

6. The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit and-loss account as a separate item under an appropriate heading.

7. The eliminations referred to in Article 26 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.

8. Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 16 (3).

Article 34

In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

2. (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.

   (b) The same information must be given in respect of undertakings exluded from a consolidation pursuant to Articles 13 and 14 and. without prejudice to Article 14 (3), an explanation must be given for the exclusion of the undertakings referred to in Article 13.

3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

   (b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.

4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation and those excluded pursuant to Article 14, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of

negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.

6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.

7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organized, these categories and markets differ substantially from one another.

9. (a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.

   (b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.

10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42 of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.

11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.

12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

13. The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

Article 35

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

SECTION 3

The consolidated annual report

Article 36

1. The consolidated annual report must include at least a fair review of the development of business and the position of the undertakings included in the consolidation taken as a whole.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as a whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts.

SECTION 4

The auditing of consolidated accounts

Article 37

1. An undertaking which draws up consolidated accounts must have them audited by one or more persons authorized to audit accounts under the laws of the Member State which govern that undertaking.

2. The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

SECTION 5

The publication of consolidated accounts

Article 38

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.

2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.

3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: 'It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost'.

4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

5. Articles 48 and 49 of Directive 78/660/EEC shall apply.

6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

SECTION 6

Transitional and final provisions

Article 39

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1), account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.

2. Paragraph 1 above shall apply *mutatis mutandis* to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that

it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.

3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:

(a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and

(b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

Article 40

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:

(a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;

(b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.

They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.

2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:

(a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;

(b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.

3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 41

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.

2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.

3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.

4. Articles 2 and 3 (2) shall apply.

5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by

that Member State to draw up consolidated accounts in accordance with the provisions of this Directive, as well as parent undertakings with a similar legal form.

Article 42

The following shall be substituted for Article 56 of Directive 78/660/EEC:

'Article 56

1. The obligation to show in annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

2. The notes on the accounts must also disclose:

(a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;

(b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;

(c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.'

Article 43

The following shall be substituted for Article 57 of Directive 78/660/EEC:

'Article 57

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

(a) the parent undertaking must be subject to the laws of a Member State;

(b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;

(d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;

(e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;

(f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.'

Article 44

The following shall be substituted for Article 58 of Directive 78/660/EEC:

'Article 58

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

(a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;

(b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;

(c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.'

Article 45

The following shall be substituted for Article 59 of Directive 78/660/EEC:

'Article 59

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

(a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or

(b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.

(c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the accounts must indicate whether (a) or (b) above has been used.

(d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.

3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.

4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.

5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item "goodwill".

6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.

(b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.

(c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.

8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).'

Article 46

The following shall be substituted for Article 61 of Directive 78/660/EEC:

'*Article 61*

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

(a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or

(b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.'

Article 47

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Article 48

This Directive shall not affect laws in the Member States requiring that consolidated accounts in which undertakings not falling within their jurisdiction are included be filed in a register in which branches of such undertakings are listed.

Article 49

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.

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

Article 50

1. Five years after the date referred to in Article 49 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1 (1) (d) (second subparagraph), 4 (2), 5, 6, 7 (1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.

2. Paragraph 1 above shall not affect Article 53 (2) of Directive 78/660/EEC.

Article 51

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1983.

For the Council

The President

H. TIETMEYER

Eighth Council Directive of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents
(84/253/EEC)
(OJ No L 126 of 12.5.1984, p. 20 - 26)

No L 126/20 Official Journal of the European Communities 12. 5. 84

II

(Acts whose publication is not obligatory)

COUNCIL

EIGHTH COUNCIL DIRECTIVE

of 10 April 1984

based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents

(84/253/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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, under Directive 78/660/EEC (4), the annual accounts of certain types of company must be audited by one or more persons entitled to carry out such audits from which only the companies mentioned in Article 11 of that Directive may be exempted;

Whereas the aforementioned Directive has been supplemented by Directive 83/349/EEC (5) on consolidated accounts;

Whereas the qualifications of persons entitled to carry out the statutory audits of accounting documents should be harmonized; whereas it should be ensured that such persons are independent and of good repute;

Whereas the high level of theoretical knowledge required for the statutory auditing of accounting documents and the ability to apply that knowledge in practice must be ensured by means of an examination of professional competence;

Whereas the Member States should be given the power to approve persons who, while not fulfilling all the conditions imposed concerning theoretical training, nevertheless have engaged in professional activities for a long time, affording them sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence;

Whereas the Member States should also be authorized to adopt transitional provisions for the benefit of professional persons;

(1) OJ No C 112, 13. 5. 1978, p. 6; OJ No C 317, 18. 12. 1975, p. 6.
(2) OJ No C 140, 5. 6. 1979, p. 154.
(3) OJ No C 171, 9. 7. 1979, p. 30.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) OJ No L 193, 18. 7. 1983, p. 1.

Whereas the Member States will be able to approve both natural persons and firms of auditors which may be legal persons or other types of company, firms or partnership;

Whereas natural persons who carry out the statutory audits of accounting documents on behalf of such firms of auditors must fulfill the conditions of this Directive;

Whereas a Member State will be able to approve persons who have obtained qualifications outside that State which are equivalent to those required by this Directive;

Whereas a Member State which, when this Directive is adopted, recognizes categories of natural persons who fulfil the conditions imposed in this Directive, but whose level of examination of professional competence is below university, final examination level, should be allowed to continue, under certain conditions and until subsequent coordination, to grant such persons special approval for the purpose of carrying out the statutory audits of the accounting documents of companies and bodies of undertakings, of limited size, when such Member State has not made use of the possibilities for exemption afforded by Community Directives in respect of the preparation of consolidated accounts;

Whereas this Directive does not cover either the right of establishment or the freedom to provide services with regard to persons responsible for carrying out the statutory audits of accounting documents;

Whereas recognition of the approval given to nationals of other Member States for the purpose of carrying out such audits will be specifically regulated by Directives on the taking up and pursuit of activities in the fields of finance, economics and accountancy, as well as on the freedom to provide services in those fields,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Scope

Article 1

1. The coordination measures prescribed in this Directive shall apply to the laws, regulations and administrative provisions of the Member States concerning persons responsible for:

(a) carrying out statutory audits of the annual accounts of companies and firms and verifying that the annual reports are consistent with those annual accounts in so far as such audits and such verification are required by Community law;

(b) carrying out statutory audits of the consolidated accounts of bodies of undertakings and verifying that the consolidated annual reports are consistent with those consolidated accounts in so far as such audits and such verification are required by Community law.

2. The persons referred to in paragraph 1 may, depending on the legislation of each Member State, be natural or legal persons or other types of company, firm or partnership (firms of auditors as defined in this Directive).

SECTION II

Rules on approval

Article 2

1. Statutory audits of the documents referred to in Article 1 (1) shall be carried out only by approved persons. The authorities of the Member States may approve only:

(a) natural persons who satisfy at least the conditions laid down in Articles 3 to 19;

(b) firms of auditors which satisfy at least the following conditions:

(i) the natural persons who carry out statutory audits of the documents referred to in Article 1 on behalf of firms of auditors must satisfy at least the conditions imposed in Articles 3 to 19; the Member States may provide that such natural persons must also be approved;

(ii) a majority of the voting rights must be held by natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19 with the exception of Article 11 (1) (b); the Member States may provide that such natural persons or firms of auditors must also be approved. However, those Member States which do not impose such majority at the time of the adoption of this Directive need not impose it provided that all the shares in a firm of auditors are registered and can be transferred only with the agreement of the firm

of auditors and/or, where the Member State so provides, with the approval of the competent authority;

(iii) a majority of the members of the administrative or management body of a firm of auditors must be natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19; the Member States may provide that such natural persons or firms of auditors must also be approved. Where such body has no more than two members, one of those members must satisfy at least those conditions.

Without prejudice to Article 14 (2), the approval of a firm of auditors must be withdrawn when any of the conditions imposed in (b) is no longer fulfilled. The Member States may, however, provide for a period of grace of not more than two years for the purpose of meeting the requirements imposed in (b) (ii) and (iii).

2. For the purposes of this Directive, the authorities of the Member States may be professional associations provided that they are authorized by national law to grant approval as defined in this Directive.

Article 3

The authorities of a Member State shall grant approval only to persons of good repute who are not carrying on any activity which is incompatible, under the law of that Member State, with the statutory auditing of the documents referred to in Article 1 (1).

Article 4

A natural person may be approved to carry out statutory audits of the documents referred to in Article 1 (1) only after having attained university entrance level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university, final examination level organized or recognized by the State.

Article 5

The examination of professional competence referred to in Article 4 must guarantee the necessary level of theoretical knowledge of subjects relevant to the statutory auditing of the documents referred to in Article 1 (1) and the ability to apply such knowledge in practice.

Part at least of that examination must be written.

Article 6

The text of theoretical knowledge included in the examination must cover the following subjects in particular:

(a) — auditing,
- analysis and critical assessment of annual accounts,
- general accounting,
- consolidated accounts,
- cost and management accounting,
- internal audit,
- standards relating to the preparation of annual and consolidated accounts and to methods of valuing balance sheet items and of computing profits and losses,
- legal and professional standards relating to the statutory auditing of accounting documents and to those carrying out such audits;

(b) in so far as they are relevant to auditing:
- company law,
- the law of insolvency and similar procedures,
- tax law,
- civil and commercial law,
- social-security law and law of employment,
- information and computer systems,
- business, general and financial economics,
- mathematics and statistics,
- basic principles of the financial management of undertakings.

Article 7

1. By way of derogation from Articles 5 and 6, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

2. By way of derogation from Article 5, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of

the ability to apply in practice his theoretical knowledge of such subjects when he has received practical training in them attested by an examination or diploma recognized by the State.

Article 8

1. In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee must complete a minimum of three years' practical training in *inter alia* the auditing of annual accounts, consolidated accounts or similar financial statements. At least two-thirds of such practical training must be completed under a person approved under the law of the Member State in accordance with this Directive; the Member State may, however, permit practical training to be carried out under a person approved by the law of another Member State in accordance with this Directive.

2. Member States shall ensure that all training is carried out under persons providing adequate guarantees regarding training.

Article 9

Member States may approve persons to carry out statutory audits of the documents referred to in Article 1 (1) even if they do not fulfil the conditions imposed in Article 4, if they can show either:

(a) that they have, for 15 years, engaged in professional activities which have enabled them to acquire sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence referred to in Article 4, or

(b) that they have, for seven years, engaged in professional activities in those fields and have, in addition, undergone the practical training referred to in Article 8 and passed the examination of professional competence referred to in Article 4.

Article 10

1. Member States may deduct periods of theoretical instruction in the fields referred to in Article 6 from the years of professional activity referred to in Article 9, provided that such instruction is attested by an examination recognized by the State. Such instruction must last not less than one year, nor may it reduce the period of professional activity by more than four years.

2. The period of professional activity as well as the practical training must not be shorter than the programme of theoretical instruction and the practical training required by Article 4.

Article 11

1. The authorities of a Member State may approve persons who have obtained all or part of their qualifications in another State provided they fulfil the following two conditions:

(a) the competent authorities must consider their qualifications equivalent to those required under the law of that Member State in accordance with this Directive; and

(b) they must have furnished proof of the legal knowledge required in that Member State for purposes of the statutory auditing of the documents referred to in Article 1 (1). The authorities of that Member State need not, however, require such proof where they consider legal knowledge obtained in another State sufficient.

2. Article 3 shall apply.

Article 12

1. A Member State may consider to be approved, in accordance with this Directive, those professional persons who were approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).

2. The admission of a natural person to a professional association recognized by the State where, according to the law of that State, such admission confers on the members of that association the right to carry out statutory audits of the documents referred to in Article 1 (1), may be considered as approval by individual act for the purposes of paragraph 1 of this Article.

Article 13

Until the application of the provisions referred to in Article 30 (2), a Member State may consider approved, in accordance with this Directive, those professional persons who have not been approved by individual acts of the competent authorities but who have nevertheless the same qualifications in that Member State as persons

approved by individual acts who on the date of approval are carrying out statutory audits of the documents referred to in Article 1 (1) on behalf of such approved persons.

Article 14

1. A Member State may consider to be approved in accordance with this Directive those firms of auditors which have been approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).

2. The conditions imposed in Article 2 (1) (b) (ii) and (iii) must be complied with no later than the end of a period which may not be fixed at more than five years from the date of application of the provisions referred to in Article 30 (2).

3. Those natural persons who, until the application of the provisions referred to in Article 30 (2), carried out statutory audits of the documents referred to in Article 1 (1) in the name of a firm of auditors may, after that date, be authorized to continue to do so even if they do not fulfil all the conditions imposed by this Directive.

Article 15

Until one year after the application of the provisions referred to in Article 30 (2), those professional persons who have not been approved by individual acts of the competent authorities but who are nevertheless qualified in a Member State to carry out statutory audits of the documents referred to in Article 1 (1) and have in fact carried on such activities until that date may be approved by that Member State in accordance with this Directive.

Article 16

For one year after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of professional persons who, after that date, maintain the right to audit the annual accounting documents of certain types of company or firm not subject to statutory audit but who will no longer be able to carry out such audits upon the introduction of new statutory audits unless special measures are enacted for their benefit.

Article 17

Article 3 shall apply to Articles 15 and 16.

Article 18

1. For six years after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of persons already undergoing professional or practical training when those provisions are applied who, on completion of their training, would not fulfil the conditions imposed by this Directive and would therefore be unable to carry out statutory audits of the documents referred to in Article 1 (1) for which they had been trained.

2. Article 3 shall apply.

Article 19

None of the professional persons referred to in Articles 15 and 16 or of those persons referred to in Article 18 may be approved by way of derogation from Article 4 unless the competent authorities consider that they are fit to carry out statutory audits of the documents referred to in Article 1 (1) and have qualifications equivalent to those of persons approved under Article 4.

Article 20

A Member State which does not make use of the possibility provided for in Article 51 (2) of Directive 78/660/EEC and in which, at the time of the adoption of this Directive, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (a) of this Directive, may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (a) in the case of a company which does not exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, natural persons acting in their own names who:

(a) fulfil the conditions imposed in Articles 3 to 19 of this Directive save that the level of the examination of professional competence may be lower than that required in Article 4 of this Directive; and

(b) have already carried out the statutory audit of the company in question before it exceeded the limits of two of the three criteria established in Article 11 of Directive 78/660/EEC.

However, if a company forms part of a body of undertakings to be consolidated which exceeds the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, such persons may not carry out the statutory audit of the documents referred to in Article 1 (1) (a) of this Directive in the case of that company.

Article 21

A Member State which does not make use of the possibility provided for in Article 6 (1) of Directive 83/349/EEC and in which, when this Directive is adopted, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (b) of this Directive may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (b), a person approved pursuant to Article 20 of this Directive if on the parent undertaking's balance sheet date, the body of undertakings to be consolidated does not, on the basis of those undertakings' latest annual accounts, exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, provided that he is empowered to carry out the statutory audit, of the documents referred to in Article 1 (1) (a) of this Directive, of all the undertakings included in the consolidation.

Article 22

A Member State which makes use of Article 20 may allow the practical training of the persons concerned as referred to in Article 8 to be completed under a person who has been approved under the law of that Member State to carry out the statutory audits referred to in Article 20.

SECTION III

Professional integrity and independence

Article 23

Member States shall prescribe that persons approved for the statutory auditing of the documents referred to in Article 1 (1) shall carry out such audits with professional integrity.

Article 24

Member States shall prescribe that such persons shall not carry out statutory audits which they have required if such persons are not independent in accordance with the law of the Member State which requires the audit.

Article 25

Articles 23 and 24 shall also apply to natural persons who satisfy the conditions imposed in Articles 3 to 19 and carry out the statutory audit of the documents referred to in Article 1 (1) on behalf of a firm of auditors.

Article 26

Member States shall ensure that approved persons are liable to appropriate sanctions when they do not carry out audits in accordance with Articles 23, 24 and 25.

Article 27

Member States shall ensure at least that the members and shareholders of approved firms of auditors and the members of the administrative, management and supervisory bodies of such firms who do not personally satisfy the conditions laid down in Articles 3 to 19 in a particular Member State do not intervene in the execution of audits in any way which jeopardizes the independence of the natural persons auditing the documents referred to in Article 1 (1) on behalf of such firms of auditors.

SECTION IV

Publicity

Article 28

1. Member States shall ensure that the names and addresses of all natural persons and firms of auditors approved by them to carry out statutory audits of the documents referred to in Article 1 (1) are made available to the public.

2. In addition, the following must be made available to the public in respect of each approved firm of auditors:

(a) the names and addresses of the natural persons referred to in Article 2 (1) (b) (i); and

(b) the names and addresses of the members or shareholders of the firm of auditors;

(c) the names and addresses of the members of the administrative or management body of the firm of auditors.

3. Where a natural person is permitted to carry out statutory audits of the documents referred to in Article 1 (1) in the case of a company according to the conditions referred to in Articles 20, 21 and 22, paragraph 1 of this Article shall apply. The category of company or firm or the bodies of undertakings in respect of which such an audit is permitted must, however, be indicated.

SECTION V

Final provisions

Article 29

The Contact Committee set up by Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Article 30

1. Member States shall bring into force before 1 January 1988 the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 shall not apply until 1 January 1990.

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

4. Member States shall also ensure that they communicate, to the Commission, lists of the examinations organized or recognized pursuant to Article 4.

Article 31

This Directive is addressed to the Member States.

Done at Brussels, 10 April 1984.

For the Council

The President

C. CHEYSSON

Council Directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (86/635/EEC)
(OJ No L 372 of 31.12.1986, p. 1 - 17)

31. 12. 86 Official Journal of the European Communities No L 372/1

II

(Acts whose publication is not obligatory)

COUNCIL

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;

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

(1) OJ No C 130, 1. 6. 1981, p. 1, OJ No C 83, 24. 3. 1984, p. 6 and OJ No C 351, 31. 12. 1985, p. 24.
(2) OJ No C 242, 12. 9. 1983, p. 33 and OJ No C 163, 10. 7. 1978, p. 60.
(3) OJ No C 112, 3. 5. 1982, p. 60.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) OJ No L 314, 4. 12. 1984, p. 28.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 322, 17. 12. 1977, p. 30.

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

1. Articles 2, 3, 4 (1), (3) to (5), 6, 7, 13, 14, 15 (3) and (4), 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 45 (1), 46, 48 to 50, 51 (1), 54, 56 to 59 and 61 of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9 and 10 (balance sheet) or to Articles 23 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Articles 4 (balance sheet) or to Articles 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.

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

The Member States shall prescribe the following layout for the balance sheet.

Assets

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

   (b) Other bills eligible for refinancing with central banks (unless national law prescribes that such bills be shown under Assets items 3 and 4)

3. Loans and advances to credit institutions:

   (a) repayable on demand

   (b) other loans and advances

4. Loans and advances to customers

5. Debt securities including fixed-income securities:

   (a) issued by public bodies

   (b) issued by other borrowers, showing separately:

   — own-debt securities (unless national law requires their deduction from liabilities).

6. Shares and other variable-yield securities

7. Participating interests, showing separately:

   — participating interests in credit institutions (unless national law requires their disclosure in the notes on the accounts)

8. Shares in affiliated undertakings, showing separately:

   — shares in credit institutions (unless national law requires their disclosure in the notes on the accounts)

9. Intangible assets as described under Assets headings B and C.I of Article 9 of Directive 78/660/EEC, showing separately:

   — formation expenses, as defined by national law and in so far as national law permits their being shown as an asset (unless national law requires their disclosure in the notes on the accounts)

   — goodwill, to the extent that it was acquired for valuable consideration (unless national law requires its disclosure in the notes on the accounts)

10. Tangible assets as described under Assets heading C.II of Article 9 of Directive 78/660/EEC, showing separately:

    — land and buildings occupied by a credit institution for its own activities (unless national law requires their disclosure in the notes on the accounts)

11. Subscribed capital unpaid, showing separately:

    — called-up capital (unless national law provides for called-up capital to be included under liabilities, in which case capital called but not yet paid must be included either in this Assets item or in Assets item 14)

12. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value to the extent that national law permits their being shown in the balance sheet)

13. Other assets

14. Subscribed capital called but not paid (unless national law requires that called-up capital be shown under Assets item 11

15. Prepayments and accrued income

16. Loss for the financial year (unless national law provides for its inclusion under Liabilities item 14)

Total assets

Liabilities

1. Amounts owed to credit institutions:
   (a) repayable on demand
   (b) with agreed maturity dates or periods of notice
2. Amounts owed to customers:
   (a) savings deposits, showing separately:
      — those repayable on demand and those with agreed maturity dates or periods of notice where national law provides for such a breakdown (unless national law provides for such information to be given in the notes on the accounts)
   (b) other debts
      (ba) repayable on demand
      (bb) with agreed maturity dates or periods of notice
3. Debts evidenced by certificates:
   (a) debt securities in issue
   (b) others
4. Other liabilities
5. Accruals and deferred income
6. Provisions for liabilities and charges:
   (a) provisions for pensions and similar obligations
   (b) provisions for taxation
   (c) other provisions
7. Profit for the financial year (unless national law provides for its inclusion under Liabilities item 14)
8. Subordinated liabilities
9. Subscribed capital (unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately)
10. Share premium account
11. Reserves
12. Revaluation reserve
13. Profit or loss brought forward
14. Profit or loss for the financial year (unless national law requires that this item be shown under Assets item 16 or Liabilities item 7)

Total liabilities

Off-balance sheet items

1. Contingent liabilities, showing separately:
   — acceptances and endorsements
   — guarantees and assets pledged as collateral security
2. Commitments, showing separately:
   — commitments arising out of sale and repurchase transactions

Article 5

The following must be shown separately as sub-items of the items in question:

— claims, whether or not evidenced by certificates, on affiliated undertakings and included in Assets items 2 to 5,

— claims, whether or not evidenced by certificates, on undertakings with which a credit institution is linked by virtue of a participating interest and included in Assets items 2 to 5,

— liabilities, whether or not evidenced by certificates, to affiliated undertakings and included in Liabilities items 1, 2, 3 and 8.

— liabilities, whether or not evidenced by certificates, to undertakings with which a credit institution is linked by virtue of a participating interest and included in Liabilities items 1, 2, 3 and 8.

Article 6

1. Subordinated assets shall be shown separately as sub-items of the items of the layout and the sub-items created in accordance with Article 5.

2. Assets, whether or not evidenced by certificates, are subordinated if, in the event of winding up or bankruptcy, they are to be repaid only after the claims of other creditors have been met.

Article 7

The Member States may permit the disclosure of the information referred to in Articles 5 and 6, duly broken down into the various relevant items, in the notes on the accounts.

Article 8

1. Assets shall be shown under the relevant balance sheet headings even where the credit institution drawing up the

balance sheet has pledged them as security for its own liabilities or for those of third parties or has otherwise assigned them as security to third parties.

2. A credit institution shall not include in its balance sheet assets pledged or otherwise assigned to it as security unless such assets are in the form of cash in the hands of that credit institution.

Article 9

1. Where a loan has been granted by a syndicate consisting of a number of credit institutions, each credit institution participating in the syndicate shall disclose only that part of the total loan which it has itself funded.

2. If in the case of a syndicated loan such as described in paragraph 1 the amount of funds guaranteed by a credit institution exceeds the amount which it has made available, any additional guarantee portion shall be shown as a contingent liability (in Off-balance sheet item 1, second indent).

Article 10

1. Funds which a credit institution administers in its own name but on behalf of third parties must be shown in the balance sheet if the credit institution acquires legal title to the assets concerned. The total amount of such assets and liabilities shall be shown separately or in the notes on the accounts, broken down according to the various Assets and Liabilities items. However, the Member States may permit the disclosure of such funds off the balance sheet provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding-up of a credit institution (or similar proceedings).

2. Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Article 11

Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of 24 hours or one working day has been agreed shall be regarded as repayable on demand.

Article 12

1. Sale and repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the 'transferor') to another credit institution or customer (the 'transferee') of assets, for example, bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price.

2. If the transferee undertakes to return the assets on a date specified or to be specified by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.

3. If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase.

4. In the case of the sale and repurchase transactions referred to in paragraph 2, the assets transferred shall continue to appear in the transferor's balance sheet; the purchase price received by the transferor shall be shown as an amount owed to the transferee. In addition, the value of the assets transferred shall be disclosed in a note in the transferor's accounts. The transferee shall not be entitled to show the assets transferred in his balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor.

5. In the case of the sale and repurchase transactions referred to in paragraph 3, however, the transferor shall not be entitled to show in his balance sheet the assets transferred; those items shall be shown as assets in the transferee's balance sheet. The transferor shall enter under Off-balance sheet item 2 an amount equal to the price agreed in the event of repurchase.

6. No forward exchange transactions, options, transactions involving the issue of debt securities with a commitment to repurchase all or part of the issue before maturity of any similar transactions shall be regarded as sale and repurchase transactions within the meaning of this Article.

SECTION 4

SPECIAL PROVISIONS RELATING TO CERTAIN BALANCE SHEET ITEMS

Article 13

Assets: Item 1 — Cash in hand, balances with central banks and post office banks

1. Cash in hand shall comprise legal tender including foreign notes and coins.

2. This item may include only balances with the central banks and post office banks of the country or countries in

which a credit institution is established. Such balances must be readily available at all times. Other claims on such bodies must be shown as loans and advances to credit institutions (Assets item 3) or as loans and advances to customers (Assets item 4).

Article 14

Assets: Item 2 — Treasury bills and other bills eligible for refinancing with central banks

1. This item shall comprise, under (a), treasury bills and similar securities, i. e. treasury bills, treasury certificates and similar debt instruments issued by public bodies which are eligible for refinancing with the central banks of the country or countries in which a credit institution is established. Those debt instruments issued by public bodies which fail to meet the above condition shall be shown under Assets sub-item 5 (a).

2. This item shall comprise, under (b), bills eligible for refinancing with central banks, i.e. all bills held in portfolio that were purchased from credit institutions or from customers to the extent that they are eligible, under national law, for refinancing with the central banks of the country or countries in which a credit institution is established.

Article 15

Assets: Item 3 — Loans and advances to credit institutions

1. Loans and advances to credit institutions shall comprise all loans and advances arising out of banking transactions to domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Loans and advances to undertakings which do not satisfy the above conditions shall be shown under Assets item 4.

Article 16

Assets: Item 4 — Loans and advances to customers

Loans and advances to customers shall comprise all types of assets in the form of claims on domestic and foreign customers other than credit institutions, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

Article 17

Assets: Item 5 — Debt securities including fixed-income securities

1. This item shall comprise negotiable debt securities including fixed-income securities issued by credit institutions, by other undertakings or by public bodies; such securities issued by the latter, however, shall be included only if they are not to be shown under Assets item 2.

2. Securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities including fixed-income securities.

3. Only repurchased and negotiable own-debt securities may be included in sub-item 5 (b).

Article 18

Liabilities: Item 1 — Amounts owed to credit institutions

1. Amounts owed to credit institutions shall include all amounts arising out of banking transactions owed to other domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings

which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Article 19

Liabilities: Item 2 — Amounts owed to customers

1. Amounts owed to customers shall include all amounts owed to creditors that are not credit institutions within the meaning of Article 18, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. Only deposits which satisfy the conditions laid down in national law shall be treated as savings deposits.

3. Savings bonds shall be shown under the corresponding sub-item only if they are not represented by negotiable certificates.

Article 20

Liabilities: Item 3 — Debts evidenced by certificates

1. This item shall include both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts, *'bons de caisse'* and liabilities arising out of own acceptances and promissory notes.

2. Only acceptances which a credit institution has issued for ist own refinancing and in respect of which it is the first party liable ('drawee') shall be treated as own acceptances.

Article 21

Liabilities: Item 8 — Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not evidenced by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under this item.

Article 22

Liabilities: Item 9 — Subscribed capital

This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors.

Article 23

Liabilities: Item 11 — Reserves

This item shall comprise all the types of reserves listed in Article 9 of Directive 78/660/EEC under Liabilities item A.IV, as defined therein. The Member States may also prescribe other types of reserves if necessary for credit institutions the legal structures of which are not covered by Directive 78/660/EEC.

The types of reserve referred to in the first paragraph shall be shown separately, as sub-items of Liabilities item 11, in the balance sheets of the credit institutions concerned, with the exception of the revaluation reserve which shall be shown under item 12.

Article 24

Off-balance sheet: Item 1 — Contingent liabilities

This item shall comprise all transactions whereby an institution has underwritten the obligations of a third party.

Notes on accounts shall state the nature and amount of any type of contingent liability which is material in relation to an institution's activities.

Liabilities arising out of the endorsement of rediscounted bills shall be included in this item only if national law does not require otherwise. The same shall apply to acceptances other than own acceptances.

Sureties and assets pledged as collateral security shall include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, particularly in respect of sureties and irrevocable letters of credit.

Article 25

Off-balance sheet: Item 2 — Commitments

This item shall include every irrevocable commitment which could give rise to a risk.

Notes on accounts shall state the nature and amount of any type of commitment which is material in relation to an institution's activities.

Commitments arising out of sale and repurchase transactions shall include commitments entered into by a credit institution in the context of sale and repurchase transactions (on the basis of firm agreements to sell with options to repurchase) within the meaning of Article 12 (3).

SECTION 5

LAYOUT OF THE PROFIT AND LOSS ACCOUNT

Article 26

For the presentation of the profit and loss account, the Member States shall prescribe one or both of the layouts provided for in Articles 27 and 28. If a Member State prescribes both layouts it may allow undertakings to choose between them.

Article 27

Vertical layout

1. Interest receivable and similar income, showing separately that arising from fixed-income securities
2. Interest payable and similar charges
3. Income from securities:
   (a) Income from shares and other variable-yield securities
   (b) Income from participating interests
   (c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income
8. General administrative expenses:
   (a) Staff costs, showing separately:
      — wages and salaries
      — social security costs, with a separate indication of those relating to pensions
   (b) Other administrative expenses
9. Value adjustments in respect of Assets items 9 and 10
10. Other operating charges
11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after tax
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Extraordinary profit or loss after tax
22. Other taxes not shown under the preceeding items
23. Profit or loss for the financial year

Article 28

Horizontal layout

A. *Charges*

1. Interest payable and similar charges
2. Commissions payable
3. Net loss on financial operations
4. General administrative expenses:
   (a) Staff costs, showing separately:
      — wages and salaries
      — social security costs, with a separate indication of those relating to pensions
   (b) Other administrative expenses
5. Value adjustments in respect of Assets items 9 and 10
6. Other operating charges

7. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

8. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

9. Tax on profit or loss on ordinary activities

10. Profit or loss on ordinary activities after tax

11. Extraordinary charges

12. Tax on extraordinary profit or loss

13. Extraordinary loss after tax

14. Other taxes not shown under the preceding items

15. Profit for the financial year

B. *Income*

1. Interest receivable and similar income, showing separately that arising from fixed-income securities

2. Income from securities:

   (a) Income from shares and other variable-yield securities

   (b) Income from participating interests

   (c) Income from shares in affiliated undertakings

3. Commissions receivable

4. Net profit on financial operations

5. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

6. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

7. Other operating income

8. Profit or loss on ordinary activities after tax

9. Extraordinary income

10. Extraordinary profit after tax

11. Loss for the financial year

SECTION 6

SPECIAL PROVISIONS RELATING TO CERTAIN ITEMS IN THE PROFIT AND LOSS ACCOUNT

Article 29

Article 27, items 1 and 2 (vertical layout)

Article 28, items A 1 and B 1 (horizontal layout)

Interest receivable and similar income and interest payable and similar charges.

These items shall include all profits and losses arising out of banking activities, including:

(1) all income from assets entered under Assets items 1 to 5 in the balance sheet, however calculated. Such income shall also include income arising from the spreading on a time basis of the discount on assets acquired at an amount below, and liabilities contracted at an amount above, the sum payable at maturity;

(2) all charges arising out of liabilities entered under Liabilities items 1, 2, 3 and 8, however calculated. Such charges shall also include charges arising from the spreading on a time basis of the premium on assets acquired at an amount above, and liabilities contracted at an amount below, the sum payable at maturity;

(3) income and charges resulting from covered forward contracts, spread over the actual duration of the contract and similar in nature to interest;

(4) fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

Article 30

Article 27, item 3 (vertical layout)

Article 28, item B 2 (horizontal layout)

Income from shares and other variable-yield securities, from participating interests, and from shares in affiliated undertakings

This item shall comprise all dividends and other income from variable-yield securities, from participating interests and from shares in affiliated undertakings. Income from shares in investment companies shall also be included under this item.

Article 31

Article 27, items 4 and 5 (vertical layout)

Article 28, items A 2 and B 3 (horizontal layout)

Commissions receivable and commissions payable

Without prejudice to Article 29, commissions receivable shall include income in respect of all services supplied to third parties, and commissions payable shall include charges for services rendered by third parties, in particular

— commissions for guarantees, loans administration on behalf of other lenders and securities transactions on behalf of third parties,

— commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities,

— commissions for foreign currency transactions and for the sale and purchase of coin and precious metals on behalf of third parties,

— commissions charged for brokerage services in connection with savings and insurance contracts and loans.

Article 32

Article 27, item 6 (vertical layout)

Article 28, item A 3 or item B 4 (horizontal layout)

Net profit or net loss on financial operations.

This item covers:

1. the net profit or loss on transactions in securities which are not held as financial fixed assets together with value adjustments and value re-adjustments on such securities, taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article; however, in those Member States which exercise the option provided for in Article 37, these net profits or losses and value adjustments and value re-adjustments shall be included only in so far as they relate to securities included in a trading portfolio;

2. the net profit or loss on exchange activities, without prejudice to Article 29, point 3;

3. the net profits and losses on other buying and selling operations involving financial instruments, including precious metals.

Article 33

Article 27, items 11 and 12 (vertical layout)

Article 28, items A 7 and B 5 (horizontal layout)

Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments.

1. These items shall include, on the one hand, charges for value adjustments in respect of loans and advances to be shown under Assets items 3 and 4 and provisions for contingent liabilities and for commitments to be shown under Off-balance sheet items 1 and 2 and, on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.

2. In those Member States which exercise the option provided for in Article 37, this item shall also include the net profit or loss on transactions in securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article. The nomenclature of this item shall be adapted accordingly.

3. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

4. Value adjustments in respect of loans and advances to credit institutions, to customers, to undertakings with which a credit institution is linked by virtue of participating interests and to affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting-off pursuant to paragraph 3.

Article 34

Article 27, items 13 and 14 (vertical layout)

Article 28, items A 8 and B 5 (horizontal layout)

Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.

1. These items shall include, on the one hand, charges for value adjustments in respect of assets shown in Assets items 5 to 8 and, on the other hand, all the amounts written back following earlier value adjustments, in so far as the charges and income relate to transferable securities held as financial fixed assets as defined in Article 35 (2), participating interests and shares in affiliated undertakings.

2. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

3. Value adjustments in respect of these transferable securities, participating interests and shares in affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting off pursuant to paragraph 2.

SECTION 7

VALUATION RULES

Article 35

1. Assets items 9 and 10 must always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are intended for use on a continuing basis in the normal course of an undertakings's activities.

2. Where reference is made to financial fixed assets in Section 7 of Directive 78/660/EEC, this term shall in the case of credit institutions be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking's activities.

3. (a) Debt securities including fixed-income securities held as financial fixed assets shall be shown in the balance sheet at purchase price. The Member States may, however, require or permit such debt securities to be shown in the balance sheet at the amount repayable at maturity.

(b) Where the purchase price of such debt securities exceeds the amount repayable at maturity the amount of the difference must be charged to the profit and loss account. The Member States may, however, require or permit the amount of the difference to be written off in instalments so that it is completely written off by the time when the debt securities are repaid. The difference must be shown separately in the balance sheet or in the notes on the accounts.

(c) Where the purchase price of such debt securities is less than the amount repayable at maturity, the Member States may require or permit the amount of the difference to be released to income in instalments over the period remaining until repayment. The difference must be shown separately in the balance sheet or in the notes on the accounts.

Article 36

1. Where transferable securities which are not held as financial fixed assets are shown in the balance sheet at purchase price, credit institutions shall disclose in the notes on their accounts the difference between the purchase price and the higher market value of the balance sheet date.

2. The Member States may, however, require or permit those transferable securities to be shown in the balance sheet at the higher market value at the balance sheet date. The difference between the purchase price and the higher market value shall be disclosed in the notes on the accounts.

Article 37

1. Article 39 of Directive 78/660/EEC shall apply to the valuation of credit institutions' loans and advances, debt securities, shares and other variable-yield securities which are not held as financial fixed assets.

2. Pending subsequent coordination, however, the Member States may permit:

(a) loans and advances to credit institutions and customers (Assets items 3 and 4) and debt securities, shares and other variable-yield securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio to be shown at a value lower than that which would result from the application of Article 39 (1) of Directive 78/660/EEC, where that is required by the prudence dictated by the particular risks associated with banking. Nevertheless, the difference between the two values must not be more than 4 % of the total amount of the assets mentioned above after application of the aforementioned Article 39;

(b) that the lower value resulting from the application of subparagraph (a) be maintained until the credit institution decides to adjust it;

(c) where a Member State exercises the option provided for in subparagraph (a), neither Article 36 (1) of this Directive nor Article 40 (2) of Directive 78/660/EEC shall apply.

Article 38

1. Pending subsequent coordination, those Member States which exercise the option provided for in Article 37 must permit and those Member States which do not exercise that option may permit the introduction of a Liabilities item 6A entitled 'Fund for general banking risks'. That item shall include those amounts which a credit institution decides to put aside to cover such risks where that is required by the particular risks associated with banking.

2. The net balance of the increases and decreases of the 'Fund for general banking risks' must be shown separately in the profit and loss account.

Article 39

1. Assets and liabilities denominated in foreign currency shall be translated at the spot rate of exchange ruling on the balance sheet date. The Member States my, however, require or permit assets held as financial fixed assets and tangible and intangible assets, not covered or not specifically covered in either the spot or forward markets, to be translated at the rates ruling on the dates of their acquisition.

2. Uncompleted forward and spot exchange transactions shall be translated at the spot rates of exchange ruling on the balance sheet date.

The Member States may, however, require forward transactions to be translated at the forward rate ruling on the balance sheet date.

3. Without prejudice to Article 29 (3), the differences between the book values of the assets, liabilities and forward transactions and the amounts produced by translation in accordance with paragraphs 1 and 2 shall be shown in the profit and loss account. The Member States may, however, require or permit differences produced by translation in accordance with paragraphs 1 and 2 to be included, in whole or in part, in reserves not available for distribution, where they arise on assets held as financial fixed assets, on tangible and intangible assets and on any transactions undertaken to cover those assets.

4. The Member States may provide that positive translation differences arising out of forward transactions, assets or liabilities not covered or not specifically covered by other forward transactions, or by assets or liabilities shall not be shown in the profit and loss account.

5. If a method specified in Article 59 of Directive 78/660/EEC is used, the Member States may provide that any translation differences shall be transferred, in whole or in part, directly to reserves. Positive and negative translation differences transferred to reserves shall be shown separately in the balance sheet or in the notes on the accounts.

6. The Member States may require or permit translation differences arising on consolidation out of the re-translation of an affiliated undertaking's capital and reserves or the share of a participating interest's capital and reserves at the beginning of the accounting period to be included, in whole or in part, in consolidated reserves, together with the translation differences arising on the translation of any transactions undertaken to cover that capital and those reserves.

7. The Member States may require or permit the income and expenditure of affiliated undertakings and participating interests to be translated on consolidation at the average rates of exchange ruling during the accounting period.

SECTION 8

CONTENTS OF THE NOTES ON THE ACCOUNTS

Article 40

1. Article 43 (1) of Directive 78/660/EEC shall apply, subject to Article 37 of this Directive and to the following provisions.

2. In addition to the information required under Article 43 (1) (5) of Directive 78/660/EEC, credit institutions shall disclose the following information relating to Liabilities item 8 (Subordinated liabilities):

(a) in respect of each borrowing which exceeds 10 % of the total amount of the subordinated liabilities:

  (i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;

  (ii) whether there are any circumstances in which early repayment is required;

  (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.

(b) an overall indication of the rules governing other borrowings.

3. (a) In place of the information required under Article 43 (1) (6) of Directive 78/660/EEC, credit

institutions shall in the notes on their accounts state separately for each of the Assets items 3 (b) and 4 and the Liabilities items 1 (b), 2 (a), 2 (b) (bb) and 3 (b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

— not more than three months,

— more than three months but not more than one year,

— more than one year but not more than five years,

— more than five years.

For Assets item 4, loans and advances on call and at short notice must also be shown.

If loans and advances or liabilities involve payment by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

However, for five years after the date referred to in Article 47 (2) the Member States may require or permit the listing by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. In that event, where a credit institution has acquired an existing loan not evidenced by a certificate, the Member States shall require classification of that loan to be based on the remaining maturity as at the date on which it was acquired. For the purposes of this subparagraph, the originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment; the period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made; if loans and advances or liabilities are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or liabilities arose and the date on which the last instalment falls due. Credit institutions shall also indicate for the balance sheet items referred to in this subparagraph what proportion of those assets and liabilities will become due within one year of the balance sheet date.

(b) Credit institutions shall, in respect of Assets item 5 (Debt securities including fixed-income securities) and Liabilities item 3 (a) (Debt securities in issue), indicate what proportion of assets and liabilities will become due within one year of the balance sheet date.

(c) The Member States may require the information referred to in subparagraphs (a) and (b) to be given in the balance sheet.

(d) Credit institutions shall give particulars of the assets which they have pledged as security for their own liabilities or for those of third parties (including contingent liabilities); the particulars should be in sufficient detail to indicate for each Liabilities item and for each Off-balance sheet item the total amount of the assets pledged as security.

4. Where credit institutions have to provide the information referred to in Article 43 (1) (7) of Directive 78/660/EEC in Off-balance sheet items, such information need not be repeated in the notes on the accounts.

5. In place of the information required under Article 43 (1) (8) of Directive 78/660/EEC, a credit institution shall indicate in the notes on its accounts the proportion of its income relating to items 1, 3, 4, 6 and 7 of Article 27 or to items B 1, B 2, B 3, B 4 and B 7 of Article 28 by geographical markets, in so far as, taking account of the manner in which the credit institution is organized, those markets differ substantially from one another. Article 45 (1) (b) of Directive 78/660/EEC shall apply.

6. The reference in Article 43 (1) (9) of Directive 78/660/EEC to Article 23 (6) of that Directive shall be deemed to be a reference to Article 27 (8) or Article 28 (A 4) of this Directive.

7. By way of derogation from Article 43 (1) (13) of Directive 78/660/EEC, credit institutions need disclose only the amounts of advances and credits granted to the members of their administrative, managerial and supervisory bodies, and the commitments entered into on their behalf by way of guarantees of any kind. That information must be given in the form of a total for each category.

Article 41

1. The information prescribed in Article 15 (3) of Directive 78/660/EEC must be given in respect of assets held as fixed assets as defined in Article 35 of this Directive. The obligation to show value adjustments separately shall not, however, apply where a Member State has permitted set-offs between value adjustments pursuant to Article 34 (2) of this Directive. In that event value adjustments may be combined with other items.

2. The Member States shall require credit institutions to give the following information as well in the notes on their accounts:

(a) a breakdown of the transferable securities shown under Assets items 5 to 8 into listed and unlisted securities;

(b) a breakdown of the transferable securities shown under Assets items 5 and 6 into securities which, pursuant to Article 35, are or are not held as financial fixed assets and the criterion used to distinguish between the two categories of transferable securities;

(c) the value of leasing transactions, apportioned between the relevant balance sheet items;

(d) a breakdown of Assets item 13, Liabilities item 4, items 10 and 18 in the vertical layout or A 6 and A 11 in the horizontal layout and items 7 and 17 in the vertical layout or B 7 and B 9 in the horizontal layout in the profit and loss account into their main component amounts, where such amounts are important for the purpose of assessing the annual accounts, as well as explanations of their nature and amount;

(e) the charges paid on account of subordinated liabilities by a credit institution in the year under review;

(f) the fact that an institution provides management and agency services to third parties where the scale of business of that kind is material in relation to the institution's activities as a whole;

(g) the aggregate amounts of assets and of liabilities denominated in foreign currencies, translated into the currency in which the annual accounts are drawn up;

(h) a statement of the types of unmatured forward transactions outstanding at the balance sheet date indicating, in particular, for each type of transaction, whether they are made to a material extent for the purpose of hedging the effects of fluctuations in interest rates, exchange rates and market prices, and whether they are made to a material extent for dealing purposes. These types of transaction shall include all those in connection with which the income or expenditure is to be included in Article 27, item 6, Article 28, items A 3 or B 4 or Article 29 (3), for example, foreign currencies, precious metals, transferable securities, certificates of deposit and other assets.

SECTION 9

PROVISIONS RELATING TO CONSOLIDATED ACCOUNTS

Article 42

1. Credit institutions shall draw up consolidated accounts and consolidated annual reports in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.

2. Insofar as a Member State does not have recourse to Article 5 of Directive 83/349/EEC, paragraph 1 of this Article shall also apply to parent undertakings the sole object of which is to acquire holdings in subsidiary undertakings and to manage such holdings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly credit institutions.

Article 43

1. Directive 83/349/EEC shall apply, subject to Article 1 of this Directive and paragraph 2 of this Article.

2. (a) Articles 4, 6, 15 and 40 of Directive 83/349/EEC shall not apply.

(b) The Member States may make application of Article 7 of Directive 83/349/EEC subject to the following additional conditions:

— the parent undertaking must have declared that it guarantees the commitments entered into by the exempted undertaking; the existence of that declaration shall be disclosed in the accounts of the exempted undertaking;

— the parent undertaking must be a credit institution within the meaning of Article 2 (1) (a) of this Directive.

(c) The information referred to in the first two indents of Article 9 (2) of Directive 83/349/EEC, namely:

— the amount of the fixed assets and

— the net turnover

shall be replaced by:

— the sum of items 1, 3, 4, 6 and 7 in Article 27 or B 1, B 2, B 3, B 4 and B 7 in Article 28 of this Directive.

(d) Where, as a result of applying Article 13 (3) (c) of Directive 83/349/EEC, a subsidiary undertaking which is a credit institution is not included in consolidated accounts but where the shares of that undertaking are temporarily held as a result of a financial assistance operation with a view to the reorganization or rescue of the undertaking in question, the annual accounts of that undertaking shall be attached to the consolidated accounts and additional information shall be given in the notes on the accounts concerning the nature and terms of the financial assistance operation.

(e) A Member State may also apply Article 12 of Directive 83/349/EEC to two or more credit institutions which are not connected as described in Article 1 (1) or (2) of that Directive but are managed on a unified basis other than pursuant to a

contract or provisions in the memorandum or articles of association.

(f) Article 14 of Directive 83/349/EEC, with the exception of paragraph 2, shall apply subject to the following provision.

Where a parent undertaking is a credit institution and where one or more subsidiary undertakings to be consolidated do not have that status, those subsidiary undertakings shall be included in the consolidation if their activities are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, the management of unit trusts, the management of dataprocessing services or any other similar activity.

(g) For the purposes of the layout of consolidated accounts:

— Articles 3, 5 to 26 and 29 to 34 of this Directive shall apply;

— the reference in Article 17 of Directive 83/349/EEC to Article 15 (3) of Directive 78/660/EEC shall apply to the assets deemed to be fixed assets pursuant to Article 35 of this Directive.

(h) Article 34 of Directive 83/349/EEC shall apply in respect of the contents of the notes on consolidated accounts, subject to Articles 40 and 41 of this Directive.

SECTION 10

PUBLICATION

Article 44

1. The duly approved annual accounts of credit institutions, together with the annual reports and the reports by the persons responsible for auditing the accounts shall be published as laid down by national law in accordance with Article 3 of Directive 68/151/EEC [1].

National law may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report on request. The price of such a copy must not exceed its administrative cost.

2. Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual reports and the reports by the persons responsible for auditing the accounts.

3. However, where a credit institution which has drawn up annual accounts or consolidated accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraphs 1 and 2 of this Article as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its registered office or, in the absence of a registered office, at its principal place of business. It must be possible to obtain copies of such documents on request. The prices of such copies must not exceed their administrative cost.

4. The annual accounts and consolidated accounts of a credit institution must be published in every Member State in which that credit institution has branches within the meaning of the third indent of Article 1 of Directive 77/780/EEC. Such Member States may require that those documents be published in their official languages.

5. The Member States shall provide for appropriate sanctions for failure to comply with the publication rules referred to in this Article.

SECTION 11

AUDITING

Article 45

A Member State need not apply Article 2 (1) (b) (iii) of Directive 84/253/EEC [2] to public savings banks where the statutory auditing of the documents of those undertakings referred to in Article 1 (1) of that Directive is reserved to an existing supervisory body for those savings banks at the time of the entry into force of this Directive and where the person responsible complies at least with the conditions laid down in Article 3 to 9 of Directive 84/253/EEC.

SECTION 12

FINAL PROVISIONS

Article 46

The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall, when meeting as constituted appropriately, also have the following functions:

[1] OJ No L 65, 14. 3. 1968, p. 8.

[2] OJ No L 126, 12. 5. 1984, p. 20.

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

Article 47

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31 December 1990. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January 1993 or during the calendar year 1993.

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

Article 48

Five years after the date referred to in Article 47 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise all those provisions of this Directive which provide for Member State options, together with Articles 2 (1), 27, 28 and 41, in the light of the experience acquired in applying this Directive and in particular of the aims of greater transparency and harmonization of the provisions referred to by this Directive.

Article 49

This Directive is addressed to the Member States.

Done at Brussels, 8 December 1986.

For the Council

The President

N. LAWSON

Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)
(OJ No L 199 of 31.7.1985, p. 1 - 9)

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2137/85
of 25 July 1985
on the European Economic Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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 a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishmend and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

(1) OJ No C 14, 15. 2. 1974, p. 30 and OJ No C 103, 28. 4. 1978, p. 4.
(2) OJ No C 163, 11. 7. 1977, p. 17.
(3) OJ No C 108, 15. 5. 1975, p. 46.

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented *vis-à-vis* third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

— social and labour laws,

— competition law,

— intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.

2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself.

Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

(a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;

(b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;

(c) employ more than 500 persons;

(d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;

(e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:

(a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central adminsitration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;

(b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:

(a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or

(b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or

(c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5

A contract for the formation of a grouping shall include at least:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;

(b) the official address of the grouping;

(c) the objects for which the grouping is formed;

(d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;

(e) the duration of the grouping, except where this is indefinite.

Article 6

A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39 (1).

Article 7

A contract for the formation of a grouping shall be filed at the registry referred to in Article 6.

The following documents and particulars must also be filed at that registry:

(a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;

(b) notice of the setting up or closure of any establishment of the grouping;

(c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;

(d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;

(e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22 (1);

(f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;

(g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;

(h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35 (2);

(i) any proposal to transfer the official address, as referred to in Article 14 (1);

(j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26 (2).

Article 8

The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:

(a) the particulars which must be included in the contract for the formation of a grouping, pursuant to Article 5, and any amendments thereto;

(b) the number, date and place of registration as well as notice of the termination of that registration;

(c) the documents and particulars referred to in Article 7 (b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

Article 9

1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions laid down by the national law applicable pursuant to Article 3 (5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1).

2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

Article 10

Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

Article 11

Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the *Official Journal of the European Communities* after it has been published in the gazette referred to in Article 39 (1).

Article 12

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

The official address must be fixed either:

(a) where the grouping has its central administration, or

(b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

(1) OJ No L 65, 14. 3. 1968, p. 8.

Article 13

The official address of a grouping may be transferred within the Community.

When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

Article 14

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

Article 15

1. Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.

2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9 (1).

Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16

1. The organs of a grouping shall be the members acting collectively and the manager or managers.

A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.

2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17

1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.

2. A unanimous decision by the members shall be required to:

(a) alter the objects of a grouping;

(b) alter the number of votes allotted to each member;

(c) alter the conditions for the taking of decisions;

(d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;

(e) alter the contribution by every member or by some members to the grouping's financing;

(f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;

(g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions

for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.

4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

Article 18

Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records.

Article 19

1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.

No person may be a manager of a grouping if:

— by virtue of the law applicable to him, or

— by virtue of the internal law of the State in which the grouping has its official address, or

— following a judicial or administrative decision made or recognized in a Member State

he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.

2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7 (d) to represent them.

If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.

The restrictions imposed in paragraph 1 shall also apply to those representatives.

3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 (c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against thrid parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1) only if it is published in accordance with Article 8.

Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

Article 23

No grouping may invite investment by the public.

Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liablity.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

Article 25

Letters, order forms and similar documents must indicate legibly:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;

(b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;

(c) the grouping's official address;

(d) where applicable, that the managers must act jointly;

(e) where applicable, that the grouping is in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.

2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9 (1), only if it is published in accordance with Article 8.

Article 27

1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

Article 28

1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4 (1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

Article 29

As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 30

Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.

Article 31

1. A grouping may be wound up by a decision of its members ordering its winding up. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping.

2. A grouping must be wound up by a decision of its members:

(a) noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or

(b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.

Where, three months after one of the situation referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

3. A grouping must also be wound up by a decision of its members or of the remaining member when the conditions laid down in Article 4 (2) are no longer fulfilled.

4. After a grouping has been wound up by decision of its members, the manager or managers must take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 32

1. On application by any person concerned or by a competent authority, in the event of the infringement of Articles 3, 12 or 31 (3), the court must order a grouping to be wound up, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On applications by a member, the court may order a grouping to be wound up on just and proper grounds.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the grouping acts in contravention of that State's public interest, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

Article 33

When a member ceases to belong to a grouping for any reason other than the assignment of his rights in accordance with the conditions laid down in Article 22 (1), the value of his rights and obligations shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

The value of the rights and obligations of a departing member may not be fixed in advance.

Article 34

Without prejudice to Article 37 (1), any member who ceases to belong to a grouping shall remain answerable, in accordance with the conditions laid down in Article 24, for the debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

Article 35

1. The winding up of a grouping shall entail its liquidation.

2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.

3. A grouping shall retain its capacity, within the meaning of Article 1 (2), until its liquidation is concluded.

4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

Article 36

Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

Article 37

1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

Article 38

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Article 39

1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8 (c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the *Official Journal of the European Communities* pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

Article 40

The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

Article 41

1. The Member States shall take the measures requried by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4 (4). The Commission shall inform the other Member States.

Article 42

1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

Article 43

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1985.

For the Council

The President

J. POOS

II. MEASURES PROPOSED

Amended proposal for a Fifth Directive founded on Article 54(3)(g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs
(OJ No C 240 of 9.9.1983, p. 2 - 38)

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs (1)

(Submitted by the Commission to the Council pursuant to Article 149 (2) of the EEC Treaty on 19 August 1983)

(1) OJ No C 131, 13. 12. 1972, p. 49 or Bulletin of the European Communities (Supplement) 10/72.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Proposal for a Fifth Directive to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the EEC Treaty, as regards the structure of sociétés anonymes and the powers and obligations of their organs	**Amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs**
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	Unchanged.
Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,	
Having regard to the proposal from the Commission,	Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Parliament,	Having regard to the opinion of the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee,	Having regard to the opinion of the Economic and Social Comittee (3),
Whereas the coordination provided for in Article 54 (3) (g) was begun by Directive 68/151/EEC of 9 March 1968 governing the disclosure, validity of obligations entered into by the representative organs and the nullity of sociétés anonymes, sociétés en commandite par actions and sociétés à responsabilité limitée (*);	Whereas the coordination provided for in Article 54 (3) (g) was begun by **Council** Directive 68/151/EEC (4) governing the disclosure, validity of obligations entered into by the representative organs, and the nullity of **public limited companies and private limited companies;**
Whereas the coordination of national laws relating to such limited liability companies was continued by Directive ... of ... (1) on the annual accounts;	Whereas the coordination of national laws relating to such limited liability companies was continued by **Council** Directive **78/660/EEC** (5) **on the annual accounts of such companies and by Council Directive 83/349/EEC** (6) **on consolidated accounts;**

(*) Where the French terms are used in the recitals of this proposal, they are to be taken to include a reference to the corresponding types of company existing in each of the 10 Member States.

(1) OJ No C 7, 28. 1. 1972.

(1) OJ No C 131, 13. 12. 1972, p. 49.
(2) OJ No C 149, 14. 6. 1982, p. 17.
(3) OJ No C 109, 19. 9. 1974, p. 9.
(4) OJ No L 65, 14. 3. 1968, p. 8.
(5) OJ No L 222, 14. 8. 1978, p. 11.
(6) OJ No L 193, 18. 7. 1983, p. 1.

ORIGINAL PROPOSAL

Whereas, further, the coordination of laws relating to sociétés anonymes must be given priority because these companies, much more than others, carry on cross-frontier activities;

Whereas the laws of the Member States relating to the formation and capital of sociétés anonymes were coordinated by Directive ... of ... (1) and those relating to mergers of such companies were coordinated by Directive ... of ... (2);

Whereas so that the protection afforded to the interests of members and others is made equivalent, the laws of the Member States relating to the structure of sociétés anonymes and to the powers and obligations of their organs must be coordinated;

Whereas in the fields aforesaid equivalent legal conditions must be created in the Community for sociétés anonymes;

Whereas so far as concerns the organization of the administration of this type of company two different sets of arrangements at present obtain in the Community; whereas one of these provides for one administrative organ only while the other provides for two, namely a management organ responsible for managing the business of the company and an organ responsible for controlling the management body; whereas in practice, even under the arrangement which provides for only one administrative organ, a *de facto* distinction is made between active members who manage the business of the company and passive members who confine themselves to supervision; whereas in order to delimit clearly the responsibilities of the persons who are charged respectively with one or other of these duties it is preferable that there be separate organs whose responsibility it is to carry them out; whereas, further, the two-tier system will facilitate the formation of sociétés anonymes by members or groups of members from different Member States and, thereby, interpenetration of undertakings within the Community; whereas to this end the introduction of the two-tier system on an optional basis would not be sufficient; whereas that structure must be made compulsory for all sociétés anonymes;

(1) OJ No C 48, 24. 4. 1970.
(2) OJ No C 89, 14. 7. 1970.

AMENDED PROPOSAL

Whereas further coordination of laws relating to public limited companies has been given priority owing to their relative importance as regards cross-frontier economic activities;

Whereas, **accordingly,** the laws of the Member States relating to the formation and capital of **public limited companies** were coordinated by **Council Directive 77/91/EEC** (1) and those relating to mergers **and divisions** of such companies were coordinated by **Council Directives 78/855/EEC** (2) **and 82/891/EEC** (3) respectively;

Whereas, so that the protection afforded to the interests of members and others is made equivalent, the laws of the Member States relating to the structure of **public limited companies** and to the powers and obligations of their organs must also be coordinated;

Whereas, in the fields aforesaid, equivalent legal conditions must be created in the Community for **competing public limited companies;**

Whereas, so far as concerns the organization of the administration of this type of company, two different sets of arrangements at present obtain in the Community; whereas one of these provides for one administrative organ only while the other provides for two, namely a management organ responsible for managing the business of the company and an organ responsible for controlling the management body; whereas, in practice, even under the arrangement which provides for only one administrative organ, a *de facto* distinction is **often** made between **executive** members who manage the business of the company and **non-executive** members who confine themselves to supervision; **whereas in both systems a clear delimitation is desirable between the responsibilities of the persons charged with one or other of these duties; whereas the general introduction of such a distinction will facilitate the formation of public limited companies** by members or groups of members from different Member States and, thereby, interpenetration of undertakings within the Community; **whereas the general introduction of the two-tier system on a compulsory basis is for the time being impracticable though such systems should be made generally available at least as an option for public limited companies; whereas one-tier systems may therefore be maintained provided that they are endowed with certain characteristics designed to harmonize their functioning with that of two-tier structures;**

(1) OJ No L 26, 31. 1. 1977, p. 1.
(2) OJ No L 295, 20. 10. 1978, p. 36.
(3) OJ No L 378, 31. 12. 1982, p. 47.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas the laws of certain Member States provide for worker participation within the supervisory body but no such provision exists in other Member States; whereas differences in the laws relating to this field must be eliminated not least because they constitute a barrier to the application of the Community rules which are necessary to facilitate transnational operations involving reconstruction and interpenetration of undertakings, in particular in so far as concerns the giving of effect to Article 220 of the Treaty which provides *inter alia* for international merger and transfer of the seat; whereas in order to make provision for worker participation in appointing and dismissing members of the supervisory organ the Directive does not make rules uniform for all the Member States but leaves them to choose between a number of equivalent arrangements;	Whereas the laws of certain Member States provide for **employee** participation within the supervisory **or administrative organ** but no such provision exists in other Member States; **whereas provision should be made for such participation in all Member States, but in some Member States employee participation through a body representing company employees or through collectively agreed systems is a necessary first step;** whereas differences in the laws relating to this field must be eliminated not least because they constitute a barrier to the application of the Community rules which are necessary to facilitate transnational operations involving reconstruction and interpenetration of undertakings, in particular in so far as concerns the giving of effect to Article 220 of the Treaty which provides *inter alia* for international **mergers and transfers** of seat; whereas, in order to make provision for **employee** participation, the Directive does not make rules uniform for all the Member States but leaves them to choose between a number of equivalent arrangements; **whereas certain common principles are nevertheless necessary in particular as to the appointment of employee representatives;**
	Whereas the operation of this Directive's provisions concerning the organization of the company's administration and employee participation should be reviewed within five years after the date from which the provisions of the Directive are to be applied; whereas this review should examine the question whether, and if so to what extent, further harmonization is desirable, including the question of the desirability of the general introduction of equal representation of shareholders and employees on the supervisory or administrative organ;
	Whereas the provisions of this Directive are without prejudice to the provisions of Directive ... on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings (1);
Whereas the members of the management and supervisory organs must be made subject to special rules relating to civil liability which provide for joint and several liability, reverse the burden of proof in respect of liability for wrongful acts and ensure that the bringing of proceedings on behalf of the company for the purpose of making those persons liable is not improperly prevented;	Unchanged.
Whereas, as regards the preparation and holding of general meetings, the shareholders must be protected by equivalent provisions relating to the form, content and period of notice, the right to attend and to be represented at meetings, written or oral information, exercise of the right to vote, the majorities required for the passing of resolutions and, finally, the right to	Unchanged.

(1) See proposal for this Directive — OJ No C 297, 15. 11. 1980, p. 3.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
bring proceedings in respect of void or voidable resolutions:	
Whereas certain rights of shareholders should be capable of being exercised by a minority of them;	
Whereas, in the interests of members and others, the audit of the annual accounts should be carried out by experts whose independence is guaranteed by special provisions,	Whereas, in the interests of members and others, **provisions are also necessary concerning the adoption of the annual accounts, and in particular the independence and responsibility of the auditors of those accounts;**
	Whereas, pending subsequent coordination, the application of certain provisions of this Directive may need to be qualified where a public limited company is a member of a group,
HAS ADOPTED THIS DIRECTIVE:	Unchanged.
	CHAPTER I
Scope of application	**Scope of application**
Article 1	*Article 1*
1. The coordination measures prescribed by this Directive apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:	1. The coordination measures prescribed by this Directive **shall** apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:
— in Germany: die Aktiengesellschaft,	— in Germany: die Aktiengesellschaft,
— in Belgium: la société anonyme/de naamloze vennootschap,	— in Belgium: la société anonyme/de naamloze vennootschap,
— in France: la société anonyme,	— **in Denmark: aktieselskabet,**
— in Italy: la societa per azioni,	— in France: la société anonyme,
— in Luxembourg: la société anonyme,	— **in Greece: ανώνυμη εταιρεία,**
— in the Netherlands: de naamloze vennootschap.	— **in Ireland: the public company limited by shares and the public company limited by guarantee and having a share capital,**
	— in Italy: la società per azioni,
	— in Luxembourg: la société anonyme,
	— in the Netherlands: de naamloze vennootschap,
	— **in the United Kingdom: the public company limited by shares and the public company limited by guarantee and having a share capital.**
2. It shall be permissible for the Member States not to apply the provisions of this Directive to cooperatives whose legal form is that of one of the types of company indicated in the foregoing paragraph.	2. It shall be permissible for the Member States not to apply this Directive to cooperatives set up in one of the legal forms indicated in paragraph 1. To the extent that the laws of the Member States make use of this possibility, they shall require these companies to include the word 'cooperative' on all the documents to which reference is made in Article 4 of Directive 68/151/EEC.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
CHAPTER I	CHAPTER II
Structure of the company	**Structure of the company**
Article 2	*Article 2*
1. The Member States shall make provision so that the structure of the company takes the form provided for in Chapters II and III of this Directive, the company thereby having not less than three separate organs:	1. **The Member States shall provide that the company shall be organized according to a two-tier system (management organ and supervisory organ) in accordance with Chapter III. They may, however, permit the company to have a choice between a two-tier system organized in accordance with Chapter III and a one-tier system (administrative organ) in accordance with the provisions of Chapter IV.**
(a) the management organ responsible for managing and representing the company;	
(b) the supervisory organ responsible for controlling the management organ;	
(c) the general meeting of shareholders.	
2. They shall, further, make provision for the annual accounts to be drawn up and audited in manner provided in Chapter IV of this Directive.	2. **The Member States shall in addition make provision for the general meeting of shareholders in accordance with Chapter V and the drawing up and auditing of annual accounts in accordance with Chapter VI.**
CHAPTER II	CHAPTER III
	THE TWO-TIER SYSTEM
	Section 1
The management organ and the supervisory organ	**The management organ and the supervisory organ**
Article 3	*Article 3*
1. The members of the management organ shall be appointed by the supervisory organ.	1. **(a) The company shall be managed by a management organ under the supervision of a supervisory organ.** **(b) The members of the management organ shall be appointed by the supervisory organ. However, the members of the first management organ may be appointed in the memorandum or articles of association.**
2. Where the management organ has more than one member, the supervisory organ shall specify which member of the management organ is reponsible for questions of personnel and worker relations.	2. Where the management organ has **several members**, the supervisory organ shall specify which member of the management organ is **more particularly** responsible for questions of personnel and **employee** relations.
3. The provisions of this Article shall be without prejudice to national laws under which the appointment or dismissal of any member of the management organ cannot be effected against the wishes of the majority of the members of the supervisory organ who were appointed by the workers or by their representatives.	3. The provisions of this Article shall be without prejudice to national laws under which the appointment or dismissal of any member of the management organ cannot be effected against the wishes of the majority of the members of the supervisory organ who were appointed by **the employees.**
Article 4	*Article 4*
1. The laws of the Member States shall make provisions that, at any rate for companies which employ 500 staff or more, the appointment of members of the supervisory organ shall be made in manner provided in paragraphs 2 or 3.	1. **In companies employing in the Community on average less than a number of persons which the legislation of the Member States cannot fix at more than 1 000, the members of the supervisory organ shall be appointed by the general meeting. For the purposes of this calculation, persons employed by subsidiary undertakings of a company according to the legislation applicable to that company in conformity**

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	with Article 1 of Directive 83/349/EEC shall be considered to be employees of that company.
2. Without prejudice to the provisions contained in the following subparagraphs, the members of the supervisory organ shall be appointed by the general meeting. Not less than one-third of the members of the supervisory organ shall be appointed by the workers or their representatives or upon proposal by the workers or their representatives. The laws of the Member States may provide in relation to the appointment of members of the supervisory board that some of those who are not appointed in manner provided in the preceding subparagraphs may be appointed otherwise than by the general meeting.	2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with paragraph 1, the Member States shall provide for employee participation in the appointment of members of the supervisory organ in accordance with Articles 4b or 4c. However, as an alternative to employee participation in accordance with these Articles, Member States may provide for employee participation through a body representing the company's employees in accordance with Article 4d or through collectively agreed systems in accordance with Article 4e. In all cases, Member States may provide that employee participation shall not be implemented in respect of a company when a majority of the employees has expressed its opposition to such participation.
3. The members of the supervisory organ shall be appointed by that organ. However, the general meeting or the representatives of the workers may object to the appointment of a proposed candidate on the ground either that he lacks the ability to carry out his duties or that if he were appointed there would, having regard to the interests of the company, the shareholders or the workers, be imbalance in the composition of the supervisory organ. In such cases the appointment shall not be made unless the objection is declared unfounded by an independent body existing under public law.	3. Where the average number of a company's employees rises above or falls below the number fixed in accordance with paragraph 1, that fact need not affect the application of paragraphs 1 or 2 until the average number of employees has exceeded or fallen below that number for two consecutive years.
4. As regards companies which employ a lesser number of workers than that fixed in pursuance of paragraph 1, the members of the supervisory organ shall be appointed by the general meeting.	4. The members of the first supervisory organ may be appointed in the memorandum or articles of association.
5. The members of the first management organ and of the first supervisory organ may be appointed in the statutes or in the instrument of constitution.	Deleted (but see Article 4 (4) above).
(See Article 4 (2) above)	*Article 4a* By way of derogation from Articles 4 (1), 4b (1), and 4c (1), the laws of the Member States may provide that not more than one-third of the members of the supervisory organ may be appointed otherwise than as provided in those Articles. However, where Article 4b (1) applies, the minimum employee representation therein specified shall always be respected unless the conditions specified in the last sentence of Article 4 (2) have been fulfilled.
	Section 2 Employee participation in the appointment of members of the supervisory organ
(See Article 4 (2) above)	*Article 4b* 1. The members of the supervisory organ shall be appointed by the general meeting as regards a

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maximum of two-thirds and by employees of the company as regards a minimum of one-third but subject to a maximum of one-half.

2. Where employees appoint one-half of the members of the supervisory organ, its voting procedures shall ensure that decisions may ultimately be taken by the members appointed by the general meeting.

Article 4c

(See Article 4 (3) above)

1. The members of the supervisory organ shall be appointed by co-optation by that organ. However, the general meeting or a committee of shareholders designated by that meeting or the representatives of the employees may object to the appointment of a proposed candidate on the ground either that he lacks the ability to carry out his duties or that if he were appointed the supervisory organ would, having regard to the interests of the company, the shareholders and the employees, be improperly constituted. In such cases, the appointment shall not be made unless the objection is declared unfounded by an independent body existing under public law.

Section 3

Employee participation through a body representing company employees

Article 4d

1. A body representing the employees shall have the right, in relation to the company's management organ, to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation and investment plans. It shall also have the same rights to information as those conferred on the members of the supervisory organ by Article 11.

2. In addition, in the cases referred to in Article 12 (1), the body representing the employees must be consulted before the supervisory organ considers whether to grant authorization. Where the supervisory organ does not comply with the opinion given, it shall communicate its reasons to the body representing the employees. The law, the memorandum or the articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 10a (2) shall apply to the members of the body representing the employees.

4. The body representing the employees shall meet at regular intervals, and at least immediately prior to each meeting of the supervisory organ, and shall be given all the documentation and information connected with the agenda of the meeting of the

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supervisory organ needed for its deliberations. At the request of the body representing the employees, the chairman of the supervisory organ, his deputy or a member of the management organ shall attend its

Section 4

Employee participation through collectively agreed systems

Article 4e

1. Employee participation shall be regulated in accordance with collective agreements concluded between the company or an organization representing the company and organizations representing its employees.

2. Collective agreements concluded pursuant to paragraph 1 shall respect the provisions of this Section and of Article 4i and make provisions at least for employee participation in the supervisory organ in accordance with Article 4f or for employee representation in accordance with Article 4g.

Article 4f

1. The members of the supervisory organ shall be appointed in accordance with Articles 4b or 4c.

2. Articles 5 to 21 shall apply.

Article 4g

1. Employee representatives shall have the right in relation to the company's management organ to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation, and investment plans. They shall also have the same rights to information as those conferred on the members of the supervisory organ by Article 11.

2. In addition, in the cases referred to in Article 12 (1), the law or the collective agreements concluded pursuant to Article 4e shall provide at least that employee representatives must be consulted before the supervisory organ considers whether to grant authorization. Where the supervisory organ does not comply with the opinion given, it shall communicate its reasons to the employee representatives. The law, the collective agreements, the memorandum or the articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 10a (2) shall apply to employee representatives who receive information of a confidential nature pursuant to paragraphs 1 and 2.

4. Article 4d (4) shall apply to the employee representatives.

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Article 4h

1. The Member States shall provide that, where collective agreements are not concluded pursuant to Article 4e before the end of a period of not more than one year after the expiry of the period referred to in Article 64 (2), employee participation shall be regulated in accordance with Articles 4b, 4c or 4d.

2. The Member States shall further provide that, where a collective agreement concluded pursuant to Article 4e comes to an end and a suibsequent agreement is not concluded within a period of one year, employee participation shall be regulated in accordance with Articles 4b, 4c or 4d.

Section 5

Principles as to appointment of employee representatives

Article 4i

To the extent that the employees must participate in the appointment of members of the supervisory organ in accordance with Articles 4b or 4c or through a body representing the company's employees in accordance with Article 4d or through collectively agreed systems in accordance with Article 4e, the Member States shall ensure that the following principles are observed:

(a) the relevant members of the supervisory organ and representatives of the employees shall be elected in accordance with systems of proportional representation ensuring that minorities are protected;

(b) all employees must be able to participate in the election;

(c) the elections shall be by secret ballot;

(d) free expression of opinion shall be guaranteed.

Section 6

Members of the management and supervisory organs

Article 5

1. Only natural persons may be appointed as members of the management organ.

2. Where the laws of the Member States provide that legal persons may be members of the supervisory organ, those legal persons shall designate a permanent representative who shall be subject to the same conditions and obligations as if he were personally a member of the supervisory organ, but without prejudice to the liability of the legal person which he represents.

Article 5

Unchanged.

Article 6

No person may be at the same time a member of the management organ and of the supervisory organ.

Article 6

Unchanged.

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Article 7	*Article 7*
The members of the management organ and of the supervisory organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.	1. The members of the **supervisory organ** shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment. **2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with Article 4 (1), the members of the management organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.**
Article 8	*Article 8*
The management organ and the supervisory organ shall not fix the remuneration of their own members.	The management organ and the supervisory organ shall not fix the remuneration of their own members. **The management organ shall not fix the remuneration of the members of the supervisory organ.**
Article 9	*Article 9*
1. The members of the management organ shall not, without the authorization of the supervisory organ, carry on within another undertaking any activity, whether remunerated or not, for their own account of any other person.	1. Unchanged.
2. The general meeting shall be informed each year of the authorizations given.	2. **The general meeting shall be informed of the authorizations given.**
3. A natural person shall not be a member of the supervisory organ of more than 10 companies.	3. **Before a natural person can be appointed a member of the supervisory organ, the organs or persons which are empowered to make or object to appointments shall be informed of any activity carried on by that person within another undertaking, whether renumerated or not, for his own account or for the account of any other person.**
Article 10	*Article 10*
1. Every agreement to which the company is party and in which a member of the management organ or of the supervisory organ has an interest, even if only indirect, must be authorized by the supervisory organ at least.	1. Unchanged.
2. Where a member of the management organ or supervisory organ becomes aware that such circumstances as are described in paragraph 1 obtain, he shall inform those two organs thereof. The interested member shall not take part either in the discussion or decision relating to the giving of the authorization required under paragraph 1 within the supervisory organ.	2. Where a member of the management organ or supervisory organ becomes aware that such circumstances as are described in paragraph 1 obtain, he shall inform those two organs thereof. The interested member shall **have the right to be heard but may not take part in the discussion or in the decision relating to the relevant agreement within the management organ or the decision relating to the giving of the authorization required under paragraph 1 within the supervisory organ.**
3. The general meeting shall be informed each year of the authorizations given under paragraph 1.	3. **The general meeting shall be informed of the authorizations given under paragraph 1.**
4. Want of authorization by the supervisory organ or irregularity in the decision giving authorization	4. Unchanged.

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shall not be adduced as against third parties save where the company proves that the third party was aware of the want of authorization or of the irregularity in the decision, or that in view of the circumstances he could not have been unaware thereof.	
	Article 10a
	1. All members of the management and supervisory organs shall have the same rights and duties as other members of the same organ, without prejudice to provisions which make it possible for the functions of these organs to be allocated among their members.
	2. All the members of the management and supervisory organs shall carry out their functions in the interest of the company, having regard to the interests of the shareholders and employees. They shall exercise a proper discretion in respect of information of a confidential nature concerning the company. This duty shall continue to apply even after they have ceased to hold office.
	Section 7
	Information of and authorization by the supervisory organ
Article 11	*Article 11*
1. The management organ shall, not less than every three months, send to the supervisory organ a report on the progress of the company's affairs.	1. The management organ shall, not less than every three months, send to the supervisory organ a **written** report on the progress of the company's affairs.
2. The management organ shall, within three months following the end of each financial year, present to the supervisory organ the draft annual accounts and draft annual report within the meaning of Articles 2 and 43 of Directive . . . of . . .	2. The management organ shall, within **five** months following the end of each financial year, present to the supervisory organ the draft annual accounts and draft annual report within the meaning of Articles 2 and **46** of Directive **78/660/EEC.**
3. The supervisory organ may at any time request from the management organ a special report on the affairs of the company or on certain aspects thereof.	3. **At the request of the supervisory organ, the management organ shall furnish a special report on the affairs of the company or on certain aspects thereof.**
4. The supervisory organ or one-third of the members thereof shall be entitled to obtain from the management organ all information and relevant documents and to undertake all such investigations as may be necessary. The supervisory organ may authorize one or more of its members or one or more experts to exercise these powers.	4. **The supervisory organ shall be entitled to undertake or cause to be undertaken all investigations which may be necessary. At the request of at least one-third of the members of the supervisory organ the management organ shall furnish all information and documents necessary to the exercise of its supervision.**
5. Each member of the supervisory organ shall be entitled to examine all reports, documents and information supplied by the management organ to the supervisory organ.	5. Unchanged.

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Article 12	*Article 12*
1. The authorization of the supervisory organ shall be obtained for decisions of the management organ relating to:	1. Unchanged.
(a) the closure or transfer of the undertaking or of substantial parts thereof;	
(b) substantial curtailment or extension of the activities of the undertaking;	
(c) substantial organizational changes within the undertaking;	
(d) establishment of long-term cooperation with other undertakings or the termination thereof.	
2. The law or the statutes may provide that the authorization of the supervisory organ must be obtained also for the effecting of other operations.	2. The law, **the memorandum or the articles of association** may provide that the authorization of the supervisory organ must be obtained also for the effecting of other operations.
3. The provisions of Article 10 (4) shall apply as regards third parties.	3. Unchanged.
	Section 8
	Dismissal of members of management and supervisory organs
Article 13	*Article 13*
1. The members of the management organ may be dismissed by the supervisory organ.	1. Unchanged.
2. The members of the supervisory organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures. However, the members of the supervisory organ who were appointed by it under Article 4 (3) may be dismissed only where proper grounds for dismissal are found to exist by judgment of the court in proceedings brought in that behalf by the supervisory organ, the general meeting or the workers' representatives.	2. The members of the supervisory organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures. However, the members of the supervisory organ who were appointed by it under Article 4c may be dismissed only where proper grounds for dismissal are found to exist by judgment of **a court in proceedings brought by the supervisory organ,** the general meeting or **the employees'** representatives.
	Section 9
	Civil liability
Article 14	*Article 14*
1. The laws of the Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that, at minimum, compensation is made for all damage sustained by the company as a result of breaches of law or of the statutes or of other wrongful acts committed by the members of those organs in carrying out their duties.	1. The laws of the Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that, at minimum, compensation is made for all damage sustained by the company as a result of breaches of law **or of the memorandum or articles of association** or of other wrongful acts committed by the members of those organs in carrying out their duties.
2. Each member of the organ in question shall be jointly and severally liable without limit. He may, however, exonerate himself from liability if he proves that no fault is attributable to him personally.	2. Unchanged.

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3. The provisions of the preceding paragraphs shall apply even where the powers vested in the organ have been allocated among its members.	3. Unchanged.
4. The authorization given by the supervisory organ shall not have the effect of exempting the members of the management organ from civil liability.	4. Unchanged.
5. Furthermore, any discharge, instruction or authorization given by the general meeting shall not have the effect of exempting the members of the management organ or of the supervisory organ from civil liability.	5. Unchanged.
Article 15	*Article 15*
1. Proceedings on behalf of the company to enforce the liability referred to in Article 14 shall be commenced if the general meeting so resolves.	1. Unchanged.
2. Neither the law nor the statutes may require for the passing of a resolution in that behalf a majority greater than an absolute majority of votes of the shareholders present or represented.	2. **Neither the law nor the memorandum nor the articles of association may require for the passing of such a resolution** a majority greater than an absolute majority of votes of the shareholders present or represented.
Article 16	*Article 16*
It shall be provided that proceedings on behalf of the company to enforce the liability referred to in Article 14 shall also be commenced if so requested by one or more shareholders:	1. It shall be provided that proceedings on behalf of the company to enforce the liability referred to in Article 14 **may** also be commenced if so requested **on behalf of and also in the name of the company** by one or more shareholders:
(a) who hold shares of a certain nominal value or proportional value which the Member States shall not require to be greater than 5 % of the capital subscribed; or	(a) who hold shares of a certain nominal **or accounting par** value which the Member States shall not require to be greater than 5 % of the **subscribed capital;** or
(b) who hold shares of a certain nominal value or proportional value which the Member States shall not require to be greater than 100 000 units of account. This figure may vary up to not more than 10 % for purposes of conversion into national currency.	(b) who hold shares of a certain nominal **or accounting par** value which the Member States shall not require to be greater than 100 000 ECU. This figure may vary up to not more than 10 % for purposes of conversion into national currency.
	2. Should the court dismiss the proceedings referred to in paragraph 1, it may order the shareholders concerned personally to pay all or part of the costs of the case where it considers that no reasonable grounds existed for commencing the proceedings.
Article 17	*Article 17*
The bringing of proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be made subject, whether by law, the statutes or any agreement:	1. The bringing of proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be made subject, whether by law, **the memorandum or articles of association** or any agreement:
(a) to prior resolution of the general meeting or other organ of the company; or	(a) to prior resolution of the general meeting or other organ of the company; or
(b) to prior decision of the court in respect of wrongful acts of the members of the management	(b) to prior decision of the court in respect of wrongful acts of the members of the management

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organ or of the supervisory organ, or in respect of the dismissal or replacement of members thereof.	organ or of the supervisory organ, or in respect of the dismissal or replacement of members thereof.
	2. The provisions of the preceding paragraph shall not in any way prejudice the right of Member States to prescribe by law that the proceedings referred to in Article 16 may not be brought without prior permission from the court. The court may refuse such permission if it considers that the action is clearly unfounded.
Article 18	*Article 18*
1. Renunciation by the company of the right to bring proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be implied:	1. Unchanged.
(a) from the sole fact that the general meeting has approved the accounts relating to the financial year during which the acts giving rise to damage occurred;	
(b) from the sole fact that the general meeting has given discharge to the members of the management organ or of the supervisory organ in respect of that financial year.	
2. For renunciation to take place the following minimum conditions must be satisfied:	2. **For renunciation to take place the following conditions must be satisfied:**
(a) an act giving rise to damage must actually have occurred;	(a) an act giving rise to damage must actually have occurred;
(b) the general meeting must expressly resolve to renounce; the resolution shall in no way affect the right conferred by Article 16 on one or more shareholders who satisfy the requirements of that Article, provided they voted against the resolution or made objection thereto which was recorded in the minutes.	(b) the general meeting must expressly resolve to renounce; the resolution shall in no way affect the right conferred by Article 16 on one or more shareholders who satisfy the requirements of that Article, provided they voted against the resolution or made objection thereto which was recorded in the minutes.
3. This Article shall apply to all compromises relating to the bringing of proceedings to enforce the liability aforesaid which have been agreed between the company and the member whose liability is in question.	3. Unchanged.
Article 19	*Article 19*
1. Proceedings on behalf of the company to enforce the liability referred to in Article 14 may also be brought by a creditor of the company who is unable to obtain payment from it.	**The provisions of Articles 14 to 18 shall in no way restrict the personal liability of members of the organs of the company towards shareholders personally and towards third parties, pursuant to the general civil law set down in national legislation.**
2. Action by the creditor under the preceding paragraph shall in no way be affected by such renunciation or transactions as are referred to in Article 18.	
Article 20	*Article 20*
1. The Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that compensation is made for all damage sustained personally by shareholders and third parties	Deleted.

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as a result of breaches of law or of the statutes or of other wrongful acts committed by the members of those organs in carrying out their duties.

2. The provisions of Article 14 (2) to (5) shall apply.

Article 21

The period in which action to enforce the liability referred to in Articles 14, 19 or 20 may be brought shall not be less than three years from the date of the act giving rise to damage or, if the act has been dissembled, from the time when it has become known.

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Article 21

The period in which an action to enforce the claim for damages referred to in Article 14 may be brought shall not be less than three years from the date of the act giving rise to damage or, if the act has been dissembled, from the time when it has become known.

CHAPTER IV

THE ONE-TIER SYSTEM

Section 1

The administrative organ

Article 21a

1. (a) The company shall be managed by the executive members of an administrative organ under the supervision of the non-executive members of that organ. The number of non-executive members shall be divisible by three and greater than the number of executive members.

(b) The executive members of the administrative organ shall be appointed by the non-executive members acting if necessary by a majority. However, the executive members of the first administrative organ may be appointed in the memorandum or articles of association.

2. Where the administrative organ has more than one executive member, the non-executive members, acting if necessary by a majority, shall specify which executive member is more particularly responsible for questions of personnel and employee relations.

3. The provisions of this Article shall be without prejudice to national laws under which the appointment or dismissal of any member of the administrative organ cannot be effected against the wishes of the majority of the members of the administrative organ who were appointed by the employees.

Article 21b

1. In companies employing in the Community on average less than a number of persons which the Member States shall not fix at more than 1 000, the non-executive members shall be appointed by the general meeting. For the purposes of this calculation,

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persons employed by subsidiary undertakings of a company according to the legislation applicable to that company in conformity with Article 1 of Directive 83/349/EEC shall be considered to be employees of that company.

2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with paragraph 1, the Member States shall provide for employee participation in the appointment of the non-executive members of the administrative organ in accordance with Article 21d. However, as an alternative to employee participation in accordance with this Article, Member States may provide for employee participation through a body representing the company's employees in accordance with Article 21e or through collectively agreed systems in accordance with Article 21f. In all cases, Member States may provide that employee participation shall not be implemented in respect of a company when a majority of the employees has expressed its opposition to such participation.

3. Where the average number of a company's employees rises above or falls below the number fixed in accordance with paragraph 1, that fact need not affect the application of paragraphs 1 or 2 until the average number of employees has exceeded or fallen below that number for two consecutive years.

4. The non-executive members of the first administrative organ may be appointed in the memorandum or articles of association.

Article 21c

By way of derogation from Articles 21b (1) and 21d, the laws of the Member States may provide that not more than one-third of the members of the administrative organ may be appointed otherwise than as provided in those articles. However, where Article 21d applies, the minimum employee representation therein specified shall always be respected unless the conditions specified in the last sentence of Article 21b (2) have been fulfilled.

Section 2

Employee participation in the appointment of non-executive members of the administrative organ

Article 21d

1. The non-executive members of the administrative organ shall be appointed by the general meeting as regards a maximum of two-thirds and by employees of the company as regards a minimum of one-third but subject to a maximum of one-half.

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2. Where employees appoint one-half of the non-executive members of the administrative organ, its voting procedures shall ensure that decisions of the non-executive members may ultimately be taken by the members appointed by the general meeting.

Section 3

Employee participation through a body representing company employees

Article 21e

1. A body representing the employees shall have the right in relation to the company administrative organ to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation and investment plans. It shall also have the same rights to information as those conferred on the non-executive members of the administrative organ by Article 21r.

2. In addition, in the cases referred to in Article 21s (1), the body representing the employees must be consulted before the administrative organ considers whether to grant authorization. Where the administrative organ does not comply with the opinion given, it shall communicate its reasons to the body representing the employees. The law or the memorandum or articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 21q (2) shall apply to the members of the body representing the employees.

4. The body representing the employees shall meet at regular intervals, and at least immediately prior to each meeting of the administrative organ, and shall be given all the documentation and information connected with the agenda of the meeting of the administrative organ needed for its deliberations. At the request of the body representing the employees, the chairman of the administrative organ or his deputy or an executive member of the administrative organ shall attend these meetings.

Section 4

Employee participation through collectively agreed systems

Article 21f

1. Employee participation shall be regulated in accordance with collective agreements concluded between the company or an organization representing the company and organizations representing its employees.

2. Collective agreements concluded pursuant to paragraph 1 shall respect the provisions of this Section and of Article 21j and make provisions at least for

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employee participation in the administrative organ in accordance wirh Article 21g or for employee representation in accordance with Article 21h.

Article 21g

1. The non-executive member of the administrative organ shall be appointed in accordance with Article 21d.

2. Articles 21j to 21u shall apply.

Article 21h

1. Employee representatives shall have the right in relation to the company's administrative organ to regular information and consultation on the administration, progress and prospects of the company, its competitive position, credit situation, and investment plans. They shall also have the same rights to information as those conferred on the non-executive members of the administrative organ by Article 21r.

2. In addition, in the cases referred to in Article 21s, the law or the collective agreements concluded pursuant to Article 21f (1) shall provide at least that employee representatives must be consulted before the administrative organ considers whether to grant authorization. Where the administrative organ does not comply with the opinion given, it shall communicate its reasons to the employee representatives. The law, the collective agreements or the memorandum or articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 21q (2) shall apply to employee representatives who receive information of a confidential nature pursuant to paragraphs 1 and 2.

4. Article 21e (4) shall apply to the employee representatives.

Article 21i

1. The Member States shall provide that, where collective agreements are not concluded pursuant to Article 21f before the end of a period of not more than one year after the expiry of the period referred to in Article 64 (2), employee participation shall be regulated in accordance with Article 21d or 21e.

2. The Member States shall further provide that, where a collective agreement concluded pursuant to Article 21f comes to an end and a subsequent agreement is not concluded within a period of one year, employee participation shall be regulated in accordance with Article 21d or 21e.

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Section 5

Principles as to appointment of employee representatives

Article 21j

To the extent that the employees must participate in the appointment of non-executive members of the administrative organ in accordance with Article 21d, or through a body representing the employees in accordance with Article 21e, or through collectively agreed systems in accordance with Article 21f, the Member States shall ensure that the following principles are observed:

(a) the relevant members of the administrative organ and representatives of the employees shall be elected in accordance with systems of proportional representation ensuring that minorities are protected;

(b) all employees must be able to participate in the elections;

(c) the elections shall be by secret ballot;

(d) free expression of opinion shall be guaranteed.

Section 6

Members of the administrative organ

Article 21k

1. Only natural persons may be appointed as executive members of the administrative organ.

2. Where the laws of the Member States provide that legal persons may be non-executive members of the administrative organ, those legal persons shall designate a permanent representative who shall be subject to the same conditions and obligations as if he were personally a member of the administrative organ, but without prejudice to the liability of the legal person which he represents.

Article 21l

No person may be at the same time an executive and a non-executive member of the administrative organ.

Article 21m

1. The non-executive members of the administrative organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.

2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with Article 21b (1), the executive members of the administrative organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.

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Article 21n

Neither the executive nor the non-executive members of the administrative organ shall fix their own remuneration. The executive members of the administrative organ shall not fix the remuneration of the non-executive members of the administrative organ.

Article 21o

1. The executive members of the administrative organ shall not, without the authorization of the non-executive members, carry on within another undertaking any activity, whether remunerated or not, for their own account or for account of any other person.

2. The general meeting shall be informed of the authorizations given.

3. Before a natural person can be appointed a non-executive member of the administrative organ, the organs or persons which are empowered to make appointments shall be informed of any activity carried on by that person within another undertaking, whether remunerated or not, for his own account or for the account of any other person.

Article 21p

1. Every agreement to which the company is party and in which a member, whether executive or non-executive of the administrative organ has an interest, even if only indirect, shall require the authorization at least of the non-executive members of the administrative organ.

2. Where an executive or non-executive member of the administrative organ becomes aware that such circumstances as are described in paragraph 1 obtain, he shall inform the administrative organ thereof. The interested member shall have the right to be heard but may not take part in the discussion or in the decision of the executive members relating to the relevant agreement or in the decision of the non-executive members of the administrative organ relating to the giving of the authorization referred to in paragraph 1.

3. The general meeting shall be informed of the authorizations given under paragraph 1.

4. Want of authorization by the administrative organ or irregularity in the decision giving authorization shall not be adduced as against third parties save where the company proves that the third party was aware of the want of authorization or of the irregularity in the decision, or that in view of the circumstances he could not have been unaware thereof.

Article 21q

1. All the executive members of the administrative organ shall have the same rights and duties, without

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prejudice to provisions making it possible for the functions of this organ to be allocated amongst its members. The same shall apply to the non-executive members.

2. All the members of the administrative organ shall carry out their functions in the interest of the company, having regard to the interest of the shareholders and the employees. They shall exercise a proper discretion in respect of information of a confidential nature concerning the company. This duty shall continue to apply even after they have ceased to hold office.

Section 7

Information of, and authorization by, the non-executive members of the administrative organ

Article 21r

1. The executive members of the administrative organ shall, not less than every three months, present to the non-executive members a written report on the progress of the company's affairs.

2. The executive members of the administrative organ shall, within five months following the end of each financial year, present to the non-executive members the draft annual accounts and draft annual report within the meaning of Articles 2 and 46 of Directive 78/660/EEC.

3. At the request of the non-executive members of the administrative organ, the executive members shall furnish a special report on the affairs of the company or on certain aspects thereof.

4. The non-executive members of the administrative organ shall be entitled to undertake or cause to be undertaken all investigations which may be necessary. At the request of at least one-third of the non-executive members, the executive members shall furnish all information and documents necessary to the exercise of their supervision.

5. Each non-executive member of the administrative organ shall be entitled to examine all reports, documents and information supplied by the executive members to another non-executive member.

Article 21s

1. The administrative organ shall not be able to delegate power to decide on the following operations:

(a) the closure or transfer of the undertaking or of substantial parts thereof;

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(b) substantial curtailment or extension of the activities of the undertaking;

(c) substantial organizational changes within the undertaking;

(d) establishment of long-term cooperation with other undertakings or the termination thereof.

2. The law or the memorandum or articles of association may prohibit delegation of the power to decide on other operations.

3. The provisions of Article 21p (4) shall apply as regards third parties.

Section 8

Dismissal of members of the administrative organ

Article 21t

1. The executive members of the administrative organ may be dismissed by the non-executive members acting by majority.

2. The non-executive members of the administrative organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures.

Section 9

Civil liability

Article 21u

The provisions of Articles 14 to 21 shall apply to the executive and non-executive members of the administrative organ.

CHAPTER III

GENERAL MEETING

Article 22

1. The general meeting shall be convened at least once each year.

2. It may be convened at any time by the management organ.

Article 23

1. It shall be provided that one or more shareholders who satisfy the requirements of Article 16 may request the company to convene the general meeting and settle the agenda therefor.

2. If, following a request made under paragraph 1, no action has been taken by the company within one month, the competent court must have power to

CHAPTER V

GENERAL MEETING

Article 22

1. Unchanged.

2. It may be convened at any time by the management organ or by the executive members of the administrative organ.

Article 23

1. It shall be provided that one or more shareholders who satisfy the requirements of Article **16 (1)** may request the company to convene the general meeting and settle the agenda therefor.

2. Unchanged.

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convene the general meeting or to authorize it to be convened either by the shareholders who requested that it be convened or by their agents.	
Article 24	*Article 24*
1. The laws of the Member States may provide that the general meeting of a company all of whose shares are registered may be convened by notice sent by registered letter. In every other case the meeting shall be convened by notice published at least in the company's national gazette designated in that behalf pursuant to Article 3 (4) of Directive 68/151/EEC of 9 March 1968.	1. (a) The laws of the Member States may provide that the general meeting of a company all of whose shares are registered may be convened by notice sent by any means of communication which permits verification that it has been sent to every shareholder and the date on which it was sent. (b) In every other case the meeting shall be convened by notice published at least in the national gazette designated pursuant to Article 3 (4) of Directive 68/151/EEC.
2. The notice shall contain the following particulars at least:	2. (a) to (c) unchanged;
(a) the name of the company and the address of its registered office;	
(b) the place and date of the meeting;	
(c) the type of general meeting (ordinary, extraordinary or special);	
(d) a statement of the formalities, if any, prescribed by the statutes for attendance at the general meeting and for the exercise of the right to vote;	(d) a statement of the formalities, if any, prescribed by the memorandum or articles of association for attendance at the general meeting and for the exercise of the right to vote;
(e) any provisions of the statutes which require the shareholder, where he appoints an agent, to appoint a person who falls within certain specified categories of persons;	(e) any provisions of the memorandum or articles of association which require the shareholder, where he appoints an agent, to appoint a person who falls within certain specified categories of persons;
(f) the agenda;	(f) and (g) unchanged.
(g) the wording of proposed resolutions concerning each of the items on the agenda.	
3. The length of the period between the date of dispatch by registered letter of the first notice of meeting and the date of the first meeting of the general meeting shall be not less than two weeks, and the length of the period between the date of first publication of the notice of meeting and the date of the first meeting of the general meeting shall be not less than one month.	3. The length of the period between the date of either the dispatch of the first notice of general meeting by the means referred to in paragraph 1 (a), or the first publication of the notice of general meeting in accordance with paragraph 1 (b), and the date of the first general meeting shall be not less than 21 days.
Article 25	*Article 25*
1. It shall be provided that one or more shareholders who satisfy the requirements of Article 16 may request that one or more new items be included in the agenda of a general meeting of which notice has already been given.	1. It shall be provided that one or more shareholders who satisfy the requirements of Article 16 (1) may request that one or more new items be included in the agenda of a general meeting of which notice has already been given.
2. Requests for inclusion of new items in the agenda shall be sent to the company within five days following the date of dispatch by registered letter of the first notice of general meeting or within 10 days	2. Requests for inclusion of new items in the agenda shall be sent to the company within seven days following the date of either dispatch of the first notice of general meeting by the means referred to in

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following the first publication of the notice of general meeting.	**Article 24 (1) (a) or the first publication of the notice of general meeting in accordance with Article 24 (1) (b).**
3. The items whose inclusion in the agenda has been requested under the last foregoing paragraph shall be communicated or published in the same way as the notice of meeting, not less than five days or 10 days, respectively, before the meeting.	3. **Items** whose inclusion in the agenda has been requested under **paragraph 2** shall be communicated or published in the same way as the notice of meeting, not less than **seven days before the meeting.**
Article 26	*Article 26*
Every shareholder who has completed the formalities prescribed by law or by the statutes shall be entitled to attend the general meeting.	Every shareholder who has completed the formalities prescribed by law or by the **memorandum and articles of association** shall be entitled to attend the general meeting.
Article 27	*Article 27*
1. Every shareholder shall be entitled to appoint a person to represent him at the general meeting.	1. Unchanged.
2. The statutes may restrict the choice of representative to one or more specified categories of persons. Every shareholder must, however, have the right to appoint another shareholder to represent him.	2. **The memorandum or articles of association** may restrict the choice of representative to one or more specified categories of persons. Every shareholder must, however, have the right to appoint another shareholder to represent him.
3. The appointment shall be made in writing which shall be sent to the company and be retained by it for not less than three years.	3. The appointment shall be made in writing, sent to the company and be retained by it for not less than three years **from the date of the general meeting.**
Article 28	*Article 28*
1. If any person publicly invites shareholders to send their forms of proxy to him and offers to appoint agents for them, Article 27 and the following provisions shall apply:	1. **Where national law allows any person to publicly invite shareholders to send their forms of proxy to him and to offer to appoint agents for them,** Article 27 and the following provisions shall apply:
(a) the appointment shall relate only to one meeting; it shall, however, be valid for a second meeting having the same agenda;	(a) to (g) unchanged.
(b) the appointment shall be revocable;	
(c) the invitation shall be sent in writing to every shareholder whose name and permanent address are known;	
(d) the invitation shall contain the following particulars ar least:	
(aa) the agenda of the meeting;	
(bb) the wording of proposed resolutions concerning each of the items on the agenda;	
(cc) a statement to the effect that the documents referred to in Article 30 are available to any shareholder who requests them;	
(dd) a request for instructions concerning the exercise of the right to vote in respect of each item on the agenda;	
(ee) a statement of the way in which the agent will exercise the right to vote if the shareholder gives no instructions;	

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(e) the right to vote shall be exercised in accordance with the instructions of the shareholder or, if none are given by him, in accordance with the statement made to the shareholder;	
(f) the agent may, however, depart from the instructions given by the shareholder or from the statement made to him if circumstances arise which were not known at the time the instructions or invitation were sent and the interests of the shareholder might be detrimentally affected;	
(g) where the right to vote has been exercised in a manner contrary to the shareholder's instructions or to the statement made to him, the agent shall forthwith inform the shareholder and explain the reasons therefor.	
2. The provisions of the foregoing paragraph shall apply where the company invites the shareholder to send his form of proxy to it and it appoints an agent for him.	2. Unchanged.
Article 29	*Article 29*
A list of persons present shall be drawn up in respect of each general meeting before any business is transacted. The list shall contain the following particulars at least:	Unchanged.
(a) the name and permanent address of each shareholder present;	(a) unchanged;
(b) the name and permanent address of each shareholder represented and of the person representing him;	(b) unchanged;
(c) the number, class, nominal or proportional value and number of votes attaching to the shares of each shareholder present or represented.	(c) the number, class **and nominal value, or in the absence of a nominal value, the accounting par value and the number** of votes attaching to the shares of each shareholder present or represented.
Article 30	*Article 30*
1. The documents relating to the annual accounts within the meaning of Article 2 (1) of Directive ... of ...(1) together with the report of the persons responsible for auditing the accounts (Article 60 of this Directive) shall be available to every shareholder at latest from the date of dispatch or of publication of the notice of general meeting convened to examine or adopt the annual accounts and the appropriation of the results of the financial year	1. **The annual accounts within the meaning of Article 2 (1) of Directive 78/660/EEC, the proposed appropriation of profit or treatment of loss where it does not appear in the annual accounts, the annual report within the meaning of Article 46 of Directive 78/660/EEC, and the opinion of the persons responsible for auditing the accounts within the meaning of Article 58 (2) of this Directive shall be available to every shareholder at the latest from the date of dispatch or publication of the notice of general meeting convened to adopt the annual accounts and to decide on the appropriation of profit or treatment of loss or, where it is not competent to adopt the annual accounts, solely to decide on the appropriation of profit or treatment of loss. Every shareholder shall be able to obtain a copy of such documents free of charge upon request. From that same date, the report of the persons responsible for auditing the accounts within the meaning of Article 60 of this Directive shall be made available to any shareholder wishing to**

(1) OJ No C 7, 28. 1. 1972.

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	consult it at the company's registered office and at the place where the general meeting is to be held.
2. Paragraph 1 shall apply also to contracts in respect of which the approval of the general meeting is required.	2. **The first and second sentences of paragraph 1** shall also apply to contracts in respect of which the approval of the general meeting is required.
Article 31	*Article 31*
1. Every shareholder who so requests at a general meeting shall be entitled to obtain correct information concerning the affairs of the company if such information is necessary to enable an objective assessment to be made of the items on the agenda.	1. Unchanged.
2. The management organ shall supply the information.	2. The management organ **or the executive members of the administrative organ** shall supply the information.
3. The communication of information may be refused only where: (a) communication might cause material detriment to the company; or (b) the company is under legal obligation not to divulge the information in question.	3. The communication of information may **only be refused** where: **(a) it would be seriously prejudicial to the company;** or (b) the company is under a legal obligation not to divulge the information in question.
4. Disputes as to whether a refusal to supply information was justified shall be determined by the court.	4. Unchanged.
Article 32	*Article 32*
1. The general meeting shall not pass any resolution concerning items which do not appear on the agenda.	1. Unchanged.
2. Paragraph 1 shall not apply provided all the shareholders are present or are represented at the general meeting and no shareholder requires his objection that the business in question should not be discussed to be recorded in the minutes.	2. Unchanged.
3. It shall, however, be permissible for the Member States not to apply paragraph 1 to resolutions relating to the following matters: (a) dismissal of members of the management organ or supervisory organ or of the persons responsible for auditing the accounts, provided that at the same meeting of the general meeting other persons are appointed to replace them; (b) the bringing of proceedings on behalf of the company to enforce the liability of the members of the management organ or of the supervisory organ, provided that the annual accounts have been discussed or been the subject of a resolution at the same meeting; (c) the calling of a new meeting.	3. It shall, however, be permissible for the Member States not to apply paragraph 1 to resolutions relating to the following matters: (a) deleted; (b) the bringing of proceedings on behalf of the company to enforce the liability of the members of the **administrative, management or supervisory organ,** provided that the annual accounts have been discussed or **have** been the subject of a resolution at the same meeting. (c) unchanged.
Article 33	*Article 33*
1. The shareholder's right to vote shall be proportionate to the fraction of capital subscribed which the share represents.	1. The shareholder's right to vote shall be proportionate to the fraction **of the subscribed capital which the shares represent.**

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2. Notwithstanding paragraph 1, the laws of the Member States may authorize the statutes to allow:	2. Notwithstanding paragraph 1, the laws of the Member States may authorize the **memorandum and the articles of association** to allow:
(a) restriction or exclusion of the right to vote in respect of shares which carry special advantages;	(a) and (b) unchanged.
(b) restriction of votes in respect of shares allotted to the same shareholder, provided the restriction applies at least to all shareholders of the same class.	
3. In no case may the right to vote be exercised where payment up of calls made by the company has not been effected.	3. **Any shareholder who, at the date of the general meeting, has not paid up calls made by the company at least one month earlier may not exercise his right to vote.**
Article 34	*Article 34*
Neither a shareholder nor his representative shall exercise the right to vote attached to his shares or to shares belonging to third persons where the subject matter of the resolution relates to:	Unchanged.
(a) discharge of that shareholder;	
(b) rights which the company may exercise against that shareholder;	
(c) the release of that shareholder from his obligations to the company;	
(d) approval of contracts made between the company and that shareholder.	
Article 35	*Article 35*
Agreements whereby a shareholder undertakes to vote in any of the following ways shall be void:	Unchanged.
(a) that he will always follow the instructions of the company or of one of its organs;	
(b) that he will always approve proposals made by the company or by one of its organs;	
(c) that he will vote in a specified manner, or abstain, in consideration of special advantages.	
Article 36	*Article 36*
1. Resolutions of the general meeting shall be passed by absolute majority of votes cast by all the shareholders present or represented, unless a greater majority or other requirements be prescribed by law or by the statutes.	1. Resolutions of the general meeting shall be passed by absolute majority of votes cast by all the shareholders present or represented, unless a greater majority or other **additional** requirements **are prescribed by the law or the memorandum or articles of association.**
2. The foregoing paragraph shall not apply to the appointment of members of the management organ or of the supervisory organ or of the persons responsible for auditing the accounts of the company.	2. **Paragraph 1** shall not apply to the appointment of members of the **company organs** or of the persons responsible for auditing the accounts of the company.
Article 37	*Article 37*
1. A resolution of the general meeting shall be required for any alteration of the statutes.	1. A resolution of the general meeting shall be required for any alteration of the **memorandum or articles of association.**

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2. The laws of the Member States may, however, provide that the general meeting may authorize another organ of the company to alter the statutes, provided:	2. The laws of the Member States may, however, provide that the general meeting may authorize another organ of the company to alter the **memorandum or articles of association,** provided:
(a) the alteration is effected only for the purpose of giving effect to a resolution already passed by the general meeting; or	(a) unchanged;
(b) the alteration is imposed by an administrative authority whose approval is necessary in order for alterations of the statutes to be valid;	(b) the alteration is imposed by an administrative authority whose approval is necessary in order for alterations **of the memorandum or articles of association** to be valid;
(c) the alteration is effected solely in order that the statutes comply with compulsory provisions of law.	(c) the alteration is effected solely in order that the **memorandum and articles of association** comply with compulsory provisions of law.
Article 38	*Article 38*
The complete text of the statutes which is to be put before the general meeting shall be set out in the notice of meeting.	1. The complete text of the **alteration to the memorandum or articles of association** which is to be put before the general meeting shall be set out in the notice of meeting.
	2. The laws of the Member States may, however, provide that if the general meeting is convened by notice published pursuant to Article 24 (1) (b), the text of the alteration referred to in paragraph 1 shall be made available to shareholders at the latest from the date of publication. Every shareholder shall be able to obtain a copy of such text free of charge upon request.
Article 39	*Article 39*
1. A majority of not less than two-thirds either of votes carried by shares represented at the meeting or of the capital subscribed which is represented thereat shall be required for the passing by the general meeting of resolutions altering the statutes.	1. A majority of not less than two-thirds either of votes carried by shares represented at the meeting or of the **subscribed capital** which is represented thereat shall be required for the passing by the general meeting of resolutions altering the **memorandum or articles of association.**
2. Where, however, the laws of the Member States provide that the general meeting may validly transact business only if at least one-half of the capital subscribed is represented, resolutions for alteration of the statutes shall require a majority not less than that required under Article 36.	**2. The laws of the Member States may, however, provide that where at least half of the subscribed capital is represented, the majority provided for in Article 36 (1) shall suffice.**
3. Resolutions of the general meeting which would have the effect of increasing the liabilities of the shareholders shall require in any event the approval of all shareholders involved.	3. Unchanged.
Article 40	*Article 40*
1. A resolution of the general meeting shall, where the share capital is divided into different classes and the resolution is detrimental to the holder of shares of those classes, be valid only if consented to by separate vote at least of each class.	1. **Where the share capital is divided into different classes, a resolution of the general meeting shall be valid only if consented to by separate vote at least of each class of shareholders whose rights are affected by the resolution in question.**
2. Article 39 shall apply.	2. Unchanged.

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Article 41	*Article 41*
1. Minutes shall be prepared of every meeting of the general meeting.	Unchanged.
2. The minutes shall contain the following particulars at least:	
(a) the place and date of the meeting;	
(b) the resolutions passed;	
(c) the result of the voting;	
(d) objections made by shareholders to discussion of particular items of business.	
3. There shall be annexed to the minutes:	
(a) the list of persons present;	
(b) the documents relating to the calling of the general meeting.	
4. The minutes and the documents annexed thereto shall be held at the disposal at least of the shareholders and shall be kept for not less than three years.	
Article 42	*Article 42*
The Member States shall ensure that, without prejudice to rights acquired in good faith by third parties, all resolutions of the general meeting are void or voidable where:	Unchanged.
(a) the general meeting was not called in conformity with Article 24 (1), (2) (b) and (d) and (3);	(a) to (f) unchanged;
(b) the subject matter of the resolution was not communicated and published in conformity with Article 24 (2) (f) or Article 25 (3), but without prejudice to the provisions of Article 32 (2) or (3);	
(c) contrary to Article 26, a shareholder was not allowed to attend the general meeting;	
(d) contrary to Article 30, a shareholder was unable to examine a document or, contrary to Article 31, information was refused to him;	
(e) in the course of transacting business, the provisions of Articles 33 and 34 relating to the exercise of the right of vote were not observed and as a result thereof the outcome of the vote was decisively affected;	
(f) the majority required under Articles 36 or 39 was not obtained.	
	(g) contrary to Article 40 (1), the separate vote did not take place.

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Article 43	*Article 43*
Proceedings under Article 42 for nullity or voidability may be brought at least:	Unchanged.
(a) in the case of Article 42 (a), by any shareholder who was not present or represented at the general meeting;	(a) to (f) unchanged;
(b) in the case of Article 42 (b), by any shareholder unless he was present or represented at the general meeting but did not cause to be recorded in the minutes his objection that the business in question should not be discussed;	
(c) in the case of Article 42 (c), by any shareholder who was not allowed to attend the general meeting;	
(d) in the case of Article 42 (d), by any shareholder who was unable to examine any document or to whom information was refused;	
(e) in the case of Article 42 (e), by any shareholder who was excluded from voting or who disputes the right to vote of some other shareholder who voted;	
(f) in the case of Article 42 (f), by any shareholder.	
	(g) in the case of Article 42 (g), by any shareholder belonging to the class of shareholders whose rights were affected by the resolution of the general meeting.
Article 44	*Article 44*
Proceedings for nullity or voidability shall be brought within a period which the Member States shall fix at not less than three months nor more than one year from the time when the resolution of the general meeting could be adduced as against the person who claims that the resolution is void or voidable.	Unchanged.
Article 45	*Article 45*
A resolution of the general meeting shall not be declared void where it has been replaced by another resolution passed in conformity with the law or the statutes. The competent court must have power to allow the company time to do this.	A resolution of the general meeting shall not be declared void where it has been replaced by another resolution passed in conformity with the law or **memorandum and articles of association.** The competent court must have power to allow the company time to do this.
Article 46	*Article 46*
The question whether a decision of nullity pronounced by a court of law in respect of a resolution of the general meeting may be relied on as against third parties shall be governed by Article 12 (1) of Directive 68/151/EEC of 9 March 1968.	**1. Any judgment declaring a resolution of the general meeting void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.**

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	2. The question whether a judgment declaring a resolution of the general meeting void may be relied on as against third parties shall be decided in accordance with Article 12 (1) of Directive 68/151/EEC.
Article 47	*Article 47*
Where the laws of the Member States provide for special meetings of holders of certain classes of shares, the provisions of Chapter 3 shall apply to such meetings and to the resolutions thereof.	Where the laws of the Member States provide for special meetings of holders of certain classes of shares, the provisions of Chapter V shall apply ***mutatis mutandis*** to such meetings and to the resolutions thereof.
CHAPTER IV	CHAPTER VI
The adoption and audit of the annual accounts	**The adoption and audit of the annual accounts**
Article 48	*Article 48*
1. The annual accounts within the meaning of Article 2 of Directive ... of ... shall be adopted by the general meeting.	1. The annual accounts within the meaning of Article 2 of Directive **78/660/EEC** shall be adopted by the general meeting.
2. The laws of the Member States may, however, provide that the annual accounts shall be adopted not by the general meeting but by the management organ and the supervisory organ, unless those two organs decide otherwise or fail to agree.	2. The laws of the Member States may, however, provide that **in companies organized according to the two-tier system,** the annual accounts shall be adopted not by the general meeting but by the management organ and the supervisory organ, unless those two organs decide otherwise **or do not reach agreement on adoption of the annual accounts.**
Article 49	*Article 49*
1. Five per cent of the result for each year, reduced where appropriate by losses brought forward from previous years, shall be appropriated to legal reserve until that reserve amounts to not less than 10 % of the capital subscribed.	1. Five per cent **of any profit for the financial year,** reduced where appropriate by losses **brought forward,** shall be appropriated to **a** legal reserve until that reserve amounts to not less than 10 % of the **subscribed capital.**
2. So long as the legal reserve does not exceed the amount specified in the foregoing paragraph, it shall not be used except to set off losses and then only if other reserves are inadequate for that purpose.	2. So long as the legal reserve does not exceed the amount specified in the foregoing paragraph, it shall not be used except to **increase the subscribed capital or** to set off losses and then only if other **available** reserves are inadequate for **those purposes.**
	3. Pending subsequent coordination, the Member States need not apply this Article to Investment Companies with Variable Capital as defined in Article 1 (2) of Directive 77/91/EEC.
Article 50	*Article 50*
1. The general meeting shall decide how the result for each year, reduced where appropriate by the amount of the losses brought forward from previous years, are to be appropriated.	1. The general meeting shall decide how **the profit or loss for the financial year, increased where appropriate by profits brought forward and drawings from reserves available for that purpose, and reduced where appropriate by losses brought forward and amounts taken to reserves in accordance with the law or the memorandum or articles of association, is appropriated or treated.**

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2. The statutes may, however, provide for the appropriation of a maximum of 50 % of the result referred to in paragraph 1.	2. **The memorandum or articles of association** may, however, provide for the appropriation of a maximum of 50 % of **any profit** referred to in paragraph 1.
Article 51	*Article 51*
1. One of more persons shall be made responsible for auditing the accounts of the company. 2. The audit shall in any event cover the annual accounts within the meaning of Article 2 of Council Directive ... of ... and the annual report within the meaning of Article 43 of that Directive.	Deleted.
Article 52	*Article 52*
Only persons who are independent of the company and who are nominated or approved by a judicial or administrative authority may be charged with the responsibility of auditing the accounts of the company.	Deleted.
Article 53	*Article 53*
1. The audit of the accounts shall in no case be undertaken by persons who are members, or who during the last three years have been members, of the management organ, supervisory organ or staff of the company whose accounts are to be audited. 2. Further, the audit of the accounts shall in no case be undertaken by companies or firms whose members or partners, members of the management organ or supervisory organ, or of which the persons who have power of representation are members, or during the last three years have been members, of the management organ, supervisory organ or staff of the company whose accounts are to be audited.	1. The audit of the accounts shall in no case be undertaken by persons who are members, or who during the last three years have been members, of the **administrative, management or supervisory organs, or of the** staff of the company whose accounts are to be audited. 2. Further, the audit of the accounts shall in no case be undertaken by companies or firms whose members or partners, members of the **administrative, mangement or supervisory organs,** or of which the persons who have power of representation are members, or during the last three years have been members, of the **administrative, management or supervisory** organ or staff of the company whose accounts are to be audited.
Article 54	*Article 54*
1. The persons who have audited the accounts shall in no case be or, for a period of three years following cessation of their duties, become members of the management organ, supervisory organ or staff of the company whose accounts have been audited. 2. «Further, the members or partners, members of the management organ or supervisory organ or the persons who have power of representation of the companies or firms who have audited the accounts shall in no case become members of the management organ, supervisory organ or staff of the company whose accounts have been audited, less than three years after cessation of their duties.	1. The persons who have audited the accounts shall in no case **become members of the adminsitrative, management or supervisory organs or of the** staff of the company whose accounts have been audited **less than three years after cessation of their duties.** 2. **Further, the partners, members of the administrative, management or supervisory, organs, or the persons having the** power of representation of the companies or firms who have audited the accounts shall in no case become members of the **administrative, management or supervisory organ or of the** staff of the company whose accounts have been audited less than three years after cessation of their duties.
Article 55	*Article 55*
1. The persons who are to audit the accounts shall be appointed by the general meeting. This Directive	1. Unchanged.

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shall, however, be without prejudice to the provisions of law of the Member States relating to the appointment of such persons at the time of formation of the company.	
2. Where appointment by the general meeting has not been made in due time or where any of the persons appointed is unable to carry out his duties, the management organ, the supervisory organ or any shareholder must have the right to apply to the court for appointment of one or more persons to audit the accounts.	2. Where appointment by the general meeting has not been made in due time or where any of the persons appointed is unable to carry out his duties, the **administrative, management or supervisory** organ or any shareholder must have the right to apply to a **judicial or administrative authority** for appointment of one or more persons to audit the accounts.
3. Further, the court must have power to dismiss, where there are proper grounds, any person appointed by the general meeting to audit the accounts, and must also have power to appoint some other person for that purpose if application is made by the management organ, supervisory organ or by one or more shareholders who satisfy the requirements of Article 16. Such application shall be made within two weeks following the date of the appointment by the general meeting.	3. Further, the **judicial or administrative authority** must have power to dismiss, where there are proper grounds, any person appointed by the general meeting to audit the accounts, and must also have power to appoint some other person for that purpose if application is made by the **administrative, management or supervisory** organ or by one or more shareholders who satisfy the requirements of Article 16 **(1)**. Such application shall be made within two weeks **of the appointment by the general meeting.**
Article 56	*Article 56*
The persons who audit the accounts shall be appointed for a period certain of not less than three years nor more than six years. They shall be eligible for reappointment.	The persons who audit the accounts shall be appointed for a **specified period** of not less than three years nor more than six years. They shall be eligible for reappointment.
Article 57	*Article 57*
1. The remuneration of the persons appointed by the general meeting to audit the accounts shall be fixed for the whole of their period of office before it commences.	1. The remuneration, **or its method of calculation, of the persons responsible for auditing the accounts** shall be fixed for the whole of their period of office before it commences, **taking account of the nature and importance of the duties to be carried out.**
2. Apart from the remuneration fixed pursuant to paragraph 1, no remuneration or benefit shall be accorded to the persons in question in respect of their auditing of the accounts.	2. Unchanged.
3. The provisions of paragraph 2 shall apply to the persons appointed by the court to audit the accounts.	3. Deleted.
Article 58	*Article 58*
1. The persons appointed to audit the accounts shall in all cases examine whether the annual accounts within the meaning of Article 2 of Directive ... of ... (1) and the annual report within the meaning of Article 43 of that Directive are in conformity with the law and the statutes.	1. The persons **responsible** for auditing the accounts shall in all cases examine whether the annual accounts within the meaning of Article 2 of Directive **78/660/EEC give a true and fair view of the company's assets, liabilities, financial position and profit or loss. They shall also verify the consistency of the annual report within the meaning of Article 46 of the above Directive with the annual accounts for the same financial year.**

(1) OJ No C 7, 28. 1. 1972.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. If they have no reservation to make, the persons responsible for the audit shall so certify on the annual accounts; otherwise they shall issue their certificate subject to reservations or shall refuse their certificate.	2. If they have no reservation to make, the persons responsible for the audit shall **deliver an opinion on the annual accounts that the requirements imposed in paragraph 1 have been met**; otherwise they shall issue their **opinion** subject to reservations **or shall withold their opinion.**
Article 59	*Article 59*
The persons responsible for auditing the accounts shall be entitled to obtain from the company all information and relevant documents and to undertake all such investigations as may be necessary.	Unchanged.
Article 60	*Article 60*
The persons responsible for auditing the accounts shall prepare a detailed report relating to the results of their work. The report shall contain the following at least:	The persons responsible for auditing the accounts shall prepare a detailed report relating to the results of their work. The report shall contain the following at least:
(a) an indication of whether the provisions of Article 58 (1) have been observed;	(a) deleted;
(b) observations concerning any infringements of law or of the statutes which have been found in the company's accounts, in its annual accounts or in the management report;	(b) observations concerning any infringements of law or of the **memorandum or articles of association** which have been found in the company's accounts, annual accounts **or annual report in the course of the audit;**
(c) observations concerning any facts noted which constitute a serious danger to the financial situation of the company;	(c) observations concerning any facts noted **in the course of the audit** which constitute a serious danger to the financial **position** of the company;
(d) the complete text of the certificate given pursuant to Article 58 (2). Where reservations have been withheld, the reasons therefor shall be specified.	(d) the complete text of the **opinion delivered** pursuant to Article 58 (2). **Where reservations have been made or where the opinion has been withheld,** the reasons therefor shall be specified.
Article 61	*Article 61*
Save where proper grounds exist, the persons responsible for auditing the accounts shall not be dismissed by the general meeting before the end of their period of office.	Unchanged.
Article 62	*Article 62*
Articles 14 to 21 of this Directive shall apply in respect of the civil liability of the persons responsible for auditing the accounts, so as to ensure that compensation is made for any damage sustained by the company, any shareholder or third party as a result of wrongful acts committed by those persons aforesaid in carrying out their duties.	**Articles 14 to 19 and 21** shall apply in respect of the civil liability of the persons responsible for auditing the accounts, so as to ensure that compensation is made for any damage sustained by the company as a result of wrongful acts committed by the **aforesaid persons** in carrying out their duties.
Article 63	*Article 63*
1. The Member States shall ensure that, without prejudice to rights acquired in good faith by third parties, all resolutions of the organ whose responsibility it is to adopt the annual accounts are void or voidable where:	1. Unchanged.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
(a) the annual accounts have not been audited in conformity with Article 58 (1);	(a) unchanged;
(b) the certificate relating to the annual accounts has been refused in accordance with Article 58 (2);	(b) the **opinion** relating to the annual accounts has been **withheld** in accordance with Article 58 (2);
(c) the annual accounts have not been audited by a person nominated or approved in manner required by Article 52;	(c) to (e) unchanged.
(d) the annual accounts have been audited by a person who, under Article 53, should not have been made responsible for the audit, or who has been dismissed by the court in conformity with Article 55 (3) or by the general meeting in conformity with Article 61;	
(e) the annual accounts have been audited by a person who, contrary to Article 55 (1), was not appointed by the general meeting or who, contrary to Article 55 (2) or (3), was not appointed by the court.	
2. Proceedings for nullity or voidability may be brought at least by any shareholder.	2. Unchanged.
3. Articles 44 to 46 shall apply.	3. Unchanged.

CHAPTER V

General provisions

CHAPTER VII

General provisions

Article 63a

1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78 (1). The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in ECU in this Directive, in the light of economic and monetary trends in the Community.

Article 63b

1. Pending subsequent coordination where the company is the parent undertaking of a group, the Member States:

(a) may derogate from Articles 4 and 21b in so far as may be necessary to permit the employees of subsidiary undertakings of that group to be included in the system of participation or representation of employees applicable to that parent undertaking in accordance with this Directive:

(1) OJ No L 379, 30. 12. 1978, p. 1.

ORIGINAL PROPOSAL

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(b) need not apply Articles 10a (2) first sentence and 21q (2), first sentence, in respect of decisions concerning a subsidiary undertaking of that group.

1a. Pending subsequent coordination, the Member States may derogate from Articles 4 to 4i and 21b to 21i where the company is:

(a) a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC or

(b) the parent undertaking of an international group and its sole object is the coordination of the management and financing of subsidiary undertakings.

2. Pending subsequent coordination, where the company is a subsidiary undertaking of a group, the Member States:

(a) need not apply Articles 4 and 21b provided that the employees of that subsidiary undertaking are included in the system of participation or representation of employees applicable to the parent undertaking of that group in accordance with this Directive;

(b) may, provided that the employees' participation or representation rights are guaranteed in accordance with subparagraph (a), derogate from Articles 12, 14 and 21s in so far as may be necessary to allow that subsidiary undertaking to be managed in accordance with group strategy, and on condition that the parent undertaking assumes responsibility for the liabilities of the subsidiary undertaking towards third parties and as regards Article 14 for the liabilities to which that Article refers.

(c) may derogate from Articles 3 (1) (b) and 13 (1) where the members or the supervisory organ of the subsidiary undertaking are appointed in accordance with Article 4c.

Article 63c

1. Not more than five years after the expiry of the period referred to in Article 64 (2), the Commission shall submit a report to the Council and Parliament on the experience of Member States as regards the application of this Directive and in particular Articles 2 to 4i, 11, 12 and 21b to 21s thereof.

In that report the Commission shall devote particular attention to the view communicated to it regarding the application of those Articles by the organizations of employers and employees involved in their application.

2. The Commission shall include, where appropriate, in the report referred to in paragraph 1, more detailed proposals concerning the matters governed by this Directive in general and by the Articles referred to in paragraph 1.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Article 63d **The Member States may derogate from Articles 4 to 4i and 21b to 21i with respect to companies whose sole or principal object is:** **(a) political, religious, humanitarian, charitable, educational, scientific or artistic; or** **(b) related to public information or expression of opinion.** **Such special provision must be limited to that which is necessary to ensure that such undertakings enjoy the freedom to which they are entitled under the national laws to which they are subject.**
Article 64	*Article 64*
1. The Member States shall bring into force within 18 months following the notification of this Directive all such amendments to their laws, regulations or administrative provisions as may be necessary to comply with the provisions of this Directive and shall inform the Commission thereof.	1. The Member States shall bring into force **before ...** the laws, regulations **and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.**
2. The Member States may provide that the amendments to their laws as referred to in paragraph 1 shall not apply to companies already in existence at the time of entry into force of those amendments until 18 months after that time.	2. The Member States may provide that the **laws, regulations and administrative provisions** referred to in paragraph 1 shall not apply to companies already in existence at the time of entry into force **thereof until the end of a period of 18 months after the date referred to in paragraph 1. The period of 18 months may, however, be four years in respect of the application of Article 2 (1).**
3. The Member States shall communicate to the Commission, for information, the texts of the draft laws and regulations, together with the grounds therefor, relating to the field governed by this Directive. The texts shall be communicated not later than six months before the proposed date of entry into force of the drafts.	3. Unchanged.
Article 65	*Article 65*
This Directive is addressed to the Member States.	Unchanged.

Proposal for a Tenth Council Directive based on Article 54(3)(g) of the Treaty concerning cross-border mergers of public limited companies
(OJ No C 23 of 25.1.1985, p. 11 - 15)

Proposal for a Tenth Council Directive based on Article 54 (3) (g) of the Treaty concerning cross-border mergers of public limited companies

COM(84) 727 final

(Submitted by the Commission to the Council on 14 January 1985)

(85/C 23/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, although mergers between public limited liability companies have been coordinated by Council Directive 78/855/EEC (1), such coordination extends only to mergers involving companies which are governed by the law of the same Member State; whereas, in the interests of the common market, provision should be made particularly of mergers involving companies which are governed by the laws of different Member States;

Whereas Article 220 of the Treaty which provides for Member States, where necessary, to enter into negotiations with each other with a view to ensuring that cross-frontier mergers are possible, does not prevent the matter from being harmonized by directive;

Whereas that approach offers the advantage that in the numerous cases where the arrangements governing national and cross-border mergers coincide, reference can be made in the present Directive to the corresponding provisions of Directive 78/855/EEC, thereby ensuring at the same time a more uniform implementation and interpretation of both sets of rules than would be possible with two completely separate legal instruments;

Whereas this Directive is therefore limited to additional requirements or to those aspects of cross-border mergers which differ from national mergers;

Whereas the scope of this Directive is essentially the same as that of Directive 78/855/EEC; whereas, however, a Member State should also be empowered not to apply this Directive to companies which, under its law, are governed by provisions concerning employee participation in the composition of the organs of those companies; whereas this exception appears necessary at any rate until the Council has decided on the Commission's amended proposal for a Fifth Directive based on Article 54 (3) (g) of the Treaty concerning the structure of public limited companies and the powers and obligations of their organs (2); whereas in other respects the protection of employees in the event of either cross-border or national mergers is guaranteed by Council Directive 77/187/EEC (3);

Whereas, for the purpose of defining cross-border mergers, reference may be made to the definition of national mergers in Directive 78/855/EEC, with the sole exception that two or more of the companies involved must be governed by the laws of different Member States;

Whereas, although Directive 78/855/EEC permits Member States to choose whether or not to apply certain provisions of that Directive in the case of national mergers, they may exercise those options in the case of cross-border mergers only for those companies involved in the operation which are governed by their law;

Whereas although Directive 78/855/EEC permits certain exceptions for operations treated as mergers, Member States may make use of those exceptions in the case of cross-border mergers only if the other Member States whose law governs the other companies involved have also done so;

Whereas although Directive 78/855/EEC provides in the case of national mergers that it is sufficient for the draft terms of a merger to be drawn up in writing,

(1) OJ No L 295, 20. 10. 1978, p. 36.

(2) OJ No C 240, 9. 9. 1983, p. 2.

(3) OJ No L 61, 5. 3. 1977, p. 26.

the draft terms of a cross-border merger need to be drawn up and certified in due legal form if the law of a Member State governing one of the companies involved so provides;

Whereas, following their filing in the register, the draft terms of a national merger may be published in the national gazette in accordance with Council Directive 68/151/EEC (1) simply by means of reference to their filing in the register; whereas, in the case of cross-border mergers, additional details appear necessary in order to provide third parties, and particularly creditors of companies being acquired, with better information on their rights;

Whereas stricter requirements should not be imposed in respect of a general meeting's decision concerning a cross-border merger than in respect of a general meeting's decision concerning a national merger;

Whereas the creditors of companies involved in a cross-border merger should benefit from the same system of protection as creditors in the case of a national merger;

Whereas in the case of cross-border mergers the judicial or administrative preventive supervision or, where appropriate, the drawing up and certification of documents in due legal form, must be synchronized for all the companies involved;

Whereas a cross-border merger may not take effect until the necessary supervision or formalities have been completed for all the companies involved;

Whereas the publication of a cross-border merger must take place for the acquired company before it takes place for the acquiring company;

Whereas the grounds of nullity of cross-border mergers should be limited as far as possible,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

(a) *Germany:*
Aktiengesellschaft;

(b) *Belgium:*
société anonyme / naamloze vennootschap;

(c) *Denmark:*
aktieselskaber;

(d) *France:*
société anonyme;

(e) *Greece:*
ανώνυμη εταιρία;

(f) *Ireland:*
public companies limited by shares or by guarantee;

(g) *Italy:*
società per azioni;

(h) *Luxembourg:*
société anonyme;

(i) *The Netherlands:*
naamloze vennootschap;

(j) *United Kingdom:*
public companies limited by shares or by guarantee.

2. Where a Member State applies Article 1 (2) or (3) of Directive 78/855/EEC in respect of a company governed by its law which is involved in a cross-border merger, this Directive shall not apply.

3. Pending subsequent coordination, a Member State need not apply the provisions of this Directive to a cross-border merger where an undertaking, whether or not it was involved, would as a result no longer meet the conditions required for employee representation in that undertaking's organs.

4. Protection of the rights of the employees of each of the companies involved in a cross-border merger shall be regulated in accordance with Directive 77/187/EEC.

Article 2

1. Except where this Directive provides otherwise, the Member States shall provide for cross-border mergers by the acquisition of one or more companies by another and for cross-border mergers by the creation of a new company in accordance with Directive 78/855/EEC in respect of. companies governed by their law.

2. Articles 17 and 22 (1) (b) of Directive 78/855/EEC shall not apply.

(1) OJ No L 65, 14. 3. 1968, p. 8.

3. A Member State may apply Articles 3 (2), 4 (2), 8, 11 (2) second subparagraph, 22 (1) and (2), 23 (4) and 25 to 29 of Directive 78/855/EEC only in respect of those companies involved in a cross-border merger which are governed by its law.

4. A Member State may apply Articles 30 and 31 of Directive 78/855/EEC to those companies involved in a cross-border merger which are governed by its law only if the Member States by whose law the other companies involved in the operation are governed have also done so.

Article 3

For the purposes of this Directive, 'cross-border merger by acquisition' means the operation referred to in Article 3 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 4

For the purposes of this Directive, 'cross-border merger by the formation of a new company' means the operation referred to in Article 4 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 5

1. Article 5 of Directive 78/855/EEC shall apply to the drawing up of the draft terms of a cross-border merger. No further details than those listed in paragraph 2 of the abovementioned Article may be required.

2. The draft terms of a cross-border merger shall be drawn up and certified in due legal form if this is prescribed by the law of a Member State by which one or more of the companies involved in the cross-border merger is governed.

3. The law of the Member State requiring that the draft terms be drawn up and certified in due legal form shall determine the person or authority competent so to do. Where the laws of several Member States by which companies involved in the cross-border merger are governed require that the draft terms be drawn up and certified in due legal form, this may be done by any person or authority competent under the law of one of those Member States.

Article 6

1. Article 6 of Directive 78/855/EEC and Article 3 of Directive 68/151/EEC shall apply to the publication of the draft terms of a cross-border merger for each of the merging companies.

2. However, when the draft terms referred to in paragraph 2 are disclosed as provided for in Article 3 (4) of Directive 68/151/EEC for each of the merging companies the following information shall be specified:

(a) the type, name and registered office of each of the merging companies;

(b) the register in which a file as referred to in Article 3 (2) of Directive 68/151/EEC has been opened for each of the merging companies and the number of the entry in that register;

(c) the conditions which, in accordance with Article 11, determine the date on which the cross-border merger takes effect.

3. The disclosure shall also specify for the acquired company or companies the details of the exercise of the rights of the creditors of those companies in accordance with Articles 13, 14 and 15 of Directive 78/855/EEC and Article 9 of this Directive.

Article 7

Article 7 of Directive 78/855/EEC relating to rules for approval by the general meeting shall apply to each of the merging companies. However the Member States may not require a larger majority than they require for a merger in which all the companies involved are governed by their law.

Article 8

1. Article 10 of Directive 78/855/EEC relating to the drawing up of the report of the expert or experts shall apply.

2. The experts shall be appointed or approved by a judicial or administrative authority of the Member State whose law governs the company for whose shareholders the report is drawn up.

3. Where all the laws of the Member States by which the companies involved in a cross-border merger are governed apply the second sentence of Article 10 (1) of Directive 78/855/EEC, the appointment of one or more experts for all the merging companies may be made at the joint request

of those companies by a judicial or administrative authority of any of those Member States. In such cases, the content of the expert's report shall be determined by the law governing that judicial or administrative authority in accordance with Article 10 (2) of Directive 78/855/EEC.

Article 9

1. Articles 13 and 14 of Directive 78/855/EEC relating to the system of protection of the interests of creditors shall apply to cross-border mergers.

2. The protective system shall not be different from that which applies to the creditors of merging companies which are all governed by the law of the Member States concerned.

3. Article 15 of Directive 78/855/EEC shall apply to cross-border mergers subject to the proviso that:

(a) the law governing the company being acquired shall determine whether a meeting of holders of the securities referred to may approve an alteration in their rights in that company;

(b) the law governing the acquiring company shall determine whether the holders of the securities referred to are entitled to have them repurchased by the acquiring company.

Article 10

1. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger provides for judicial or administrative preventive supervision of the legality of that merger, that law shall apply to those companies.

2. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger does not provide for judicial or administrative preventive supervision or where such supervision does not extend to all the legal acts required for the merger, Article 16 of Directive 78/855/EEC shall apply to the company or companies concerned. Where that law provides for a merger contract to be concluded following the decisions of the general meetings held concerning the cross-border merger, that contract shall be concluded by all the companies involved in the operation. Article 5 (3) shall apply.

3. Where both the law governing the acquiring company and the law governing the company or companies being acquired provides for judicial or administrative preventive supervision of the legality of the cross-border merger, that supervision shall be carried out first in respect of the acquiring company. It may not be carried out in respect of a company being acquired until proof is furnished that it has already been carried out in respect of the acquiring company.

4. Where the law governing one or more of the companies involved provides for judicial or administrative preventive supervision while the law governing one or more of the other companies involved does not, that supervision must be carried out simply on the basis of the documents drawn up and certified in due legal form referred to in Article 16 of Directive 78/855/EEC.

Article 11

The law of the Member State governing the acquiring company shall determine the date on which a cross-border merger takes effect. That date must be after the supervision has been carried out and, where appropriate, the documents certified in due legal form referred to in Article 10 have been drawn up for all the companies involved.

Article 12

Article 18 of Directive 78/855/EEC shall apply. However the publication of a cross-border merger must take place for the company or companies being acquired before publication for the acquiring company.

Article 13

Article 19 (3) of Directive 78/855/EEC shall apply subject to the proviso that the law of the Member State governing a company being acquired shall determine whether in order to be effective against third parties, the transfer of certain assets, rights and obligations by that company requires the completion of special formalities.

Article 14

The civil liability of the members of the administrative or management bodies and of the experts of an acquired company shall be determined, in accordance with Articles 20 and 21 of Directive 78/855/EEC, by the law of the Member State governing that company.

However, in the case referred to in Article 8 (3), the civil liability of the experts shall be determined by the law of the Member State governing the judicial or administrative authority which appointed them.

Article 15

1. Article 22 (1) of Directive 78/855/EEC shall apply subject to the proviso in paragraph 1 (b) of the said Article that a cross-border merger which has taken effect pursuant to Article 11 of this Directive may be declared void only if there has been no judicial or administrative preventive supervision of its legality or if it has not been drawn up and certified in due legal form, where such supervision or certification is laid down by the law of the Member State governing the relevant company. However where the law governing the acquiring company does not provide for the nullity of the merger where there has been no judicial or administrative preventive supervision of its legality or where it has not been drawn up and certified in due legal form, it may not be declared void.

2. The law of a Member State may not provide for grounds of nullity for cross-border mergers which it has not provided for mergers involving companies all of which are governed by that law.

3. Article 22 (1) (f) of Directive 78/855/EEC shall apply where the laws of a Member State where a judgment has declared a cross-border merger void permit a third party to challenge such a judgment.

Article 16

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. The Member States need not apply this Directive to cross-border mergers or to operations treated as cross-border mergers for the preparation or execution of which a prescribed act or formality has already been completed when the provisions referred to in paragraph 1 enter into force.

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

Article 17

This Directive is addressed to the Member States.

Amended proposal for an Eleventh Council Directive on company law concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State
(OJ No C 105 of 21.4.1988, p. 6 - 12)

II

(Preparatory Acts)

COMMISSION

Amended Proposal for an Eleventh Council Directive on company law concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State (1)

COM(88) 153 final

(Submitted by the Commission to the Council on 5 April 1988 on the basis of Article 149 (3) of the EEC Treaty)

(88/C 105/08)

(1) OJ No C 203, 12. 8. 1986, p. 12.

INITIAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	Unchanged
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 in order to facilitate the exercise of the freedom of establishment in respect of companies covered by Article 58 of the Treaty, Article 54 (3) (g) and the general programme on the suppression of restrictions on the freedom of establishment require coordination of the safeguards required of companies and firms in the Member States for the protection of the interests of members and others;	
Whereas hitherto this coordination has been effected in respect of disclosure by the adoption of the First Council Directive 68/151/EEC (1), covering limited liability companies and continued in the field of accounting by the Fourth Council Directive 78/660/EEC (2) on annual accounts of certain types of companies, the Seventh Council Directive 83/349/EEC (3) on consolidated accounts and by the Eighth Council Directive 84/253/EEC (4) on the approval of persons performing the statutory audits of accounting documents;	

(1) OJ No L 65, 14. 3. 1968, p. 9.
(2) OJ No L 222, 14. 8. 1978, p. 11.
(3) OJ No L 193, 18. 7. 1983, p. 1.
(4) OJ No L 126, 12. 5. 1984, p. 20.

INITIAL PROPOSAL	AMENDED PROPOSAL
Whereas these Directives apply to companies as such but do not cover their branches; whereas, the opening of a branch, as well as the creation of a subsidiary company, is one of the possibilities currently open to companies in exercising their rights of establishment in another Member State;	
Whereas in respect of branches the lack of coordination, in particular concerning disclosure, gives rise to disparity in respect of protection of shareholders and third parties between companies which operate in other Member States by opening branches and those which operate by creating subsidiary companies and it is appropriate to eliminate such disparities in order to ensure an equivalent level of protection for those concerned;	
Whereas in this field the divergence among the laws of the Member States interferes with the exercise of the right of establishment and it is therefore necessary to eliminate such divergence to guarantee the exercise of the said right;	
Whereas to ensure the protection of persons who deal with companies by way of a branch, measures in respect of disclosure are required in the Member State in which the branch is situated, and to effect such disclosure it is necessary to make use of the procedure already instituted for limited liability companies within the Community;	Whereas to ensure the protection of persons who deal with companies by way of a branch, measures in respect of disclosure are required in the Member State in which the branch is situated; whereas the economic and social influence of a branch may be comparable to that of a subsidiary company, so that to that extent the public interest in disclosure is comparable; whereas to effect such disclosure it is necessary to make use of the procedure already instituted for limited liability companies within the Community;
Whereas the said disclosure with an exception in respect of those having powers of representation may be confined to information concerning the branch itself together with a reference to the register of the company of which the branch is part, given that, pursuant to Community rules, all information covering the company as such is available on that register;	Whereas the said disclosure with an exception in respect of those having powers of representation and the winding-up of the company may be confined to information concerning the branch itself together with a reference to the register of the company of which the branch is part, given that, pursuant to Community rules, all information covering the company as such is available on that register;
Whereas national provisions in respect of disclosure of accounting documents relating to the branch can no longer be justified following the coordination of national law in respect of the drawing up, statutory audit and disclosure of the accounting documents of the company; whereas in consequence it is sufficient to disclose, on the register of the branch, the annual accounts of the company and, in default of those, the consolidated accounts in which the company is included;	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
Whereas to avoid any discrimination arising out of the country of origin of the company, the Directive should also cover branches created by companies governed by the law of third countries and based on legal forms comparable with limited liability companies, whereas for these branches it is necessary to apply certain provisions different from those applying to branches of companies governed by the law of other Member States given that the Directives set out above do not apply to companies of third countries,	Unchanged
HAS ADOPTED THIS DIRECTIVE:	Unchanged
I	I
Branches of companies from other Member States	Unchanged
Article 1	*Article 1*
Documents and particulars relating to a branch set up in a Member State by a company which is subject to the law of another Member State and to which Directive 68/151/EEC applies shall be disclosed according to the law of the Member State of the branch in compliance with Article 3 of the said Directive.	Unchanged
Article 2	*Article 2*
1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars:	1. Unchanged
(a) the address of the branch;	
	(aa) the object of the activities of the branch;
(b) the register in which the company file mentioned in Article 3 of Directive 68/151/EEC is kept, together with the registration number in that register;	Unchanged
	(ba) the existence of other branches in the same Member State, together with the particulars referred to in (a) and (b);
(c) the name of the branch if that is different from the name of the company;	
(d) the appointment, termination of office and particulars of the persons who, either as a body constituted pursuant to law or as members of any such body and those who as permanent representatives of the company for the activities of the branch, are authorized to represent the company in dealings with third parties and in legal proceedings. It must be stated whether the persons authorized to represent the company may do so alone or must act jointly;	

INITIAL PROPOSAL	AMENDED PROPOSAL
	(da) the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers in accordance with Article 2 (1) (j) of Directive 68/151/EEC;
(e) the accounting documents covered by Article 3;	Unchanged
(f) the closure of the branch.	(f) the closure of the branch and transfers of its location.
2. The Member State of the place of the branch may require the deposit in the register of the branch of the certified signature of the persons referred to in paragraph 1 (d).	Unchanged
Article 3	*Article 3*
1. The compulsory disclosure of accounting documents provided for by Article 2 (1) (e) shall be limited to the annual accounts and annual report of the company. These documents must have been drawn up and audited in accordance with the law of the Member State by which the company is governed in compliance with Directives 78/660/EEC and 84/253/EEC.	1. Unchanged
2. Paragraph 1 shall not apply where, pursuant to Article 57 of Directive 78/660/EEC, the provisions thereof concerning the content, auditing and publication of the annual accounts do not apply to a company which is a subsidiary company within the meaning of Directive 83/349/EEC. In this event the compulsory disclosure provided for in Article 1 shall cover the consolidated accounts and the consolidated annual report of the parent undertaking of the company. Those documents must have been drawn up and audited in accordance with the law of the Member State by which the parent undertaking is governed in compliance with Council Directives 83/349/EEC and 84/253/EEC.	2. Unchanged
3. The Member State in which the branch was created may stipulate that the documents and particulars referred to in paragraphs 1 and 2 must be published in its official language and their translation must be certified.	
Article 4	*Article 4*
Member States shall prescribe that letters and order forms used by the branch shall state, in addition to the information prescribed by Article 4 of Directive 68/151/EEC, the register in which the file in respect of the branch is kept together with the number of the branch in that register.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
II	II
Branches of companies from third countries	Unchanged
Article 5	*Article 5*
Documents and particulars concerning a branch set up in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company to which Directive 68/151/EEC applies shall be published according to the law of the Member State of the branch in accordance with Article 3 of the said Directive.	Unchanged
Article 6	*Article 6*
1. The compulsory disclosure provided for in Article 5 shall cover at least the following documents and particulars:	Unchanged
(a) the address of the branch;	
	(aa) the object of the activities of the branch;
(b) the law of the State by which the company is governed;	
(c) where the said law so provides, the register in which the company is recorded and the registration number of the company in that register;	
	(ca) the existence of other branches in the same Member State, together with the particulars referred to in (a), (aa) and (c);
(d) the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument with all amendments to these documents;	Unchanged
(e) the legal form of the company, its seat, its name and its object and the amount of subscribed capital if these matters are not shown in the documents covered by subparagraph (d);	
(f) the name of the branch if that is different from the name of the company;	
(g) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body and those who as permanent representatives of the company for the activities of the branch are authorized to represent the company in dealings with third parties and in legal proceedings. It must be stated whether the persons authorized to represent the company may do so alone or must act jointly;	
	(ga) the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers;
(h) the accounting documents referred to in Article 7;	

INITIAL PROPOSAL	AMENDED PROPOSAL
(i) the closure of the branch.	(i) the closure of the branch and transfers of its location.
2. The Member State of the place of the branch may require the deposit in the register of the branch of the certified signature of the persons referred to in paragraph 1 (g).	Unchanged
Article 7	*Article 7*
1. The compulsory disclosure of accounting documents provided for by Article 6 (1) (h) shall apply to at least the annual accounts and annual report of the company.	1. Unchanged
2. Where the company produces consolidated accounts and a consolidated annual report instead of annual accounts and an annual report the compulsory disclosure provided for in Article 5 shall cover such consolidated accounts and the consolidated annual report.	2. Unchanged
3. The documents covered by paragraphs 1 and 2 must have been drawn up and audited pursuant to the law which governs the company and in accordance with the relevant provisions of such legislation or, in default thereof, in accordance with the accounting principles generally accepted in the State in question.	3. The documents covered by paragraphs 1 and 2 must have been drawn up in accordance with Directives 78/660/EEC and 83/349/EEC respectively, or so as to be equivalent to annual accounts or consolidated accounts and an annual report or a consolidated annual report drawn up according to the Directive concerned; they must also have been audited pursuant to the law which governs the company.
4. Article 3 (3) shall apply.	4. Unchanged
Article 8	*Article 8*
Member States shall prescribe that letters and order forms used by the branch shall state the register in which the file in respect of the branch is kept together with the number of the branch in that register.	Member States shall prescribe that letters and order forms used by the branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. If the law governing the company requires an entry in a register, that register and the number of the entry shall also be stated.
	IIa
	Disclosure of particulars in respect of branches in the register in which the company is recorded
	Article 8a
	The particulars of branches, irrespective of their location, opened by companies subject to the law of a Member State and to which Directive 68/151/EEC applies, shall be disclosed by those companies in accordance with Article 3 of the said Directive.

INITIAL PROPOSAL	AMENDED PROPOSAL
III	III
Transitional and final provisions	Unchanged
Article 9	*Article 9*
Member States shall provide for appropriate penalties in the case of failure to disclose the matters set out in Articles 1, 2, 3, 5, 6 and 7 and of omission from commercial documents of the compulsory particulars provided for in Articles 4 and 8.	Unchanged
Article 10	*Article 10*
Each Member State shall determine by which persons the disclosure formalities provided for in this Directive are to be carried out.	Unchanged
Article 11	*Article 11*
Pending subsequent coordination, Member States need not apply the provisions of Articles 3 and 7 to the branches of banks, other financial institutions and insurance companies.	Unchanged
Article 12	*Article 12*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 January 1990. They shall forthwith inform the Commission thereof.	1. Unchanged
2. Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 1 January 1992.	2. Member States shall stipulate that the provisions referred to in paragraph 1 apply from 1 January 1991.
3. 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.	3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.
Article 13	*Article 13*
The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:	Unchanged
(a) facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, the harmonized application of this Directive, through regular meetings dealing, in particular, with practical problems arising in connection with its application;	
(b) advise the Commission, if necessary, on any necessary additions or amendments to this Directive.	
Article 14	*Article 14*
This Directive is addressed to the Member States.	Unchanged

Amended proposal for a Council Directive on the obligations of branches established in a Member State by credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (OJ No C 143 of 1.6.1988, p. 9 - 13)

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on the obligations of branches established in a Member State by credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (1)

COM(88) 118 final

(Submitted by the Commission to the Council pursuant to Article 149 (3) of the EEC Treaty on 11 March 1988)

(88/C 143/10)

(1) OJ No C 230, 11. 9. 1986, p. 4.

II. TEXT OF THE PROPOSAL

ORIGINAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	Unchanged
Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,	
Having regard to the proposal from the Commission,	
Having regard to the opinion of the European Parliament,	
Having regard to the opinion of the Economic and Social Committee,	
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 the proposal for an Eleventh Council Directive concerning disclosure requirements in respect of branches provides for rules of disclosure concerning documents and particulars relating to branches opened in a Member State by certain types of companies governed by the law of another State; whereas as regards disclosure of annual accounting documents, Article 11 of that proposed Directive refers to specific provisions to be laid down for banks and other financial institutions;	Whereas the proposal for an Eleventh Council Directive concerning disclosure requirements in respect of branches provides for rules of disclosure concerning documents and particulars relating to branches opened in a Member State by certain types of companies governed by the law of another State; whereas as regards disclosure of annual accounting documents, Article 11 of that proposed Directive refers to specific provisions to be laid down for banks and other financial institutions, **especially in respect of the matters covered by Articles 3 and 7 of that proposed Directive;**

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas the present practice of some Member States of requiring the branches of credit institutions and financial institutions having their head offices outside the Member State to publish annual accounts relating to the branch is no longer justified following the adoption of the Council Directive on the annual accounts of banks and other financial institutions; whereas 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 coherent whole cannot be viewed in isolation;	Unchanged
Whereas, on the other hand, in view of the present level of integration, the need for certain information on the activities of branches of credit institutions and financial institutions having their head offices outside the relevant Member State cannot be disregarded; whereas, however, the extent of such information must be limited so as to prevent distortions of competition;	
	5. recital (inserted) **Whereas, however, the provisions of this Directive do not in any way affect the obligations of branches of credit institutions and financial institutions to provide information pursuant to social legislation, especially with regard to employees' rights to information, pursuant to host countries' rights of supervision over credit institutions or financial institutions, and pursuant to fiscal legislation;**
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 other hand, in publishing their 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 their own annual accounts if they fulfil the abovementioned condition;	Unchanged
Whereas the equivalence of annual accounting documents of credit institutions and financial institutions having their head offices in non-member countries required under this Directive 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 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 (1), with the Committee meeting in an appropriate composition where problems relating to credit institutions are to be dealt with,	

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

ORIGINAL PROPOSAL	AMENDED PROPOSAL
HAS ADOPTED THIS DIRECTIVE:	
Article 1	*Article 1*
Scope	**Scope**
(1) The coordination measures prescribed by this Directive shall apply to branches of credit institutions and financial institutions within the meaning of Article 2 of Council Directive .../.../EEC (1) established in a Member State which have 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 insofar as the credit institution or financial institution has a legal form which is comparable to the legal forms specified in Article 2 of Directive .../.../EEC.	(1) The coordination measures prescribed by this Directive shall apply to branches of credit institutions and financial institutions within the meaning of Article 2 of Council Directive **86/635/EEC** (1) established in a Member State which have 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 insofar as the credit institution or financial institution has a legal form which is comparable to the legal forms specified in Article 2 of Directive **86/635/EEC.**
(2) The third indent of Article 1 of Council Directive 77/780/EEC (2) shall apply *mutatis mutandis* to branches of credit institutions and financial institutions within the meaning of this Directive.	(2) Unchanged
Article 2	*Article 2*
Provisions relating to branches of credit institutions and financial institutions having their head offices in other Member States	Unchanged
(1) Member States shall require branches of credit institutions and financial institutions having their head offices in other Member States to publish the documents, specified in Article 42 of Directive .../.../EEC (annual accounts, consolidated accounts, annual report, consolidated annual report, opinions of the person responsible for auditing the annual accounts and consolidated accounts), of the credit institution or financial institution in accordance with the provisions set out therein.	(1) Member States shall require branches of credit institutions and financial institutions having their head offices in other Member States to publish the documents, specified in **Article 44, and in particular, in paragraphs 2 and 4, thereof, of Directive 86/635/EEC** (annual accounts, consolidated accounts, annual report, consolidated annual report, opinions of the person responsible for auditing the annual accounts and consolidated accounts), of the credit institution or financial institution in accordance with the provisions set out therein.
(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 .../.../EEC.	(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.**
	(2a) Articles 2 and 4 of the proposal for an eleventh Council Directive concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State shall apply *mutatis mutandis*.
(3) Branches may not be required to publish annual accounts relating to their own activities.	(3) Unchanged

(1) Proposal for a Council Directive on the annual accounts of banks and other financial institutions, OJ No C 130, 1. 6. 1981 and amended proposals, OJ No C 83, 24. 3. 1984 and OJ No C 351, 31. 12. 1985.

(2) OJ No L 322, 17. 12. 1977, p. 30.

(1) OJ No L 372, 31. 12. 1986, p. 1.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
(4) Member States may, pending further coordination, require branches to provide the following additional information:	(4) Unchanged
(a) details of:	(a) details of:
— the endowment capital of the branch,	— unchanged
— the profit or loss of the branch,	— unchanged
— the income of the branch deriving from items 1 to 3 and 6 of Article 29 or from item B 1 to B 3 and B 6 of Article 30 of Directive .../.../EEC,	— the income of the branch deriving from items **1, 3, 4, 6 and 7** of Article **27** or from items B 1 to B **4** and B **7** of Article **28** of Directive **86/635/EEC**,
— the total claims and liabilities attributable to the branch, broken down by those in respect of credit institutions and those in respect of customers,	— unchanged
— the net sums of the total assets or liabilities of the balances of the branch in relation to the head office, the other branches and the undertakings included in the consolidated accounts of the credit institution or financial institution;	— unchanged
(b) the description of the activities of the branch, showing the main categories of business during the financial year.	Unchanged
Where such information is required, it must be audited by one or more persons authorized to audit accounts under the law of the Member State in which the branch is established.	
Article 3	*Article 3*
Provisions relating to branches of credit institutions and financial institutions having their head offices in non-member countries	Unchanged
(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 non-member country, in accordance with the provisions set out therein.	(1) Unchanged
(2) Where such documents are in conformity with or equivalent to documents drawn up in accordance with the provisions of Directive .../.../EEC, Article 2 (3) shall apply.	(2) Where such documents are in conformity with or equivalent to documents drawn up in accordance with the provisions of Directive **86/635/EEC**, Article 2 (3) shall apply.
(3) Where the documents specified in paragraph 1 are not in conformity with or equivalent to documents drawn up in accordance with the provisions of Directive .../.../EEC, Member States may require the branches to publish annual accounts relating to their own activities.	(3) Where the documents specified in paragraph 1 are not in conformity with or equivalent to documents drawn up in accordance with the provisions of Directive **86/635/EEC**, Member States may require the branches to publish annual accounts relating to their own activities.
(4) In the cases specified in paragraphs 2 and 3, Article 2 (4) shall apply.	(4) Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
(5) Member States shall not apply to branches of credit institutions and financial institutions having their head offices in non-member countries provisions which would place such branches in a more favourable position than the branches of credit institutions or financial institutions having their head offices in other Member States.	(5) Unchanged
Article 4	*Article 4*
Language of publication	**Language of publication**
Member States may require that the documents provided for in this Directive be published in their official language and that the translation of such documents be certified.	Unchanged
Article 5	*Article 5*
Contact Committee	**Contact Committee**
The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall, when constituted appropriately, also:	The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall, when constituted appropriately, also:
(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application, such as assessment of equivalence;	(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application, such as assessment of equivalence; **facilitate decisions on the comparability and equivalence of the legal forms referred to in Article 1 (1);**
(b) advise the Commission, if necessary, on additions or amendments to this Directive.	(b) unchanged
Article 6	*Article 6*
Final provisions	**Final provisions**
(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1990. They shall forthwith inform the Commission thereof.	(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than **31 December** 1990. They shall forthwith inform the Commission thereof.
(2) A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to annual accounts for the financial year beginning on 1 January 1992 or during the calendar year 1992.	(2) A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to annual accounts for the financial year beginning on 1 January **1993** or during the calendar year **1993.**
(3) 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.	(3) unchanged
Article 7	*Article 7*
This Directive is addressed to the Member States.	Unchanged

Proposal for a Council Directive amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives
(OJ No C 144 of 11.6.1986, p. 10 - 11)

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 as regards the scope of those Directives

COM(86) 238 final

(Submitted by the Commission to the Council on 5 May 1986)

(86/C 144/13)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Council Directive 78/660/EEC (1), as last amended by the Act of Accession of Spain and Portugal, applies to the annual accounts of public and private limited 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 Council Directive 83/349/EEC (2), as amended by the Act of Accession of Spain and Portugal, Member States need only require companies covered by Directive 78/660/EEC to draw up consolidated accounts;

Whereas inside the Community there is a substantial and constantly growing number of partnerships, limited partnerships and unlimited companies all of whose unlimited members are constituted as either public or private limited companies;

Whereas it would contradict the spirit and the aims of the abovementioned Directives to allow Member States not to apply these Community rules to such partnerships, limited partnerships and unlimited companies;

Whereas the provisions covering the scope of the two Directives in question should therefore be explicity supplemented,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following is hereby inserted as paragraph 1a in Article 1 of Directive 78/660/EEC:

'Article 1a

The coordination measures prescribed by this Directive shall also apply to the laws, regulations and administrative provisions of the Member States 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 commandite/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;

(g) in Ireland;

the partnership, the limited partnership, the unlimited company;

(h) in Italy:

la società in nome collettivo, la società in accomanditá semplice;

(1) OJ No L 222, 14. 8. 1978, p. 11.
(2) OJ No L 193, 18. 7. 1983, p. 1.

(i) in Luxembourg:

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

(j) in the Netherlands:

de vennootschap onder firma, de comanditaire vennootschap;

(k) in Portugal:

sociedade em nome colectivo, sociedade em comandita simples;

(l) in the United Kingdom:

the partnership, the limited partnership, the unlimited company;

where the members having unlimited liability are constituted as one of the types of company set out in paragraph 1 or in this paragraph.'

Article 2

Article 4 of Directive 83/349/EEC is hereby amended as follows:

1. The followings is inserted as paragraph 1 (a):

'1. (a) Paragraph 1 shall also apply where either the parent undertaking or one or more subsidiary undertakings is constituted as one of the types of company mentioned in Article 1 (1) (a) of Directive 78/660/EEC.'

2. The text of paragraph 2 is replaced by the following:

'2. Member States may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not constituted as one of the types of company mentioned in Article 4 (1) of this Directive or Article 1 (1) (a) of Directive 78/660/EEC.'

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 above shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.

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

Article 4

This Directive is addressed to the Member States.

Amendment to the proposal for a Council Directive amending Directive 75/130/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (1)

COM(86) 262 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 23 May 1986)

(86/C 144/14)

The Commission's original proposal is hereby amended to take into account the following proposed amendment:

Replace Article 12 by the following:

'Article 12

Initial or terminal road haulage in the context of combined road/rail transport or combined transport on inland waterways shall be exempt from general prohibitions on road movement laid down by non-local authorities in respect of certain days or during certain periods. This exemption shall not extend to prohibitions on traffic movements on Sundays and public holidays.'

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(1) OJ No 139, 7. 6. 1985, p. 2.

Proposal for a Council Directive on the annual accounts and consolidated accounts of insurance undertakings
(OJ No C 131 of 18.5.1987, p. 1 - 21)

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the annual accounts and consolidated accounts of insurance undertakings

COM(86) 764 final

(Submitted by the Commission to the Council on 21 January 1987)

(87/C 131/01)

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,

Having regard to the opinion of the European Parliament,

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

Whereas Article 54 (3) (g) of the Treaty requires the coordination to the necessary extent of the safeguards which, for the protection of the interests of members and others, are required by Member States for companies or firms within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community;

Whereas the Fourth 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 [1], as last amended by the Act of Accession of Spain and Portugal, need not be applied to insurance companies, hereinafter referred to as 'insurance undertakings', pending subsequent coordination; whereas, in view of the importance of insurance undertakings in the Community, such coordination cannot be delayed any longer following implementation of Directive 78/660/EEC;

Whereas the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts [2] provides for derogations for insurance undertakings only until expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also contain provisions specific to insurance undertakings in respect of consolidated accounts;

Whereas such coordination is also urgently required owing to the Community-wide operations of insurance undertakings; whereas, for creditors, debtors, members, policy-holders and their advisers and for the general public, improved comparability of the annual accounts and consolidated accounts of these undertakings is therefore of crucial importance;

Whereas, in the Member States, insurance undertakings of different legal forms are in competition with each other; whereas undertakings engaged in the business of direct insurance customarily engage also in the business of reinsurance and are therefore in competition with specialist reinsurance undertakings; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope which is in line with the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance [3] and the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance [4], both

[1] OJ No L 222, 14. 8. 1978, p. 11.

[2] OJ No L 193, 18. 7. 1983, p. 1.
[3] OJ No L 228, 16. 8. 1973, p. 3.
[4] OJ No L 63, 13. 3. 1979.

as last amended by the Act of Accession of Spain and Portugal, but which also includes certain undertakings that are excluded from the scope of those Directives and companies and firms which are specialist reinsurance undertakings;

Whereas although, in view of the specific characteristics of insurance undertakings, it appears appropriate to propose a separate Directive on annual accounts and consolidated accounts for such undertakings, this must not result in a set of standards being established which is separate from those of Directives 78/660/EEC and 83/349/EEC; whereas such separate standards would be neither appropriate nor consistent with the basic principles underlying the coordination of company law since, given the important place they occupy in the economy of the Community, insurance undertakings cannot be excluded from the framework of standards devised for undertakings generally; whereas for this reason only the particular characteristics of insurance undertakings are taken into account, and this Directive therefore deals only with exceptions to the rules contained in Directives 78/660/EEC and 83/349/EEC;

Whereas there are important differences in the structure and content of the balance sheets of insurance undertakings in the various Member States; whereas this Directive must therefore lay down the same structure and the same item designations for the balance sheets of all insurance undertakings in the Community;

Whereas, if the annual accounts and consolidated accounts are to be comparable, a number of basic questions regarding the presentation of certain transactions in the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of certain balance sheet items be determined precisely;

Whereas the same also applies to the composition and definition of certain 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 for a proper understanding of the financial situation of insurance undertakings it is necessary to disclose the current value of investments as well as their value based upon the principle of purchase price or production costs;

Whereas, in view of the special nature of insurance undertakings, certain changes are necessary with regard to the notes on the annual accounts and on the consolidated accounts;

Whereas, in line with the intention to cover all those insurance undertakings which are within the scope of Directives 73/239/EEC and 79/267/EEC as well as certain others, derogations are not provided for small and medium-sized insurance undertakings such as are provided for under the terms of Directive 78/660/EEC, but certain small mutual undertakings which are excluded from the scope of the said Directives 73/239/EEC and 79/267/EEC should not be covered;

Whereas for the same reasons, the scope allowed Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirements if the undertakings to be consolidated do not together exceed a certain size has not been extended to insurance undertakings; whereas in view of its particular nature special provisions are needed for the association of underwriters known as Lloyd's;

Whereas the provisions of this Directive should also apply to the consolidated accounts drawn up by a parent undertaking which is a financial holding company and where its subsidiary undertakings are either exclusively or mainly insurance undertakings;

Whereas the examination of problems which arise in connection with this Directive, notably concerning its application, requires the cooperation of representatives of the Member States and the Commission in the form of a contact committee; whereas, in order to avoid the proliferation of such committees, it is desirable that the said cooperation be achieved by means of the committee provided for in Article 52 of Directive 78/660/EEC; whereas nevertheless, when examining problems concerning insurance undertakings, the committee will be appropriately constituted;

Whereas, in view of the complexity of the matter, the insurance undertakings covered by this Directive must be allowed a longer period than usual to implement the provisions thereof,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Preliminary provisions and scope

Article 1

1. The provisions of Directive 78/660/EEC shall apply to insurance undertakings within the meaning of Article 2 of this Directive, except where this Directive provides otherwise.

2. Where reference is made in Directive 78/660/EEC to Articles 9 and 10 (balance sheet) or to Articles 23 to 26 (profit and loss account) of that Directive, such references shall be construed as references to Article 5 (balance sheet) or to Article 29 (profit and loss account) of this Directive.

3. Where reference is made in 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 5 of this Directive which include the assets and liabilities in question.

Article 2

The coordination measures prescribed by this Directive shall apply to companies or firms within the meaning of the second paragraph of Article 58 of the Treaty which are:

(a) undertakings within the meaning of Article 1 of Directive 73/239/EEC, excluding those mutual associations which are excluded from the scope of that Directive by virtue of Article 3 thereof but including those institutions referred to in Article 4 thereof except where their activity does not consist wholly or mainly of the carrying-on of insurance business;

or

(b) undertakings within the meaning of Article 1 of Directive 79/267/EEC, excluding those institutions, organizations and mutual associations referred to in Article 2 (2) and (3) and Article 3 of that Directive;

or

(c) undertakings whose whole or main activity consists of reinsurance operations.

Such undertakings are referred to in this Directive as insurance undertakings.

Article 3

1. This Directive shall apply to the association of underwriters known as Lloyd's with such adaptations as are necessary to take account of the particular nature and structure of Lloyd's.

2. The Commission shall submit to the Council, not later than ..., a report on the adaptations made under paragraph 1.

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 4

Article 4 (2) of Directive 78/660/EEC shall not apply to insurance undertakings.

SECTION 3

Layout of the balance sheet

Article 5

The Member States shall prescribe the following layout for the balance sheet.

Assets

A. *Subscribed capital unpaid*

of which there has been called (unless national law provides that called-up capital be shown under 'Liabilities'. In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D.4)

B. *Intangible assets*

as described under assets headings B and C.I of Article 9 of Directive 78/660/EEC, showing separately:

— formation expenses, as defined by national law and in so far as national law permits their being shown as an asset

(unless national law requires their disclosure in the notes on the accounts),

— goodwill, to the extent that it was acquired for valuable consideration (unless national law requires its disclosure in the notes on the accounts)

C. *Investments*

I. Land and buildings:

— showing separately land and buildings occupied by the insurance undertaking for its own activities

II. Investments in affiliated undertakings and participating interests:

1. Shares in affiliated undertakings
2. Debt securities issued by, and loans to, affiliated undertakings
3. Participating interests
4. Debt securities issued by, and loans to, undertakings with which the insurance undertaking is linked by virtue of a participating interest

III. Other financial investments:

1. Shares and other variable-yield securities
2. Debt securities (Article 9)
3. Loans guaranteed by mortgage (Article 10)
4. Other loans (Article 10)
5. Deposits with credit institutions (Article 11)

IV. Investments for the benefit of life insurance policy holders who bear the investment risk (Article 12)

V. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet

VI. Deposits with cedant undertakings (Article 13)

D. *Debtors*

1. Debtors arising out of direct insurance operations, with a separate indication of amounts owed by:
   (a) affiliated undertakings
   (b) undertakings with which the insurance undertaking is linked by virtue of a participating interest
2. Debtors arising out of reinsurance operations, with a separate indication of amounts owed by:
   (a) affiliated undertakings
   (b) undertakings with which the insurance undertaking is linked by virtue of a participating interest
3. Other debtors, with a separate indication of amounts owed by:
   (a) affiliated undertakings
   (b) undertakings with which the insurance undertaking is linked by virtue of a participating interest

4. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A)

E. *Tangible assets and consumables*

1. Tangible assets as listed under assets heading C II of Article 9 of Directive 78/660/EEC, other than land and buildings

2. Consumables

F. *Cash at bank and in hand* (Article 11)

G. *Prepayments and accrued income*

1. Accrued interest and rent (Article 14)

2. Deferred acquisition costs (distinguishing those arising in non-life and life insurance business) (Article 15)

3. Other prepayments and accrued income

H. *Loss for the financial year* (unless national law provides for it to be shown under A.VI under 'Liabilities')

Liabilities

A. *Capital and reserves*

I. Subscribed capital (Article 16)
(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately)

II. Share premium account

III. Revaluation reserve

IV. Reserves (Article 17)

V. Profit or loss brought forward

VI. Profit or loss for the financial year (unless national law requires that this item be shown under H under 'Assets' or under H under 'Liabilities')

B. *Subordinated liabilities* (Article 18)

C. *Technical provisions* (Articles 19 and 20)

1. Unearned premiums (and unexpired risks) (Articles 21 and 22)

(a) gross amount .....

(b) reinsurance amount (−) .....

2. Life insurance provisions (Article 23)

(a) gross amount .....

(b) reinsurance amount (−) .....

— showing separately the amounts in respect of contracts under which the policy holder bears the investment risk

3. Claims outstanding (Article 24)

(a) gross amount .....

(b) reinsurance amount (−) .....

4. Provision for bonuses and rebates (Article 25)

(a) gross amount .....

(b) reinsurance amount (−) .....

5. Equalization provisions required by national law (Article 26)

6. Other technical provisions

(a) gross amount .....

(b) reinsurance amount (−) .....

D. *Provisions for other liabilities and charges*

1. Provisions for pensions and similar obligations

2. Provisions for taxation

3. Other provisions

E. *Deposits withheld from reinsurers* (Article 27)

F. *Creditors*
(for each of the following items, a separate indication must be given of amounts owed to:

(a) affiliated undertakings

(b) undertakings with which the insurance undertaking is linked by virtue of a participating interest)

1. Debenture loans, showing convertible loans separately

2. Amounts owed to credit institutions

3. Creditors arising out of direct insurance operations

4. Creditors arising out of reinsurance operations

5. Other creditors, including tax and social security

G. *Accruals and deferred income*

H. *Profit for the financial year*
(unless national law provides for it to be shown under A.VI under 'Liabilities')

Article 6

Articles 11, 12, 27, 44, 47 (2) and (3) and 51 (2) of Directive 78/660/EEC shall not apply to insurance undertakings.

Article 7

The provisions of Article 14 of Directive 78/660/EEC shall not apply to those commitments which are taken into account in determining the amount of the technical provisions.

SECTION 4

Special provisions relating to certain balance sheet items

Article 8

1. Article 15 (1) and (2) of Directive 78/660/EEC shall not apply to insurance undertakings.

2. The requirements of paragraph 3 of the above-mentioned Article shall apply to each item of B, C and E. 1 under 'Assets' in the layout prescribed in Article 5.

Article 9

Assets: item C.III.2

Debt securities

1. This item shall comprise negotiable fixed-interest debt securities issued by credit institutions, by other undertakings or by public bodies, in so far as they are not appropriate to asset items C.II.2 and C.II.4.

2. Securities carrying interest rates that vary in line with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as fixed-interest debt securities.

Article 10

Assets: item C.III.3 and 4

Loans guaranteed by mortgages and other loans

Loans to policy holders for which the policy is the main security shall be included under the heading of 'Other loans' and their amount shall be disclosed in the notes on the accounts. Loans guaranteed by mortgages shall be shown as such even where they are also secured by an insurance policy. Where the amount of 'other loans' not secured by a policy is significant an appropriate breakdown shall be given in the notes on the accounts.

Article 11

Assets: items C.III.5 and F

Deposits with credit institutions

Cash at bank and in hand

'Deposits with credit institutions' comprises amounts the withdrawal of which is subject to a time restriction, whereas sums deposited with no such restriction shall appear under assets item F, even if they bear interest.

Article 12

Assets: item C.IV

Investments for the benefit of life insurance policy holders who bear the investment risk

Investments for the benefit of life insurance policy holders who bear the investment risk shall comprise the amount of all investments which the insurance undertaking holds by virtue of its commitment under life insurance contracts the benefits of which are expressed by reference to the value of those investments. Pending further harmonization, Member States may however require or permit insurance undertakings to include such investments under the headings where they would appear but for the provisions of this Article. Where use is made of this option the amount of such investments under each of the respective headings shall be separately disclosed.

Article 13

Assets: item C.VI

Deposits with cedant undertakings

In the balance sheet of an undertaking accepting reinsurance, this item shall comprise amounts deposited with, or withheld by, other insurance undertakings under insurance contracts. These amounts may not be merged with other amounts owed by or to the other undertakings in question.

Securities deposited with cedant undertakings which remain the property of the undertaking accepting reinsurance shall not be shown here but under the appropriate heading for the type of asset in question.

Article 14

Assets: item G.1

Accrued interest and rent

Accrued interest and rent shall comprise those items that represent interest and rent that have been earned up to the date of the balance sheet but have not yet become receivable.

Article 15

Assets: item G.2

Deferred acquisition costs

Deferred acquisition costs shall comprise the amount of expenditure incurred on the acquisition of insurance business premium income which relates to a subsequent financial year or years having regard to the period to which the individual contract relates. Member States may prohibit the deferral of such amounts in life insurance business; any such prohibition must be disclosed in the notes on the accounts.

Where the zillmerization of life insurance contracts results in a negative amount in respect of particular contracts the total of such negative amounts shall be included in deferred acquisition costs and disclosed in the notes on the accounts.

Article 16

Liabilities: item A.I

Subscribed capital

This item shall comprise all amounts, irrespective of their actual designations, which, in accordance with the legal structure of an insurance undertaking, are regarded under the national law of the Member State concerned as equity capital subscribed by the shareholders or other proprietors.

Article 17

Liabilities: item A.IV

Reserves

Reserves shall comprise all the types of reserves listed in Article 9 of Directive 78/660/EEC under 'Liabilities' A.IV, as defined therein. The Member States may also require other types of reserves if necessary for insurance undertakings the legal structures of which are not covered by Directive 78/660/EEC.

These reserves shall be shown separately, as sub-items to 'Liabilities' item A.IV, in the balance sheets of the insurance undertakings concerned, except for the revaluation reserve, which is shown under 'Liabilities' item A.III.

Article 18

Liabilities: item B

Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not represented by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under 'Liabilities' item B.

Article 19

Liabilities: item C

Technical provisions

Article 20 of Directive 78/660/EEC shall not apply to the technical provisions disclosed under 'Liabilities' item C.

Article 20

Liabilities: item C

Reinsurance amount (deduction)

The reinsurance amounts shall be determined in accordance with the stipulations of the reinsurance contracts.

Article 21

Liabilities: item C.1

Unearned premiums

Unearned premiums shall comprise the amount representing that part of gross premiums written which is to be allocated to a subsequent financial year or subsequent financial years. In the case of life insurance Member States may, pending further harmonization, permit or require the unearned premiums to be included in the life insurance provisions.

Article 22

Liabilities: item C.6 (or C.1)

Unexpired risks

Unexpired risks shall comprise the amount set aside in addition to unearned premiums in respect of risks to be borne by the insurance undertaking after the end of the financial year, in order to provide for all claims and expenses in connection with insurance contracts in force in excess of the related unearned premiums and any premiums receivable on those contracts. The amount

provided for unexpired risks shall be included in the amount for 'other technical provisions' at 'Liabilities' item C.6, unless national legislation provides that it shall be added to unearned premiums as defined in Article 21 and included in the amount disclosed at 'Liabilities' item C.1, in which case the description of that item shall be 'unearned premiums and unexpired risks'. In either case, where the amount of unexpired risks is material it shall be separately disclosed either in the balance sheet or in the notes on the accounts.

Article 23

Liabilities: item C.2

Life insurance provisions

The life insurance provisions shall comprise the actuarially estimated value of the liabilities net of future premiums in respect of life direct insurance and reinsurance contracts. Negative amounts resulting from the zillmerization of life insurance provisions shall be disclosed in accordance with the provisions of Article 15.

Article 24

Liabilities: item C.3

Claims outstanding

1. The provision for claims outstanding shall be the total estimated ultimate cost to the insurance undertaking of settling all claims arising from events which have occurred up to the end of the financial year, whether reported or not, less amounts already paid in respect of such claims.

2. The provision created through the application of Methods 1 or 2 described in Article 40 (1) shall be included in the provision for claims outstanding. The amount so included shall be disclosed in the notes on the accounts.

Article 25

Liabilities: item C.4

Provision for bonuses and rebates

The provision for bonuses and rebates shall comprise amounts intended for policy holders and other insured parties by way of bonuses and rebates as defined in Article 34 to the extent that such amounts have not been attributed to individual policy holders or other insured parties through inclusion in the life insurance technical provisions shown under 'Liabilities' item C.2 or otherwise.

Article 26

Liabilities: item C.5

Equalization provisions required by national law

The amount shown under 'Liabilities' item C.5 shall comprise any amounts set aside in compliance with legal provisions to equalize fluctuations in loss ratios in the coming years. Amounts set aside for similar purposes other than by virtue of a legal requirement shall be separately disclosed under 'Liabilities' item A.IV. Member States may however permit or require them to be included in 'other technical provisions' at 'Liabilities' item C.6, in which event their amount shall be disclosed in the notes on the accounts if it is material.

Article 27

Liabilities: item E

Deposits withheld from reinsurers

In the balance sheet of an undertaking ceding reinsurance, this item shall comprise amounts deposited by, or withheld from, other insurance undertakings under reinsurance contracts. These amounts may not be merged with other amounts owed to or by the other undertakings in question.

Where the undertaking ceding reinsurance has received as a deposit securities which have been transferred to its ownership, this item shall comprise the amount owed by the cedant undertaking by virtue of the deposit.

SECTION 5

Layout of the profit and loss account

Article 28

1. The Member States shall prescribe the layout provided in Article 29 for the profit and loss account.

2. The technical account for non-life-insurance business is to be used for those classes of direct insurance which are within the scope of Directive 73/239/EEC and for the corresponding classes of reinsurance business.

3. The technical account for life insurance business is to be used for those classes of direct insurance wich are within the scope of Directive 79/267/EEC and for the corresponding classes of reinsurance business.

Article 29

Profit and loss account

I *Technical account — Non-life-insurance business*

1. Premiums:
   - (a) gross premiums written (Article 30)
   - (b) outgoing reinsurance premiums (−) (Article 31)
   - (c) change in provision for unearned premiums, net of reinsurance (+ or −) (Article 32)
   - (d) earned premiums (result of (a), (b) and (c))
2. Other technical income
3. Claims incurred: (Article 33)
   - (a) gross claims paid
   - (b) amounts recoverable from reinsurers (−)
   - (c) change in provision for claims, net of reinsurance (+ or −)
   - (d) net claims incurred (result of (a), (b), and (c))
4. Changes in other technical provisions, net of reinsurance:
   - (a) change in unexpired risks provision (+ or −)
   - (b) changes in other technical provisions (not shown under other headings) (+ or −)
   - (c) result of (a) and (b) (+ or −)
5. Bonuses and rebates: (Article 34)
   - (a) gross bonuses and rebates
   - (b) amounts receivable from reinsurers (−)
   - (c) net bonuses and rebates ((a) − (b))

6. Commissions and other technical charges:

   (a) commissions (Article 35)

   (b) administrative expenses (Article 36)

   (c) commissions and profit participation from other insurance undertakings (−)

   (d) variations in deferred acquisition costs (+ or −)

   (e) net amount of commissions and other technical charges (result of (a), (b), (c), and (d))

7. Other technical charges, net of reinsurance

8. Subtotal (first technical result)

9. Changes in equalization provisions and reserves:

   (a) changes in legally prescribed equalization provisions (+ or −)

   (b) changes in other equalization provisions and reserves (+ or −)

   (c) result of (a) and (b)

10. Allocated investment return (+) (III.10) (Article 37)

11. Subtotal (second technical result (III.1)

II. Technical account — Life insurance business

1. Premiums:

   (a) gross premiums written (Article 30)

   (b) outgoing reinsurance premiums (−) (Article 31)

   (c) change in provision for unearned premiums, net of reinsurance (+ or −) (Article 32)

   (d) earned premiums (result of (a), (b) and (c))

2. Income from participating interests, with a separate indication of that derived from affiliated undertakings

3. Income from other investments, with a separate indication of that derived from affiliated undertakings: (Article 38)

   (a) income from land and buildings

   (b) income from other investments

   (c) result of (a) and (b)

4. Profit on the realization of investments

5. Value adjustments on investments

6. Unrealized gains on investments (Article 39)

7. Other technical income

8. Subtotal: total technical income

9.	Claims incurred:	(Article 33)
	(a) gross claims paid	
	(b) amounts recoverable from reinsurers (−)	
	(c) net claims incurred (result of (a) and (b))	
10.	Changes in technical provisions, as far as not shown under 1 (c):	
	(a) life insurance provision, net of reinsurance (+ or −)	(Article 32)
	(b) other technical provisions, net of reinsurance (+ or −)	
11.	Bonuses and rebates:	(Article 34)
	(a) gross bonuses and rebates	
	(b) amounts receivable from reinsurers (−)	
	(c) net bonuses and rebates ((a) − (b))	
12.	Commissions and other technical charges:	
	(a) commissions	(Article 35)
	(b) administrative expenses	(Article 36)
	(c) commissions and profit participations from other insurance undertakings (−)	
	(d) variations in deferred acquisition costs (+ or −)	
	(e) net amount of commissions and other technical charges (result of (a), (b), (c) and (d))	
13.	Investment charges:	(Article 38)
	(a) charges, including interest, relating to land and buildings	
	(b) other investment management charges, including interest	
14.	Losses on the realization of investments	
15.	Value adjustments on investments	
16.	Unrealized losses on investments	(Article 39)
17.	Other technical charges	
18.	Subtotal: total technical charges	
19.	Subtotal (first technical result)	
20.	Allocated investment return (−) (III.9)	(Article 38)
21.	Subtotal (second technical result) (III.2)	

III. *Non-technical account*

1.	Result of technical account — non-life-insurance business (I.11)	

2. Result of technical account — life insurance business (II.21)

3. Income from participating interests, apart from that shown in the technical account, with a separate indication of that derived from affiliated untertakings

4. Income from other investments, with a separate indication of that derived from affiliated undertakings:

   (a) income from land and buildings

   (b) income from other investments

5. Value adjustments on investments (+ or −)

6. Investment charges:

   (a) charges, including interest, related to land and buildings

   (b) other investment management charges, including interest

7. Profits on the realization of investments

8. Losses on the realization of investments

9. Allocated investment return transferred from life insurance technical account (II.20) (+)

10. Allocated investment return transferred to non-life-insurance technical account (I.10) (−)

11. Non-investment income

12. Non-investment charges, including value adjustments

13. Tax on profit or loss on ordinary activities

14. Profit or loss on ordinary activities after taxation

15. Extraordinary income

16. Extraordinary charges

17. Extraordinary profit or loss

18. Tax on extraordinary profit or loss

19. Other taxes not shown under the above items

20. Profit or loss for the financial year

SECTION 6

Special provision relating to certain items in the profit and loss account

Article 30

1. Article 28 of Directive 78/660/EEC shall not apply to insurance undertakings.

Non-life technical account item I.1 (a)

Life technical account item II.1 (a)

Gross premiums written

2. Gross premiums written shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertaking, including:

(a) single premiums, inclusive of annuity considerations;

(b) additions to premiums in the case of semi-annual, quarterly or monthly payments and recoveries from policy holders of expenses borne by the company;

(c) in the case of coinsurance, the insurance undertakings's portion of total premiums (excluding premiums to be allocated to coinsurance partners);

(d) reinsurance premiums in respect of business acquired from ceding companies;

after deduction of cancellations and of taxes and parafiscal contributions or levies charged by reference to the amount of individual premiums or the volume of premiums.

Article 31

Non-life technical account item I.1 (b)

Life technical account item II.1 (b)

Outgoing reinsurance premiums

Outgoing reinsurance premiums shall comprise all amounts paid and payable in respect of outgoing reinsurance contracts entered into by the insurance undertaking.

Article 32

Non-life technical account item I.1 (c)

Life technical account item II.1 (c)

Change in provision for unearned premiums, net of reinsurance

The change in the provision for unearned premiums, net of reinsurance, shall comprise the difference between the provision for unearned premiums at the beginning of the financial year and at its end, and shall not include the change in the provision for unexpired risks. Pending further coordination, Member States may in the case of life insurance require or permit the change in unearned premiums to be included in the change in the life insurance provision.

Article 33

Non-life technical account: item I.3

Life technical account: item II.9

Claims incurred

1. Claims incurred shall comprise all amounts paid and payable, after taking into account provisions made in previous years, in respect of liabilities arising in relation to events occurring up to and including the balance sheet date. The amounts in question include annuities, surrenders, adjustments of claims in respect of previous years still outstanding at the balance sheet date, losses incurred but not reported, external and internal direct and indirect claims settlement costs and entries and withdrawals of loss-provisions to and from ceding insurance undertakings and reinsurers. Amounts received or receivable as a result of obtaining the legal ownership of insured property or acquiring the rights of the policy holder against third parties in connection with the settlement of a claim (salvage and subrogation) shall be deducted. Where such amounts are material they shall be disclosed in the notes on the accounts.

2. Where the amount of adjustments of claims in respect of previous years still outstanding at the balance sheet date is material, it shall be disclosed in the notes on the accounts.

Article 34

Non-life technical account: items I.5

Life technical account: item II.11

Bonuses and rebates

Bonuses shall comprise all amounts chargeable for the financial year which are paid or payable to policy holders and other insured parties or provided for their benefit, including amounts used to increase technical provisions or applied to the reduction of future premiums, to the extent that such amounts represent an allocation of surplus or profit arising on business as a whole or a section of business, after deduction of amounts provided in previous years which are no longer required.

Rebates shall comprise such amounts to the extent that they represent a partial refund of premiums resulting from the experience of individual contracts.

Where material, the amount charged for bonuses and that charged for rebates shall be distinguished in the notes on the accounts.

Article 35

Non-life technical account: item I.6 (a)

Life technical account: item II.12 (a)

Commissions

Commissions shall comprise all amounts paid or payable in respect of insurance contracts which constitute a fee paid, otherwise than by virtue of a contract of employment, for services rendered in respect of business introduced to the insurance undertaking. They include amounts paid to agents and brokers but exclude amounts paid to employees (such as members of the direct sales force) acting in the ordinary course of their service to the undertaking.

Article 36

Non-life technical account: item I.6 (b)

Life technical account: item II.12 (b)

Administrative expenses

Administrative expenses shall include in particular value adjustments on tangible assets other than land and buildings and all staff costs, including commissions paid to employees acting in the ordinary course of their service to the undertaking, with the exception of staff costs incurred in connection with claims settlement and those that are properly charged under investment expenses.

Article 37

Non-life technical account: item I.10

Non-technical account: item III.10

Allocation of part of investment return to the non-life technical account

Where part of the investment return is allocated to the technical account for non-life-insurance business, the transfer from the non-technical account shall be deducted at item III.10 and added at item I.10. The reason for the allocation and the basis on which it is made must be disclosed in the notes on the accounts.

Article 38

Life technical account: item II

Investment income, etc.

1. In the case of an undertaking carrying on only life insurance business, all investment income and charges and profits and losses on the realization of investments shall be disclosed in the technical account for life insurance business.

2. In the case of an undertaking carrying on both life insurance and non-life insurance business, all investment income and charges and profits and losses on the realization of investments shall to the extent that they are directly connected with the carrying-on of the life insurance business be disclosed in the technical account for life insurance business.

3. That part of the investment income and charges and of profits and losses on the realization of investments disclosed in the technical account for life insurance business which is not used or set aside for the benefit of policy holders and insured parties may be allocated in whole or in part to the non-technical account, the amount allocated being deducted at item II.20 and added at item III.9. The reason for the allocation and the basis on which it is made must be disclosed in the notes on the accounts.

Article 39

Life technical account: items II.6 and 16

Unrealized gains and losses in life insurance business

Variations in the amount of the difference between the valuation of investments in accordance with current value and their valuation in accordance with the principle of purchase price or production cost shall be shown at items II.6 and 16 only to the extent that Article 43 (2) applies.

SECTION 7

Valuation rules

Article 40

1. Pending further coordination Member States may require or permit the application of the following methods where, owing to the nature of the class or type of insurance in question, information about premiums receivable, claims payable, or both, for the underwriting year is insufficient at the time at which the annual accounts are drawn up to enable accurate estimates to be made.

Method 1

The excess of the premiums received over the claims and expenses paid in respect of contracts commencing in the underwriting year forms a technical provision, which in accordance with Article 24 (2) is included in the technical provision for claims outstanding shown in the balance sheet at 'Liabilities' item C 3. The amount of this technical provision is if necessary increased to make it sufficient to meet present and future obligations. No amount in respect of the contracts in question is included in the technical provisions for unearned premiums and unexpired risks referred to respectively in Articles 21 and 22. The technical provision formed in accordance with this method is replaced by a provision for claims outstanding estimated in the usual manner at the end of the year following the underwriting year or at the end of a later year.

Method 2

The rules of Method 1 apply, except that the technical provision referred to in the first sentence of the description of that method is calculated as a particular percentage of the premiums receivable.

Method 3

The figures shown in the whole of the technical account or at certain items within it relate to a year which wholly or partly precedes the financial year.

The amount of the technical provisions shown in the annual accounts is if necessary increased to make them sufficient to meet present and future obligations.

2. Where a method referred to in paragraph 1 is adopted, it shall be applied systematically in successive years unless circumstances justify a change. The use of any such method shall be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss, with particular reference to its effect on the provisions for unearned premiums and claims outstanding. Where Methods 1 or 2 are used, the length of time that elapses before a provision for claims outstanding is created on the usual basis shall be disclosed in the notes on the accounts. Where Method 3 is used, the length of time by which the year to which the figures relate precedes the financial year shall be disclosed in the notes on the accounts.

3. Where Methods 1 or 2 are used, a provision for claims outstanding shall be created on the usual basis not later than the end of the third year following the underwriting year. Where Method 3 is used, the length of time by which the year to which the figures relate precedes the financial year shall not exceed 12 months.

4. For the purposes of this Article the expression 'underwriting year' means the financial year in which the insurance contracts in the class or type of insurance in question commenced.

Article 41

Article 32 of Directive 78/660/EEC, which provides that the valuation of items shown in the annual accounts shall be based on the principle of purchase price or production cost, shall in its application to investments be subject to Articles 42 to 45 of this Directive.

Article 42

1. As regards the valuation of investments shown in Article 5 under 'Assets' item C Member States may require or permit insurance undertakings to apply current value calculated in accordance with Articles 44 and 45.

2. Where in life insurance business the benefits provided to policy holders and insured parties are related to the current value of particular investments or investments as a whole, those investments shall be shown in the balance sheet at current value.

3. Where the principle of purchase price or production cost referred to in Article 32 of Directive 78/660/EEC is applied to investments, the current value shall be disclosed in the notes on the accounts.

4. Where investments are shown at current value, the value resulting from the application of the principle of purchase price or production cost shall be disclosed in the notes on the accounts.

5. The same basis shall be applied to all investments included in any item denoted by an arabic number.

6. The method applied to each item of investments shall be disclosed in the notes on the accounts.

Article 43

1. Where current value is applied to investments, Article 33 (2) and (3) of Directive 78/660/EEC shall apply, except as provided in paragraph 2.

2. In the case described in Article 42 (2), the amount of the difference between valuation in accordance with current value and valuation in accordance with the principle of purchase price or production cost shall be entered in the life insurance provisions in Article 5 at 'Liabilities' item C. 2. Variations in this difference shall be disclosed in the technical account for life insurance business at Article 29, items II.6 and 16.

Article 44

1. In the case of investments other than land and buildings, current value shall mean market value, save as provided in paragraph 6.

2. Where investments are quoted on a recognized stock exchange, market value shall mean the middle market value on the balance sheet date or on the last day of trading preceding that date.

3. Where an active market exists for investments other than those referred to in paragraph 2, the market value shall mean the average figure at which such investments were traded on the balance sheet date or the last day of trading preceding that date.

4. Where the application of a method referred to in paragraphs 2 and 3 produces a figure for particular investments which, owing to exceptional circumstances at the date in question, is materially higher than the figure which would have been obtained in the absence of those circumstances, the latter figure shall be taken as the market value.

5. Where at the date at which the accounts are drawn up investments referred to in paragraphs 2 or 3 have been sold or there is an intention to sell them within the short term, the market value shall be reduced by the incurred or estimated realization costs.

6. Except where the equity method is applied in accordance with Article 59 of Directive 78/660/EEC, all other investments shall be valued on a basis which has prudent regard to the likely realizable value.

7. In all cases the precise method of valuation and the reason for adopting it shall be disclosed in the notes on the accounts.

Article 45

1. Except as provided in paragraph 6, current value in the case of land and buildings shall mean the market value determined at the date of valuation, reduced as provided in paragraphs 4 and 5.

2. Market value shall mean the price at which the land and buildings could be sold under private contract between a willing seller and an arm's length buyer at the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale.

3. The market value shall be determined through the separate valuation of each item of land and buildings carried out not less frequently than every five years by persons approved for the purpose by the Member State in which the head office of the insurance undertaking is situated.

4. Where the value of any item of land and buildings has diminished at the balance sheet date, the appropriate value adjustment shall be made. The lower value thus arrived at shall not be increased in subsequent balance sheets unless such increase results from a new determination of market value arrived at in the conditions prescribed in paragraphs 2 and 3.

5. Where at the date at which the accounts are drawn up land and buildings have been sold or there is an intention to sell them within the short term, the value arrived at in accordance with paragraphs 2 and 4 shall be reduced by the incurred or estimated realization costs.

6. Where it is impossible to determine the market value of an item of land and buildings, the value arrived at on the basis of the principle of purchase price or production cost shall be treated as the current value.

7. In all cases the method by which current value has been arrived at and the year or years in which valuations were last carried out in accordance with paragraph 3 shall be disclosed in the notes on the accounts.

Article 46

1. Article 33 of Directive 78/660/EEC shall apply to insurance undertakings in the following manner:

(a) references to 'tangible fixed assets' shall be construed as references to assets listed under 'Assets' C.II.2, 3 and 4 in Article 9 of Directive 78/660/EEC;

(b) the reference to 'stocks' shall be construed as a reference to assets shown in this Directive at Article 5, 'Assets' item E.2.

2. Subject to Article 43 of this Directive, Article 33 of Directive 78/660/EEC shall not apply to investments which are financial fixed assets within the meaning of 'Assets' C.III of Article 9 of Directive 78/660/EEC.

Article 47

The application of Article 35 of Directive 78/660/EEC to insurance undertakings shall be subject to the following modifications:

(a) references to 'fixed assets' shall be construed as references to assets shown in this Directive at Article 5, 'Assets' items B, C and E.1;

(b) references to 'financial fixed assets' shall be construed as references to assets shown in this Directive at Article 5, 'Assets' items C.II, III, IV, V and VI.

Article 48

In Article 38 of Directive 78/660/EEC the reference to tangible fixed assets, raw materials and consumables shall, as regards insurance undertakings, be construed as a reference to assets shown in this Directive at Article 5, 'Assets' item E.

Article 49

For the application of Article 39 of Directive 78/660/EEC to insurance undertakings the reference to current assets shall be construed as a reference to assets shown in this Directive at Article 5, 'Assets' items D. 1, 2 and 3 and F.

Article 50

In non-life insurance the amount of deferred acquisition costs shall be established on a basis consistent with that followed for unearned premiums.

In life insurance the calculation of the amount of acquisition costs to be deferred may form part of the actuarial calculation referred to in Article 55.

Article 51

Subject to Article 42, debt securities included under Article 5, 'Assets' items C. II and III, shall be shown in the balance sheet at purchase price. The Member States may, however, permit or require debt securities to be shown in the balance sheet at the amount repayable at maturity.

Where the purchase price of such debt securities exceeds the amount repayable at maturity, the amount of the difference must be charged to the profit and loss account. The amount of the difference may however be written off in instalments so that it is completely written off no later than the time of repayment of the debt securities. The difference must be shown separately in the balance sheet or in the notes on the accounts.

Where the purchase price of such debt securities is less than the amount repayable at maturity, the Member States may permit or require the amount of the difference to be released to income in instalments during the period remaining until repayment. The difference must be shown separately in the balance sheet or in the notes on the accounts.

Article 52

The amount of technical provisions shall be such as to ensure that all liabilities arising out of insurance contracts can be met by the insurance undertaking.

Article 53

The provision for unearned premiums shall be computed for each individual contract and *pro rata temporis* by reference to the proportion of the period covered by the contract which extends over a period following the end of the financial year. Member States may permit the use of flat-rate methods where they are likely to give approximately the same results as the individual calculations. If the nature of risks is such that the *pro rata temporis* method does not reflect the expected risk experience, appropriate adjustments shall be made.

Article 54

The provision for unexpired risks shall be computed on the basis of the probable claims arising from events after the end of the financial year from contracts concluded before the date, in so far as they exceed the provision for unearned premiums.

Article 55

The life insurance provision shall be computed separately for each insurance contract. Approximate methods may however be used where they are likely to give approximately the same results as the individual calculations. A computation must be made annually under the responsibility of an actuary on the basis of recognized actuarial methods. A summary of the principal assumptions must be disclosed in the notes on the accounts.

Article 56

1. The provisions for claims outstanding shall in principle be calculated case by case, but statistical methods may be used if they result in an adequate provision having regard to the nature of the risks. For the calculation of claims incurred but not reported, regard shall be had to past experience and all other relevant factors.

2. External and internal direct and indirect claims settlement costs shall be taken into account when calculating the provision.

3. Where in calculating the provision account is taken of estimated amounts receivable as a result of obtaining the legal ownership of insured property or acquiring the rights of the policy holder against third parties in connection with the settlement of a claim (salvage and subrogation), a prudent basis shall be adopted. Where such amounts are material they shall be disclosed in the notes on the accounts.

4. Where in non-life insurance benefits resulting from a claim have to be paid in the form of an annuity, the amounts to be provided for this purpose shall be calculated actuarially and included in the provision for claims outstanding.

5. Where, apart from cases in which the benefits have to be calculated actuarially, a deduction is exceptionally made in respect of investment income which may be attributable to the provisions for particular claims because of the expected delay in settlement, such deduction shall be calculated on an actuarial basis. Where such discounting is adopted it must be disclosed in the notes on the accounts together with an explanation of

the reasons for it and a statement of its effects on the assets, liabilities, financial position and profit or loss.

Implicit discounting, whether resulting from the placing of a present-day value on a provision for an outstanding claim which is expected to be settled later at a higher figure, or otherwise brought about, is not permissible.

Article 57

Pending further coordination those Member States which require the formation of equalization provisions shall prescribe the valuation rules to be applied to them.

SECTION 8

Contents of the notes on the accounts

Article 58

1. In place of the information required by Article 43 (1) (8) of Directive 78/660/EEC, insurance undertakings shall indicate, in the notes on the accounts, gross premiums within the meaning of Article 30 of this Directive, broken down by categories of activity and into geographical markets as follows:

— as regards non-life insurance, firstly as between direct insurance and acceptances of reinsurance, and then within each of those categories between:

  — accident and health,

  — motor,

  — marine, aviation and transport,

  — fire and other damage to property,

  — liability,

  — credits and suretyship,

  — legal expenses,

  — assistance,

  — miscellaneous,

  except that disclosure under any of these headings is not necessary if it accounts for less than 10% of the non-life gross premiums in direct insurance or in reinsurance respectively;

— as regards life insurance, firstly as between direct insurance and acceptances of reinsurance, if such acceptances amount to at least 10% of total life insurance gross premiums, and then within each of those categories to indicate:

  — periodic premiums,

  — single premiums, including annuity considerations,

  — premiums under group contracts,

  — premiums for contracts under which the policy holders bear the investment risk

  except that disclosure under any of these headings is not necessary if it accounts for less than 10% of the life gross premiums in direct insurance or in reinsurance respectively;

— as regards both non-life and life insurance, the total gross premiums resulting from contracts concluded by the insurance undertaking in each Member State or other country in which it has an establishment (head office, branch or agency), except that such disclosure is not necessary where the figure for any particular Member State or other country accounts for less than 5% of the total gross premiums.

2. The reference in Article 43 (1) (10) of Directive 78/660/EEC to Articles 31 and 34 to 42 thereof shall be construed as a reference to those Articles as modified for the purposes of their application to insurance undertakings by the provisions of this Directive.

3. Insurance undertakings shall indicate, in the notes on the accounts, assets shown respectively under items C.III.1 (shares) and C.III.2 (debt securities) of Article 5 broken down between quoted and unquoted investments.

SECTION 9

Provisions relating to consolidated accounts

Article 59

1. Insurance undertakings shall draw up consolidated accounts and a consolidated annual report in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.

2. In so far as a Member State does not make use of Article 5 of Directive 83/349/EEC, paragraph 1 shall also apply to parent undertakings the sole object of which is to acquire holdings and turn them to profit,

where those subsidiary undertakings are either exclusively or mainly insurance undertakings.

Article 60

Directive 83/349/EEC shall apply subject to the following provisions:

1. Articles 4, 6, 15 and 40 shall not apply;

2. The information referred to in the first two indents of Article 9 (2), namely:

   — the amount of the fixed assets,

   and

   — net turnover

   shall be replaced by 'Gross premiums written' as defined in Article 30 of this Directive.

3. For the purposes of the layout of consolidated accounts, the reference in Article 17 to Articles 9 and 10 (balance sheet) and 23 to 26 (profit and loss account) of Directive 78/660/EEC shall be deemed to be a reference to Articles 5 (balance sheet) and 29 (profit and loss account) of this Directive. Articles 4, 7 to 27, 28 and 30 to 39 of this Directive shall also apply.

4. For the purposes of valuing assets and liabilities to be included in consolidated accounts, the reference in Articles 29 and 33 to Articles 31 to 42 and 60 of Directive 78/660/EEC shall be deemed to be a reference to those Articles as amended in their application by Articles 40 to 57 of this Directive.

5. Article 34 shall apply in respect of the contents of the notes on consolidated accounts, suject to Article 58 of this Directive.

SECTION 10

Publication

Article 61

1. The duly approved annual accounts of insurance undertakings, together with the annual reports and the opinion of the persons responsible for auditing the accounts shall be published as laid down by the laws of each Member State in accordance with Article 3 of First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community [1].

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost.

2. Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual reports and the opinions submitted by the persons responsible for auditing the accounts.

3. Where an insurance undertaking which has drawn up annual accounts or consolidated accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraphs 1 and 2 as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its registered office. It must be possible to obtain copies of such documents on request. The price of such copies must not exceed their administrative cost.

4. Member States shall provide for appropriate sanctions for failure to comply with the publication rules laid down in this Article.

SECTION 11

Final provisions

Article 62

The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall, when constituted appropriately, also have the following functions:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

[1] OJ No L 65, 14. 3. 1968, p. 8.

Article 63

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

2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January ... or during the calendar year ... .

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

Article 64

This Directive is addressed to the Member States.

Proposal for a Twelfth Council Directive on company law concerning single-member private limited companies

(OJ No. C 173 of 2.7.1988, p. 10 - 12)

II

(Preparatory Acts)

COMMISSION

Proposal for a Twelfth Council Directive on company law concerning single-member private limited companies

COM(88) 101 final — SYN 135

(Submitted by the Commission on 19 May 1988)

(88/C 173/10)

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 certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 of the Treaty should be coordinated with a view to making such safeguards equivalent throughout the Community;

Whereas in this field Council Directives 68/151/EEC (1), 78/660/EEC (2) and 83/349/EEC (3) concerning disclosure, the validity of commitments, nullity, annual accounts and consolidated accounts apply to all companies, while Council Directives 77/91/EEC (4), 78/855/EEC (5) and 82/891/EEC (6) on formation and capital, mergers and divisions apply only to public limited companies;

Whereas the SME action programme was approved by the Council on 3 November 1986;

Whereas reforms in the legislation of certain Member States in the last few years, permitting single-member private limited companies, have created divergences between the laws of the Member States;

Whereas it is important to provide a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community;

Whereas a private limited company may be a single-member company from the time it is formed, or may become so because its shares have come to be held by a single shareholder; the shares of a single-member company should be nominative and certain conditions should be established for companies with a legal person as their sole member;

Whereas the fact that all the shares have come to be held by a single shareholder should be disclosed;

Whereas decisions taken by the sole member in his capacity as general meeting should be recorded in writing;

Whereas agreements between the sole member and the company should likewise be recorded in writing,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

(1) OJ No L 65, 14. 3. 1968, p. 8.
(2) OJ No L 222, 14. 8. 1978, p. 11.
(3) OJ No L 193, 18. 7. 1983, p. 1.
(4) OJ No L 26, 30. 1. 1977, p. 1.
(5) OJ No L 295, 20. 10. 1978, p. 36.
(6) OJ No L 378, 31. 12. 1982, p. 42.

— *in Belgium:*
la société privée à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid,

— *in Denmark:*
anpartsselskaber,

— *in Germany:*
die Gesellschaft mit beschränkter Haftung,

— *in Spain:*
la sociedad de responsabilidad limitada,

— *in France:*
la société à responsabilité limitée,

— *in Greece:*
η εταιρία περιορισμένης ευθύνης,

— *in Ireland:*
the private company limited by shares or by guarantee,

— *in Italy:*
la società a responsabilità limitata,

— *in Luxembourg:*
la société à responsabilité limitée,

— *in the Netherlands:*
de besloten vennootschap met beperkte aansprakelijkheid,

— *in Portugal:*
a sociedade por quotas,

— *in the United Kingdom:*
the private company limited by shares or by guarantee.

Article 2

1. A company may have a sole member, either when it is formed or when all the shares come to be held by a single person (single-member company). Shares in such a company shall be nominative.

2. A single-member company whose sole member is a legal person may not be the sole member of another company.

3. Where the sole member is a legal person, Member States shall provide that either:

(a) the legal person has unlimited liability for the company's obligations arising during the period of the person's sole membership. However, Member States may provide that where a legal person becomes a sole member, because all the shares come to be held by a single person, that liability is not incurred unless another member has not been found within one year,

or

(b) a minimum capital is fixed for the single-member company and both the company and the sole member are companies which at their balance sheet dates do not exceed the limits of two of the three criteria in Article 27 of Directive 78/660/EEC. If one of the companies exceeds the limits and the situation is not regularized in the year following the balance sheet date, the sole member shall have unlimited liability for the obligations of the single-member company arising after the balance sheet date.

Article 3

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact shall be recorded in the file or entered in the register within the meaning of Article 3 (1) and (2) of Directive 68/151/EEC.

Article 4

1. The sole member shall exercise the powers of the general meeting of the company and may not delegate them.

2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes.

Article 5

1. Agreements between the sole member and the company shall be drawn up in writing.

2. The possibility of any agreement between the sole member and the company represented by that member must be provided for in the statutes or instrument of incorporation of the company.

Article 6

Where a Member State allows the formation of a single-member public limited company, the rules of this Directive shall apply.

Article 7

A Member State may decide not to apply this Directive where its legislation provides that an individual businessman may set up an undertaking whose liability is limited to a sum devoted to a stated activity, on condition that safeguards are laid down for such undertakings which are equivalent to those imposed by Community law on the companies to which this Directive applies.

Article 8

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

2. Member States may provide that in the case of companies already in existence on 1 January 1990 this Directive shall not apply until 1 January 1991.

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

Article 9

This Directive is addressed to the Member States.

Proposal for a Council Directive amending Directive 85/3/EEC on the weights, dimensions and certain other technical characteristics of certain road vehicles

COM(88) 286 final

(Submitted by the Commission on 25 May 1988)

(88/C 173/11)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Directive 85/3/EEC (1), as amended by Directive 86/360/EEC (2), lays down maximum authorized dimensions of all vehicles intended for the transport of goods above 3,5 tonnes and maximum authorized vehicle weights and axle weights only of five- or six-axle combined vehicles and trailers forming part of combined vehicles;

Whereas the maximum authorized vehicle weight and drive axle weight of two-axle rigid vehicles should be fixed as well,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 85/3/EEC is hereby amended as follows:

1. Article 7 is replaced by the following:

'*Article 7*

After consulting the Commission, Member States shall take the measures necessary to comply with this Directive:

— as from 1 July 1986 as regards application of all provisions other than Article 4 and Annex II, as well as points 2.3 and 3.4 of Annex I,

— as from 1 January 1990 as regards the application of Article 4, point 2.3 of Annex I and Annex II,

— as from 1 January 1992 as regards the application of point 3.4 of Annex I.

Member States shall inform the Commission of the measures they take to implement this Directive.'.

2. The following point is inserted in Annex I:

'2.3. Two-axle rigid vehicles 18 tonnes';

3. Point 3.4 of Annex I is replaced by the following:

'3.4. Driving axle of vehicles referred to in points 2.2 and 2.3 11,5 tonnes'.

Article 2

This Directive is addressed to the Member States.

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(1) OJ No L 2, 3. 1. 1985, p. 14.
(2) OJ No L 217, 5. 8. 1986, p. 19.

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
(OJ NO C 287 of 11.11.1988, p. 5 - 8)

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.

Amended proposal for a Council Regulation on the Statute for European companies
(Bulletin of the European Communities, Supplement 4/75)
(COM(75) 150 final)

Bulletin
of the European Communities
Supplement 4/75

Proposal for a Council regulation on the Statute for European companies

(Amended proposal presented by the Commission to the Council on 13 May 1975, pursuant to the second paragraph of Article 149 of the EEC Treaty)

EUROPEAN COMMUNITIES
Commission

contents

Amended proposal
for a regulation

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235,

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

Having regard to the Opinion of the Assembly,[2]

Having regard to the Opinion of the Economic and Social Committee,[3]

Whereas a harmonious development of economic activities and a continous and balanced expansion within the Comunity as a whole call for transition from the stage of customs union to that of economic union; whereas achievement of the latter presupposes, in addition to the elimination of obstacles to trade, a reorganization of the factors of production and distribution on a Community scale in order to ensure that the enlarged market will operate similarly to a domestic market;

Whereas to this end it is essential that undertakings whose activity is not confined to meeting purely local requirements should be able to plan and carry out the reorganization of their activities at Community level and improve their means of action and their competitiveness directly at this level; and whereas, if such improvement were to occur in the main at national level, it might tend to fragment markets and so constitute an impediment to economic integration;

Whereas structural reorganization at Community level presupposes the possibility of combining the potential of existing undertakings in a number of Member States by rationalization and merger, but these processes can only be conducted subject to the rules on competition;

Whereas the establishment of European undertakings is clearly the obvious and normal means of achieving these aims under the most satisfactory conditions;

Whereas this is therefore a necessary instrument for attaining the said objectives of the Community;

Whereas, however, the establishment of such undertakings meets with legal, fiscal and psychological difficulties; and whereas the measures provided for in the Treaty by way of harmonization of legislation and the conclusion of conventions to enable the movement of companies to be effected by transfer of the registered office and by merger are calculated to alleviate some of these difficulties, they do not dispense with the necessity of adopting a specific national legal system to invest an economically European undertaking with the legal status essential to a commercial company; still less do they eliminate the obstacle which a change of nationality constitutes for undertakings linked by name and tradition to a given country;

Whereas, therefore, the legal framework within which European undertakings must still operate, and which remains national in character, no longer corresponds to the economic framework within which they are to develop if the Community is to achieve its purpose; and whereas this situation, especially because of the psychological effects it produces, may seriously impede the regrouping of companies incorporated in different countries;

Whereas the only solution capable of effecting both economic and legal unity of the European undertaking is, accordingly, to permit the formation, side by side with companies governed by one or other national law, of companies wholly subject only to a specific legal system that is directly applicable in all the Member States, thereby freeing this form of company from any legal tie to this or that particular country;

Whereas the introduction of this uniform legal status effective throughout the Community thus appears necessary for the unimpeded formation and management of undertakings of European dimensions produced by regrouping the forces of national companies;

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[1] The original proposal of 30 June 1970 was published in OJ C 124 of 10.10.1970. It was issued, with explanatory notes, as Supplement to Bull. EC 8-1970.
[2] OJ C 93 of 7.8.1974, p. 22.
[3] OJ C 131 of 13.12.1972, p. 32.

Whereas the requisite powers to formulate this legal status have not been provided for in the Treaty;

Whereas the purpose underlying the legal provisions for a European company demands in any event, without prejudicing any future economic requirements, that a European company may be formed, to allow companies in different Member States to merge, to form a holding company and to allow companies and other corporations pursuing commercial aims and incorporated in different Member States to form joint subsidiary companies; and whereas it is sufficient, in order to attain the desired economic objectives, at the same time as the process of founding a European company is simplified, to accept as founders of a European company through merger and the establishment of holding companies, apart from other European companies, only companies incorporated under national law in the form of a company limited by shares;

Whereas the form of a European company should itself be that of a company limited by shares, which is best suited, from both the financial and management points of view, to the needs of companies operating at European level; and whereas, in order to ensure that such undertakings may operate on an acceptable scale, a minimum paid-up capital must be stipulated such that these companies have adequate resources at their disposal, but not such as thereby to restrict the formation of European companies by national undertakings of medium size; and whereas the amount of capital must none the less be smaller in the case of formation of subsidiaries;

Whereas to obtain maximum benefit from such uniformity of status, none of the regulations governing the founding, structure, operation and winding up of the European company must be subject to national laws; and whereas it is necessary for this purpose to formulate a statute for the European company containing a full set of standard provisions and to refer back to the general principles common to the laws of the Member States for solution of problems relating to matters governed by this Statute but which have not expressly been dealt with herein;

Whereas in order to ensure uniformity of status it is imperative that the founding of the European company be subject to a system of registration at a central registry, under legal control, to eliminate any possibility of invalidity of the company after incorporation; and whereas one specific European legal body should be seised of this control in order to avoid discrepancies of judgment in the scrutiny of deeds and documents prepared by the founders; and whereas the requisite authority should naturally be vested in the judicial body of the Communities, the Court of Justice of the European Communities;

Whereas, in order to afford the European company every possibility of efficient management but at the same time to ensure effective supervision thereof, it is necessary to introduce a system whereunder a clear separation of responsibility is obtained and to provide the European company with a Board of Management administering the company's affairs under the supervision of a Supervisory Board by whom it is appointed;

Whereas, in order to promote throughout the Community a harmonious development of economic activities, an increase in stability and an improvement of working conditions and of the standard of living for workers, it is necessary to involve the employees in the life of the European company; whereas in all the Member States concrete consequences follow from the special legal and factual relationship between employees and undertakings; whereas though all these arrangements differ in content, they are based on the common conviction that the employees of an undertaking must be able to have a common representation of their interests within the undertaking and to share in the making of certain decisions;

Whereas the wide differences between the laws in force in the Member States as regards the representation of employees on the governing bodies of undertakings and the means whereby they participate in the decision-making process do not allow of such matters being left to the jurisdiction of national laws insofar as the governing bodies of European companies are concerned, for the uniformity of the provisions applying to the administration of the European company would then be disrupted;

Whereas employees must be represented in like manner to shareholders on the Supervisory Board of the European company so that account may be taken of the interests of both groups concerned in the undertaking of the European company when important economic decisions are made in respect of the administration of the company and of the appointment of members of the Board of Management;

Whereas, further, in order to enable interests to be represented in the European company broader than those of the shareholders and employees directly affected, it is requisite that the Supervisory Board of the European company shall include as members persons representing general interests and independent of both shareholders and employees;

Whereas national legislation concerning representation of workers at works level may continue to apply, it is nevertheless necessary, in the case of European companies with establishments in several Member States, to provide for the formation of a European Works Council as the body representing the interests of employees of the European company, possessing its own rights of information, consultation and co-determination and competent to deal with matters affecting a number of establishments;

Whereas, in order to ensure that in all Member States members of the Supervisory Board appointed by the employees and members of the European Works Council are elected by employees in a uniform manner and in accordance with democratic principles uniform electoral rules must be introduced;

Whereas the European company must be subject to uniform rules regarding the presentation of accounts which reflect a true and fair view of the company's assets, financial position and operating results;

Whereas the grouping of undertakings under sole management has acquired such economic importance that a Statute for the European company must contain rules which take account of the economic and operational characteristics of ties between undertakings; whereas the rules providing for a flexible operating policy must be available to the European company in a framework laid down by law; and whereas shareholders independent of the group, and employees and creditors of undertakings within the group must at the same time be afforded adequate safeguards;

Whereas the Court of Justice must have jurisdiction, to the exclusion of national courts, to decide whether a European company and another undertaking constitute a group of companies within the meaning of this expression in Title VII of this Regulation; and whereas, indeed, the existence of a group, which has important legal implications for the management, the shareholders and the employees of a company, being a member thereof often cannot be established, in case of doubt, except by analysis of actual relationships between companies in different countries and hence of the *de facto* situations in these various countries, which require appraisal; and whereas an examination of this kind would be very difficult for a national tribunal whose powers of inquiry would not extend beyond the country concerned;

Whereas the European company must retain the capacity to transform itself according to its economic needs into a company incorporated under national law or to merge with other European companies or with limited companies incorporated under national law;

Whereas the European company must remain subject to national fiscal requirements, since formulation of a fiscal system solely for the European company might be the source of discrimination, favourable or otherwise, in relation to *sociétés anonymes* subject to national law; whereas, however, allowance should be made in the calculation of the taxable profits of the European company for losses incurred by their permanent branches or subsidiaries in other

countries, until taxation of the revenue of the companies can be brought under the exclusive control of their country of domicile for fiscal purposes; whereas it is necessary, moreover, to lay down a procedure for the settlement of possible disputes upon the determination of the domicile of the European company for fiscal purposes and to settle the terms and consequences of transfer of fiscal domicile from one country to another; and whereas, further, the European company is to benefit, on the same basis as companies incorporated under national law, from the provisions of the directive concerning the common fiscal system applicable to parent and subsidiary companies in different Member States and the directive on the common system applicable to mergers, scission and the contribution of assets effected between companies in different Member States,[1] issued by the Council on ...;

Whereas, in order to ensure that breaches of obligations under the Statute for the European company shall not go unpenalized, it is essential that Member States introduce appropriate provisions to punish such breaches; and whereas it is necessary that all Member States should prescribe penalties under criminal law or fines for the same offences and only for those offences, in order to avoid disparities prejudicial to uniformity of status,

Has adopted this Regulation:

Title I

General provisions

Article 1

[Form of European Company (SE)]

1. Commercial companies may be incorporated throughout the European Economic Community as European companies (Societas Europaea 'SE') on the conditions and in the manner set out in this Regulation.

2. The capital of the European company shall be divided into shares. The liability of the shareholders for the debts and obligations of the company shall be limited to the amount subscribed by them.

3. The SE is a commercial company whatever the object of its undertaking.

4. The SE has legal personality. In each Member State and subject to the express provisions of this Statute it shall have in all respects the same rights and powers as a company limited by shares incorporated under national law.

Article 2

[Formation]

1. Companies limited by shares incorporated under the law of a Member State may form an SE by merging or by forming a holding company, provided at least two of the companies are subject to different national laws.

[1] Proposal presented by the Commission to the Council on 16 January 1969, OJ C39 of 22.3.1969.

2. Companies having legal personality, including cooperative societies, incorporated under the law of a Member State, and other corporations governed by the public or private law of a Member State, which have as their object the carrying on of economic activity, may form an SE by forming a joint subsidiary company, provided that at least two of those companies or corporations are subject to different national laws.

3. A company or other corporation which participates in forming an SE must be one which is recognized under the Convention on the mutual recognition of companies and bodies corporate, signed on 29 February 1968 in each Member State[1] whose law applies to any of the participating companies or corporations.

Article 3

[Formation with participation of an SE]

1. An SE together with one more other European companies or together with one or more limited companies incorporated under the laws of Member States may establish an SE by merging or by forming a holding company.

2. An SE together with one or more other SE's, or together with one or more companies or other corporations within the meaning of Article 2(2) constituted under the laws of Member States may establish an SE by forming a joint subsidiary.

3. An SE may establish a subsidiary in the form of an SE.

4. Article 2(3) shall apply to companies and other corporations which participate in establishing an SE under paragraph 1 or 2 of the Article, if such companies and other corporations are constituted under the laws of one or more Member States.

Article 4

[Minimum capital]

The capital of an SE shall amount to not less than:

— 250000 u.a. in the case of a merger or formation of a holding company,

— 100000 u.a. in the case of formation of a joint subsidiary,

— 100000 u.a. in the case of formation of a subsidiary by an SE.

Article 5

[Registered office of SE]

1. The registered office of an SE shall be situate at the place specified in its Statutes. Such place shall be within the European Economic Community.

2. The Statutes may designate a number of registered offices.

Article 6

[Dependent and controlling undertakings]

1. For the purpose of this Statute, a dependent undertaking is one which has separate legal personality and over which another undertaking (hereinafter referred to as the 'controlling company'), is able, directly or indirectly, to exercise a controlling influence, one of the two being an SE.

2. An undertaking shall be conclusively presumed to be dependent on another, when that other has the power, directly or indirectly in relation to the first:

(a) to control more than half the votes exercisable in respect of the whole of the issued share capital;

[1] Supplement to Bull. EC 2-1969.

(b) to appoint more than half of the Board of Management or of the supervisory body of the first undertaking.

3. A controlling influence shall be presumed to be exercisable if one undertaking has, directly or indirectly, a majority shareholding in the capital of another.

4. In calculating the extent of the shareholding of a controlling company in a dependent company there shall be taken into account shares in it which belong to an undertaking acting on behalf of the controlling company or to an undertaking dependent thereon.

Article 7

[Scope of the Statute]

1. Save as otherwise provided, matters governed by this Statute, including those not expressly mentioned herein, shall not be subject to the national laws of the Member States. A matter not expressly dealt with herein shall be governed:

(a) by the general principles upon which this Statute is based;

(b) if those general principles do not provide a solution to the problem, by the rules or general principles common to the laws of the Member States.

For the purposes of the application of this Regulation the rules and general principles of law of the Member States referred to in subparagraph (b) shall be deemed to be incorporated herein.

2. Matters which are not governed by this Statute shall be subject to the national law applicable in the circumstances.

Article 8

[European Commercial Register]

1. Every SE shall be registered in the European Commercial Register at the Court of Justice of the European Communities. The documents to be published under this Statute shall be filed therein.

2. The formalities concerning the opening and maintaining of the European Commercial Register shall be laid down in rules prescribed by the Council on a proposal from the Commission.

3. Each Member State shall maintain in its own country, a register supplementary to the European Commercial Register in which European companies, which have their registered office in the territory in that State, shall also be registered. Duplicates of all documents filed in the European Commercial Register shall also be filed in the supplementary register. Entries appearing in the European Commercial Register and documents filed therein shall be deemed authentic in the event of discrepancies.

4. The European Commercial Register, its supplementary registers and the documents filed therein shall be open to public inspection.

Article 9

[Notices concerning SE]

1. All notices in respect of the SE shall be published in the Official Journal of the European Communities and in the official publication for company notices in the Member State in which the SE has its registered office. The text in the original language of a notice published in the Official Journal of the European Communities shall alone be authentic.

2. The publications referred to in the preceding paragraph are hereinafter called 'company journals'.

3. Where this Statute prescribes a time-limit computed from the date of publication in the company journals, such time-limit shall be computed from the date of publication of whichever of the relevant journals shall last be published.

Article 9a

[Effects of Notices]

1. Documents required to be filed in the Commercial Registry and particulars required to be registered therein may only be relied on against a third party after notice thereof has been published in accordance with Article 9, unless the company proves that at the relevant time the third party had knowledge of the contents of the documents or of particulars in question. In the case of transactions completed before the sixteenth day following that on which notice is published under Article 9, the documents and particulars may only be relied on against a third party who proves that it was impossible for him to have knowledge of those documents or particulars.

2. Third parties may nevertheless rely upon any documents or particulars referred to in paragraph 1 above even though the required publication has not yet been completed, unless the documents or particulars relate to the formation of the SE.

3. If the publication in the company journals of a document which is required to be filed, or of particulars which are required to be registered, is incorrect or incomplete, a third party may rely on the contents of the publication thereof, unless the SE proves that at the relevant time he had knowledge of the particulars registered in the Registry or the contents of the document filed therein.

Article 10

[Documents of SE]

In all documents sent out by it the SE shall state the number under which it is registered in the European Commercial Registry, the address of its registered office and the amount of its issued capital. If the company is in liquidation, that fact also shall be stated.

Article 10a

[Jurisdiction]

For the purposes of the application of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments of 27 September 1968[1] and in particular of Articles 16(2) and 53 first sentence thereof, and for the purposes of the application of the provisions of this Statute which provide that the court of the place where the company has its registered office shall have jurisdiction, the registered office of an SE shall exclusively be deemed to be the office or offices described as such in the statutes of the company pursuant to Article 5.

Article 10b

[Related Applications]

Where related applications concerning an SE are brought before the courts of different Member States, each of which has exclusive jurisdiction, the courts other than that before which the action is first brought, shall, so long as the application has not become *res judicata*, stay proceedings of their own motion, unless they decline jurisdiction in accordance with Article 22(2) of the Convention on Jurisdiction and the

[1] Supplement to Bull. EC 2-1969.

Enforcement of Civil and Legal Judgments of 27 September 1968.

Article 10c

[Recognition and execution of judgments]

Where there is more than one registered office, recognition and execution of a judgment rendered by the court of a Member State which is competent by virtue of a registered office of the SE being situate in such State may not be repudiated in the State of recognition or execution on the ground that there is another registered office of the SE established in the latter State.

Title II

Formation

SECTION ONE

General

Article 11

[Application for registration of SE]

1. Application shall be made to the Court of Justice of the European Communities by the founder companies for registration of the SE in the European Commercial Register.

2. The application shall be accompanied by the document of constitution and the statutes of the SE, and the additional particulars prescribed under the subsequent Sections of this Title with regard to the individual methods of formation.

3. The expression 'founder companies' in this Title means those companies and other Corporations which under Articles 2 and 3 may participate in forming an SE in one of the ways herein provided.

Article 12

[Document of constitution]

The document of constitution of the SE shall be drawn up by the founder companies in the manner provided under one of the subsequent Sections of this Title. It shall be authenticated by notarial deed.

Article 13

[Statutes of SE]

1. The Statutes of the SE must be approved by the founder companies in the manner provided under one of the subsequent Sections of this Title. They shall be authenticated by notarial deed.

2. The Statutes shall contain not less than the following:

(a) the name of the company which shall include the abbreviation 'SE';

(b) the address of the company's registered office;

(c) the object of the undertaking;

(d) the amount of the capital, the nominal value and number of the shares; specifying whether they are in bearer or registered form; where there are different classes of shares the nominal value and the number of shares and the rights attaching thereto shall be stated in respect of each class;

(e) the period for which the company is formed, if its duration is limited;

(f) the names of the first members of the Board of Management;

(g) the names of those first members of the Supervisory Board who are to be appointed by the shareholders.

Article 14

(deleted)

Article 15

[Auditors]

1. The governing body of each founder company shall appoint one or more auditors who shall examine the draft document of constitution. The same person may be appointed as an auditor for only one company.

2. Only persons who are suitably qualified and experienced may be appointed as auditors. They shall have obtained their professional qualification by satisfying the requirements imposed or recognized by law for admission to their profession including the passing of a specialized examination, and shall be persons who may in any one or more Member States lawfully act as auditors of the annual accounts of public companies whose shares are quoted on a stock exchange. The auditors shall in no way be dependent on any of the founder companies, nor have been so dependent at any time during the three years preceding the preparation of the auditors' report. The auditors may be persons appointed to audit the accounts of any of the founder companies.

3. An auditor shall be fully liable to the SE, to its shareholders and to third parties for all loss or damage resulting from his failure to observe the provisions of this Statute or from any other breach of the obligations imposed on him in carrying out his duties.

If the founder company shall have appointed more than one auditor, all auditors shall be liable jointly and severally. An auditor shall not, however, be liable if he can prove that no fault is attributable to him.

Such liability shall continue for a period of three years as from the day on which the SE is registered in the European Commercial Register or, in the event of harmful acts or omissions having been concealed, as from time of their discovery.

4. As regards any action brought by the SE in respect of such liability, Article 72 shall be of corresponding application.

Article 16

(deleted)

Article 17

[Examination by the Court of Justice of the European Communities]

1. The Court of Justice of the European Communities shall examine whether the formalities required for the formation of the SE have been complied with. A procedural regulation shall prescribe the scope and form of this examination.

2. The Court of Justice shall refuse to register a company as an SE in the European Commercial Register, if the provisions of this Regulation relating to its formation have not been complied with, or if the Statutes of the SE do not conform to the provisions of this Regulation.

3. The Court of Justice may require the founder companies to provide all the information it may desire. It may allow them to supplement or correct their applications and the documents relating to formation which they have filed.

4. If the Court of Justice finds no reason to refuse or to defer registration, it shall order registration of the SE in the European Commercial Register and shall forward the application thereto, together with the particulars filed pursuant to Article 11.

Article 18

[Registration of formation]

1. There shall be registered in the European Commercial Register:

(a) the name of the company;

(b) the address of the registered office;

(c) the object of the undertaking;

(d) the amount of the capital;

(e) the names of the members of the Board of Management, and of the members of the Supervisory Board appointed by the shareholders;

(f) a statement of the manner in which the company is formed pursuant to Article 2 or 3;

(g) particulars of the founder companies;

(h) a statement that each member of the Board of Management is authorized to represent the company in dealings with third parties.

2. The fact of registration and the particulars required by paragraph 1 shall be published in the company journals.

Article 19

[Acquisition of legal personality by SE]

1. The SE shall have legal personality from the day following the publication of its registration in the Official Journal of the European Communities. As from that date, it shall be treated as having been properly formed in all respects.

2. Any person who acts in the name of the SE before this date shall be personally liable to third parties in respect of any obligation intended to be thereby incurred; if several persons have acted together they shall be jointly and severally liable.

3. The SE may itself assume liability for such obligations. In that case persons who have acted in the name of the SE shall cease to be liable under paragraph 2.

Article 20

[Liability in connection with formation]

1. For a period of three years from the date on which the SE is registered in the European Commercial Register the founder companies and the members of their governing bodies shall be jointly and severally liable to the SE and to third parties for loss resulting from any omission or error in the particulars included in the application for registration.

2. The founder companies and the members of their governing bodies shall be similarly liable if the capital of the SE is not fully paid up in cash or in kind.

3. No liability shall be imposed under this Article on those members of the governing bodies of a founder company who at the material time was unaware of circumstances giving rise to liability under either of the foregoing paragraphs, nor could have become aware there of by exercising the care incumbent on a prudent businessman.

SECTION TWO

Formation by merger

Article 21

[Definition]

1. If an SE is formed by a merger of limited companies the whole of the assets and liabilities of the founder companies shall vest in the SE and the founder companies shall thereupon be dissolved without being wound up. The shareholders of the merging companies shall be allotted shares in the SE and, if appropriate, an equalization payment in cash not exceeding 10% of the nominal value of the shares so issued.

2. A limited company in liquidation may be a party to the formation of an SE by merger, if the distribution of its assets among its shareholders has not begun.

Article 22

[Preparation of draft document of constitution]

1. The governing body of the founder companies shall prepare a draft document of constitution setting out:

(a) the names of the founder companies and the addresses of their registered office;

(b) an opening balance sheet of the SE made out as at the date of its formation together with any necessary explanatory notes;

(c) the ratio of the exchange of shares in the SE for shares of the founder companies and the amount of any equalization payments in cash;

(d) the manner in which shares of the SE may be transferred;

(e) the rights to be conferred by the SE on shareholders of the founder companies who are entitled to special rights, and on the holders of securities other than shares, and measures proposed for the benefit of such persons;

(f) the auditors' reports under Article 23;

(g) the reports of the governing bodies of the founder companies under Article 23a.

2. The following shall be annexed to the draft document of constitution:

(a) the draft Statutes of the SE;

(b) the Statutes of the founder companies in their current form;

(c) the balance sheets, profit and loss accounts, and directors' reports of the founder companies for the last three respective financial years, or, if a company has been in existence for less than three years, for each complete financial year since its formation;

(d) an interim balance sheet made out as at the first day of the second month preceding the drawing up of the draft instrument of constitution, in respect of each founder company whose most recent annual balance sheet relates to a financial year which ended more than six

months before the drawing up of the draft instrument of constitution;

(e) if a founder company has not been in existence for a complete financial year, its opening balance sheet or, if no such opening balance sheet has been drawn up or was made out at a date more than six months before the draft instrument of constitution, an interim balance sheet in respect of that company made out as at the first day of the second month preceding the month in which the draft instrument of constitution is drawn up.

Article 22a

[Opening balance]

1. The opening balance sheet of the SE and the accompanying explanatory notes shall comply with the provisions of this Regulation relating to the annual balance sheet of an SE and the accompanying explanatory notes. The explanatory notes shall set out:

(a) the estimated total expenses to be borne by the SE in connection with its formation and matters incidental thereto;

(b) any special benefits and remuneration promised in connection with the formation of the SE.

2. An interim balance sheet provided for in Article 22(2)d, shall be in the same form and adopt the same classification as the most recent annual balance sheet of the company concerned. The following rules shall, however, apply:

(a) it shall not be necessary to draw up a fresh inventory of the company's assets;

(b) the values of assets contained in the most recent annual balance sheet shall merely be amended to agree with alterations of those values entered in the company's books of account; however, the following shall be taken into account;

— amounts which should be written off for depreciation, corrections in values, and transfers to reserve for the interim period;

— material changes in the real value of assets not shown in the books of account.

3. An interim balance sheet provided for by Article 22(2)e, shall be in the same form and shall adopt the same classification as an annual balance sheet of the company concerned.

Article 23

[Audit]

1. One or more auditors appointed for each founder company shall examine the draft document of constitution and shall draw up a report for the shareholders.

2. In their report the auditors must state in particular whether in their opinion the ratio for the exchange of shares of the SE for those of the founder companies, is fair or not. Their opinion must take into account the following matters at least:

(a) the ratio between the assets of the founder companies less their respective liabilities taken at their actual values;

(b) the relationship between the respective earning capacities of the founder companies, with particular regard to future prospects;

(c) the criteria adopted for assessing the values of the assets, liabilities and earning capacities of the founder companies.

3. If any special difficulties have arisen in making an assessment or valuation, they must be mentioned in the auditors' report.

4. Each auditor is empowered to obtain from the founder companies all relevant information and documents and to carry out all necessary inspections and investigations.

Article 23a

[Reports by governing bodies of founder companies]

1. The governing bodies of the founder companies shall draw up a report explaining and justifying the draft document of constitution from both the economic and the legal aspects, and in particular they shall deal with the ratio for the exchange of shares.

2. The report shall also deal with the legal, economic and social effects of the merger on the employees of the founder companies over a period of at least two years and indicate the measures to be taken regarding them.

Article 23b

[Convening of General Meeting of founder companies]

1. The governing bodies of the founder companies shall supply copies of the draft document of constitution and of the documents annexed to it free of charge on request to any interested party after the General Meeting of a founder company to decide upon the merger has been called.

2. A period of at least two months must elapse between the calling of a general meeting of a founder company and the date when the meeting is held.

3. The notice of the general meeting shall set out the rights conferred by paragraph 1 above. The notice shall also state that only those shareholders who vote against the draft instrument of constitution and have their dissent recorded in the minutes of the meeting, may apply to the court to invalidate the proceedings of the general meeting.

Article 23c

[Handling of implications of merger for employees]

1. The governing bodies of the founder companies shall within two weeks after the publication of the draft document of constitution discuss with the representatives of the employees of their companies the legal, economic and social implications of the merger for the employees, and the measures to be taken concerning them as shown in the report provided for in Article 23(a).

2. *(a)* For the purposes of this Article, 'employees' representatives' means the institutions, organizations or persons who under the statutory or contractual provisions applicable to the founder companies must be consulted on the occasion of a merger.

(b) Where a European company participating in the merger as a founder company has a European Works Council, the latter shall be considered to be the representative of its employees within the meaning of this provision.

3. If the representatives of the employees consider that the employees' interests are adversely affected by the merger, the governing body of the company concerned shall, before the General Meeting resolves to proceed with the merger, open negotiations with such representatives in order to reach agreement on the steps to be taken with regard to employees. Any such agreement reached shall be recorded in writing.

4. If no agreement is achieved as a result of negotiations, the representatives of the employees may set out in writing their views on the implications of the merger for the employees and on the results of the consultations and negotiations with the governing bodies.

5. The governing bodies of the founder companies shall submit to the general meeting called to decide on the merger a report on the results of the discussions and negotiations with the representatives of the employees. The report shall contain the terms of any agreement reached under paragraph 3 or a statement of the views of the representatives of the employees as provided for in paragraph 4, as the case may be. The governing bodies of the founder companies shall upon request make copies of this report available to any interested party free of charge at least eight days before the general meeting.

Article 23d

[Arbitration Board]

1. If no agreement is achieved as a result of negotiations under Article 23c(3) and the merger has been approved by the general meeting of the company concerned, any party to the negotiations may within one month refer the matter to an Arbitration Board.

2. The Arbitration Board shall be composed of equal numbers of persons appointed by the governing body and of persons appointed by the representatives of the employees of the company concerned, and shall be presided over by an independent chairman, who shall be appointed by agreement between both sides. If there is disagreement as to the appointment of a chairman, or as to the number of persons who shall compose the Arbitration Board, the question in dispute shall be decided by the court within whose jurisdiction the registered office of the company concerned is situated.

3. The Arbitration Board shall after hearing the parties specify the steps to be taken by the founder company or by the SE with regard to employees in the event of a merger. The decision shall be communicated to the parties in writing.

4. Where the SE comes into existence during the arbitration proceedings, it shall take the place of the founder company in those proceedings.

Article 24

[Approval of merger by General Meetings]

1. The document of constitution and the Statutes of the SE must be approved by a resolution passed by a General Meeting of each founder company. The resolution must conform to the provisions governing the founder company as regards mergers, or in the absence of such provisions, as regards dissolution.

2. In so far as the national law governing a company does not require more extensive information to be given to shareholders, each of them shall be entitled to receive such information as he may request at the General Meeting in respect of matters which are essential to enable him to make an assessment of the merger, including information concerning the other founder companies.

3. The proceedings of the General Meeting of each founder company shall be recorded in a notarial deed.

4. The minutes of the General Meeting of each founder company shall be filed without delay and in any event not later than two weeks following the General Meeting, at the office where the company's statutes are filed under the applicable law. Copies of the minutes shall on request be supplied free of charge to any interested party.

Article 25

[Proceedings for invalidation of resolutions of General Meetings]

1. The resolutions passed by General Meetings of the merging companies may be declared invalid by the court only on the application of one or more shareholders who voted against the resolution at the General Meeting and caused their dissent to be recorded in the minutes of the meeting. Whatever the grounds, proceedings for the invalidation of resolutions shall be commenced in the competent national court within 45 days after the resolution is passed.

2. If a shareholder who did not exercise his right to apply for the invalidation of resolutions as provided for in paragraph 1 above makes an application to the European Court of Justice before the SE is registered in the European Commercial Register, that Court may, after giving the founder companies an opportunity to be heard, allow the shareholder an extension of time in which to commence proceedings in the competent national court for the invalidation of any resolution, provided prima facie evidence is produced to the Court of Justice that the shareholder, through no fault of his own, was prevented from complying with the provisions of paragraph 1 above and that there has been a breach of one or more essential provisions of the statutes of the founder company in which he holds shares or of the national law governing that company.

3. The European Court of Justice shall not order registration of the SE in the European Commercial Register until the expiration of the period specified in paragraph 1 and of any extension of time for commencement of proceedings for invalidation allowed granted under paragraph 2 or, where such proceedings have been commenced, before final judgment has been given therein.

4. An application to the Court to declare any resolution of a General Meeting invalid shall not be made after the date on which registration of the SE in the European Commercial Register was published in the Official Journal of the European Communities.

Article 26

[Application for registration of SE and dissolution of founder companies]

1. Minutes of the General Meetings of the founder companies together with proof that they have been properly filed or registered shall be annexed to the application for registration of the SE by the Court of Justice of the European Communities.

The governing bodies of the founder companies shall inform the court whether any applications have been made to the court to declare invalid the resolution passed by its General Meeting and if so, to which court the application has been made.

2. As from the day when the registration of the SE is published in the Official Journal of the European Communities the founder companies shall be dissolved. As from that date, the SE shall be liable for the debts and obligations of the founder companies in their place and the shareholders of the founder companies shall become shareholders of the SE.

3. When they have been officially notified of the registration of the SE, the commercial registers or courts within whose jurisdiction the registered offices of the founder companies are situated shall forward the instruments of constitution and other documents relating to the founder companies in their possession to the supplementary register of the European Commercial Register in the country in which those companies had their registered office.

Article 27

[Protection of creditors of founder companies]

1. Creditors of the founder companies may within three months after those companies have been dissolved require the SE to lodge a security for their claims against it.

2. If no agreement has been reached as to the security to be given within two weeks after the SE receives a creditor's demand, the court within

whose jurisdiction the registered office of the SE is situate may on the application of the creditor order security to be given for his claim. If the SE does not give the security ordered within one month after the order of the court is made, the debt or other obligation shall immediately become due and payable. The court shall dismiss the creditor's application if the creditor already has adequate security for his claim, or if the SE is obviously able to meet all claims against it.

3. The SE shall not be required to provide any security if the obligation is satisfied, whether before or at maturity, either prior to the decision of the court or within one month thereafter.

4. The provisions of this Article shall not apply in respect of debenture holders of a founder company if a meeting of such debenture holders has power under the national law governing the founder company to approve a merger and such a meeting gives that approval, or if the debenture holders unanimously approve the merger.

Article 28

[Holding of one founder company in another founder company]

1. Articles 21 to 27 shall apply even though some or all of the shares of a founder company belong to one of the other founder companies. In this event, the shares of founder companies which an SE acquires as successor to another founder company shall cease to exist.

2. Where one of the founder companies holds all the shares of another founder company the same person may notwithstanding the provisions of Article 15(1) be appointed as auditor for both companies.

SECTION THREE

Formation of an SE as holding company

Article 29

[Definition]

1. If an SE is formed as a holding company, all the shares in the capital of the founder companies shall vest to the SE holding company in exchange for shares in the SE holding company.

2. The founder companies shall continue to exist. Any provision of national law by which a founder company must be wound up if the whole of its capital is held by a single shareholder shall not apply.

Article 30

[Preparation of draft document of constitution]

1. The governing bodies of the founder companies shall prepare a draft document of constitution. This draft shall contain the information required by Article 22(1)(a) to (e), and reports of the auditors and the governing bodies of the founder companies as provided for in Article 31 and 31a.

2. The documents specified in Article 22(2) shall be annexed to the draft document of constitution.

3. Article 22a shall apply as regards the opening balance sheet of the SE and the accompanying explanatory notes and, where appropriate, the interim statements of account of the founder companies.

Article 31

[Audit]

One or more auditors appointed for each founder company shall examine the draft document of constitution and shall draw up a report for the shareholders. Article 23(2) to (4) shall apply to the report.

Article 31a

[Reports by governing bodies of founder companies]

1. The governing bodies of the founder companies shall draw up a report explaining and justifying the draft document of constitution from both the economic and the legal aspects and in particular they shall deal with the ratio for the exchange of shares.

2. The report shall also deal with the legal, economic, and social effects of the formation of the SE holding company on the employees of the founder companies over a period of at least two years and indicate the measures to be taken regarding them.

Article 31b

[Covening of General Meeting of founder companies]

1. The governing bodies of the founder companies shall supply copies of the draft document of constitution and of the documents annexed to it free of charge on request to any interested party after the General Meeting of a founder company to decide upon the formation of the SE holding company has been called.

2. Article 23b(2) and (3) shall apply to the convening of the General Meeting of the founder companies.

Article 31c

[Handling of implications of formation for employees]

1. The governing bodies of the founder companies shall within two weeks after the publication of the draft document of constitution discuss with the representatives of the employees of their companies the legal, economic and social implications of the formation of the SE holding company for the employees, and the measures to be taken concerning them as shown in the report provided for in Article 31a.

2. The provisions of Article 23c(2) to (5) and Article 23d(1) to (3) shall be applicable.

In such application the expression 'merger' refers to the formation of the SE holding company.

Article 32

[Approval of formation by General Meetings]

The document of constitution and the Statutes of the SE shall be approved by a general meeting of each of the founder companies. The resolution of approval shall be passed in the manner provided by Article 24.

Article 33

[Proceedings for invalidation of resolutions of General Meetings]

Resolution of the General Meeting may be declared invalid by the court only in the circumstances and conditions provided by Article 25.

Article 34

[Application for registration of SE and conversion of shares of founder companies]

1. An application to the Court of Justice of the European Communities for registration of the SE shall be governed by Article 26(1).

2. As from the day when the registration of the SE is published in the Official Journal of the European Communities, the shareholders of the founder companies shall become shareholders of the SE.

SECTION FOUR

Formation of a joint subsidiary

Article 35

[Preparation of draft document of constitution]

1. If a joint subsidiary company is to be established in the form of an SE the governing bodies of the founder companies shall prepare the draft document of constitution setting out:

(a) the name, the address of the registered office and legal character of the founder companies;

(b) an opening balance sheet of the SE made out as at the date of its formation together with any necessary explanatory notes;

(c) the number of shares of the SE to be taken by each founder company;

(d) the auditors' reports under Article 35b;

(e) a statement of the economic reasons for the formation of the SE.

2. The following shall be annexed to the draft instrument of constitution:

(a) the draft statutes of the SE;

(b) the statutes of the founder companies in their current form.

Article 35a

[Opening balance]

1. The opening balance sheet of the SE and the accompanying explanatory notes shall comply with the provisions of this Regulation relating to the annual balance sheet of an SE and the accompanying explanatory notes.

2. The explanatory notes shall set out:

(a) the estimated total expenses to be borne by the SE in connection with its formation and matters incidental thereto;

(b) any special benefits and remuneration promised in connection with the formation of the SE;

(c) details of any subscriptions for shares of the SE for a consideration in kind, including the value thereof, the names of the subscribers and the nominal value and the classes of shares to be issued to such subscribers.

Article 35b

[Audit]

1. One or more auditors appointed for each founder company shall examine the draft documents of constitution and shall draw up a report for the governing bodies of the founder companies.

2. The auditors' report shall contain, in particular, their opinion together with supporting reasons as to:

(a) the opening balance sheet of the SE and the explanatory notes annexed thereto;

(b) the valuation of subscriptions for the shares of the SE for a consideration in kind.

3. Article 23(3) and (4) shall apply to the auditors' report.

Article 35c

[Subsequent acquisition of assets]

1. If within two years after its formation an SE acquires assets which belong to a founder company, or to a shareholder of such a company or to a shareholder of the SE itself, and the consideration to be given for those assets exceeds one tenth of the capital of the SE, the acquisition shall be the subject of an auditors' report. The report shall be prepared by the auditors of the annual accounts of the SE, or, where such auditors have not yet been appointed, by the auditors who prepared the report prepared in connection with the formation of the SE. The acquisition shall further be subject to the approval of a general meeting of the SE. The conclusions set out in the auditors' report shall be published in the company journals.

2. Paragraph 1 shall not apply where the acquisition has already been approved by the founder companies on the formation of the SE, and was dealt with in the explanatory notes to the opening balance sheet.

Article 36

[Approval of formation]

1. The document of constitution and the statutes shall be approved by all the founder companies in the manner provided by the law applicable to them.

2. In the case of founder companies incorporated under national law, the provisions of national law governing their participation in forming a subsidiary in the form of a public company shall apply.

3. The following provisions shall apply to founder companies which are themselves SEs:

(a) the document of constitution and the statutes shall be approved by the Supervisory Board;

(b) the Board of Management shall consult the European Works Council before seeking the approval of the Supervisory Board;

(c) the Supervisory Board may give its approval only after the European Works Council has stated its views, unless it does not do so within a reasonable time;

(d) if the participation of the SE in forming the new company falls within the scope of one of the items listed in Article 83(1) to (3), the document of constitution and the statutes of the new company shall be subject to the approval of the General Meeting of the SE;

(e) if the interests of the employees are adversely affected by the formation of a joint subsidiary company, the Board of Management shall prepare a social plan within the meaning of Article 126a setting out the measures to be taken in respect of the employees.

Article 37

[Application for registration of SE]

The resolutions of the Supervisory Board and, where appropriate, of the General Meeting shall be annexed to the application to the Court of Justice of the European Communities for the registration of a joint subsidiary company.

SECTION FIVE

Formation of a subsidiary by an SE

Article 38

[Document of constitution, audit, subsequent acquisition of assets]

1. If an SE forms a subsidiary company which is also an SE, the board of management of the

founder company shall prepare the draft document of constitution. The draft shall set out:

(a) the name and the address of the registered office of the founder company;

(b) an opening balance sheet of the subsidiary company made out as at the date of its formation together with any necessary explanatory notes;

(c) an auditors' report;

(d) an explanation of the economic reasons for the formation of the subsidiary company.

2. The following shall be annexed to the draft document of constitution:

(a) the draft Statutes of the subsidiary company;

(b) the statutes of the founder company in the present form.

3. Article 35a shall apply to the opening balance sheet and the accompanying explanatory notes.

4. Article 35b shall apply correspondingly to the auditors' report.

5. Article 35c shall apply correspondingly.

Article 39

[Approval of formation and application for registration of SE]

1. The document of constitution and the Statutes of the SE shall be approved in the manner provided by Article 36(3).

2. Article 37 shall apply correspondingly to the application to the Court of Justice of the European Communities for registration of the SE.

Title III

Capital — Shares — Debentures

SECTION ONE

Capital

Article 40

[Capital of SE]

1. The capital of the SE shall be expressed in European Community units of account or in the currency of one of the Member States.

2. The capital of the SE shall be divided into shares. It shall be fully paid up, either in cash or in kind. No capital may be returned, except in the event of a reduction of capital.

3. Capital subscribed otherwise than in cash shall be considered as subscribed in kind. Intangible assets shall be treated as capital subscribed in kind only if they are saleable.

Article 41

[Increase of capital]

1. Capital may be increased either by the subscription of new capital paid up in full or by the capitalization of disposable reserves. An increase of capital shall require an alteration of the Statutes.

2. If new capital is subscribed wholly or partly in kind, a report as to the value of the assets contributed shall be submitted to the General Meeting. The report shall be prepared and signed either by one or more qualified experts appointed by the court within whose jurisdiction the registered office of the SE is situated, or by the auditor of the SE. The Board of Management shall choose between these two alternatives subject to the approval of the Supervisory Board. The provisions of Article 15(2) and (3) shall apply to such experts appointed by the Court.

3. Copies of the report referred to in the preceding paragraph shall be made available to the shareholders free of charge as from the date on which the notice of the General Meeting is published. A note to this effect shall appear in the notice of the General Meeting.

4. If capital is increased by capitalization of available reserves, the new shares shall be distributed amongst the shareholders in proportion to their existing shareholdings.

By the resolution for an increase of capital, the General Meeting may nevertheless provide that all or some of the new shares be distributed amongst the employees of the SE.

Article 42

[Approval of future increase of capital]

1. The General Meeting may also approve a future increase of capital by altering the Statutes. The Statutes shall specify the amount of the approved capital and the period for which approval is given.

2. Such approval may be given for a period of not more than five years and the total approved capital may not exceed one half of the capital subscribed.

3. The Board of Management shall with the consent of the Supervisory Board decide how such approval shall be utilized.

4. Any issue of shares by virtue of approval granted shall be notified to the European Commercial Register and published in the company journals by the Board of Management. Each year the Board of Management shall, in the notes on the annual accounts, report on the manner in which approval has been utilized.

5. Where the approved capital has been fully subscribed or has been subscribed only in part but the period specified in paragraph 2 has expired, the Board of Management shall alter the Statutes to show the new amount of capital.

Where no avail has been made of approval to increase the capital, the Board of Management shall have the provisions regarding approval incorporated into the Statutes pursuant to Article 1 removed therefrom.

Such alterations shall be published in the company journals.

Article 43

[Entitlement of shareholders to subscribe for new shares]

1. If capital is increased by cash subscription, the shareholders shall be entitled to subscribe for new shares in proportion to their existing shareholdings. The Board of Management shall give notice in the official journals of the issue price and of the period within which the right to subscribe shall be exercised. This period shall not be less than one month as from the date of publication.

2. The General Meeting may, when resolving to increase capital by new subscriptions, wholly or partly suspend shareholders' subscription rights, provided that it shall have received a report from the Board of Management stating the reasons for such suspension or restriction of subscription rights and for the proposed issue price.

3. The General Meeting may also suspend shareholders' subscription rights in whole or in

part where a future increase of capital is approved. It may, further, empower the Board of Management to restrict or suspend subscription rights with the Supervisory Board's consent. The General Meeting may so resolve only after having received a report from the Board of Management stating the reasons why such action is required.

4. Copies of the reports referred to in the preceding paragraph shall be made available to the shareholders free of charge as from the date on which notice of the General Meeting is given. A note to this effect shall appear in the convening notice.

Article 43a

[Liability of Board of Management in connection with increases of capital]

1. For a period of three years from the date on which an increase of capital is entered in the European Commercial Register, members of the Board of Management of the SE shall be jointly and severally liable to the SE and to third parties for loss resulting from any omission or error in the particulars included in the application for registration.

2. They shall be similarly liable for any failure of payment in full of new capital contributed.

3. No member of the Board of Management shall be liable under paragraphs 1 or 2 if he was unaware of circumstances giving rise to such liability, nor could have become aware thereof by exercising the care incumbent on a prudent businessman.

Article 44

[Reduction of capital]

1. A reduction of capital shall be effected by altering the Statutes. The reasons for the reduction shall be specified in the notice of General Meeting.

2. The reduction of capital shall be effected by decreasing the nominal value of the shares. The amount of nominal capital shall not, however, be reduced below the amount of minimum capital. Only when losses have been incurred may the General Meeting resolve to reduce the capital to an amount below that of the minimum capital; the General Meeting shall, at the same time, resolve to increase the capital so that it be raised to an amount equal to or exceeding the minimum capital. This provision shall not be treated as inconsistent with Article 249.

3. If capital is reduced for the purpose of reconciling it with the capital of the company as diminished by losses and, in consequence of the reduction the company's assets exceed its liabilities, the amount of the difference shall be credited to a reserve. This reserve shall not be used for the purpose of distributing dividends or in any other way for the benefit of shareholders.

Article 45

[Protection of creditors when capital is reduced]

1. Creditors the origin of whose claims predates the reduction of capital may, within two months after the Minutes of the General Meeting are filed, require the SE to lodge a security for their claims against it.

2. If no agreement has been reached as to the security to be given within two weeks after the SE receives a creditor's demand, the court within whose jurisdiction the registered office of the SE is situate may on the application of the creditor order security to be given for this claim. If the SE does not give the security ordered within one month after the order of the court is made, the debt or other obligation shall immediately become due and payable. The court shall dismiss the creditor's application if the creditor already has adequate security for his claim, or if the SE is obviously able to meet all claims against it.

3. The SE shall not be required to provide any security if the obligation is satisfied, whether before or at maturity, either prior to the decision of the court or within one month thereafter.

4. No payments may be made to shareholders until the court has reached a decision, or until any security ordered by the court has been provided, or until the creditors have been paid as provided for in paragraph 3.

5. The provisions of this Article shall not apply in the event of a reduction of capital which has as its object the reconciliation of capital with the assets of the company as diminished by losses.

Article 46

[Own shares]

1. The acquisition of and subscription for shares in the SE by the SE itself, by third parties on behalf of the SE, or by undertakings which are controlled by the SE or in which the SE holds a majority of shares, is prohibited.

2. The foregoing provisions shall not affect the application by the SE of its disposable reserves to the acquisition of its own shares, either by itself or by third parties on its behalf, for distribution to its employees or to employees of undertakings belonging to the same group as the SE. Such acquisition shall require the approval of the Supervisory Board of the SE. The SE's own holding of shares in itself including such acquired by third parties on its behalf may not exceed 10% of its capital.

3. The SE may not take any pledge of its own shares or acquire any right of usufruct or other beneficial rights over them.

4a. If an undertaking comes under the control of an SE in which it holds shares or if a majority of its shares are acquired by such an SE, the undertaking shall dispose of the shares in the SE within eighteen months from the date of its coming under the control of the SE or from the date when the SE acquires the majority of its shares.

If an SE acquires its own shares by way of universal succession, or if an undertaking which is controlled by the SE or the majority of whose shares are held by the SE acquires shares in the SE in this manner, such shares shall be disposed of within the period stated.

4b. If shares acquired by the SE pursuant to paragraph 2 for distribution to employees have not been distributed to them within twelve months from the date upon which they were acquired, they must be disposed of within a further six months at the latest.

5. No rights may be exercised in respect of the shares referred to in paragraphs 4a and b until they have been disposed of or distributed to employees.

Article 46a

[Obligations to notify shareholdings]

1. Any shareholder possessing more than 10% of the capital of an SE either

— directly or through his spouse, his minor children or an intermediary, or

— through a company controlled by him or through third parties acting on his behalf,

shall within eight days notify the SE of such shareholding and of any change therein, stating the amount of shares held.

2. Any SE which directly or through a company controlled by it or through a third party acting on its behalf, holds altogether more than

10% of the capital of another company shall be obliged to notify such other company likewise.

3. An SE shall forthwith after notification notify the European Commercial Register of every

— shareholding exceeding 10% of its capital;

— change which causes such a shareholding to rise above or fall below each 5% stage above the initial 10% of the capital of the SE;

— reduction of such a shareholding to 10% or less.

4. No rights may be exercised under a shareholding subject to a duty of notification pursuant to paragraph 1 as long as such duty remains undischarged.

Article 47

[Reciprocal shareholdings]

1. A reciprocal shareholding arises between an SE and another company when either company directly or through a dependent undertaking or through a third party acting on its behalf holds altogether more than 10% of the capital of the other company.

2. Where there is a reciprocal shareholding within the meaning of paragraph 1, the company which first receives a notification under Article 46a shall reduce its holding to 10% of the capital of the other company within 18 months of receipt of the notification. If both companies received notification at the same time, they shall both be bound by this obligation.

However, the companies may, within the specified period, agree on a different procedure for reducing the reciprocal shareholding.

3. Rights under a shareholding of a company which is obliged to dispose thereof may up to the time of disposal be exercised only to the extent of 10% of the capital of the other company.

4. Paragraph 2 shall not apply in the case of a reciprocal shareholding, if the SE holds the majority of the shares of another company, or if the other company is controlled by the SE. The other company shall then dispose of its shares in the SE within eighteen months of its coming under the control of the SE or of acquisition by the SE of a majority of its shares. No rights vested in the other company in respect of the shares may be exercised before their disposal.

5. If the SE comes under the control of another company, or if such company holds a majority of the shares of the SE, the SE must dispose of its shares in the company within the period specified in paragraph 4. No rights vested in the SE in respect of the shares may be exercised before their disposal.

6. If in the event of a reciprocal shareholding each company either controls the other or holds a majority of the other's shares, they shall each reduce their shareholding in the other to not more than 10% in accordance with paragraphs 4 and 5 unless within the period stated in paragraph 4 they agree on a different procedure for reducing the reciprocal shareholding.

SECTION TWO

Shares and shareholders' rights

Article 48

[Form of shares]

1. The nominal value of shares shall be expressed in the same currency as the capital and shall be divisible by ten.

2. Shares of different nominal value may be issued.

3. Shares are indivisible. Where more than one person holds a share, the rights deriving therefrom may be exercised only by one common representative.

Article 49

[Rights conferred]

1. Shares may carry different rights in respect of the distribution of the profits and assets of the company. Payment of fixed interest may be neither made nor promised to shareholders.

2. Non-voting shares may be issued, subject to the following conditions:

(a) their total nominal value shall not exceed one-half of the capital;

(b) they shall confer all the rights of a shareholder, except the right to vote; on an increase of capital they shall carry the right to subscribe only for non-voting shares;

(c) they shall not be included in computing a quorum or a majority required by this Statute or by the Statutes.

The foregoing provisions of this Article are without prejudice to paragraph 5 of this Article or to paragraph 2 of Article 235.

3. No other shares limiting or extending voting rights, such as shares carrying multiple rights, may be issued.

4. Shares carrying the same rights shall constitute one class of shares.

5. If the holders of a class of shares are adversely affected by a resolution of the General Meeting, such resolution shall be valid only if approved by the holders of the shares of the class concerned. In such case, holders of non-voting shares shall be entitled to vote. The provisions of Title VIII shall apply correspondingly with regard to the convening of the meeting, the quorum required thereat and the majority required for approval by the holders of the shares of the class concerned.

Article 50

[Issue of bearer or registered shares]

1. Shares may be issued either in bearer or in registered form. The Statutes may entitle the shareholders to request conversion of their bearer shares into registered shares or vice versa.

2. An SE issuing registered shares shall keep an alphabetical register of all shareholders, together with their addresses and the registered shares held by them. Any interested person may on request inspect the information contained in the register of shareholders at the registered office of the company.

Article 51

[Issue of share certificate]

1. Every shareholder shall be entitled without charge to receive a certificate in respect of each of his shares.

2. Where, in consequence of any change in the legal position, certificates issued have become inaccurate, the Board of Management may, following a request to the holders to this effect, declare void any such certificates that are not submitted for rectification or exhange. Certificates declared void shall be replaced by new certificates.

3. If a certificate has so deteriorated that it is no longer suitable for circulation, the shareholder shall be entitled to have a new certificate issued to him by the company in exchange for the old, provided that the material content of the certificate remains legible. The shareholder shall pay the costs in advance.

4. When a share certificate is lost or destroyed, the shareholder may apply to the court within whose jurisdiction the registered office of the company is situate to cancel the certificate. The applicant shall have a notice published in the official newspapers requesting any interested person to notify to the court within three months his vested or contingent rights in respect of the certificate. If the court declares the certificate void, the holder shall be entitled to request the company to issue a new certificate to him upon payment of the costs in advance. After a certificate is cancelled the holder may no longer enforce any rights embodied in the share certificate against the company.

Article 52

[Transfer of bearer shares]

Transfer of a bearer share by simple delivery shall be effective as against the SE.

Article 53

[Transfer of registered shares]

1. A transfer of a registered share shall be effective against the SE only when entered in the register of shareholders.

2. Registration shall be effected upon production of an instrument of transfer, dated and signed by the transferor and by the transferee.

3. The Statutes may restrict the right of transfer. The restrictions shall be clearly stated in the Statutes. They shall not be such as to amount to a complete discretion, on the part of the company, in the matter of approval of a transfer, or such as to render the shares non-transferable in practice.

4. Instruments of transfer presented to the SE after the convening of a General Meeting shall not be entered in the register of shareholders until after the meeting has been held.

SECTION THREE

Debentures

Article 54

[Issue of debentures]

Subject to the provisions of Articles 60 and 60a, the Board of Management may issue debentures with the consent of the Supervisory Board.

Article 55

[Public issue of debentures]

Notice of any public issue of debentures shall be given in the official journals. The notice shall specify the number, nominal amount, issue price and rate of interest of the debentures to be issued, and the date and conditions of redemption. It shall also state the nominal amount of the convertible debentures already issued by the company, the unredeemed amount of other debentures already issued, the guarantees attaching thereto, and the amount of loans guaranteed by the SE or, where applicable, the fraction of such loans guaranteed.

Article 56

[Body of debenture holders]

1. Holders of debentures of the same public issue shall automatically constitute a body whose resolutions, subject to their being passed in accordance with the provisions of this Section, shall be binding on each of them.

2. A meeting of such a body shall be competent to decide on any proposal of the company relating to the debentures and, in particular, on any proposal to vary the condition on which they were issued, or to vary or cancel any security for them.

Article 57

[Representatives of body of debenture holders]

1. Upon a public issue of debentures, the Board of Management of the SE shall, with the consent of the Supervisory Board, appoint a person who is independent of the company to represent the body of debenture holders. A meeting of the said body may at any time dismiss the representative and appoint another in his place. In an emergency, any debenture holder may apply to the court in whose jurisdiction the registered office of the SE is situate for appointment of a representative.

2. The representative of the body of debenture holders shall represent the latter *vis-à-vis* the SE in any judicial or other proceedings. He may enforce the rights of the debenture holders against the company, and may accept guarantees for their debentures on their behalf. He is entitled to attend General Meetings of the company, to speak at such meetings upon matters appearing on the agenda and to exercise the same right as shareholders to request and receive information in accordance with Article 90. The SE shall pass to the representative all documents that shareholders are entitled to inspect or of which they may obtain copies. These documents shall be made accessible to debenture holders on request.

Article 58

[Meeting of body of debenture holders]

1. A meeting of the body of debenture holders may be convened by the representative or by the Board of Management of the SE. One or more debenture holders holding 10% of the debentures issued and outstanding, or debentures with a nominal value of 250000 u.a., may in writing request the representative or the Board of Management to convene such a meeting.

2. A meeting shall be validly held if the holders of at least 50% of the debentures issued and outstanding are present or are represented. Failing this quorum, the meeting shall be reconvened. The second meeting may be validly held irrespective of the number of holders present or represented. A note to this effect shall appear in the convening notice.

3. A majority of three-quarters of the votes validly cast shall be required for the passing of resolutions.

4. Voting rights shall attach to debentures in proportion to their nominal amount; the minimum nominal amount shall carry the right to one vote.

5. The representative or, in his absence, a member of the Board of Management of the company shall take the chair.

6. The provisions governing the convening and holding of general meetings shall apply to meetings of debenture holders.

Article 59

[Expenses in respect of measures taken in interests of body of debenture holders and legal venue in case of dispute]

1. The expenses incurred in convening and holding meetings of debenture holders, in remunerating the representative and in carrying out measures taken in the interests of the body of debenture holders and in the preservation of their rights shall be borne by the company.

2. Any dispute between the company and the body of debenture holders shall be decided by the court within whose jurisdiction the registered office of the SE is situated.

Article 60

[Convertible debentures]

1. The General Meeting may by altering the statutes decide to issue convertible debentures which shall confer a vested right to exchange them or subscribe for shares. The Meeting shall at the same time create approved capital, in respect of which the shareholders shall waive their right of subscription, the amount and duration of which shall correspond to the maximum exercise of such exchange or subscription rights.

2. The amount of capital created for the issue of convertible debentures may altogether be equal to not more than half the subscribed capital.

3. Shareholders shall be entitled to apply for convertible debentures in proportion to their existing shareholdings, unless the General Meeting decides otherwise by due application of the provisions of Article 43.

4. As long as convertible debentures are outstanding the SE shall not alter its statutes in such a way that the rights of holders of convertible debentures are reduced, unless at least three months before the proposed alteration they are given the opportunity, by notice published in the company journals, of exercising their rights of subscription or exchange, or the body of debentures has declared its agreement with the proposed alteration.

5. Where rights of subscription or exchange deriving from convertible debentures issued have been fully exercised or have been exercised only in part, but the period within which they may be exercised has expired, the Board of Management shall alter the Statutes to show the new amount of capital. Where rights of subscription or exchange are not exercised within the prescribed period, the Board of Management shall have the provision concerning the issue of convertible debentures removed from the Statutes.

Article 60a

[Participating debentures]

1. The General Meeting may, by a resolution which meets the requirements for altering the Statutes, resolve to issue debentures conferring rights on their holders which depend in whole or in part on the company's profits.

2. Such debentures shall be subject to the terms of Article 60(4).

SECTION FOUR

Other securities

Article 61

The company shall not issue to persons who are not shareholders of the company other securities conferring a right to participate in the profits or assets of the company.

Title IV

Governing bodies

SECTION ONE

Board of Management

Article 62

[Function of Board of Management]

The company shall be managed by a Board of Management exercising its functions under the supervision of a Supervisory Board.

Article 63

[Appointment of Board of Management]

1. Members of the Board of Management shall be appointed by the Supervisory Board. The Supervisory Board, on behalf of the company, shall enter into a contract with each member of the Board of Management setting out the nature and amount of his remuneration. The members of the first Board of Management shall be designated by the Statute of the SE.

2. Members of the Board of Management shall be appointed for a period not exceeding six years. They may be reappointed.

3. Only natural persons shall be appointed members of the Board of Management.

4. Persons may not be members of the Board of Management if:

— by virtue of the law applicable to them, or

— as the result of a court decision under the law of a Member State,

they may not exercise the functions of such an office.

5. The maximum number of members of the Board of Management shall be specified in the Statutes.

6. If the Board of Management comprises more than one member, the Supervisory Board may appoint one of its members as chairman.

7. The Supervisory Board may dismiss members of the Board of Management, including the chairman, if there are serious grounds justifying such action. The resolution for dismissal shall in every case entail immediate and definitive termination of office, even where it is successfully contested in court. The other effects of dismissal shall be determined in accordance with the contract concluded with the member of the Board of Management and the law applicable thereto.

Article 64

[Powers of Board of Management]

1. The Board of Management shall have full power to act in the interests of the company, except where power to act is expressly reserved to other bodies by this Statute.

2. If the Board of Management comprises more than one member, the members shall act collectively. Members of the Board of Management may divide their powers among themselves; such a division shall be for internal purposes only. The Supervisory Board shall determine responsibility within the Board of Management for personnel and industrial relations.

3. The Supervisory Board may, after consulting the Board of Management, make regulations for the latter's internal functioning.

Article 65

[Representation of SE *vis-à-vis* third parties]

1. Where the Board of Management comprise more than one member, each of them shall have authority to represent the company in its dealings with third parties, unless otherwise provided by the Statutes. Provisions of the Statutes to this latter effect may not be relied on to defeat claims by third parties.

2. The Board of Management may, subject to the approval of the Supervisory Board, confer general and unlimited powers to represent the company on one or more persons. The Board of Management may revoke such powers of representation at any time.

3. In its dealings with third parties, the company shall be bound by the acts of members of the Board of Management and persons with general powers to represent the company, notwithstanding that such acts are unconnected with the objects of the company, unless the acts are outside the functions of the Board of Management as provided by this Statute.

4. Notice of change in membership of the Board of Management or of the appointment or dismissal of a representative having general powers to represent the company shall be given by the Board of Management to the European Commercial Register for registration and publication in the company journals.

5. The appointment and dismissal of members of the Board of Management or of representatives having general powers to represent the company shall be effective *vis-à-vis* third parties in accordance with Article 9a. After entry in the European Commercial Register defects in the appointment of members of the Board of Management or of persons having general powers to represent the company may be relied on in order to defeat a claim by a third party only if the company proves that the third party had knowledge thereof.

Article 66

[Authorization by Supervisory Board of acts of Board of Management]

1. The following acts of the Board of Management shall be subject to prior authorization by the Supervisory Board:

(a) closure or transfer of establishments of the company or of appreciable parts thereof;

(b) substantial curtailment, extension or modification of the activities of the undertaking;

(c) substantial organizational changes within the undertaking;

(d) establishment or termination of long-term cooperation with other undertakings;

Such authorization shall be required even if such acts affect a group undertaking controlled by the SE.

2. In applying the provisions of paragraph 1 account shall be taken of the consequences with regard both to the nature and extent of the activities of the undertaking and to employment within the SE and the group undertakings dependent upon it.

3. In addition to the matters mentioned in paragraph 1 and elsewhere in this Statute, the Statutes may provide that specified decisions of the Board of Management shall require prior authorization by the Supervisory Board.

4. The absence of or irregularity in prior authorization by the Supervisory Board of decisions of the Board of Management may not be relied on to defeat claims by a third party unless the company shall prove that the third party was aware of the absence of or irregularity in such authorization or could not have been unaware thereof in view of the circumstances.

5. The powers of the General Meeting, the Group Works Council and of the European Works Council shall remain unaffected.

Article 67

(deleted)

Article 68

(deleted)

Article 69

[Other activities of members of Board of Management, borrowing from SE, agreements with SE]

1. A member of the Board of Management may not also be a member of the Supervisory Board.

2. Members of the Board of Management may not engage in other professional activities, nor accept appointment to the Supervisory Board of another company, unless specifically authorized so to do by the Supervisory Board.

3. Members of the Board of Management may not borrow, in any form whatever, from the company or from its dependent companies, nor obtain from them any overdraft, whether on current or other account, nor procure them to guarantee or overdraft their commitments towards third parties. This prohibition shall extend to the spouse, ascendants and descendants of each member of the Board of Management, and to any intermediary.

4. Prior authorization of the Supervisory Board shall be required for the making of any agreement to which the company is a party and in which a member of the Board of Management has a direct or indirect interest.

The Member concerned shall not take part in the discussion or decision of the Board of Management relating to such an agreement.

Any member of the Board of Management or Supervisory Board learning of the existence of such an agreement shall forthwith notify both bodies thereof.

The Supervisory Board shall each year inform the General Meeting of the authorization which it has given.

The provisions of Article 66(4) regarding such authorization shall apply correspondingly in respect of third parties.

Article 70

[Obligations of members of Board of Management]

1. In carrying out their duties of management, members of the Board of Management shall exercise the standard of care expected of a prudent administrator and shall promote the interests of the company and of its personnel.

2. They shall exercise proper discretion in respect of information of a confidential nature concerning the company or its dependent undertakings, and shall continue to do so after they have ceased to hold office.

Article 71

[Liability to SE]

1. Members of the Board of Management shall be liable to the company for any loss resulting from their failure to observe the provisions of this Statute or of the Statutes of the company, or from any other breach of their obligations.

2. Each member of the Board of Management shall be jointly and severally liable for such loss without limitation. Nevertheless, no member shall be held liable if he proves that no fault is attributable to him and if he notified the Supervisory Board in writing of the act or ommission in question as soon as possible after it came to his knowledge.

3. Authorization given by the Supervisory Board shall not absolve the members of the Board of Management from liability.

4. The members of the Board of Management shall not be relieved of liability by the fact that the General Meeting has resolved to relieve them or has approved their action.

5. The right of action in respect of liability of the members of the Board of Management shall be barred at the end of three years from the date of the act complained of or, if such act was concealed, from the date of its discovery.

Article 72

[Liability proceedings]

1. The Supervisory Board or the General Meeting may resolve that proceedings shall be brought on behalf of the company in respect of the liability of members of the Board of Management or of any member thereof. No greater majority shall be required for the resolution of the General Meeting than an ordinary majority of the votes validly cast.

2. The action shall be brought by the Supervisory Board. If the General Meeting resolves to bring an action, it may do so through a representative appointed by it.

3. An action may also be brought on behalf of the company by one or more shareholders holding 5% of the capital of the company or shares of a total nominal value of not less than 100000 u.a. For this purpose the shareholders, if there are more than one, shall appoint a special representative to bring the action.

4. An action may also be brought against the members of the Board of Management by a creditor of the company who proves that he is unable to obtain satisfaction from the latter.

5. If bankruptcy proceedings are instituted against the company, an action in respect of the liability of members of the Board of Management may also be brought by the company's trustee in bankruptcy.

6. The plaintiffs may sue for the full amount of the loss sustained by the company. If their action is successful, the damages awarded shall be paid to the company, which shall indemnify the plaintiffs for the costs incurred by them in so far as these are not paid by the defendant(s).

Article 72a

[Liability to shareholders and third parties]

1. The members of the Board of Management of the SE shall be liable to the shareholders of the SE and to third parties for any loss or damage that the latter may personally sustain through breach of the provisions of this Statute or of the statutes of the company or through any other failure by members of the Board of Management to fulfil their obligations in the pursuit of their duties.

2. Article 71(2 to 5 shall be of corresponding application.

SECTION TWO

The Supervisory Board

Article 73

[Functions of Supervisory Board]

1. The Supervisory Board shall exercise continuous supervision over the administration of the company's affairs by the Board of Management.

2. The Supervisory Board shall advise the Board of Management, either upon request thereof or on its own initiative, on any matter of importance to the company.

3. The Supervisory Board shall not participate directly in the management of the company, nor represent it in dealings with third parties. The Supervisory Board shall represent the company at law in legal proceedings brought by or against the Board of Management or members thereof and in concluding agreements between the company and any member of the Board of Management.

Article 73a

[Rights of Supervisory Board and its members to information]

1. At least once every quarter, the Board of Management shall submit to the Supervisory Board a report on the management and progress of the company and of the undertakings controlled by it. Quarterly accounts shall be attached to the report.

2. The Board of Management shall immediately communicate all matters of importance to the chairman of the Supervisory Board. Any matter concerning a dependent undertaking which may appreciably affect the SE shall be deemed to be a matter of importance. Matters so referred to the chairman of the Supervisory Board shall be incorporated in the next following quarterly report.

3. The Supervisory Board may at any time require the Board of Management to submit a special report on any matter concerning the company or the undertakings controlled by it.

4. The Supervisory Board or one third of its members may require the Board of Management to provide it with information and to submit documents relating to matters affecting the company or the undertakings controlled by it. The Board of Management shall make such information and documents available to all members of the Supervisory Board simultaneously.

5. The Supervisory Board or one-third of its members shall have right of access to the company's books of account, correspondence, minutes and documents. The Supervisory Board or one third of its members may appoint one or more of its members to exercise this right.

The Supervisory Board or one-third of its members may appoint one or more experts to carry out such inspection as it may consider necessary.

All members of the Supervisory Board shall be informed simultaneously and without delay of the results of the inspection.

6. Each member of the Supervisory Board shall have access to all documents and information supplied by the Board of Management to the Supervisory Board.

Article 74

[Conditions of membership; Number of members]

1. Only natural persons may be members of the Supervisory Board.

No member may sit on the supervisory body of more than ten companies. Where a member of a Supervisory Board has a seat on several Supervisory Boards within a group, these shall be counted as not more than two. No member of the Supervisory Board of an SE may have a seat on the management body of an undertaking controlled by the SE.

2. Persons may not be members of the Supervisory Board if:

— by virtue of the law applicable to them; or

— as a result of a court decision under the law of a Member State,

they may not exercise the functions of such an office.

3. The number of members of the Supervisory Board shall be prescribed by the Statutes of the company; it shall be uneven and divisible by three.

Where an SE has establishments in several Member States the number shall be not less than nine.

If an SE is the controlling undertaking of a group, establishments of group undertakings controlled by the SE shall be deemed to be establishments of the SE for the purposes of this paragraph.

4. In the event of it proving necessary to increase the number of members of the Supervisory Board in order to comply with the provisions of the preceding paragraph, the said Board shall continue to act without changes in its composition until the next General Meeting convened to adopt the annual accounts.

Article 74a

[Composition of Supervisory Board]

1. The Supervisory Board shall consist as to one-third of representatives of the shareholders, as to one-third of representatives of the employees and as to one-third, of members co-opted by these two groups.

2. Shareholders' representatives shall be appointed in accordance with Article 75.

3. Employees' representatives shall be appointed in accordance with Article 137.

4. The remaining third to be co-opted to membership of the Supervisory Booard shall be appointed in accordance with Articles 75a and 75b.

5. The Board of Management shall immediately notify the European Commercial Register of the composition of the composition of the Supervisory Board and of any change therein.

Article 74b

[Carrying out of duties of Supervisory Board before its membership is complete]

1. After the formation of the SE, the members of the Supervisory Board representing the shareholders shall perform the Board's duties alone until employees' representatives have been elected.

2. As from the date of formation the duties of the Supervisory Board shall be carried out solely by the shareholders' and employees' representatives in the absence of those members of the co-opted third who have not yet been appointed.

Article 74c

[Term of office]

1. The Supervisory Board shall hold office for four years. Members of the Board may offer themselves for re-election.

2. If upon expiry of the Supervisory Board's term of office no new elections to membership thereof shall have been held, the members appointed for the preceding term shall continue in office until new elections are held, provided that such further period shall not exceed six months.

3. The term of office of the members initially elected or appointed shall end four years after the formation of the SE.

Article 74d

[Termination of membership Replacement by and appointment of alternates]

1. Membership of the Supervisory Board shall also end by resignation, or upon loss of the preconditions of eligibility for membership.

2. Upon premature determination of membership or expulsion from the Supervisory Board by court order or in the event of continuing incapacity, the member of the Board concerned shall be replaced by an alternate.

3. If no alternate has been elected to deputize for a member, or if an alternate is prevented from assuming office, a new member shall be elected for the remaining period of office in accordance with the following provisions.

Members replacing shareholders' or employees' representatives shall in such cases be elected by the appropriate group of Supervisory Board members. Alternates in respect of the jointly co-opted third shall be elected by all the remaining members of the Supervisory Board.

Article 74e

[Dismissal of members by court]

1. The court within whose jurisdiction the registered office of the SE is situated may upon application dismiss a member of the Supervisory Board who has committed a serious breach of his obligations under this Statute.

Application may be made by the General Meeting, the employees' representative body and the Supervisory Board.

Application may also be made by:

— shareholders jointly holding either 10% of the capital or shares of a nominal value of 200000 u.a., or

— one quarter of the employees entitled to elect members of the Supervisory Board pursuant to Article 2 of Annex III.

2. The employees' representative body within the meaning of paragraph 1 shall be:

(a) the European Works Council;

(b) if no European Works Council is formed:

(aa) the central employees' representative body of the SE at undertaking level; if there is no central employees' representative body, on a joint basis the employees' representative bodies set up at works level and referred to in Annex I to this Statute;

(bb) the recognized representatives of employees in undertakings of the SE in Member States in which there are no employees' representative bodies within the meaning of Annex I.

(c) where an SE forms a Group Works Council, this too shall be deemed to be an employees' representative body for the purposes of this provision.

Article 75

[Appointment of shareholders' representatives]

1. Shareholders' representatives on the Supervisory Board shall be elected by the General Meeting, which may elect a like number of persons as alternates. Shareholders' representatives on the initial Supervisory Board shall be appointed by the statutes of the SE.

2. Notwithstanding the provisions of Article 91(2), the statutes may lay down a procedure whereby one or more members of the Supervisory Board shall be elected by a minority of the shareholders.

3. Members of the Supervisory Board appointed by the General Meeting or by the statutes may be replaced by the General Meeting at any time.

4. An age limit may be imposed under the statutes in respect of members who represent the shareholders. A member of the Supervisory Board who reaches this age limit shall remain in office until the end of the next General Meeting called to consider the annual accounts.

Article 75a

[Proposal of candidates for co-optation]

1. The following may put forward candidates for co-option to the Supervisory Board:

— the General Meeting;
— the employees' representative body;
— the Board of Management.

2. The employees' representative body within the meaning of paragraph 1 shall be

(a) the European Works Council,

(b) if no European Works Council is formed:

(aa) the central employees' representative body of the SE at undertaking level; if there is no central employees' representative body, on a joint basis, the employees' representative bodies set up at works level and referred to in Annex I to this Statute;

(bb) the recognized representatives of employees in undertakings of the SE in Member States in which there are no employees' representative bodies within the meaning of Annex I;

(cc) employees' representatives on the Supervisory Board of the SE if there is no representative body as provided under (aa) or (bb).

(c) Where an SE forms a Group Works Council, this too shall be deemed to be an employees' representative body for the purposes of this provision.

3. Only persons representing general interests, possessing the necessary knowledge and experience, and not directly dependent on the shareholders, the employees or their respective organizations may be nominated.

4. When an SE is being formed, the bodies of the founder companies competent for approving the constitution of the SE are entitled to put forward candidates instead of the General Meeting of the SE.

Article 75b

[Election of such members]

1. Those candidates proposed for co-option from the appropriate third shall be elected, who obtain most votes, but not less than two-thirds of the votes. One alternate may further be elected for each co-opted member.

2. If the requisite majority for the co-option of one or more members is not achieved in the first ballot, the election of such members shall be repeated on the basis of new nominations.

3. The General Meeting and the employees' representative body within the meaning of Article 75a may appoint one or more persons as proxies to submit new nominations on their behalf. Failing the appointment of a proxy, the representatives on the supervisory Board of the shareholders on the one hand and of the employees on the other shall be authorized to submit new nominations on behalf of the General Meeting and of the employees' representative body respectively.

4. If the requisite majority for the co-option of one or more members be not reached after an election has been twice repeated, an arbitration board shall decide as to their appointment.

5. The arbitration board shall comprise two assessors and a chairman; the representatives of the shareholders and of the employees on the Supervisory Boards shall each appoint one assessor. The chairman shall be appointed by the two assessors by mutual agreement. In the absence of agreement as to the choice of a chairman, the latter shall be appointed by the court within whose jurisdiction the registered office of the SE is situate.

Article 76

[Election of Chairman; convening of Supervisory Board]

1. The Supervisory Board shall elect a chairman and one or more vice-chairmen from among its members.

2. The chairman may call a meeting of the Supervisory Board on his own initiative or at the request of a member of the Supervisory Board or at the request of the board of Management. Such a request shall state the reasons for calling the meeting. If the request has not been complied with within 15 days after it is made, the applicant may call a meeting of the Supervisory Board himself.

3. Members of the Board of management shall attend meetings of the Supervisory Board unless the latter shall otherwise decide. They shall attend in an advisory capacity.

Article 77

[Preparation of meetings and decisions]

1. The agenda for meetings of the Supervisory Board shall be settled by the chairman. The Board of Management shall in good time provide written information in respect of each item of the agenda. The agenda and the written information so provided shall be sent in good time to each member of the Supervisory Board. Every member of the Supervisory Board or the Board of management may require additions to be made to the agenda.

2. Meetings of the Supervisory Board shall not be held unless at least one half of its members are present.

3. Members of the Supervisory Board not present may take part in decisions by authorizing a member who is present to represent them.

4. Unless a greater majority is required in the Statutes, decisions of the Supervisory Board shall be taken by majority vote of the members present or represented.

5. Subject to any conditions contained in the Statutes of the company decisions of the Supervisory Board on any particular matter may be made in writing, in particular by an exchange of telegrams or telex messages, provided that no objection is raised to such procedure by any member.

6. Minutes shall be kept of decisions of the Supervisory Board, and shall be signed by the chairman of the said Board. Copies of the Minutes shall be sent to the members of the Supervisory Board immediately after they have been signed.

Article 78

(deleted)

Article 79

[Remuneration of members; borrowing from SE; agreements with SE]

1. The remuneration of members of the Supervisory Board may be determined by the Statutes or, in default, by the General Meeting.

2. Members of the Supervisory Board may not borrow, in any form whatever, from the company or from its dependent companies, nor obtain from them any overdraft, whether on current or other account, nor procure them to guarantee or underwrite their commitments towards third parties. This prohibition shall extend to the spouse, ascendants and descendants of each member of the Supervisory Board, and to any intermediary.

3. Prior authorization by the Supervisory Board shall be required for the making of any agreement to which the company is a party and in which a member of the Supervisory Board has a direct or indirect interest.

The member concerned shall not take part in the discussions or the resolution regarding authorization.

Any member of the Board of Management or the Supervisory Board learning of the existence of such an agreement shall forthwith notify both bodies thereof.

The Supervisory Board shall each year inform the General Meeting of the authorizations which it has given.

The provisions of Article 66(4) regarding such authorization shall apply correspondingly in respect of third parties.

Article 80

[Obligations of members of Supervisory Board]

1. In carrying out their duties, members of the Supervisory Board shall have regard to the interests of the company and of its personnel.

2. They shall exercise proper discretion in respect of information of a confidential nature concerning the company or its dependent undertakings, and shall continue to do so after they have ceased to hold office.

Article 81

[Liability to SE]

1. The members of the Supervisory Board shall be liable to the company for any loss resulting from their failure to observe the provisions of this Statute or of the Statutes of the company, or from any other breach of their obligations.

2. Each member of the Supervisory Board shall be jointly and severally liable for such loss without limitation. Nevertheless, no member shall be held liable if he proves that no fault is attributable to him, and if he notified the chairman of the Supervisory Board in writing of the act or omission in question as soon as possible after it came to his knowledge.

3. Members of the Supervisory Board shall not be relieved of liability by the fact that the General Meeting has resolved to relieve them or has approved their action.

4. The right of action in respect of liability of the members of the Supervisory Board shall be barred at the end of three years from the date of the act complained of or, if such act was concealed, from the date of its discovery.

5. By analogy with the provisions of Article 72, the General Meeting, shareholders, creditors of the company and, where the company becomes insolvent, its trustee in bankruptcy may bring an action to enforce the liability of the members of the Supervisory Board.

Article 81a

[Liability to shareholders and third parties]

1. Members of the Supervisory Board shall be liable to the shareholders of the SE and to third parties for any loss or damage that the latter may personally sustain through breach of the provisions of this Statute or of the statutes of the company or through any other failure by Members of the Supervisory Board to fulfil their obligations in the pursuit of their duties.

2. Article 81(2), (3) and (4) shall be of corresponding application.

SECTION THREE

Special obligations applicable to members of the Board of Management, the Supervisory Board, the auditors and principal shareholders

Article 82

1. Where the company's shares are quoted on a Stock Exchange, members of the Management and Supervisory Boards and the persons responsible for auditing the accounts of the company shall, within twenty days of acquisition, either cause to be converted into registered shares or lodge with a bank, shares in the capital of the SE which are owned directly, or through an intermediary, by them, their spouse or their infant children.

Subject to Article 46a the same obligation shall apply to any person who holds, directly or through an intermediary, solely or jointly with his spouse or infant children, more than 10% of the capital of the company.

2. Persons who acquire any of the capacities mentioned in paragraph 1 shall forthwith give notice to the European Commercial Register for the purpose of entry therein, of the number, nominal value and, where appropriate, the class, of the shares to which the said paragraph applies, together with the name and status of the owner thereof. An extract applies, together with the name and status of the owner thereof. An extract from the register of registered shares, or a certificate issued by the bank with which they are lodged, shall be attached in support of the notice.

3. The like persons shall, further, give notice to the European Commercial Register within fifteen days of the end of each quarter of the financial year, for the purpose of registration, of any sale or purchase of shares, to which paragraph 1 applies, effected during that quarter, specifiying the price paid or received.

4. In respect of each person mentioned in paragraph 1, the European Commercial Register shall keep an up-to-date record of the number, nominal value and, where appropriate, the class of shares held by him, together with a record of transactions of which notice has been given pursuant to paragraph 3. Any person having an interest may inspect the entries in the register and, on payment of the expenses, obtain a copy thereof.

5. Any profit made by a person mentioned in paragraph 1 on purchase and resale of shares, or vice versa, within six months, for his own account or that of his spouse or infant children shall automatically be the property of the SE. The amount thereof shall be paid to the company within eight days from completion of the transaction from which the profit arose.

SECTION FOUR

The General Meeting

Article 83

[Duties]

1. The General Meeting shall pass resolutions concerning:

(a) increase or reduction of capital;

(b) issue of debentures convertible into shares and debentures carrying the right to share in profits;

(c) appointment and removal of members of the Supervisory Board who represent the shareholders;

(d) institution of legal proceedings on behalf of the company;

(e) appointment of auditors;

(f) approval of the annual accounts, where this is not done by the Board of Management and the Supervisory Board under Article 214;

(g) appropriation of annual profits under Article 217;

(h) alteration of the Statutes;

(i) winding-up of the company and appointment of liquidators;

(j) transformation of the company;

(k) merger of the company with another company;

(l) transfer of the assets of the company.

2. The approval of the General Meeting shall also be required for contracts by which the SE agrees:

— to pool the whole or a part of its profits with the profits of other undertakings, or parts thereof;

— to lease its undertaking to another undertaking or otherwise grant possession thereof to another undertaking;

— to carry on its business on behalf of another undertaking.

The absence of or irregularity in the granting of approval by the General Meeting may not be relied on to defeat claims by a third party unless the company shall prove that the third party was aware of the absence of or irregularity in such authorization or could not have been unaware thereof in view of the circumstances.

3. The powers of the Supervisory Board and of the European Works Council shall remain unaffected.

Article 84

[Convening]

1. The General Meeting shall be convened by the Board of Management. It shall be held at least once each calendar year, not later than six months after the end of the company's financial year, principally to review the annual accounts and the annual report. Upon application by the Board of Management this period may, in exceptional circumstances, be extended by order of the court within whose jurisdiction the registered office of the company is situate, from which there shall be no right of appeal.

2. The Board of Management may convene a General Meeting at any time, and shall do so if the Supervisory Board so requires.

3. If the Board of Management shall fail to convene a General Meeting prescribed by this Statute or by the Statutes or as required by the Supervisory Board, the latter may convene the same.

Article 85

[Convening by shareholders]

1. One or more shareholders holding between them not less than 5% of the capital or a nominal value of at least 100000 u.a. may by requisition in writing setting out their reasons and the items on the agenda, require that a General Meeting be convened. The Statutes may specify a lesser percentage and number of units.

2. If within one month after it has been lodged the requisition mentioned in paragraph 1 has not been complied with, the requisitionist or requisitionists may apply to the court for an order that the meeting be convened. The application shall be heard by the court within whose jurisdiction the registered office of the SE is situate and there shall be no right of appeal against its decision. If, after hearing the company, the court shall consider the application justified, it shall authorize the requisitionist or requisitionists to convene the General Meeting at the expense of the company, and shall determine the agenda and appoint the chairman.

Article 86

[Convening procedure]

1. A General Meeting shall be convened not less than one month before the date of the meeting.

It shall be convened by a notice published in the company journals. If the company has issued shares in registered form, holders thereof shall receive personal written invitations to attend the meeting.

2. The convening notice shall state the agenda and the proposals of the Board of Management concerning each item thereon.

3. Shareholders who individually or collectively fulfil the conditions laid down in Article 85(1) may, within ten days of a meeting being convened, by registered letter require the Board of Management to extend the agenda by one or more items or to put up for discussion their amendments regarding items of the agenda.

Such new items of the agenda and amendments shall be published not later than 10 days before the General Meeting in like manner to the convening notice.

4. The General Meeting may pass resolutions on items not included in a duly published agenda only by the unanimous vote of all the shareholders of the company.

Failing unanimity, it may resolve only to convene a new General Meeting with a new agenda.

Article 87

[Attendance at General Meeting]

1. The members of the Board of Management and of the Supervisory Board shall attend General Meetings in a consultative capacity.

2. Every shareholder and every representative of a body of debenture holders appointed in accordance with Article 57 shall be entitled to attend the General Meeting.

3. The Statutes of the company may make attendance at a General Meeting conditional upon the lodging of the certificates with a bank at least fifteen days before the meeting for retention until the conclusion thereof. In such case, the banks shall forthwith give notice of such deposit to the company, indicating the nature and nominal value of the certificates and the names and addresses of the persons lodging the same.

4. In lieu of the lodging of certificates provided by paragraph 3, the Statutes of the company may require that notice of intention to attend the meeting be given in writing or by telegram at least eight days before the holding thereof. If so, the information required under paragraph 3 shall be communicated to the company.

5. Where the Statutes contain such provisions as are mentioned in paragraphs 3 and 4, a note to this effect shall appear in the notice convening the meeting.

Article 88

[Representation of shareholders at General Meeting]

1. Shareholders who are entitled to vote may be represented by proxies at General Meetings. Members of the Board of Management, members of the Supervisory Board and salaried employees of the company, or of its dependent undertakings, may not act as proxies. The statutes may impose additional restrictions on the appointment of proxies, provided that a shareholder shall at all times be entitled to appoint another shareholder to represent him. Reference to such restrictions shall be made in the convening notice.

2. The appointment of a proxy shall be made in writing, and the person appointed shall act without payment. The document of appointment shall specify the number and nominal value of the shares in respect of which the right to vote may be exercised. It shall be lodged with the company before the meeting, and the company must retain it for at least three years.

3. The appointment of a proxy shall be valid for only one General Meeting and, where necessary, for one subsequent General Meeting with the same agenda as the meeting for which it was given. A proxy may delegate his powers to another person. The appointment of a proxy may be revoked at any time.

Article 88a

[Public proxy solicitations]

1. If any person publicly invites shareholders to send their forms of proxy to him and offers to represent them at the General Meeting, either in person or through a third party, the following provisions shall apply in addition to Article 88:

(a) all shareholders whose names and addresses are known to the person making the offer shall be invited in writing to appoint the person nominated as proxy;

(b) the invitation shall contain at least the following particulars:

(aa) the agenda of the General Meeting;

(bb) the text of proposed resolutions concerning each of the items on the agenda;

(cc) a statement to the effect that the documents referred to in Article 216 are available to shareholders on request;

(dd) a request to the shareholder for instructions concerning the exercise of the right to vote in respect of each item on the agenda;

(ee) a statement of the way in which the proxy will exercise the right to vote if the shareholder gives no instructions.

(c) the shareholder's right to vote shall be exercised in accordance with his instructions, or, if none are given by him, in accordance with the statement made to him;

(d) the proxy may, however, depart from the instructions given by the shareholder or from the statement made to him if circumstances arise that were not known at the time the instructions or invitation were sent and the interests of the shareholder might be detrimentally affected if his instructions were carried out;

(e) if the right to vote has been exercised in a manner contrary to the shareholder's instructions or to the statement made to him, the proxy shall forthwith inform the shareholder and explain the reasons therefor.

2. The provisions of paragraph 1 shall also apply if a bank seeks to act as the proxy of persons who have deposited share certificates with it. Notwithstanding paragraph 1(a), only those shareholders with share certificates in the bank's custody shall be invited to appoint it as proxy.

Article 88b

[Illicit voting]

No person may vote in his own name in respect of shares belonging to another person, unless a deed of appointment of a proxy has been duly lodged.

Article 89

[Procedure at General Meeting]

1. Unless otherwise provided by the Statutes, the chairman of the Supervisory Board shall preside at General Meetings, or, in his absence, the vice-chairman of that Board, and in the absence of the vice-chairman, the oldest member thereof. In the absence of any member of the Supervisory Board, the meeting shall elect its own chairman.

2. For every General Meeting, a list of persons present shall be prepared before the proceedings are opened. It must contain the following information:

(a) the names and permanent addresses of the shareholders present;

(b) the names and permanent addresses of the shareholders represented by proxies and the names and addresses of their proxies;

(c) in respect of each shareholder present or represented by a proxy, the number, class and nominal value of his shares.

3. Any person attending a General Meeting shall be entitled to speak upon matters appearing in the agenda which the chairman has opened to debate. Any shareholder may make counter-proposals on any item in the agenda. The chairman shall regulate the discussion, and may take any steps which he considers appropriate for the orderly conduct of business.

4. The chairman shall determine the order of voting if there is more than one proposition on the same item. The Statutes of the company may provide for a secret vote in respect of the appointment or removal of members of the Supervisory Board; a General Meeting may at any time by a majority vote decide to the contrary. Voting in respect of appointments may be by acclamation, if no objection is raised by any shareholder entitled to vote.

Article 90

[Right of shareholders to information]

1. During the course of a General Meeting, any shareholder shall be entitled to require information on request from the Board of Management concerning the affairs of the company, if such information is necessary for the proper discussion of items in the agenda. The obligation to give information shall extend to legal and business affairs concerning the SE and its dependent or controlling undertakings or affiliated undertakings within the same group.

2. The information supplied shall be accurate and complete in all respects.

3. The Board of Management may refuse to give information where:

(a) in the opinion of a prudent businessman, the information requested would be such as to cause substantial harm to the SE or to any of its dependent or controlling undertakings or affiliated undertakings within the same group; or

(b) by divulging the same the Board of Management would commit a criminal offence.

4. Where information is refused to a shareholder, he shall be entitled to require that his question and the grounds relied on for refusing it shall be entered in the Minutes of the General Meeting.

5. A shareholder to whom information is refused may challenge the validity of the refusal by applying to the court within whose jurisdiction the registered office of the SE is situate, whose decision shall be final and without right of appeal. Application to the court shall be made within 2 weeks from the conclusion of the General Meeting. The oral proceedings on the application shall be held in chambers.

6. If the applicant's right to be given the information is upheld, the Board of Management shall publish the question and the relevant information in the company journals within four weeks of the judgment.

Article 91

[Voting]

1. Subject to Article 49(2), each share shall carry voting rights in proportion to the share of the company's capital which it represents; each share shall carry at least one vote.

2. A simple majority of the votes validly cast shall be required for a General Meeting to pass resolutions except where this Statute requires a larger majority. The Statutes of the company may require a larger majority for any resolution provided that it does not exceed four-fifths of the votes validly cast.

3. A shareholder or his representative may not vote in respect of his own shares or the shares of a third party on a resolution of the General Meeting concerning:

(a) the institution of legal proceedings by the company against the shareholders;

(b) the release of the shareholder from an obligation to the company;

(c) the approval of contracts between the company and the shareholder.

Article 92

[Exercise of voting rights]

1. The voting rights attached to a share may be exercised by a usufructuary. In the event of a resolution for the alteration of the Statutes of the company, however, the right to vote shall be exercised by the legal owner of the share.

2. Voting rights in respect of shares in pledge shall be exercised by the legal owner. For this purpose, for a period of fifteen days before a General Meeting and until the conclusion thereof, the pledgee shall at the request of the legal owner lodge the shares held by him in pledge with a bank appointed by the company at the legal owner's request.

Article 93

[Agreements on voting rights]

1. Shareholders may gratuitously agree to leave to one of their number or to a third party the decision as to the manner in which their voting rights shall be exercised. All agreements by which shareholders undertake to vote in accordance with the directions or in support of proposals of the Board of Management or Supervisory Board of the SE or of the governing bodies of an undertaking dependent thereon shall be void.

2. The terms of the agreement shall be set down in writing and notified to the company. Votes cast in pursuance of such an agreement, before notice of it is given, shall be void. The termination of the agreement shall also be notified to the company.

3. When a company has been notified of the conclusion of an agreement, the names of the parties thereto and the total nominal value of their shares shall be set out in the annual report. This shall also be done where the company has been notified of the termination of an agreement.

Article 94

[Minutes of General Meeting]

1. The Minutes of the General Meeting shall be drawn up by a notary. They shall include the matters discussed, the comments which speakers have asked to be placed on record and the resolutions passed by the General Meeting.

2. The list of persons present and the documents relating to the convening of the meeting shall be annexed to the Minutes, together with the reports to shareholders on items placed on the agenda.

3. Immediately after the General Meeting the Board of Management shall file two authenticated copies of the Minutes and of the annexes thereto in the European Commercial Register.

Article 95

[Proceedings for cancellation of resolutions of General Meetings]

1. Subject to the special provisions and requirements set out in this Statute, resolutions of the General Meeting may, in accordance with the rules hereinafter contained, be cancelled on the grounds of the violation of the provisions of this Statute or of the Statutes of the company.

2. Proceedings for cancellation may be brought by any shareholder or by any other person who has an interest in the observance of the provisions, and if failure to observe those provisions may alter or influence the resolution of the General Meeting.

3. The proceedings for cancellation shall be brought before the court within whose jurisdiction the registered office of the SE is situate, within three months of filing of the Minutes of the Meeting in the European Commercial Register, and shall be against the company. If the proceedings are based on grounds which have been concealed, they may be pleaded within the three months following discovery thereof.

4. On the application of the plaintiff and after hearing the SE, the court may suspend implementation of the resolution in question. The court may likewise, on the application of the SE and after hearing the plaintiff, order the plaintiff to provide security to cover any loss caused by the proceedings or by suspension of implementation of the resolution in the event of dismissal of the proceedings as being unfounded.

5. A judgment ordering cancellation or suspension of a resolution shall have effect in respect of all parties, subject to the rights acquired *vis-à-vis* the company by third parties acting in good faith. The Board of Management shall forthwith file two authenticated copies of the judgment or order in the European Commercial Register.

6. The court shall not order cancellation of a resolution where the latter has been replaced by another passed in accordance with this Statute and the Statutes of the company. The court may if it sees fit allow such time as may be necessary for the meeting to pass such resolution.

Article 96

(deleted)

SECTION FIVE

Special supervision of the governing bodies

Article 97

[Conditions for special supervision]

1. Where there is good reason for believing that the Board of Management or the Supervisory Board has committed a serious breach of its obligations, or that a member of either has committed such breach of his obligations, or that either of these Boards is no longer in a position properly to fulfil its functions, with the consequent risk that the company may thereby suffer substantial prejudice:

— shareholders owning between them either 10% of the capital or shares to the value of 200000 u.a.;

— the European Works Council; or

— the representative of a body of debenture holders

may apply to the competent court for the appointment of one or more special commissioners.

2. The competent court shall be that within whose jurisdiction the registered office of the SE is situate, provided that the Member State concerned shall not have granted exclusive competence to decide on the appointment of special commissioners to another court.

Article 98

[Appointment and activities of special commissioners]

1. The court shall notify the company and the parties immediately concerned that an application has been made. The court shall deal with the application and hear the parties in chambers.

2. If in the opinion of the court the application is *prima facie* founded, it shall at the expense of the company appoint one or more special commissioners. It shall specify the matters that they are to investigate. Their duties may at their own moving be enlarged by the court, subject to the company being heard.

3. There shall be no appeal against a decision to appoint special commissioners or, where applicable, to enlarge their duties. Such decisions shall be published in the company journals.

4. The court may require the company to deposit a sum of money or procure a banker's guarantee to be given in respect of payment of fees of the special commissioners. The amount of their remuneration shall be determined by the court on completion of their investigations and after they have been heard by the court. The court may, during the course of the investigation increase the required amount of deposit or guarantee.

5. Special commissioners shall have the same powers as the auditors of the annual accounts.

6. On completion of their investigations the special commissioners shall submit their report to the court that appointed them. An official of the court shall forthwith notify the parties that the special commissioners' report has been submitted. The parties shall be entitled to a copy thereof.

Article 99

[Adoption of measures by court]

1. Any party may apply to the court within two months of the submission of the report. If no application is made within this period the court shall declare the proceedings closed.

2. The court shall decide on the basis of the facts disclosed after hearing the parties. It shall not be bound by their applications and shall order the submission of any evidence it considers necessary.

3. The court shall decide measures appropriate to the circumstances. It may:

— temporarily suspend from office one or more members of the Board of Management or of the Supervisory Board;

— dismiss them;

— appoint new members to these bodies on a temporary basis;

— suspend or rescind decisions and resolutions of the Board of Management, the Supervisory Board or the General Meeting;

— dissolve the company.

The court may defer the adoption of measures, provided that the company itself puts an end, within a period of time fixed by the court, to the irregularities which are the subject of the action.

4. The court shall have power of control over measures ordered by it. On application by the company it may curtail or extend the duration of temporary measures. It shall determine the fees to be paid by the company to persons appointed on a temporary basis.

5. The court may make orders for giving interim effect to measures which it has ordered under paragraphs 3 and 4, except as to dissolution of the company. The court's decisions under paragraphs 1, 3 and 4 shall be registered in the European Commercial Register and published in the company journals. Measures which the court has ordered shall affect third parties only from the date of their publication in the company journals.

Title V

Representation of employees in the European company

SECTION ONE

The European Works Council

Sub-section one

General

Article 100

[Formation of a European Works Council]

A European Works Council shall be formed in every SE having at least two establishments in different Member States, each with at least 50 employees.

Article 101

[Employees' representative bodies in Member States]

Unless otherwise expressly provided for in this Statute, organs of employee representation formed in the establishments of a European company pursuant to national laws shall continue in existence with the same functions and powers as are conferred upon them under that law.

Article 102

[References to employees' representative bodies in individual Member States]

1. The employees' representative bodies in the individual Member States to which reference is made in the provisions of this Title are listed in Annex I to this Statute.

2. The Commission of the European Communities will amend this Annex on the basis of changes in the statutory or otherwise agreed provisions governing employee representation, as soon as a Member State notifies it of such changes.

Article 102a

[Representation of trade unions in establishments of SE]

For the purposes of the provisions of this Title, the question whether a trade union is represented in an establishment of the SE shall be determined in accordance with the arrangements in force in the country in which the establishment is situate.

Sub-section two

Composition and election

Article 103

[Number of representatives of establishments of SE on European Works Council]

1. The members of the European Works Council shall be elected by the employees in establishments of the European company within the Community which have at least 50 employees.

2. Each establishment of the SE shall elect:

(*a*) for 50 to 199 employees: one representative;

(*b*) for 200 to 499 employees: two representatives;

(*c*) for 500 to 999 employees: three representatives;

(*d*) for 1000 to 2999 employees: four representatives;

(*e*) for 3000 to 4999 employees: five representatives;

(*f*) for each additional 5000 employees: one representative.

The same number of alternates shall also be elected.

Article 103a

[Enlargement of European Works Council]

1. Where all the assets and liabilities of an SE are transferred to another SE and a European Works Council has been formed in both companies, the members of the European Works Council of the SE by which the transfer is made shall become members of the European Works Council of the SE to which the transfer is made.

2. If an SE in which a European Works Council has been formed acquires one or more establishments with a minimum of 50 employees under conditions other than those specified in paragraph 1 or if it opens one or more new establishments with a minimum of 50 employees, the European Works Council of the SE shall be enlarged to accommodate members elected in those establishments in accordance with Article 103(2) unless those establishments are acquired or opened less than 15 months before the end of the period of office of the European Works Council.

Article 104

[Election of members of European Works Council]

The election of members to the European Works Council shall be subject to the rules contained in Annex II to this Statute. The said rules are an integral part of the Statute.

Article 105

(deleted)

Article 106

(deleted)

Sub-section three

Term of office

Article 107

[Period of office of European Works Council; membership of national employees' representative bodies]

1. The European Works Council shall be elected for a period of four years commencing on the date of its constituent meeting. The members of the European Works Council may be re-elected.

2. The election of an employee to the European Works Council shall in no way affect his position as a member of the representative bodies listed in Annex I to this Statute.

Article 108

[Termination of membership]

1. The term of office of the members of the European Works Council shall cease upon the expiration of the mandate of the European Works Council, upon its dissolution or, in the cases specified in Article 103a, upon the expiration of the mandate of the European Works Council of the SE to which the transfer is made, or by members' resignation, termination of their contract of employment, or by their ceasing to fulfil the conditions for membership laid down in Annex II to this Statute.

2. Any member of the European Works Council whose mandate expires before its normal term, who is expelled therefrom or who is permanently or temporarily unable to carry out his mandate shall be replaced by the corresponding alternate member.

3. If no new representatives have yet been elected for an establishment by the date of the first meeting of the European Works Council, the representatives of that establishment on the former Council shall continue in office until the election has been held.

Article 108a

[Expulsion of a member; dissolution of European Works Council]

1. Application for the expulsion of a member of a European Works Council or for the dissolution of the Council on the grounds of serious breach of obligations under the present Statute may be made to the court within whose jurisdiction the SE has its registered office by not less than one fourth of the elector employees, by the SE's Board of Management or by a trade union represented in an establishment of the SE.

The European Works Council may also request the expulsion of a member.

2. In the event of the dissolution of the European Works Council the court within whose jurisdiction the SE has its registered office shall forthwith constitute an electoral commission to conduct new elections.

Article 109

[Constituent meeting of European Works Council]

1. The newly elected European Works Council shall be convened to its constituent meeting by the Board of Management of the SE within 100 days of the formation of the SE or of the date on which the conditions of Article 100 are met, provided that at least half the members of the European Works Council have been elected.

2. The European Works Council elected to a new term of office shall hold its constituent meeting not later than 30 days after expiry of the mandate of the former Council. It shall be convened by the chairman of the former Council.

3. The old Council shall continue to deal with current business until the first meeting of the new European Works Council is held.

4. At least 15 days shall elapse between the date on which the first meeting of the European Works Council is convened and the date on which it takes place.

Article 110

(deleted)

Sub-section four

Operation

Article 111

[Election of Chairman; decision-making; formation of committees]

1. The members present at the first meeting of the European Works Council shall elect a Chairman and Vice-Chairman and shall draw up rules of procedure.

2. The European Works Council may take decisions at its first meeting if all the members have been invited to the meeting and at least half of them are present.

3. Except in the case of the first meeting of the European Works Council, members not attending may take part in the decisions by authorizing a member present to represent them.

4. Decisions of the European Works Council shall be made by majority vote of the members present and represented.

5. The European Works Council may form committees to which it may delegate certain of its tasks.

Article 112

[Protection against dismissal]

1. No employee who is an actual or alternate member of the European Works Council shall be dismissed from his employment during his term of office on the European Works Council nor during the two years thereafter, save upon grounds which, in accordance with the national law applicable, entitle the SE to terminate the contract of employment without notice. The European Works Council shall, however, be consulted before such dismissal is made.

2. Candidates for election to the European Works Council shall be entitled to the same protection from the date of their nomination until three months have elapsed since the declaration of the result of the election.

3. Dismissal in violation of these provisions shall be void.

Article 113

[Release of members of European Works Council from obligations arising from employment; prohibition of discrimination in matters relating to employment]

1. During their term of office, the members of the European Works Council shall be dispensed from the obligation to carry out the duties of their employment to the extent to which the European Works Council considers it necessary for the performance of their duties on the Council.

2. Members of the European Works Council shall not be jeopardized in any way, especially with regard to remuneration and promotion, as a result of their activities. They shall participate in all increases in wages and salaries, allowances, bonuses and other benefits.

Article 114

[Obligation of members of European Works Council to maintain secrecy]

1. Present and former members of the European Works Council and their alternates shall maintain secrecy on such matters of the undertaking and its affairs as have been expressly declared secret by the Board of Management, and which have come to their knowledge by virtue of their membership of the European Works Council. This obligation shall continue for such time as the Board of Management may prescribe.

The trade union delegates referred to in Article 116 and the experts referred to in Article 117 shall be under the same obligation.

2. This obligation shall not apply to dealings with members of the Supervisory Board or of the Group Works Council.

3. The European Works Council may refer the question of whether the Board of Management has correctly designated information as secret to the court within whose jurisdiction the registered office of the SE is situate. The court shall hear the matter in chambers, and no appeal shall lie from its decision.

Article 115

[Expenses of European Works Council]

The election and operating expenses of the European Works Council shall be borne by the SE

Article 116

[Attendance of trade union delegates at meetings of European Works Council]

The European Works Council may decide by majority vote that a delegate of a trade union represented in an establishment of the SE shall be entitled to attend certain meetings of the Council in an advisory capacity.

Article 117

[Appointment of experts]

The European Works Council may, for clarification of certain questions, consult one or more experts if this is warranted by the difficulty of the questions. The Board of Management shall make available to the experts, free of charge, all documentation necessary for their work, save where this would seriously prejudice the interests of the company. The costs incurred in consulting experts shall be borne by the SE.

Article 118

[Supply of information to employees on work of European Works Council]

1. The European Works Council shall keep the employees and their representatives in the establishments of the SE regularly informed of its work by such means as it shall deem most suitable for this purpose.

2. The information supplied shall have regard to the interests of the SE and shall in particular not disclose secrets appertaining to operating processes and the conduct of the business.

Sub-section five

Functions and powers

Article 119

[Competence of European Works Council]

1. The European Works Council shall be responsible for representing the interests of the employees of the SE.

2. The competence of the European Works Council shall extend to matters which concern more than one establishment not located in the same Member State and which cannot be settled by the national employees' representative bodies acting within their own establishment. Matters

shall not fall within the competence of the European Works Council in so far as they are settled by collective agreement.

The European Works Council may not conclude agreements nor conduct negotiations regarding the working conditions of employees unless a European collective agreement expressly authorizes the conclusion of supplementary agreements by the European Works Council.

3. The European Works Council shall ensure that effect be given to provisions of law existing for the benefit of the employees of the SE, collective agreements made in accordance with Section Four, and agreements concluded within the company as a result of its efforts.

Article 120

[Rights of European Works Council to information]

1. The Board of Management and the European Works Council shall meet at regular intervals and in any event not less than four times a year.

2. The Board of Management shall not less than once quarterly submit a report to the European Works Council on the general position of the SE and its future development. This report shall give full and up-to-date information on:

— general developments in the sectors of the economy in which the SE and undertakings controlled by it operate;

— the economic and financial position of the SE taking account of its relationships, if any, with other undertakings belonging with it to the same group or which control the SE or are controlled by it;

— the development of the business of the SE and its state of production and marketing;

— the employment situation of employees of the SE and of group undertakings controlled by it and its future development;

— the production and investment programme;

— rationalization projects;

— production and working methods, especially the introduction of new working methods;

— any other fact or project which may have an appreciable effect on the interests of the employees of the SE.

3. The Board of Management shall inform the European Works Council of every event of importance.

Article 121

[Right to receive same communications as shareholders]

1. The European Works Council shall receive the same communications and documents as the shareholders.

2. In particular, the annual accounts and the annual report and the consolidated or part-consolidated accounts and consolidated annual report prepared by the SE shall after adoption be passed to the European Works Council for information and comment.

Article 122

[Right to require information]

1. The Board of Management shall provide written information on any matter which, in the opinion of the European Works Council, affects the fundamental interests of the SE or of its employees. The European Works Council may give its opinion thereon.

2. The European Works Council may invite any member of the Board of Management to its meetings and request him to provide information on or explanations of certain business operations.

Article 123

[Right of European Works Council to participate in decision-making]

1. Decisions concerning the following matters may be made by the Board of Management only with the agreement of the European Works Council:

(*a*) rules relating to recruitment, promotion and dismissal of employees;

(*b*) implementation of vocational training;

(*c*) fixing of terms of remuneration and introduction of new methods of computing remuneration;

(*d*) measures relating to industrial safety, health and hygiene;

(*e*) introduction and management of social facilities;

(*f*) the establishment of general criteria for the daily times of commencement and termination of work;

(g) the establishment of general criteria for preparing holiday schedules.

2. Any decision taken by the Board of Management in respect of the matters specified in paragraph 1 without the agreement of the European Works Council shall be void.

3. If the European Works Council withholds its agreement or does not express its opinion within a reasonable period, agreement may be given by the court of arbitration mentioned in Article 128.

4. In respect of the decisions referred to in paragraph 1 above, employees' representative bodies set up in the various establishments shall exercise the right to participate, accorded by national law, only when the European Works Council is not competent to do so under Article 119(2), first sentence.

Article 124

[Right of European Works Council to be consulted]

1. The Board of Management shall consult the European Works Council before making any decision concerning:

(*a*) job evaluation;

(*b*) rates of wages per job or for piecework.

(*c*) the introduction and application of any technical device intended to control the conduct or performance of employees.

2. Any decision taken by the Board of Management in respect of the matters specified in paragraph 1 without consulting the European Works Council shall be void.

3. The Board of Management may make a decision without the opinion of the European Works Council where the latter does not inform the Board of its opinion within a reasonable time.

Article 125

[Right of European Works Council to be consulted]

1. The Board of Management shall also consult the European Works Council before making any decision relating to:

(*a*) the closure or transfer of an establishment or of substantial parts thereof;

(*b*) Substantial curtailment, extension or alteration of the activities of the undertaking;

(*c*) substantial organizational changes within the undertaking;

(*d*) establishment of long-term cooperation with other undertakings or the termination thereof.

In applying these provisions account shall be taken of the consequences as regards the nature

and extent of the activities of the undertaking and as regards employment.

2. In the cases specified in paragraph 1, the Supervisory Board shall not give the approval required under Article 66, paragraph 1 until the European Works Council has expressed its opinion, save where the European Works Council has not done so within a reasonable time.

Article 126

[Procedure for consultation]

1. The consultation referred to in Articles 124 and 125 shall be carried out on the basis of a report from the Board of Management setting out and explaining the reasons for the decision which the Board of Management intends to make and the legal, economic and social consequences that the decision is likely to have.

In the cases specified in Article 125, a social plan relating to measures to be adopted in respect of employees shall be included in the report, if necessary, and it shall serve as a basis for the negotiations referred to in Article 126a.

2. If the Board of Management disregards the recommendations contained in the European Works Council's opinion it shall state its reasons for so doing.

Article 126a

[Social plan]

1. If, in the cases specified in Article 125(1), the European Works Council considers that the employees' interests will be adversely affected by the proposed decision of the Board of Management, the latter shall, before the Supervisory Board takes a decision on the prior authorization required of it pursuant to Article 66, open negotiations with the European Works Council in order to reach agreement on the steps to be taken with regard to employees.

2. Any such agreement reached shall be recorded in writing and shall have the effect of an agreement at establishment level pursuant to Article 127.

3. The Board of Management shall advise the Supervisory Board of the outcome of negotiations. The European Works Council may similarly put forward its opinion thereon.

4. If no agreement is achieved as a result of negotiations and if the Supervisory Board has previously approved the decision that the Board of Management intends to make, either party may within one month invoke the arbitration board referred to in Article 128. The arbitration board shall specify the steps to be taken with regard to employees in implementing the decision of the Board of Management.

5. Referral to the arbitration board shall not postpone implementation of the decision of the Board of Management.

Article 127

[Agreements]

1. The European Works Council may, to the extent that it is competent, make agreements with the Board of Management of the SE in respect of the matters specified in Article 123.

2. Agreements made by the European Works Council shall take precedence over those made by the representative bodies listed in Annex 1 to this Statute, without prejudice to any more favourable provisions contained in national agreements.

3. The provisions of agreements made by the European Works Council may not be altered to the disadvantage of employees by individual agreements.

Sub-section six

Arbitration procedure

Article 128

[Disputes between European Works Council and Board of Management]

1. An arbitration board shall be established for the settlement of disputes between the European Works Council and the Board of Management of the SE. It shall be competent to settle all questions of procedure in matters requiring consultation with or the provision of information to the European Works Council. In matters requiring the European Works Council's approval by virtue of Article 123, it shall decide on the merits of the case.

2. The arbitration board shall be composed of assessors, half of whom shall be appointed by the European Works Council and half by the Board of Management of the SE, and an impartial chairman appointed by mutual agreement between the parties. In default of agreement as to appointment of the chairman or as to the assessors in general, they shall be appointed by the court within whose jurisdiction the registered office of the company is situate.

3. The members of the arbitration board shall maintain secrecy as to operating processes and the conduct of the business.

4. Decisions of the arbitration board shall be binding on both parties.

Article 129

[Disputes between European Works Council and national employees' representative bodies]

1. An arbitration board shall be established for the settlement of disputes between the European Works Council and the representative bodies referred to in Annex 1.

2. Article 128(2), (3) and (4) shall apply correspondingly.

SECTION TWO

The Group Works Council

Article 130

[Formation of Group Works Council]

A Group Works Council shall be formed in every SE which is the controlling company in a group within the meaning of Article 223, where the group comprises at least two undertakings with registered offices in the Member States and having at least 50 employees each. This shall apply even if such SE is itself controlled by another undertaking within a group, unless the employees of the SE and of group undertakings controlled by it are represented in such undertaking by a body equivalent to the Group Works Council of the SE.

Article 131

[Appointment of members]

The members of the Group Works Council shall be appointed:

— in European companies in which a European Works Council must be formed pursuant to Article 100, by the European Works Councils;

— in group undertakings incorporated under national law or in European companies in which the formation of a European Works Council is not required:

(*a*) by the central employees' representative bodies at undertaking level within the group; if there is no central employees' representative body, on a joint basis by the employees' representative bodies set up at works level in these undertakings and referred to in Annex I to this Statute,

(*b*) by the recognized representatives of employees in undertakings within the group in Member States where there are no employees' representative bodies within the meaning of Annex I to this Statute;

(*c*) by the body of employees in undertakings in which there are neither employees' representative bodies within the meaning of Annex I nor recognized persons representing employees.

Article 132

[Number of members and appointment procedure]

1. The representative bodies referred to in Article 131 shall appoint delegates to the Group Works Council from amongst their own members, in accordance with the following scale:

— 1 representative for each undertaking with 50 to 999 employees;

— 2 representatives for each undertaking with from 1000 to 4999 employees,

— 3 representatives for each undertaking with from 5000 to 9999 employees,

— 4 representatives for each undertaking with from 10000 to 19999 employees,

and an additional representative for every further 10000 employees. An equal number of alternates shall also be appointed.

2. If in an undertaking, representatives are to be appointed to the Group Works Council, the Board of Management of the controlling SE shall immediately notify the chairman of the central employees' representative body or, where no such body exists, the management body of the undertaking. The latter shall ensure that representatives are appointed in accordance with Article 131; they shall notify the names and addresses of the representatives appointed and of their alternates to the Board of Management of the controlling SE and to the chairman of the Group Works Council, if already appointed.

3. If it is disputed whether an undertaking is a group undertaking controlled by an SE, it shall appoint representatives to the Group Works Council only after the Court of Justice of the European Communities shall have given its ruling on the matter in accordance with Article 225.

Article 133

[Term of office and operation]

Articles 107 to 118 shall be of corresponding application to the term of office and to the operation of the Group Works Council.

Article 134

[Competence]

1. The Group Works Council shall be responsible for representing the interests of employees of the undertakings within the group controlled by the SE.

2. The competence of the Group Works Council shall extend only to matters concerning the group, or a number of undertakings within the group, which cannot be settled by the central employees' representative bodies in the group undertaking. Matters shall not fall within the competence of the Group Works Council in so far as they are settled by collective agreement.

The Group Works Council may not conclude agreements nor conduct negotiations regarding the working conditions of employees unless a European collective agreement expressly authorizes the conclusion of supplementary agreements by the Group Works Council.

Article 135

[Rights to information, consultation and co-determination]

1. The Board of Management of the SE shall inform the Group Works Council of all facts or projects appreciably affecting the interests of employees of the group controlled by the SE or of a number of undertakings within the group. Articles 120 to 122 shall apply correspondingly.

2. If decisions by the Board of Management of the SE on matters referred to in Articles 123 to 125 affect several undertakings within a group, the Group Works Council shall act in place of the European Works Council.

3. The agreement required under Article 123a shall be sought from the Group Works Council where it is competent and not from the European Works Council. Article 123(4) shall apply correspondingly in respect to the co-determination rights of national representative bodies within the meaning of Annex I.

4. Agreements made by the Group Works Council shall take precedence over those made by the European Works Councils or by the representative bodies referred to in Annex I to this Statute, without prejudice to any more favourable provisions contained in such agreements.

5. The provisions of agreements made by the Group Works Council may not be altered to the disadvantage of the employees by individual agreements.

Article 136

[Disputes with Board of Management of SE or with employees' representative bodies at employer level]

1. An arbitration board shall be established for the settlement of disputes between the Group Works Council and the Board of Management of the controlling SE. It shall be competent to settle questions of procedure in matters requiring consultation with or the provision of information to the Group Works Council. In matters where the Group Works Council's approval is necessary, it shall decide on the merits of the case.

2. An arbitration board shall also be established for the settlement of disputes between the Group Works Council and the European Works Council or the employees' representative bodies in group undertakings controlled by the SE and referred to in Annex I.

3. Article 128(2), (3) and (4) shall apply correspondingly in respect of both arbitration boards. Which of the Courts shall be competent to exercise the power conferred by Article 128(2), 2nd phrase, shall be determined by the law of the place where the registered office of the controlling SE is situated.

SECTION THREE

Representation of employees on the Supervisory Board

Article 137

[Election of employees' representatives on Supervisory Board of SE]

1. Employees' representatives on the Supervisory Board of the SE shall be elected by the employees of the SE and of group undertakings

controlled by it. The election shall be governed by the rules laid down in Annex III to this Statute, of which they form an integral part.

2. The employees' representatives shall be persons employed in an establishment of the SE or in a group undertaking controlled by it. However, where the number of employees' representatives on the Supervisory Board is three, one of them may be a person who is not in the above-mentioned employment relationship. Where the number of employees' representatives is more than three, this shall apply to two of them.

3. The provisions of this section and of Annex III shall also apply to group undertakings controlled by the SE even if the SE is itself a subsidiary of another undertaking within a group unless such other undertaking is an entity on whose governing bodies the employees of the SE and of the group undertakings controlled by it are represented in a manner equivalent to that applicable to the SE.

4. Only those undertakings whose registered office is situate within the Community shall be deemed to be group undertakings controlled by the SE within the meaning of this Section.

Article 138

[Refusal of employees to be represented on the Supervisory Board]

1. Employees shall not be represented on the Supervisory Board if the majority of the employees eligible to vote pursuant to Article 2 of Annex III to this Statute so decide.

2. A decision to this effect shall be valid for the current term of office of the Supervisory Board.

Articles 139 to 144

(deleted)

Article 145

[Rights and obligations of employees' representatives]

1. Employees' representatives on the Supervisory Board shall have the same rights and duties as the other members of the Supervisory Board. The election of an employee representative shall in no way affect his position as a member of the Group Works Council, the European Works Council or the representative bodies listed in Annex I.

2. Representatives of employees of the SE or its dependent enterprises and their alternates shall be entitled to the same protection in the matter of dismissal as members of the European Works Council. During their term of office, the members of the Supervisory Board shall be dispensed from the obligation to carry out the duties of their employment to the extent to which the Supervisory Board considers it necessary for the performance of their duties on the Board. Article 113(2) shall apply correspondingly.

SECTION FOUR

Regulation of Terms of Employment

Article 146

[Conclusion of collective agreements with trade unions represented in establishments of SE]

1. The conditions of employment which shall apply to the employees of the SE may be regulated by collective agreement made between the SE and the trade unions represented in its establishments.

2. More favourable terms applicable in one or more establishments of the SE shall remain unaffected.

Article 147

[Effects of collective agreements]

1. The conditions of employment governed by a collective agreement shall apply directly to and be binding on all employees of the SE who are members of a trades union which is party to that collective agreement.

2. It may be made a term of the contract of employment concluded between an SE and an employee to whom a collective agreement does not directly apply under the foregoing paragraph, that the conditions of employment contained in the collective agreement shall be incorporated in the contract.

Title VI

Preparation of the annual accounts

SECTION ONE

General provisions

Article 148

[General principles for drawing up annual accounts of SE]

1. The annual accounts shall comprise the balance sheet, the profit and loss account, the notes on the accounts and a statement of source and application of funds. These documents shall constitute a composite whole.

2. The annual accounts shall give a true fair view of the company's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the presentation of accounts.

Article 149

[Exception for banks and insurance companies]

The provisions of Sections One to Six of this Title shall not apply to SEs the object of whose business is the making of loans (banks) or of contracts of insurance (insurance companies). The law of the Member State from which such companies are actually managed shall apply in place of those provisions.

SECTION TWO

Classification of the annual accounts

Sub-section one

General provisions

Article 149a

[Constant use of same presentation]

The lay-out of the balance sheet, the profit and loss account and the statement of source and application of funds, particularly as regards the form adopted for their presentation, shall not be changed from one year to the next. This principle may be departed from in exceptional cases. Where it is departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor.

Article 150

[Principles of lay-out]

1. In both the balance sheet and the profit and loss account, the items referred to in Articles 153, 154 and 168 to 171 shall be shown separately. A more detailed subdivision of the items preceded by Arabic numerals is authorized.

2. A different lay-out for balance sheet and profit and loss account items preceded by Arabic numerals shall be permitted only where the special nature of the undertaking so requires. Any such different lay-out shall, however, present an equivalent view and be explained in the notes on the accounts.

3. Balance sheet and profit and loss account items preceded by Arabic numerals may be grouped together:

(a) where, in relation to the object of Article 148(2), they are of minor importance, or

(b) if the accounts would thereby be rendered clearer. Items which are grouped together must, however, be shown separately in the notes on the accounts.

4. Comparative figures for the previous financial year shall be shown in respect of each item in the balance sheet and the profit and loss account.

Article 150a

[Adaptation of lay-out]

The lay-out of the balance sheet may be adapted in order to bring out the allocation of the results.

Article 151

[Compensation]

Assets shall not be shown net of liabilities, nor income net of charges, or vice versa.

Sub-section two

Balance sheet

Article 152

[Structure of balance sheet]

The balance sheet shall be drawn up either in the horizontal (Article 153) or in the narrative (Article 154) form of presentation.

Article 153

[Horizontal form of presentation]

Balance sheet in horizontal form

Assets:

A — Costs of formation

B — Fixed assets

I — Intangible assets:

1. Research and development costs;

2. Concessions, patents, licences, trade-marks and similar rights which:

(a) were acquired for consideration and are not to be included under 3; or

(b) were created by the company itself;

3. Goodwill, to the extent that it was acquired for valuable consideration;

4. Payments on account.

II — Tangible assets:

1. Land and buildings;

2. Industrial plant and machinery;

3. Other plant and industrial and commercial equipment;

4. Payments on account and tangible assets in process of construction.

III — Participating interests and other financial assets:

1. Holdings in associated undertakings;

2. Claims on associated undertakings;

3. Participating interests;

4. Claims on undertakings with which the company is associated by virtue of a participating interest;

5. Securities ranking as fixed assets;

6. Other claims.

C — Current assets

I — Stocks:

1. Raw materials and auxiliary materials including fuel;

2. Products in course of manufacture, including rejects;

3. Finished products and goods for resale;

4. Payments on account.

II — Debtors:

(Amounts becoming due and payable within one year shall be shown separately in each case.)

1. Debtors (trade);

2. Claims on associated undertakings;

3. Claims on undertakings in which the company has a participating interest;

4. Other claims.

III — Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings;

2. Bills of exchange;

3. Balances with banks and on post office current accounts, cheques and cash;

4. Other securities.

D — Prepayments

E — Loss per balance sheet (where not shown on the liabilities side)

Liabilities:

A — Subscribed capital

(Different classes of shares, if any, shall be shown separately, stating the nominal amount of each share.)

B — Reserves

1. Legal reserve;
2. Share premium account;
3. Revaluation reserve;
4. Statutory reserves;
5. Optional reserves.

C — Total of subscribed capital and reserves less loss per balance sheet where latter not shown on the assets side. (The loss per balance sheet must be shown separately.)

D — Provisions for contingencies and charges

1. Provisions for pensions and similar obligations;
2. Taxation (provision for future taxation being shown separately);
3. Other provisions.

E — Creditors

(Amounts becoming due and payable within one year, amounts becoming due and payable after more than five years and amounts covered by valuable security, must be shown separately for each item.)

1. Loans (convertible loans being shown separately);
2. Bank borrowings;
3. Prepayments received on account of orders;
4. Suppliers of goods and services;
5. Bills of exchange;
6. Debts to associated undertakings;
7. Debts to undertakings with which the company is associated by virtue of a participating interest;
8. Miscellaneous.

F — Accruals

G — Profit per balance sheet

Article 154

[Narrative form of presentation]

Balance sheet in narrative form

A — Costs of formation

B — Fixed assets

I — Intangible assets:

1. Research and development costs;
2. Concessions, patents, licences, trade-marks and similar rights and values, if they were:

(a) acquired for valuable consideration and are not to be shown under B-I-3;

(b) created by the undertaking itself;

3. Goodwill, to the extent that it was acquired for valuable consideration;
4. Payments on account.

II — Tangible assets:

1. Land and buildings;
2. Plant and machinery;
3. Other fixtures, tools and equipment;
4. Payments on account and tangible assets in process of construction.

III — Participating interests and other financial assets:

1. Holdings in associated undertakings;
2. Claims on associated undertakings;
3. Participating interests;
4. Claims on undertakings with which the company is associated by virtue of a participating interest;
5. Securities ranking as fixed assets;
6. Other claims.

C — Current assets

I — Stocks:

1. Raw and auxiliary materials;
2. Goods in course of production and waste products;
3. Finished products and stock in hand;
4. Payments on account.

II — Debtors:

(Amounts becoming due and payable within one year must be shown separately in each case.)

1. Claims in respect of sales and services rendered;
2. Claims on associated undertakings;
3. Claims on undertakings with which the company is associated by virtue of a participating interest;
4. Other claims.

III — Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings;
2. Bills of exchange;
3. Bank balances, postal cheque account balances, cheques and cash in hand;
4. Other securities.

D — Prepayments

E — Debts becoming due and payable within one year

(Amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately;
2. Debts to credit institutions;
3. Payments received on account of orders;
4. Debts in respect of purchases and services received;
5. Debts represented by bills of exchange;
6. Debts to associated undertakings;
7. Debts to undertakings with which the company is associated by virtue of a participating interest;
8. Other debts.

F — Current assets in excess of debts becoming due and payable within one year

G — Total amount of asset items after deduction of debts becoming due and payable within one year

H — Creditors for amounts becoming due and payable after more than one year

(Amounts becoming due and payable after more than five years and amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately;
2. Debts to credit institutions;
3. Payments received on account of orders;
4. Debts in respect of purchases and services received;
5. Debts represented by bills of exchange;
6. Debts to associated undertakings;
7. Debts to undertakings with which the company is associated by virtue of a participating interest;
8. Other creditors.

I — Provisions for contingencies and charges

1. Provisions for pensions and similar obligations;
2. Provisions for taxation, provisions for future taxation being shown separately;
3. Other provisions.

J — Accruals

K — Subscribed capital

(The shares must be shown by classes, indicating their nominal value.)

L — Reserves

1. Legal reserve;
2. Share premium account;
3. Revaluation reserve;
4. Statutory reserves;
5. Optional reserves.

M — Profit/loss per balance sheet

Article 155

[Relationship to several items in balance sheet]

1. Where a component of the assets or liabilities pertains to several items in the balance sheet, its relationship to other items shall be indicated either under the item where it appears or in the notes on the accounts, unless such indication is not essential for purposes of presentation of clear and accurate annual accounts.

2. Investments in associated companies shall be shown only under the item which relates thereto.

Article 156

[Setting out of contingent liabilities and long-term financial obligations]

1. The following shall, if there is no obligation to show them under liabilities, be set out separately below the balance sheet or in the notes on the accounts:

(a) contingent liabilities on bills of exchange issued and negotiated, indemnities, guarantees and similar obligations, distinguishing between the various types of guarantee and specifying what valuable security, if any, has been provided;

(b) any financial obligations incurred for an amount exceeding 100000 u.a. and for a term exceeding one year.

2. Liabilities or obligations incurred towards associated undertakings shall be shown separately.

Sub-section three

Particulars concerning certain items in the balance sheet

Article 157

[Costs of formation]

Costs of formation shall include, in particular, costs of incorporation and of issue of capital, expenses incurred on inauguration, expansion or reconstitution of the undertaking.

Article 158

[Classification as fixed or current asset]

1. Whether a particular asset is to be classified as fixed or current shall depend upon its purpose.

2. Fixed assets shall comprise those which are permanently used to enable the company to operate.

3. *(a)* Movements in the various items of fixed assets shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown, starting with the initial purchase price or production cost, separately for each of the items of fixed assets, on the one hand the additions, disposals, transfers and upward corrections during the year, and on the other hand the depreciation and provisions for depreciation as at the date of the balance sheet. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

(b) Where, at the time the first annual accounts are drawn up in accordance with the provisions of this Title, the purchase price or production cost of an element of fixed assets cannot be determined without untoward expense or delay, the residual value at the beginning of the year may be treated as the purchase price or production cost. If use is made of the provisions contained in this subparagraph the fact must be mentioned in the notes on the accounts.

(c) In the case of application of Article 181, the presentation of the movements in the various items of fixed assets referred to under *(a)* shall be supplemented by showing separately for each of the various items the cumulative amounts, at the date of the balance sheet, of the differences referred to in Article 181(2) and of all additional depreciation and provisions for depreciation.

4. *(a)* Movements in the various items of current assets shall be presented in the balance sheet or in the notes on the accounts. To this end there shall be shown, separately for each of the items of current assets, the purchase price or production cost and depreciation and provisions for depreciation. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

(b) Paragraph 3(c) shall apply for purposes of the presentation of the item 'Stocks'.

5. Paragraph 3(a) and (b) shall apply for purposes of the presentation of the item 'Costs of formation'.

Article 159

[Research and development costs]

Under research and development costs there shall be included only the research and development costs relating to particular products and processes.

Article 160

[Land and buildings]

Under 'Land and buildings' shall be included land, whether built on or not, and any buildings erected thereon including their fixtures.

Article 161

[Participating interests]

1. The term 'participating interests' as used in this Title means rights in the capital of other undertakings, whether or not represented by certificates, which by creating a durable link with them, are intended to contribute to the activities of the company. The holding of 10% of the subscribed capital of another undertaking shall be presumed to constitute a participating interest.

2. The term 'associated undertakings' means legally autonomous undertakings existing inside or outside the Member States in which the SE owns a majority interest, or which own a majority interest in the SE, dependent or controlling undertakings (Article 6), or undertakings forming part of the same group (Article 223) or undertakings under the same management as the SE but in such manner that none of them is a dependent or controlling undertaking.

Article 162

[Prepayments on assets side]

Under 'Prepayments' on the assets side shall be shown expenditure incurred during the year but relating to a subsequent year together with earnings relating to the year to the extent that they will not be received until after the close of the year. The latter, however, may also be shown under debtors. If they are substantial in amount an explanation must be given in the notes on the accounts.

Article 163

(deleted)

Article 164

[Depreciation and provisions for depreciation]

Depreciation and provisions for depreciation are adjustment items relating to elements of assets and are intended to take account of depreciation of those elements as at the date of the balance sheet, whether the depreciation is definitive or not.

Article 165

[Provisions for contingencies and charges]

The provisions for contingencies and charges are intended to cover either the certain cost of major maintenance work or of major repairs which will be incurred in the course of subsequent years, or losses or charges the nature of which is clearly defined but which at the date of the balance sheet are either likely to be incurred, or are certain to be incurred but are indeterminate as to amount or as to the date on which they will arise.

The provisions for contingencies and charges shall not be used to adjust the value of elements of assets.

Article 166

[Accruals on liabilities side]

Under 'Accruals' on the liabilities side shall be shown income received before the date of the balance sheet but attributable to a subsequent year together with charges which, though relating to the year in question, will only be paid in the course of a subsequent year. The latter, however, may also be shown under creditors. If they are substantial in amount an explanation must be given in the notes on the accounts.

Sub-section four

Classification of the profit and loss account

Article 167

The profit and loss account shall be prepared in accordance with one of the following methods.

Article 168

I — Trading results (excluding income and expenditure, if any, included under II):

1. Net turnover;

2. Changes in stocks of finished and semi-finished products;

3. Other goods and services supplied by the undertaking to itself;

4. Other trading income arising out of the operations of the undertaking;

5. Raw materials and auxiliary materials including fuel;

6. Staff costs:

(*a*) Wages and salaries,

(*b*) Social security contributions prescribed by law,

(*c*) Other social security contributions, those for old age benefits being shown separately,

7. Depreciation and provisions for depreciation in respect of:

(*a*) Costs of formation, tangible and intangible fixed assets,

(*b*) Elements of current assets,

8. Other operating expenses;

9. Operating result.

II — Financial result:

10. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

11. Income from participating interests, other than income shown under II-10, income from associated undertakings being shown separately;

12. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

13. Other interest and similar income, that from associated undertakings being shown separately;

14. Expenditure arising from absorption of losses;

15. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets;

16. Interest and similar charges, those arising in respect of associated undertakings being shown separately;

17. Financial profit or loss.

III — Exceptional result:

18. Non-recurring income;

19. Non-recurring expenditure;

20. Balance of non-recurring items.

IV — Subtotal.

V — Taxes:

21. Taxation of profits:

(*a*) current;

(*b*) future;

22. Other taxes not included under I, II or III above.

VI — Subtotal.

VII — Set-off or transfer of profit or loss:

23. Income arising as a result of set-off of losses;

24. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.

VIII — Profit for the year/loss for the year.

IX — Profit or loss brought forward from the previous year.

X — Subtotal.

XI — Changes in reserves:

25. Withdrawals from reserves;

26. Appropriation of profit for the year to reserves.

XII — Profit/loss to balance sheet.

Article 169

A — Charges

I — Trading costs (excluding those, if any, included under II):

1. Reduction in stocks of finished and semi-finished products;

2. Raw materials and auxiliary materials including fuel;

3. Staff costs:

(*a*) Salaries and wages;

(*b*) Social security contributions prescribed by law;

(*c*) Other social security contributions, those for old age benefits being shown separately;

4. Depreciation and provisions for depreciation in respect of:

(*a*) Costs of formation, tangible and intangible fixed assets;

(*b*) Elements of current assets;

5. Other trading costs.

II — Financial expenditure:

1. Expenditure arising from absorption of losses;

2. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets;

3. Interest and similar charges, those arising in respect of associated undertakings being shown separately.

III — Non-recurring expenditure

IV — Taxes:

1. Taxation of profits:

(a) current;

(b) future;

2. Other taxes not included under I, II or III above.

V — Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits

VI — Profit:

1. Loss brought forward from the previous year;

2. Appropriation of profit for the year to reserves;

3. Profit to balance sheet.

B — Income

I — Trading income (excluding income, if any, included under II):

1. Net turnover;

2. Increase in stocks of finished and semi-finished products;

3. Other goods and services supplied by the undertaking to itself;

4. Other trading income.

II — Financial earnings:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately;

3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

4. Other interest and similar income, that from associated undertakings being shown separately.

III — Exceptional earnings

IV — Income arising as a result of set-off of losses

V — Losses:

1. Profit brought forward from the previous year;

2. Withdrawals from reserves;

3. Loss to balance sheet.

Article 170

I — Trading results (excluding any income and expenditure, if any, shown under II):

1. Net turnover;

2. Production costs of goods and services supplied (including depreciation and provisions for depreciation);

3. Gross trading profit;

4. Distribution costs (including depreciation and provisions for depreciation);

5. General administration expenses (including depreciation and provisions for depreciation);

6. Other trading income;

7. Trading profit or loss.

II — Financial result:

8. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

9. Income from trade investments, other than income shown under II-8, income from associated undertakings being shown separately;

10. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

11. Other interest and similar income, that from associated undertakings being shown separately:

12. Expenditure arising from absorption of losses;

13. Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets;

14. Interest and similar charges, those arising in respect of associated undertaking being shown separately;

15. Financial profit or loss.

III — Exceptional result:

16. Non-recurring income;

17. Non-recurring expenditure;

18. Balance of non-recurring items.

IV — Subtotal

V — Taxes:

19. Taxation of profits:

(*a*) current;

(*b*) future;

20. Other taxes not included under I, II or III above.

VI — Subtotal

VII — Set-off or transfer of profit or loss:

21. Income arising as a result of set-off losses;

22. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.

VIII — Profit for the year/loss for the year

IX — Profit or loss brought forward from the previous year

X — Subtotal

XI — Changes in reserves:

23. Withdrawals from reserves;

24. Appropriation of profit for the year to reserves.

XII — Profit/loss to balance sheet.

Article 171

A — Charges

I — Trading costs (excluding those, if any, included under II):

1. Production costs of output supplied (including depreciation and provisions for depreciation);

2. Distribution costs (including depreciation and provisions for depreciation);

3. General administration expenses (including depreciation and provisions for depreciation).

II — Financial charges:

1. Expenditure arising from absorption of losses;

2. Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets;

3. Interest and similar charges, those arising in respect of associated undertakings being shown separately.

III — Exceptional charges

IV — Taxes:

1. Taxation of profits,

(*a*) current;

(*b*) future;

2. Other taxes not included under I, II or III above.

V — Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits

VI — Profit:

1. Loss brought forward from the previous year;

2. Appropriation of profit for the year to reserves;

3. Profit to balance sheet.

B — Income

I — Trading income (excluding income, if any, included under II):

1. Net turnover;

2. Other trading income.

II — Financial earnings:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately;

3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

4. Other interest and similar income, that from associated undertakings being shown separately.

III — Exceptional earnings

IV — Income arising as a result of set-off of losses

V — Losses:

1. Profit brought forward from the previous year;

2. Withdrawals from reserves;

3. Loss to balance sheet.

Sub-section five

Particulars concerning certain items in the profit and loss account

Article 172

[Net amount of turnover]

The net amount of turnover includes receipts from sales of products, goods and services falling within the usual operations of the company, after allowing for any price reduction in respect of those sales, and for value-added tax and other taxes directly related to turnover.

Article 173

(deleted)

Article 174

[Expenditure arising as a result of absorption of losses]

Under 'Expenditure arising as a result of absorption of losses' shall be shown losses incurred by other companies which the SE is committed to absorb.

Article 175

[Exceptional earnings or charges]

1. Under the items Exceptional earnings and Exceptional charges, shall be shown earnings and charges that are attributable to another year, together with any earnings and charges that do not arise out of the usual operations of the undertaking.

2. Unless such earnings and charges are of no importance in the assessment of the results, explanations of their amount and nature shall be given in the notes on the accounts.

Article 176

[Taxes]

Under the item Taxes on the Result shall be shown the actual amount of taxes payable for the year, and separately, the amount of the future liability to tax.

Article 177

[Income arising from absorption of losses]

Under 'Income arising from absorption of losses' shall be shown expenditure repayable by third parties pursuant to agreements for pooling of losses.

Article 178

[Appropriation of profit for the year to reserves]

Under 'Appropriation of profit for the year to reserves' shall be shown the amount of profit for the year which the Board of Management and the Supervisory Board decide to appropriate to reserves in accordance with Article 217(1)(a).

SECTION THREE

Valuation rules

Article 179

[General principles]

1. The following general principles shall be applied in evaluating items for purposes of the annual accounts:

(*a*) it shall be assumed that the company will continue its activities;

(*b*) the methods of valuation shall not be changed from one year to another;

(*c*) in all cases the principle of prudence shall be observed. This shall mean, in particular:

(*aa*) only profits earned as at the date of the balance sheet shall be included in it; account shall nevertheless be taken of all contingencies foreseeable at that date;

(bb) account shall be taken of any deficiencies that do not become apparent until after the date of the balance sheet, but before it is drawn up, if they arose in the course of the year to which the annual accounts relate;

(cc) account shall be taken of any depreciation, whether the year closes with a profit or with a loss;

(d) account shall be taken of charges and receipts appertaining to the financial year to which the annual accounts relate, irrespective of the date on which such charges or receipts are paid or received;

(e) items shown on the assets and on the liabilities side shall be valued separately;

(f) the opening balance sheet of one financial year must correspond with the closing balance sheet for the previous financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Where they are departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor and an assessment of the effect on the assets, liabilities, financial position and result.

Article 180

[Valuation in accordance with principle of purchase price]

The valuation of items shown in the annual accounts shall be made in accordance with Articles 182 to 189, based on purchase price.

Article 181

[Valuation on basis of replacement value or other methods which take account of present value]

1. Notwithstanding the provisions of Article 180, valuation may be effected:

(a) on the basis of replacement value for tangible fixed assets with a limited useful life, and for stocks;

(b) on the basis of methods other than that provided for under (a), to take account of the present value for tangible fixed assets, participating interests and other financial assets, and for stocks.

Where one of these methods is employed, an indication thereof shall be given in the notes on the accounts, specifying the relevant items in the balance sheet and in the profit and loss account, and the method employed in valuing them.

2. Where paragraph 1 is applied, the amount of the difference between the valuation on the basis of replacement value or any other of the above-mentioned methods and the valuation on the basis of the general rule contained in Article 180 shall be shown under liabilities in the item Revaluation Reserve, after separate deduction of future taxes, if any. This item shall be subdivided into:

— Reserve for tangible fixed assets;

— Reserve for participating interests and other financial assets;

— Reserve for stocks.

3. Revaluation reserves may be capitalized as provided in Article 41.

4. The Revaluation reserve shall be reduced to the extent that the amounts transferred thereto are no longer required for the purpose of maintaining the substance of the undertaking. The amounts in question shall be added to the result for the year. They shall be shown separately in the profit and loss account.

5. Save as provided in paragraphs 3 and 4 the Revaluation reserve shall not be reduced.

6. Depreciation and provisions for depreciation shall be calculated each year on the basis of the values arrived at for the financial year in question.

Article 181a

[Costs of formation]

1. *(a)* Costs of formation shall be written off over a maximum period of five years;

(b) In so far as costs of formation have not been completely written off, no distribution of profits shall take place unless the amount of the optional reserves is at least equal to the amount of such expenditure not written off.

2. The amounts entered under this item shall be explained in the notes on the accounts.

Article 182

[Items of fixed assets]

1. *(a)* The items of fixed assets shall, without prejudice to the provisions of (b) and (c) below, be valued at purchase price or production cost;

(b) the purchase price or production cost of fixed assets having a working life limited in time shall be depreciated at rates which are in keeping with regular and proper accounting principles;

(c) (aa) provisions for depreciation may be made in respect of participating interests and other financial assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet;

(bb) items of fixed assets shall be depreciated whether or not their useful life is limited so that they are valued at the lowest figure attributable to them at the date of the balance sheet, if it is anticipated that the reduction in value will be permanent;

(cc) the depreciation and provisions for depreciation referred to in (aa) and (bb) shall be shown separately in the profit and loss account or in the notes on the accounts;

(dd) valuation at the lowest value provided for in (aa) and (bb) shall be discontinued if the reasons for which the value adjustments were made have ceased to apply;

(d) if the items of fixed assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. *(a)* The production cost shall be calculated by adding to the purchase price of raw and auxiliary materials including fuel the manufacturing costs directly attributable to the product in question;

(b) a reasonable proportion of the manufacturing costs which are only indirectly attributable to the product in question may be added to the production cost to the extent that they relate to the period of manufacture;

(c) costs of distribution shall not be included in production cost.

4. Interest on capital borrowed to finance the manufacture of fixed assets may be included in production costs to the extent that it relates to the period of such manufacture. The inclusion of this interest element in the assets shall be mentioned in the notes on the accounts.

Article 183

[Intangible assets]

1. Where intangibles are brought in as assets, they shall be depreciated over the period of their useful economic life assessed with proper commercial caution.

2. *(a)* Article 181a shall apply to the item 'Cost of research and development';

(b) Article 181a(1)(a) shall apply to the item 'Goodwill to the extent that it was acquired for valuable consideration'.

Article 184

[Tangible fixed assets]

Tangible fixed assets, raw and auxiliary materials, which are constantly being replaced and whose overall value is of small importance to the undertaking may, notwithstanding Article 179(1)(e), be shown at a fixed quantity and value if the quantity, value and composition thereof do not vary appreciably.

Article 185

[Majority holdings]

Where an SE holds an investment, within the meaning of Article 161, in excess of 50%, that holding shall be shown at its true value.

Article 186

[Current assets]

1. *(a)* Items of current assets shall be valued at purchase price or production cost, without prejudice to the provisions of (b) and (c) below;

(b) depreciation or provisions for depreciation shall be allowed for or made in respect of the items of current assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet;

(c) exceptional provisions for depreciation may be made if, on the basis of a reasonable commercial assessment, those are necessary so that the valuation of those items does not have to be modified in the near future because of fluctuations in value. The amount of such provisions for depreciation shall be shown separately in the profit and loss account or in the notes on the accounts;

(d) valuation at the lowest value provided for in (b) and (c) shall be discontinued if the reasons for which the depreciation and provisions for depreciation were allowed for or made have ceased to apply;

(e) if the items of current assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The definitions of purchase price and of production cost contained in Article 182(2) to (4), shall apply.

Article 187

[Stocks of goods]

1. The purchase price or production cost of stocks of goods in the same category may also be calculated either on the basis of weighted average prices or by the 'First in—first out' (Fifo) method or 'Last in—first out' (Lifo) method, or some similar method.

2. Where, because of the method employed, the valuation of balance sheet items is considerably different from their valuation on the basis of purchase price, the amount of the difference shall be shown in the notes on the accounts.

Article 188

[Discount]

1. Where the amount of any debt repayable is greater than the amount received, the difference may be shown as an asset. It shall be shown separately in the balance sheet or in the notes on the accounts.

2. The amount of the difference shall be written off not later than the time when the debt is paid.

Article 189

[Provisions for contingencies and charges]

Provisions for contingencies and charges shall not exceed in amount the sums which a reasonable businessman would consider necessary.

The provisions shown in the balance sheet under the item 'Other provisions' shall be specified in the notes on the accounts if they are at all substantial.

SECTION FOUR

Contents of the notes on the accounts

Article 190

[General principles]

The notes on the accounts shall contain commentary on the balance sheet, profit and loss account and statement of source and application of funds in such manner as to give a true and fair view of the company's assets, liabilities, financial position and results.

Article 191

[Individual items in notes on accounts]

In addition to the information required under other Articles in this Statute, the notes on the accounts shall set out information in respect of the following matters in any event:

1. The valuation methods applied to the various items in the annual accounts, and the methods employed in calculating depreciation and provisions for depreciation. In the case of claims and debts in foreign currencies, the method employed in calculating the rate of exchange shall be indicated.

2. The name and registered office address of each of the undertakings in which the SE holds at least 10% of the capital, showing the proportion of capital held and the amount of the subscribed capital, the amount of the reserves and the results for the latest business year of the undertaking concerned.

3. Any investments in the capital of the SE of which it has been notified in accordance with Article 46a(1) together with the amount of investment and the names of the owners thereof.

4. Any reciprocal shareholding within the meaning of Article 47, specifying the amount of the holding of each party.

5. Any group of companies to which the SE belongs either as a controlling company or as a dependent undertaking, or to which it has ceased to belong, together with an explanation of the circumstances; the SE must also state whether it is under common management with other companies without any of them being controlling companies or dependent undertakings.

6. The names of associated companies (Article 161(2)), the legal and business relationship with each of them, and any events that have taken place in any of them which might materially affect the position of the SE.

7. Whether there are any convertible debentures, specifying the number thereof and what rights they confer.

8. Net revenue from sales broken down according to categories of product, activity and specific geographical markets. The amount contributed by each of these categories and markets to the annual results shall be indicated.

9. The composition of the labour force split up as to categories, showing their age-groups and places of employment and, unless they are shown separately in the profit and loss account, the whole of the personnel costs relating to the financial year, broken down as indicated in Article 168(1)(6).

10. Total emoluments paid to the members of the Board of Management and the Supervisory Board for their work together with pension obligations which have arisen or have been assumed in respect of former members of these bodies or of their dependants. The above information shall be given in full in respect of each of these groups of persons. The like information shall be given regarding emoluments received by members of the abovementioned bodies in their capacity as members of the administrative, managerial or supervisory bodies of an undertaking dependent on or controlling the company.

11. Taxes comprised in the trading results, financial results or non-recurring income and expenditure.

12. The amount of the changes in the result for the year due to the application of fiscal laws.

13. The overall amount of capital and reserves and the result for the year calculated on the basis of one of the valuation methods specified in Article 181(1), if the items in the annual accounts have been valued in accordance with Article 180.

Article 192

[Exception for certain items]

The particulars required under Article 191(2), (3), (4) and (6) may be omitted if in the view of a reasonable businessman they would be prejudicial to an undertaking to which they relate. The omission of the particulars shall be mentioned in the notes on the accounts or in the statement drawn up pursuant to Article 193.

Article 193

The particulars required under Article 191(2), (3), (4) and (6) may be given in a statement filed with the European Commercial Register. If any such statement is filed, the fact shall be mentioned in the notes on the accounts.

Article 194

[Proposal for appropriation of profit for the year]

The notes on the accounts shall contain a proposal for appropriation of profit for the year.

SECTION FIVE

Contents of the annual report

Article 195

1. The annual report shall contain a detailed review of the development of the company's business and of its position.

2. In addition to the information required under other Articles in this Statute, the annual report shall set out information in respect of the following matters in any event:

(a) important events that have taken place since the end of the financial year;

(b) the company's likely future developments;

(c) proposed capital expenditure, the scale thereof and the amount of the expenses likely to be incurred in connection therewith, in particular in the field of research and development.

SECTION SIX

Preparation of group accounts

Article 196

[Group accounts and part-group accounts]

1. If the SE is the controlling undertaking within a group of undertakings, it shall, in respect of the group, draw up a consolidated balance sheet, a consolidated profit and loss account, notes on the group accounts, a statement of source and application of funds for the group (group accounts) and a group annual report.

The group accounts, prepared as at the same date as the annual accounts of the SE, shall relate to every undertaking which, in accordance with Article 223, is a member of the group.

2. If the SE is a dependent undertaking and if other undertakings within a group are controlled through it, it shall, in respect of its own part of the group, draw up a part-consolidated balance sheet, part-consolidated profit and loss account, notes on the part-group accounts, a part-group statement of source and application of funds (part-group accounts) and a part-group annual report, unless the controlling undertaking within the group prepares group accounts in accordance with the provisions of this Title. Such accounts, which shall be prepared as at the same date as the annual accounts of the SE, shall relate to the undertakings controlled through the SE. Articles 197 to 202 shall apply to part-group accounts and reports.

Article 197

[Non-consolidation of accounts of an undertaking within group]

1. *(a)* Consolidated accounts shall not relate to undertakings within the group where the effect would be to make the information contained in the consolidated accounts less meaningful;

(b) consolidated accounts need not relate to undertakings within the group which are so small that the view reflected of the assets, liabilities, financial position and results of the group is not affected by omitting them.

2. *(a)* The reason for non consolidation of the accounts of any undertaking within the group shall be stated in the notes on the accounts;

(b) the annual accounts of undertakings such as are referred to in paragraph 1(a) shall be drawn up as at the date of the consolidated accounts and shall be annexed to the notes thereon.

Article 198

[Drawing up of group accounts]

1. The group accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account, the notes on the group accounts and a statement of source and application of funds for the group. These documents shall constitute a composite whole.

2. The group accounts shall give a true and fair view of the group's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the lay-out of accounts.

Article 199

[Presentation of group accounts]

The provisions of Section Two of this Title shall apply to the presentation of consolidated accounts, subject to the following exceptions:

1. In the group balance sheet:

(a) the amount of any differences as between the book value at the date of first consolidation of investment holdings in the capital of under-

takings in the group, and the value thereof including reserves and profits, on subsequent valuation, shall be shown separately under one item entitled 'Consolidation equalization account';

(*b*) interests held by companies outside the group in the capital, reserves and profits of undertakings within the group shall be shown as a separate item;

(*c*) stocks may be grouped together under one global item.

2. In the group profit and loss account the following items may be lumped together:

(*a*) Article 168, items I-2 to 9,

(*b*) Article 169, items A-I-1 to 5 and B-I-2 to 4,

(*c*) Article 170, items I-2 to 6,

(*d*) Article 171, items A-I-1 to 3 and B-I-2.

Article 200

[Valuation]

1. As the undertakings in a group constitute one economic unit, all assets and liabilities shall be incorporated in the group consolidated balance sheet at the values shown in the balance sheets of the undertakings within the group.

2. The annual accounts of undertakings to which consolidated accounts relate shall be prepared so far as possible in accordance with the same rules of valuation.

Article 201

[Information contained in notes on consolidated accounts]

1. In so far as the information contained in the notes on the consolidated accounts is important for the purpose of assessment thereof, Articles 191 to 193 shall apply.

2. The methods of consolidation and, in particular, the sources and composition of the consolidation equalization account and the non-elimination, if any, of profits on transactions between undertakings within the group shall be explained.

Article 202

Article 195 shall apply to the consolidated annual report.

SECTION SEVEN

Audit

Article 203

[Audit by auditors]

1. The annual accounts and, in so far as it reviews developments in the company's business and position during the past financial year, the annual report shall be audited by an independent auditor acting on his own responsibility.

2. Only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing an examination, both of which must be legally established or recognized and shall be persons authorized in a Member State to act as auditors of the annual accounts of companies limited by shares whose shares are quoted on a stock exchange.

Article 203a

[Independence of auditor]

1. The audit may not be carried out by persons who are, or who within the last three years prior to their appointment have been, members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it.

2. Further, the audit may not be carried out by:

(*a*) companies, whose members, whose members of the management or supervisory body, or whose duly authorized representatives are or, in the last three years prior to their appointment were, members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it;

(*b*) a firm of auditors which is dependent on or which controls the SE, or which is dependent on the undertaking controlling the SE.

Article 203b

[Independence of auditor]

1. Persons who have carried out the audit may not become members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it for at least three years after expiry of their term of office.

2. Further, members of the management or supervisory bodies, or duly authorized representatives or members of companies which have carried out the audit, may not for at least 3 years after completion of their duties, become members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it.

Article 204

[Appointment and removal of auditor]

1. The auditor shall be appointed annually by the General Meeting. In respect of the first financial year, the auditor may be appointed by the General Meetings of the founder companies.

2. If the appointment is not made by the General Meeting in due time or should an appointed person be unable to carry out his task, the court within whose jurisdiction the registered office is situated shall, upon application by the Board of Management, the Supervisory Board or a shareholder, appoint an auditor.

3. Upon application by the Board of Management, the Supervisory Board or one or more shareholders whose shares represent in total at least 5% of the share capital or a nominal value of at least 100000 u.a., the court within whose jurisdiction the registered office is situated may remove an auditor appointed by the General Meeting and appoint another person in his place if there are serious grounds for so doing. Such application shall be made within 2 weeks of the appointment by the General Meeting.

4. Notwithstanding paragraph 3, the auditor may not be removed by the General Meeting before expiry of his term of office save where there are serious grounds for so doing. He shall be entitled to take part in any discussions concerning his removal.

5. The auditor shall be entitled to withdraw from his contract where there are serious grounds for so doing.

Article 204a

[Remuneration]

1. The auditor's remuneration shall be fixed by the General Meeting or, if he is appointed by the court, by the latter, before commencement of his duties.

2. No remuneration or benefits may be granted to him for auditing the accounts other than the remuneration fixed in pursuance of paragraph 1.

Article 205

[Object of audit]

The auditor shall ascertain whether the accounting system, the annual accounts and the annual report, insofar as the latter reviews developments in the company's business and position during the previous financial year, comply with this Statute, the Statutes of the company and the principles of regular and proper accounting.

Article 206

[Auditor's right to examine and check documents and assets]

1. In carrying out his duties, the auditor shall be completely free to examine and check any documents and assets of the SE.

2. He shall be entitled to require any explanation or information that he may consider necessary for the proper execution of his duties.

3. If the carrying out of his duties shall so require, he shall have the like rights in respect of associated undertakings.

4. The auditor may be assisted in his work by colleagues or specialists. They shall have the same rights as the auditor himself and shall act under his responsibility. The auditor and those who assist him shall keep secret all matters of professional confidence.

Article 207

[Auditor's certificate]

1. If, on completion of his audit, the auditor has no objection to make in respect of the annual accounts or annual report, he shall issue a written certificate to this effect.

2. If he has any objection to make in respect of the annual accounts, he shall qualify his certificate as appropriate or withhold it altogether.

Article 208

[Auditor's report]

The auditor shall, within three months following the end of the financial year, draw up a written report on the results of his audit. The report must contain at least the following information:

(a) whether he has carried out the audit in accordance with Article 205;

(b) any infringements of this Statute, the Statutes of the company or the principles of regular and proper accounting which he has discovered in the accounting system, the annual accounts or the annual report;

(c) any matters which he has discovered which might jeopardize the financial position of the SE, or substantially impair its future prospects or which indicate serious infringements by the Board of Management otherwise than in respect of preparation of the accounts, of any of the provisions of this Statute or of the Statutes of the company;

(d) the complete text of the certificate issued under Article 207. If the certificate is qualified or a certificate has been withheld, the reasons therefor shall be given.

Article 209

[Liability of auditor]

1. An auditor shall be fully liable to the SE, to its shareholders and to third parties for all loss or damage resulting from his failure to observe the provisions of this Statute or from any other breach of the obligations imposed on him in carrying out his duties.

If more than one auditor shall have been appointed, all auditors shall be liable jointly and severally. An auditor shall not, however, be liable if he can prove that no fault is attributable to him.

Such liability shall continue for a period of three years as from the day of publication in the Official Journal of the European Communities pursuant to Article 219, or, in the event of harmful acts or omissions having been concealed, as from the time of their discovery.

2. As regards any action brought by the SE in respect of such liability Article 72 shall be of corresponding application.

Article 210

[Audit of consolidated accounts]

The provisions of this Section shall apply to the audit of the consolidated accounts and report of a group of companies or of part of a group of companies.

SECTION EIGHT

Approval of the accounts and report, appropriation of profits and publication

Article 211

[Drawing up of annual accounts and report]

The Board of Management shall, before the end of the first three months of each financial year, draw up the annual accounts and report for the previous financial year.

Article 212

[Discussion of annual accounts and report]

1. The annual accounts and report shall be submitted by the Board of Management to the Supervisory Board. The auditor's report shall be annexed thereto.

2. The annual accounts and report shall be discussed by the Board of Management and the Supervisory Board in joint meeting. At the request of the Supervisory Board, the auditors shall attend this meeting in an advisory capacity.

Article 213

[Approval of annual accounts and report]

1. The annual accounts shall be approved by the Board of Management and by the Supervisory Board in joint meeting but voting separately.

2. The annual report shall be approved by the Board of Management.

Article 214

[Approval of annual accounts and report]

1. Failing agreement by the Supervisory Board and the Board of Management in the matter of approval of the annual accounts, the annual accounts shall be approved by the General Meeting.

2. The annual accounts prepared by the Board of Management together with the Supervisory Board's comments which shall be contained in a document to be appended to the notes on the accounts, shall be laid before the General Meeting for its decision.

Article 215

[Approval of consolidated accounts and report of a group of companies]

Articles 211 to 214 shall apply to the approval of the consolidated accounts and report of a group of companies and of a part of a group of companies.

Article 216

[Submission of annual documents to General Meeting]

1. At the General Meeting, duly convened in accordance with Article 84, there shall be presented in one document:

(a) the annual accounts;

(b) the auditor's report provided for in Article 208;

(c) the annual report.

2. As from the date of the notice convening the General Meeting, the documents referred to in the preceding paragraph (annual documents) may forthwith be obtained from the company by any person free of charge. A statement to this effect shall appear in the notice.

3. Paragraphs 1 and 2 of this Article shall apply to the consolidated accounts and report of a group of companies and of a part of a group of companies.

Article 216a

[Transfers from profit for the year to legal reserves]

1. Five per cent of the profit for the year less any losses carried forward shall be transferred to the legal reserves until the latter are equal to at least ten per cent of the subscribed capital.

2. Insofar as the legal reserves do not exceed the amount specified in paragraph 1, they may only be used to offset losses to the extent that other reserves are insufficient for this purpose.

Article 217

[Appropriation of profit for the year]

1. *(a)* If the accounts are approved by the Board of Management and the Supervisory Board, they may appropriate part of the profit for the year, but not more than one half thereof, to reserves. When they do so, the profit for the year shall be reduced, first, by the amount required to be transferred to the legal reserves pursuant to Article 216a and, secondly, by any losses carried forward. The General Meeting shall decide as to the appropriation of the profit per balance sheet upon a joint proposal from the Board of Management and the Supervisory Board;

(b) failing agreement by the Board of Management and the Supervisory Board as to the appropriation of profits, as entrusted to them in accordance with paragraph 1(a), the General Meeting shall decide as to the appropriation of the total profit for the year;

(c) in the event of such disagreement, the Supervisory Board shall set out its views in a document to be appended to the notes on the accounts. The same shall apply if the Board of Management and the Supervisory Board fail to agree on a proposal as to the appropriation of the profit per balance sheet to be submitted in accordance with paragraph 1(a).

2. If the accounts are approved by the General Meeting pursuant to Article 214(1), the latter shall decide as to the appropriation of the total profit.

Article 218

(deleted)

Article 219

[Publication of annual accounts and appropriation of profit per balance sheet]

1. Immediately after the General Meeting two copies of the document laid before it in accordance with Article 216, and of the Minutes of the meeting, shall be filed in the European Commercial Register.

2. Immediately after such filing, the accounts and the auditor's report provided for in Article 208 shall be published in full by the Board of Management in the company journals. At the same time, notice shall also be given of the filing of the annual report. Unless shown in the annual accounts, the appropriation of the profit per balance sheet or the treatment of the loss per balance sheet shall be published in the company journals together with the annual accounts.

Article 219a

[Form of publication]

1. If the accounts and the annual report are published in full by the SE, other than in the case specified in Article 219, they shall be reproduced in the form and text on the basis of which the auditor drew up his report. They shall be accompanied by the full text of the certificate. If the auditor made any qualifications or refused to certify the accounts, the fact shall be stated and the reasons given.

2. If the annual accounts are not published in full by the SE, the fact that the version published is abridged shall be stated, and reference shall be made to the Official Journal of the European Communities in which they were published. The auditor's certificate shall not accompany this publication, but it shall be stated whether the certificate was made with or without qualification, or was refused.

Article 219b

[Form of publication of consolidated accounts]

Articles 219 to 219a shall apply to the publication of group or part-group accounts.

SECTION NINE

Legal proceedings in respect of the annual accounts and report

Article 220

[Limitation periods and procedures]

1. One or more shareholders whose shares represent in total five per cent of the share capital or a nominal value of 100000 u.a., or the representative of a body of debenture holders, may apply, setting out their reasons, to the court within whose jurisdiction the registered office is situated, if they consider that the presentation of the annual accounts or of the report, in so far as it reviews developments in the company's business and position during the previous financial year, does not comply with the requirements of this Statute, provided that their objections have been recorded in the Minutes of the General Meeting.

2. The application shall be made within three months, calculated from the date of publication in the Official Journal of the European Communities provided for in Article 219(2).

3. The court may call on one or more experts to assist it in reaching its decision. Articles 15(3), 203, 203a, 203b and 206 shall apply to these experts. The period referred to in Article 15(3) shall run from the date on which the judgment becomes final.

4. Evidence shall be heard in chambers in the presence of both parties. The judgment of the court shall be published.

Article 221

[Orders of the court]

1. Where the court upholds the application, it shall order precisely how the company is to rectify its annual accounts or its annual report. Such order may be of future application only.

2. Where the order of the court relates to the balance sheet or the profit and loss account for the year in respect of which the application is made, these shall be deemed to be invalid. The company shall then draw up a new balance sheet or profit and loss account, with due regard to the terms of the order, and shall submit the same to the General Meeting within the time limit prescribed. The court may limit the consequences of the invalidity.

3. Where the order is of future application only, the court may subsequently, on application by the company, rescind the order if the circumstances have changed.

Article 222

[Consolidated accounts]

The provisions of this Section shall apply to the consolidated accounts and report of a group of companies and of a part of a group of companies.

Title VII

Groups of companies

SECTION ONE

Definition and scope

Article 223

[Group membership]

1. A controlling undertaking and one or more companies dependent on it shall constitute a group within the meaning of this Statute if all of them are under the unified management of the controlling undertaking and if one of them is an SE.

Each undertaking within the group is known as a group undertaking.

2. If a company is controlled by another undertaking within the meaning of Article 6, there shall be a presumption that the controlling undertaking and the controlled company constitute a group.

3. For the purposes of this Title, 'dependent group companies' are group undertakings which take the legal form of an SE or a company limited by shares, or a limited partnership.

4. In the following provisions of this Title, outside shareholders and the general meeting of a dependent company shall, if it is a company limited by shares, be outside holders of shares and the general meeting of the company.

5. If all the shares of a dependent group company which has been formed under the law of a Member State, are held by an SE, any provisions of national law which require the company to be wound up for that reason shall not apply.

Article 224

[Scope]

1. If the controlling undertaking of a group is an SE, Sections 3 to 6 of this Title shall apply to dependent companies in the group which have been formed under the laws of Member States, and to their relationship with the controlling SE.

2. If an SE is a dependent group company, Sections 3 to 6 of this Title shall without prejudice to paragraph 3 apply to the SE and to its relationship with the controlling undertaking without regard to where its registered office is situated.

3. If an SE is a dependent group company and other group companies which have been formed under the laws of Member States or as an SE are controlled through it (sub-group), Sections 3 to 6 of this Title shall apply also to those companies and their relationship with the SE. The SE shall be considered as a controlling undertaking of a group with regard to the application of the provisions of this Title.

Article 225

[Decision on group membership by Court of Justice of the European Communities]

1. An SE may apply to the Court of Justice of the European Communities for a decision whether it is a group undertaking within the meaning of this Statute.

A company formed under the law of a Member State may likewise apply for a decision whether it is a dependent group company controlled by an SE, and an undertaking formed under national law may apply for a decision whether it is a controlling undertaking of a group within the meaning of this Statute.

2. If the SE or the company formed under national law does not make an application for a decision under paragraph 1, the following persons shall be entitled to apply for such a decision to be made:

(a) shareholders of a company who, if it were held to be a dependent group company, would be outside shareholders of the company, and who between them hold at least 5% of the capital of the company (after deducting shares which belong directly or indirectly to any undertaking which may be held to be the controlling undertaking of the group, or which are attributable to such an undertaking under Article 6(4)); or

(b) creditors of such a company if any undertaking which may be held to be a controlling company does not comply with the requirements of Article 239.

3. The question whether a company is a dependent group company may also be brought before the Court by institutions, organizations or persons connected with this company who if this question were answered positively would be entitled to propose candidates for election to the Supervisory Board of an SE or to appoint members to the Group Works Council of an SE.

4. The Court of Justice shall give judgment after hearing evidence from the undertakings within the group. It shall, where appropriate, determine the date with effect from which the undertaking becomes an undertaking within the group.

5. Costs shall be a matter for decision by the Court of Justice.

SECTION TWO

Publicity

Article 226

[Publication of group membership]

1. If an SE becomes a controlling or dependent undertaking within a group, it shall forthwith cause that fact with, where appropriate, the name of the controlling undertaking of the group to be registered in the European Commercial Register and to be published in the company journals.

2. The same shall apply where an SE ceases to form part of a group.

Article 227

(deleted)

SECTION THREE

Protection of outside shareholders

Article 228

[Form of guarantees]

1. Within a reasonable time after a group of companies comes into existence or after a company is declared to be a dependent company within such a group by the Court of Justice of the European Communities, the controlling undertaking of the group shall make an offer to the outside shareholders of each dependent company:

(a) where the controlling undertaking is an SE or a company limited by shares formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment or, in place of such a cash payment, to acquire such shares in exchange for shares or (convertible) debentures of the controlling company of the group. The offer may also give the outside shareholders the choice between a cash payment and an exchange of their shares.

(b) where the controlling undertaking of the group is a company limited by shares not formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment. The offer can also give the outside shareholders the choice between a cash payment and an exchange of their shares for shares or (convertible) debentures of the controlling company of the group.

2. In addition to making an offer under paragraph 1, the controlling undertaking of a group shall offer the outside shareholders the alternative option of annual equalization payments calculated in proportion to the nominal value of their shares in accordance with Article 231.

Article 229

(deleted)

Article 230

(deleted)

Article 231

[Equalization]

1. The controlling undertaking of the group shall, by its offer of an annual equalization payment according to Article 228(2), undertake to make yearly payments of an amount which, having regard to the previous earnings and the future prospects of the dependent group company, may be calculated as representing the average prospective earnings per share.

2. *(a)* If the controlling undertaking of a group is an SE or a company limited by shares formed under national law, it may without prejudice to sub-paragraph (b) alternatively calculate such an annual equalization payment by reference to the earnings per share of the controlling company of the group. The ratio between the shares of the two companies shall for this purpose be calculated in the same way as for a share exchange in the case of a merger.

(b) If the SE is the parent company of a sub-group, it can calculate the annual equalization payment according to paragraph 2(a) only by reference to the earnings per share of the group company that finally controls it provided that this company is an SE or a company limited by shares formed under national law. Paragraph 2(a) last sentence applies.

Article 232

[Examination of offers]

1. Immediately after the controlling undertaking of a group has made an offer under Article 228, the Board of Management of the dependent group company in the group shall appoint one or more independent experts and instruct them to prepare a report for the outside shareholders on the appropriateness of the offer.

Article 15(2) and (3) shall apply in respect of the experts. The time limit referred to in Article 15(3) shall run from the date of the notice under Article 234(2).

2. Upon an application by one or more outside shareholders of the dependent group company who alone or together hold either 5% of its capital (after deducting shares which belong directly or indirectly to the controlling company of the group or are attributable to it under Article 6(4)), the court in whose jurisdiction the registered office of the dependent group company is situate may appoint one or more experts if it appears that the independence of the experts has not been sufficiently established.

3. In their report the experts shall in particular state whether, in their opinion, the offer is fair or not. The statement of their opinion shall set out on the following matters at least:

(a) where a cash offer is made under Article 228(1), the amount of the net assets of the company, based on their current values; the earnings of the company, having regard to its future prospects; and the criteria employed for valuing such net assets and determining such earnings;

(b) where an exchange is proposed under Article 228(1), the ratio between the net assets of the companies concerned, based on their current values; the ratio of the respective earnings of the companies, having regard to their future prospects; and the criteria employed for valuing such net assets and determining such earnings;

(c) where an annual equalization payment under Article 231(1) is proposed, the factors entering into the calculation of the average earnings per share;

(d) where an equalization payment under Article 231(2) is proposed, the same information as under (b) of this paragraph.

4. Attention shall also be drawn in the report to any difficulties encountered in the course of valuation.

5. The experts shall be entitled to obtain any relevant information from the dependent and controlling undertakings in the group and to undertake any investigations that may be necessary.

Article 233

[Report of Board of Management of dependent group company]

The Board of Management of the dependent group company shall draw up a report in which it shall comment on the report made by the experts under Article 232 and its conclusions. The Board of Management may make its own proposals, stating its reasons as to the amount of the payment in cash or the share exchange ratio and as to the amount of the annual equalization payment that they consider appropriate.

Article 234

[Convening of General Meeting of dependent group company]

1. The Board of Management of the dependent group company shall convene a General Meeting of the company to decide whether the offer made by the controlling undertaking of the group should be accepted. At least one month's notice shall be given of the meeting.

2. The notice convening the meeting shall be accompanied by the proposals of the controlling undertaking of the group. Any proposals made by the Board of Management of the dependent company shall also be sent with the notice.

3. There shall be included in the notice convening the meeting a note to the effect that shareholders are entitled to obtain on request and free of charge copies of the experts' report, the report thereon of the Board of Management of the dependent company. Attention shall at the same time be drawn to the fact that resolution concerning the offer may be challenged under the conditions set out in Article 236, only by shareholders who vote against the resolution at the General Meeting and cause their opposition to be recorded in the minutes.

Article 235

[Voting on offers]

1. When the offer made under Article 228 is put to the vote, no votes shall be cast in respect of shares which are held directly or indirectly by the controlling undertaking of the group, or which are attributable to it in accordance with Article 6(4).

2. A resolution in respect of the offer shall be effective only if supported by the holders of three-quarters of the shares whose holders are entitled to vote pursuant to paragraph 1. Non-voting shares shall carry the right to vote, and shall be counted in calculating the majority.

3. The provisions of Article 24(3) and (4) shall apply.

Article 236

[Court decision on offers]

1. If the General Meeting wholly or partly rejects the proposals made under the mandatory provisions of Article 228, the terms of the offer to which such rejection relates shall be determined, without right of appeal, by the court within whose jurisdiction the registered office is situated. An application for such a determination shall be made by the controlling undertaking of the group within one month after the decision of the General Meeting. If an application is not made within that period by the controlling undertaking of the group, an application may be made within a further month by any shareholder of the dependent group company at the expense of that company.

2. If the General Meeting accepts the proposals of the controlling undertaking of the group, the resolution passed by it may only be challenged on the ground that the cash payment, the share exchange ratio or the annual equalization payments are not fair and reasonable. Such application shall be made within one month of the decision of the General Meeting of the Court within whose jurisdiction the registered office is situated. An action challenging the resolution on this ground may be brought only by any outside shareholders who voted against a resolution at the General Meeting and caused their opposition to be recorded in the Minutes, and who together hold not less than 20% of the shares whose holders are entitled to vote pursuant to Article 235. If the offer is not fair and reasonable, its terms shall be determined by the Court without right of appeal.

3. The court may appoint independent experts at the expense of the dependent group company. The provisions of Article 15(2) and (3) and Article 232(5) shall apply to such experts. The period referred to in Article 15(3) shall run from the date on which the decision of the court takes effect.

Article 237

[Publication of guarantees to be given]

1. The Board of Management of the dependent group company shall, within two months after the passing of the resolution by the general meeting, or, where Article 236 applies, within one month of the judgment of the court, publish in the company journals the amount of the payment in cash, the amount of the annual equalization payments and the terms of such payments and, where appropriate, the share exchange ratio. Where the dependent group company is a company formed under the law of a Member State, company journals within the meaning of this Title refer to the Official Journal for the publication of matters relating to companies of the Member State concerned.

2. Every outside shareholder of the dependent group company shall be entitled to require payment in cash or, if appropriate, the exchange of his shares within three months of publication of the latest notice in the company journals.

3 The undertakings within the group shall be jointly and severally liable in respect of payment in cash. The controlling company shall be liable in respect of exchange of shares.

4 Outside shareholders who do not exercise their rights under paragraph 2 shall be entitled to receive annual equalization payments.

5 The group undertakings concerned shall be jointly and severally responsible for payment of the annual equalization payments.

Article 238

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SECTION FOUR

Buying-out of outside shareholders

Article 238a

[Conditions and procedure]

1. If the controlling undertaking of a group, taking into account shares attributable to it under Article 6(4), directly or indirectly acquires 90% or more of the capital of a dependent group company, it may, without prejudice to Article 238b and in accordance with the provisions of Article 228(1), require the outside shareholders to transfer their shares to it for a cash payment or by way of exchange. The provisions of Articles 232 to 236 and Article 237(1) shall then apply. Upon the latest notice in the company journals being given under Article 237(1), the shares of the outside shareholders shall become the property of the controlling undertaking of

the group. The certificates relating to such shares shall, until they have been delivered to the controlling undertaking, entitle their holders only to receive the cash payment or share exchange.

2. The controlling undertaking of the group shall forthwith notify its acquisition of the percentage, referred to in paragraph 1 of the capital of the dependent group company to that company. The Board of Management of the dependent group company shall publish such notification in the company journals.

3. When a notification has been published under paragraph 2, every outside shareholder of the dependent group company shall be entitled to require that his shares shall be acquired by the controlling undertaking of the group. That undertaking shall, except in cases governed by Article 238b, make an offer in accordance with Article 228(1). In so doing, the controlling undertaking shall state whether and on what terms the shares of other outside shareholders have been bought by it in application of this paragraph during the year preceding the offer. If the outside shareholder rejects the offer, the amount of the cash payment or the ratio for the exchange of shares shall, upon an application being made by the outside shareholder, be determined by the court within whose jurisdiction the registered office of the dependent company is situated. Such an application shall be made within one month after the receipt of the offer. Article 236(3) shall apply. The decision of the court shall be published by the Board of Management of the dependent group company in the company journals.

Article 238b

[Procedure]

1. Where, at the expiration of the period referred to in Article 237(2), the controlling undertaking of a group (taking into account shares attributable to it under Article 6(4)), has directly or indirectly acquired 90% or more of the capital of a dependent group company, it may require the outside shareholders of the dependent company to transfer their shares to it in consideration of cash or by way of an exchange of shares upon the terms which have been published pursuant to Article 237(1). It shall, within one week after the expiration of the period referred to in Article 237(2), notify the dependent group company whether it intends to exercise this right or not.

2. The Board of Management of the dependent group company shall forthwith cause the notification to be published in the company journals, with details of the amount of the cash payment or the ratio for the exchange of shares.

3. If the controlling undertaking of the group notifies its desire to acquire the shares of the outside shareholders, those shares shall, upon the latest publication of its notification in the company journals under paragraph 2, become the property of the controlling undertaking. The last sentence of Article 238a(1) shall apply.

4. If the controlling undertaking of the group notifies its intention not to exercise the right to acquire the shares of outside shareholders, every outside shareholder shall be entitled during the period of one month following publication under paragraph 2 to require that his shares shall be acquired by it for cash or by way of an exchange of shares upon the terms published.

SECTION FIVE

Protection of creditors

Article 239

1. The controlling undertaking of a group shall be liable for the debts and liabilities of dependent group companies.

2. Nevertheless, proceedings may be brought against the controlling undertaking of a group only where the creditor has first made a written demand for payment from the dependent group company and failed to obtain satisfaction.

SECTION SIX

Instructions and liability

Article 240

[Instructions from controlling undertaking of group]

1. From the time of the publication of the latest notice in the company journals of the dependent group company as provided under Article 237(1), the controlling undertaking of a group may issue instructions to the Board of Management of a dependent group company and these instructions shall be complied with by the Board of Management.

2. If the controlling undertaking in the group is an SE and issues instructions to the Board of Management of a dependent group company in respect of a transaction, and the latter may by law or under its statutes only enter into such transaction with the consent of its Supervisory Board, the instructions, if such consent is refused, may only be complied with by the Board of Management of the dependent company, if consent to the instruction is obtained from the Supervisory Board of the SE.

3. If the controlling undertaking of a group is an undertaking formed under national law, the powers vested in the Supervisory Board of a dependent group undertaking which is an SE under Article 66, shall remain unaffected, unless the employees of the SE and of the other group companies controlled through the SE are represented on the governing bodies of the controlling undertaking of the group in a manner equivalent to that in which they are represented under the rules governing the SE.

Article 240a

[Obligations of members of Board of Management of controlling undertaking of group]

In exercising their right to issue instructions under Article 240, members of the Board of Management of a controlling undertaking of a group shall exercise the standard of care required of a conscientious manager and shall promote the interests of the group and of its personnel.

Article 240b

[Liability]

1. In exercising their rights to issue instructions under Article 240, the members of the Board of Management of a controlling company in a group shall be liable to the dependent group company for any damage resulting from failure by them to carry out their obligations under Article 240a. Articles 71(2) to (5) and 81(2) to (4) shall apply accordingly.

2. Proceedings in respect of any such liability may be brought in the name and on behalf of the dependent group company by:

(a) one or more outside shareholders of the dependent group company who alone or together hold 5% of the capital of the company, after deducting capital belonging directly or indirectly to the controlling undertaking of the group or attributable to it under Article 6(4). For these purposes the shareholders, if there is more than one of them, shall appoint a special representative who shall be empowered to conduct the proceedings;

(b) any liquidator or trustee in bankruptcy of the dependent group company.

3. Article 72(6) shall apply accordingly.

Article 240c

[Freedom from liability of members of Board of Management of dependent group company]

The members of the Board of Management of a dependent group company shall not be liable to that company for damages arising from acts or omissions by them consequent on the instructions of the controlling undertaking of the group given in accordance with Article 240. They shall have the burden of proving that any such acts or omissions were consequent on the instructions of the controlling undertaking of the group.

SECTION SEVEN

Special rules regarding group relationships in existence prior to the formation of the SE

Article 240d

1. If a company which is a dependent group company of one of the founder companies of the SE becomes, after the formation of the SE, a dependent group company of the SE, the SE shall cause that fact, with the name of the company concerned, to be registered in the European Commercial Register and shall publish those matters in the company journals together with the notification to be given under Article 226.

2. The SE need not apply the provisions of Sections 3 and 5 where the existence of a dependent group company is notified by it in accordance with paragraph 1. It shall, however, within 18 months after the formation of the SE offer to the outside shareholders of that company an annual equalization payment in accordance with Article 231. The provisions of Articles 232 to 237 shall then apply.

3. The SE shall not later than 6 years after its formation offer to the outside shareholders of a dependent company whose existence is notified by it under paragraph 1, an appropriate cash payment or an exchange of shares under Article 228(1). The provisions of Articles 232 to 237 shall then apply.

4. The provisions of Section 4 shall not apply until the proceedings referred to in paragraph 3 of this Article have been completed.

5. Liability in accordance with Article 239 shall apply in respect of all debts and liabilities of a dependent group company whose existence is notified under paragraph 1 if such debts and liabilities arise after the formation of the SE.

6. The right to issue instructions under Article 240 may be exercised after the annual equalization payment referred to in paragraph 2 of this article has been ascertained in accordance with the procedure therein prescribed. From this time, the rules as to liability contained in Articles 240a, 240b and 240c shall also apply.

Title VIII

Alteration of the Statutes

Article 241

[Conditions for alteration of Statutes]

1. Any alteration of the Statutes shall require a resolution of the General Meeting.

2. Proposals by the Board of Management for alterations of the statutes require the approval of the Supervisory Board. The Board of Management shall state the reasons for its proposals in a report to the General Meeting.

Article 242

[Convening of General Meeting]

1. The agenda of the meeting shall state the proposed alteration of the Statutes.

2. As soon as the convening notice of the General Meeting has been given, any shareholder may require the company to provide him with a copy of the complete text of the proposed alteration, and of any report thereon by the Board of Management, free of charge. A note to this effect shall be included in the convening notice.

Article 243

[Resolutions of General Meeting]

1. The General Meeting may be duly held only if not less than one-half of the capital is represented. If the first convening notice fails to produce such quorum a second notice shall be issued. The General Meeting may then be duly held irrespective of the amount of capital represented. A note to this effect shall appear in the convening notice.

2. Resolutions shall be duly passed only if at least three-quarters of the votes validly cast are in favour thereof. The Statutes may require a greater majority.

Article 244

[Notification of alteration of Statutes]

1. The alteration of the Statutes shall be notified by the Board of Management to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The notification shall be accompanied by two authenticated copies of:

(a) the minutes of the General Meeting and of the annexes prescribed by Article 94, relating to the alteration of the Statutes;

(b) the complete text of the Statutes as altered.

Article 245

[Examination by Court of Justice of the European Communities and publication]

1. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolutions for the alternation of the Statutes were properly held and validly passed.

2. The Court of Justice shall refuse to register an alteration of the Statutes in the European Commercial Register if the resolution for the alteration was not in accordance with the provisions of this Statute or of the Statutes of the company.

3. The Court of Justice may allow the SE to supplement or correct its application and the supporting documents.

4. If the Court of Justice finds no reason to refuse or to defer registration, it shall order the alteration of the Statutes to be registered in the European Commercial Register, to which office it shall duly pass the application and supporting documents.

5. Notice of registration of the alteration shall be published in the company journals.

Article 246

(deleted)

Title IX

Dissolution, liquidation, bankruptcy and related proceedings

SECTION ONE

Dissolution

Article 247

[Cases of dissolution]

An SE is dissolved:

(a) by resolution of the General Meeting;

(b) on expiry of the period for which the company was formed as specified in the Statutes;

(c) on the occurrence of the ground for dissolution referred to in Article 249(4);

(d) on the institution of bankruptcy or similar proceedings in respect of the SE, or where an adjudication of bankruptcy is refused by a court owing to insufficiency of assets;

(e) on a court order being made under Article 99 of this Statute.

Article 248

[Dissolution by resolution of General Meeting]

1. A resolution of the General Meeting to dissolve the SE shall fulfil the requirements for alteration of the statutes.

2. The Board of Management shall consult the European Works Council before the General Meeting resolves on dissolution.

3. The General Meeting may resolve on dissolution only if the views of the European Works Council have been made known, unless the Council shall have failed to express any views within a reasonable period of its being consulted by the Board of Management.

Article 248a

[Handling of implications for employees]

1. If the European Works Council considers that employees' interests will be adversely affected by dissolution of the SE, the Board of Management shall open negotiations with the Council before the General Meeting resolves, in order to reach agreement on the steps to be taken with regard to employees (social plan).

2. Agreement reached on a social plan shall be recorded in writing and shall have the effect of an agreement pursuant to Article 127.

3. The Board of Management shall advise the General Meeting and the Supervisory Board of the outcome of negotiations on the social plan. The European Works Council may similarly put forward its opinion thereon.

4. If no agreement is achieved on the social plan and if the General Meeting resolves in favour of dissolution, the European Works Council or the SE's liquidators may within one month invoke the arbitration board referred to in Article 128. The arbitration board shall specify the steps to be taken with regard to employees upon liquidation.

Article 249

[Loss of half of capital]

1. If losses entered in its books of account result in the value of the company's net assets being shown as less than half the amount of its capital, the General Meeting convened for the purpose of considering the annual accounts under Article 84 shall decide whether the company shall be dissolved. This matter shall be included in the agenda; the Board of Management shall state its opinion on the matter explicitly in a special report, on which the Supervisory Board shall give a reasoned opinion.

Any interested person may apply for a copy of this report to be sent to him free of charge not later than 15 days before the date of the meeting. A note to this effect shall appear in the convening notice.

2. If it is decided not to dissolve the company, its capital shall, not later than two years after the date of the General Meeting referred to in paragraph 1, be reduced by an amount at least equal to the loss incurred, unless its net assets have in the meantime increased to an amount equal to not less than half of its capital. The capital may be reduced to less than the minimum amount prescribed under Article 4, however, only if an increase in the capital to the amount prescribed under the said Article is effected simultaneously. The Board of Management shall forthwith notify the European Commercial Register of the date on which the said two-year period shall expire.

3. The General Meeting shall in each case pass its resolutions in accordance with the provisions applying to alteration of the statutes.

4. If a General Meeting has failed to decide within the period prescribed under paragraph 2 either to dissolve the company or to reduce its capital in the manner prescribed in paragraph 2, the company shall at the end of such period automatically be dissolved.

Article 250

[Notification, supervision of dissolution resolution, publication of dissolution]

1. A resolution passed by a General Meeting to dissolve the company shall immediately be notified by the Board of Management to the Court of Justice of the European Communities for

registration in the European Commercial Register. Article 244(2)(a) and 245 shall apply correspondingly.

2. In the cases referred to in Article 247(b) and (c), the liquidators shall immediately notify the European Commercial Register of the dissolution for registration thereof. If such notification is not made within 2 weeks, any interested person may apply to the court in whose jurisdiction the registered office of the company is situate for an order that the dissolution be registered in the European Commercial Register.

Notice of the registration of the dissolution shall be published in the company journals.

SECTION TWO

Liquidation

Article 251

[General principles relating to liquidation]

1. Except in the event of the institution of bankruptcy proceedings, the dissolution of a company shall be followed by its liquidation, which shall be carried out in accordance with the provisions of this Section.

2. Unless otherwise required by the provisions of this Section and in so far as such provisions are not inconsistent with the purpose of the liquidation, SE's which are in liquidation shall, until the liquidation is completed, continue to be subject to the same provisions as SE's which are not in liquidation.

3. The provisions relating to the powers and duties of the members of the Board of Management shall, for the purpose of the liquidation, apply to the liquidators. The liquidators shall be subject to supervision by the Supervisory Board.

Article 252

[Appointment of liquidators]

1. On the dissolution of an SE the powers of the Board of Management shall cease. The members of the Board of Management holding office at that time shall carry out the liquidation, unless other persons are appointed as liquidators by the General Meeting.

2. On the application of shareholders who individually or together hold either 5% of the capital of the company or shares of a nominal of 100000 u.a., the court in whose jurisdiction the registered office of the company is situate may, if there are serious reasons for doing so, appoint one or more additional liquidators, or replace one or more existing liquidators.

Where the court orders the dissolution of the company under Article 99 or orders that its dissolution be registered under Article 250(2), it shall itself appoint the liquidators.

3. The General Meeting may at any time remove liquidators not appointed by the court and appoint others in their place.

4. The General Meeting shall determine the amount of the liquidators' remuneration. If the liquidators are appointed by the court under paragraph 2, the amount of their remuneration shall be determined by the court.

Article 253

[Notice of appointment]

Notice of the appointment or removal of liquidators shall be given by them to the European Commercial Register for the purpose of registration, and shall be published in the company journals. Article 65 shall apply correspondingly.

Article 254

[Duties of liquidators]

The liquidators shall terminate transactions pending, collect debts, convert remaining assets into cash, where this is necessary for their realization, and pay the sums owing to creditors. The liquidators may undertake new transactions to the extent necessary for the purposes of liquidation.

Article 255

[Duties of liquidators]

1. The liquidators shall invite the creditors of the company to submit their claims and shall make specific reference to the fact that the company is in liquidation. Notice for this purpose shall be published in the company journals on three occasions, with an interval of not less than two weeks between each.

2. Every creditor known to the company who fails to present his claim within three months of the date of the final publication of the notice shall be invited by registered letter to do so.

3. Claims that creditors fail to present within one year after the date of the last publication of the notice in the company journals shall cease to be enforceable against the company. Express notice to this effect shall be given in the last notice published in accordance with paragraph 1 and in the written invitations issued in accordance with paragraph 2.

Article 256

[Duties of liquidators]

1. The liquidators shall lay annual accounts in respect of the liquidation before the General Meeting.

2. The provisions of the first seven sections of Title VI concerning the preparation of accounts, and of Article 219 concerning the publication of annual accounts shall apply to the annual accounts of the liquidators.

Article 257

[Distribution of company assets]

1. Assets of the company remaining after discharge of its liabilities shall be distributed amongst the shareholders in proportion to the nominal value of their shares unless the statutes confer different rights in a distribution.

2. Where a liability cannot be discharged for the time being, or is disputed, a distribution of assets may be made only if security is given in favour of the creditor or if the assets remaining after a partial distribution constitute adequate security.

Article 258

[Scheme of distribution]

1. No complete or partial distribution of assets of the company shall be made until accounts prepared in accordance with Article 256, together with a scheme of distribution drawn up after the end of the one-year period prescribed under Article 255 have been laid before the General Meeting, and until a further three months have elapsed after filing of such annual accounts and the scheme of distribution with the European Commercial Register without proceedings in respect of the distribution having been commenced in the court within whose jurisdiction the registered office is situate or having been dismissed by such court.

2. Any shareholder or creditor of the company may bring proceedings under the foregoing paragraph provided that they relate to the scheme of distribution.

Article 259

[Completion of liquidation]

1. Upon completion of the liquidation the liquidators shall forthwith give notice thereof to the European Commercial Register for the purpose of registration and publish it in the company journals.

2. If further steps in connection with the liquidation thereafter become necessary, the court within whose jurisdiction the company's registered office is situate shall, on the application of any shareholder or creditor, renew the mandate of the former liquidators or appoint other liquidators.

Article 260

[Retention of books and records]

1. Following the liquidation, the books and records of the SE shall be lodged within the European Commercial Register for retention there for ten years.

2. The Court of Justice of the European Communities may authorize shareholders and creditors to examine such books and records.

Article 260a

[Continuation of SE]

1. Where an SE is dissolved by a resolution of the General Meeting, the General Meeting may, at any time before the distribution of assets among the shareholders has begun, resolve that the company shall continue in existence. Such a resolution must fulfil the requirements for alterations to the Statutes.

2. The liquidators shall notify the continuation of the company to the Court of Justice of the European Communities for registration in the European Commercial Register.

Articles 244(2) and 245 shall be of corresponding application.

Article 260b

[Continuation of SE]

Where an SE is dissolved by reason of the expiration of the period for which it was formed, the company may, at any time before the distribution of assets among the shareholders has begun, be continued in existence by means of an alteration of the Statutes.

SECTION THREE

Bankruptcy, winding-up arrangements, composition and similar proceedings

Article 261

An SE shall be subject to the Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings to be concluded among the Member States.

Article 262

(deleted)

Article 263

1. The opening of bankruptcy proceedings or proceedings for arrangement or composition or similar proceedings in respect of the assets of the SE shall be notified for registration in the European Commercial Register by the administrator in bankruptcy or other person appointed to conduct the proceedings.

Registration shall comprise:

(a) the nature of the proceedings, the date of the order, and the court making it;

(b) the date on which payments were suspended, if included the court order;

(c) the name and address of the administrator, trustee, receiver, liquidator or any other person vested with the powers of an administrator in bankruptcy or of each of them where there are more than one;

(d) any other information considered necessary.

2. The administrator shall further notify the European Commercial Register of the judgments and acts referred to in Article IV of the Protocol annexed to the said convention.

3. Where a court dismisses a final application for the institution of bankruptcy proceedings owing to want of sufficient assets, it shall, either on its own motion or on application by any interested party, order its decision to be registered in the European Commercial Register.

4. Particulars registered pursuant to paragraphs 1 and 3 above shall be published in the company journals.

Title X

Transformation

Article 264

[Conditions for transformation]

1. Upon a proposal by the Board of Management with the approval of the Supervisory Board, an SE may by means of an alteration of its statutes, be transformed into a limited company incorporated under the law of one of the Member States.

2. Transformation shall not be undertaken until three years after formation of the SE.

3. The SE shall be transformed into a limited company under the law of the Member State in which its effective management is located.

4. If employees are not represented on the governing bodies of the limited company into which the SE is to be transformed in a manner equivalent to that in which they are represented under the rules governing the SE, the approval of the Supervisory Board to the transformation shall be effective only if a majority of the employees' representatives on the Supervisory Board vote in favour thereof.

Article 265

[Report of Board of Management; consultation of European Works Council]

1. The Board of Management shall prepare a report stating its reasons for the proposed transformation. Copies of the report shall be available free of charge to any interested person from

the day on which the meeting is called. A note to this effect shall appear in the convening notice.

2. The Board of Management shall consult the European Works Council with regard to the proposed transformation, in accordance with the provisions of Article 125.

Article 266

[Notification; examination by Court of Justice of the European Communities]

1. The resolution of transformation shall be notified by the Board of Management to the Court of Justice of the European Communities.

2. The notification shall be accompanied by:

(a) two authenticated copies of the Minutes of the General Meeting and, in so far as they relate to the resolution for transformation, the annexes specified in Articles 94 and 265;

(b) the authenticated text of the Statutes as altered by the General Meeting.

3. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolution of transformation were validly held and passed.

4. If the resolution of transformation was passed in accordance with the provision of this Statute and of the Statutes of the SE, the Court of Justice of the European Communities shall return the documents mentioned in paragraph 2 to the SE together with a certificate that the resolution of transformation was validly passed.

Article 267

(deleted)

Article 268

[Procedures after examination of transformation]

1. Upon receipt of the certificate referred to in Article 266(4), the Board of Management of the SE shall carry out the procedures for verification and publicity prescribed in connection with the formation of a limited company in the Member State to whose law the company is to be subject.

2. Transformation shall become effective as soon as the company acquires legal personality under the national law applicable to it. The company shall continue in existence as a limited company under national law.

3. Upon completion of the procedures referred to in paragraph 1, the governing body of the company shall send to the European Commercial register:

(a) one of the copies referred to in Article 266(2) a;

(b) one copy of the documents and supporting papers required under the national law for formation of a limited company, including the certificate that the requisite notices have been duly published.

4. The European Commercial Register shall register the transformation and publish a notice thereof in the Official Journal of the European Communities, making reference to the registration that has been effected, the filing of documents and the giving of notices under national law insofar as such matters are set out in the documents and supporting papers filed in the European Commercial Register.

Title XI

Merger

SECTION ONE

General provisions

Article 269

[Cases of mergers and definitions]

1. An SE may merge with other European limited companies or with other limited companies formed under the laws of the Member States:

(a) by formation of a new SE in accordance with the provisions of this Statute concerning formation;

(b) by the acquisition of one or more limited companies in accordance with Section 2 of this Title;

(c) by the acquisition of the SE, in accordance with Section 3 of this Title, by a limited company formed under national law;

(d) by the formation of a new limited company under the law of one of the Member States, in accordance with Section 4 of this Title.

2. In the case of a merger by acquisition, one or more limited companies shall transfer the whole of their assets and liabilities to the acquiring company and shall be dissolved without being wound up. Shareholders of the transferring companies shall receive shares in the acquiring company.

In the case of a merger by formation of a new company, two or more limited companies shall transfer the whole of their assets and liabilities to a limited company formed by them and shall themselves be dissolved without being wound up. Their shareholders shall receive shares in the new company.

In either case, cash equilization payments may be made not exceeding 10% of the nominal value or, (in the absence of a nominal value), the book value of the shares transferred.

3. An SE in liquidation may be a party to a merger provided that the distribution of its assets amongst its shareholders has not begun. The same rule shall apply to a limited company formed under national law upon its acquisition by an SE.

Article 270

[Provisions applicable to an SE taking part in a merger]

1. Where an SE is a party to a merger of any kind, the following provisions of this Article shall apply.

2. The draft of the document of formation required for the merger where an SE is formed, or, in the case of mergers within the meaning of the following Sections, the draft of the document containing the terms of the merger shall be drawn up by the Board of Management of the SE. The draft shall be approved by the Supervisory Board.

3. The Board of Management shall appoint the auditor or auditors of the SE to examine the draft document of formation or the draft document contraining the terms of merger.

4. The merger shall be approved by a resolution of the General Meeting, which must satisfy the requirements for an alteration of the Statutes.

Article 270a

[References to provisions of Title II]

Where reference is made in the provisions of Sections 2 and 3 of the Title to the provisions of Title II, the term 'founder companies' shall mean merging companies, the term 'SE' shall mean an acquiring company, the term 'formation' shall mean a merger and the term 'document of constitution' shall mean the terms of merger.

SECTION TWO

Acquisition by an SE

Article 271

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed, and include:

(a) the name, legal form and the registered office of the merging companies;

(b) the ratio of the exchange of shares and the amount of any equalization payments in cash;

(c) details of the manner in which shares of the acquiring SE may be transferred and the time from which such shares will carry the right to participate in its profits;

(d) the time from which the business of the transferring companies will be deemed to be carried on on behalf of the acquiring SE;

(e) the rights to be conferred by the acquiring SE on shareholders of the transferring companies who are entitled to special rights and on the holders of securities other than shares, and measures proposed for the benefit of such persons;

(f) the experts' reports provided for in Article 271a;

(g) the reports of the governing bodies of the merging companies under Article 271b.

2. The following documents shall be annexed to the document containing the terms of the merger:

(a) the statutes of the merging companies in their current form;

(b) the balance sheets, interim balance sheets, profit and loss accounts and directors' reports of the merging companies, as required by Article 22(2)(c), (d) and (e).

Article 271a

[Examination of terms of merger by experts]

1. The governing body of each of the merging companies shall appoint one or more experts. The same persons may be appointed for only one company. The provisions of Article 15(2) and (3) shall be of corresponding application to such experts.

2. The experts shall examine the terms of the merger and prepare a report thereon for the shareholders. The provisions of Article 23(2) to (4) shall apply correspondingly.

Article 271b

[Reports by governing bodies of merging companies]

1. The governing bodies of the merging companies shall draw up a report explaining and justifying the terms of merger, in particular the ratio for the exchange of shares, from both the legal and economic aspects.

2. The report shall also deal with the legal, economic and social effects of the merger on the employees over a period of at least two years, and indicate the measures to be taken regarding them.

Article 271c

[Convening of General Meeting of merging companies]

1. The governing bodies of the merging companies shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of a merging company deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of each of the merging companies.

Article 271d

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees and of Article 23d shall apply correspondingly.

Article 271e

[Approval of merger and challenge of resolution of approval]

1. The terms of merger shall be approved by each of the merging companies in General Meeting. The provisions of Article 24 shall apply in respect of the resolutions of approval.

2. The resolutions of the General Meeting may be challenged or declared invalid only in the circumstances set out in Article 25.

Article 271f

[Notification of merger]

1. The merger shall be notified by the Board of Management of the acquiring SE to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The terms of merger and the annexes thereto, the Minutes of the General Meeting and a certificate that the minutes were duly filed shall be lodged with such notification. The governing bodies of the merging companies shall inform the court whether the resolution of the General Meeting has been challenged by proceedings in any court, and if so in which court.

Article 271g

[Examination by Court of Justice of the European Communities; publication and effect of merger]

1. The Court of Justice of the European Communities shall satisfy itself that the merger has been properly carried out. Article 17 shall apply correspondingly.

2. The registration of the merger shall include the name, registered office, and legal form of the merging companies, and the amount of the capital of the transferring company. It shall be published in the company journals.

3. As from the day when notice of the merger is published in the Official Journal of the European Communities, the transferring companies shall be dissolved. As from that date the SE shall assume the liabilities of the latter and the shareholders of the transferring companies shall become shareholders of the acquiring SE.

Article 271b

[Protection of creditors of transferring companies]

Creditors of the transferring companies may require the acquiring SE to give them security. Article 27 shall apply correspondingly.

Article 271i

[Shareholding of the SE in one of the transferring companies]

1. The provisions of this Section shall further apply where the acquiring SE holds all or part of the shares of one of the other merging companies. In this event, such shares shall lapse.

2. Where the acquiring SE holds all the shares of one of the merging companies, the same person may, notwithstanding the provisions of Article 271a, be appointed as the expert for both companies. In this event, the particulars to be furnished in accordance with Article 271(1)(b) and (c), shall not be required.

SECTION THREE

Acquisition of an SE by a company incorporated under national law

Article 272

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed.

2. The provisions of Article 271 to Article 271b shall apply in respect of the terms of merger. The term 'transferring company' in Article 271 shall mean the transferring SE and the term 'acquiring SE' shall mean an acquiring company incorporated under national law.

Article 272a

[Representation of employees on governing bodies of acquiring company]

If employees are not represented on the governing bodies of the acquiring company in a manner equivalent to that in which they are represented under the rules governing the transferring SE, the approval of the Supervisory Board required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the SE.

Article 272b

[Convening of General Meeting of SE]

1. The Board of Management of the SE shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the SE deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of the SE.

Article 272c

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees and of Article 23d, shall apply correspondingly with regard to the SE.

Article 272d

[Approval of merger and challenge of resolution of approval]

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the SE and in respect of any challenge to the resolution of approval.

Article 272e

[Notification of merger and examination by Court of Justice of the European Communities]

1. Upon the approval of the merger by the General Meeting of the SE and by the acquiring company, the resolutions of approval shall be notified by the Board of Management of the SE to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The following shall be annexed to the notification:

(a) the terms of merger and the annexes thereto;

(b) the statutes of the acquiring company;

(c) the minutes of the General Meeting of the SE and a certificate that such minutes were duly filed.

3. The European Court shall satisfy itself that the merger has been properly carried out.

4. If the merger complies with the provisions of this Statute and the statutes of the SE the court shall return the documents referred to in paragraph 2 to the SE duly authenticated to the effect that the resolution for the merger has been validly passed by the SE. Copies of the documents shall be filed with the European Commercial Register.

Article 272f

[Publication of merger]

1. The merger shall be registered in the European Commercial Register only when the relevant formalities required of the acquiring company by its national law have been fulfilled.

2. An application for registration of the merger may be made to the European Commercial Register by the Board of Management of the SE or by the governing body of the acquiring company. Such application shall be accompanied by the authentication of the European Court and by documents and other evidence indicationg that there is no obstacle to the merger under the law governing the acquiring company.

3. The registration of the merger in the European Commercial Register shall include the name, registered office, and objects of the acquiring company and a statement of the amount of its capital. The registration shall further include the names of the members of its Management and Supervisory Boards, and indicate the journals in which announcements concerning the company are published.

4. The registration together with the information referred to in paragraph 3, shall be published in the company journals of the SE.

Article 272g

[Effect of merger]

The SE shall cease to exist as from the day on which the registration of the merger is published in the Official Journal of the European Communities. As from that date the acquiring company shall assume the liabilities of the SE and the shareholders of the SE shall become shareholders of the acquiring company.

Article 272h

[Protection of creditors of SE]

Except in so far as more stringent provision is made by the law applicable to the acquiring company, creditors of the SE may require the acquiring company to give them security. Article 27 shall apply correspondingly.

Article 272i

[Shareholding of acquiring company in SE]

The provisions of this Section shall further apply where the acquiring company holds all or part of the shares of the SE.

2. Where the acquiring company holds all the shares of the SE the same person may, notwithstanding the provisions of Article 271a, be appointed as the expert for both companies. In this event the particulars to be furnished in accordance with Article 271(1)(b) and (c) shall not be required.

SECTION FOUR

Merger by formation of a new limited liability company under national law

Article 273

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the draft terms of merger, which shall be set out in a notarial deed.

2. The terms of merger shall include the name, legal form and registered office of the merging companies and of the new company, and the particulars and reports referred to in Article 22(1)(c) to (g).

The provisions of Articles 22, 22a(2) and (3), 23 and 23a shall be of corresponding application.

The term 'founder companies' shall mean the merging companies, the term 'SE' shall mean the new company, and the term 'document of formation' shall mean the terms of merger.

3. The terms of merger or the statutes of the new company shall include the name of each member of the governing bodies of the new company whom it falls under the law of the State in which the registered office of the company is situated, within the competence of either the General Meeting or of the merging companies to appoint.

4. Article 15 shall apply to the auditors.

Article 273a

[Representation of employees on governing bodies of new company]

If employers are not represented on the governing bodies of the new company in a manner equivalent to that in which they are represented under the rules governing the transferring SE, the approval of the Supervisory Board for the merger required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the SE.

Article 273b

[Convening of General Meeting of SE]

1. The Board of Management of the SE shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the SE deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of the SE.

Article 273c

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees, and of Article 23d, shall apply correspondingly with regard to the SE.

Article 273d

[Approval of merger and challenge of resolution of approval]

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the SE and in respect of any challenge to the resolution for approval.

Article 273e

[Formation of new company]

The formation of the new company and the publication thereof shall be effected in accordance with the provisions of the law of the State in which the registered office of the new company is situate governing the formation of companies in consequence of a merger or, in the absence of such provisions, in accordance with the law of the said State on the formation of companies.

Article 273f

[Examination of merger by Court of Justice of the European Communities and publication]

1. The provisions of Articles 272e and 272f shall apply with regard to the examination of the regularity of the merger resolution passed by the SE, to the registration of the merger in the European Commercial Register and to publication of the merger in the company journals of the SE.

The term 'acquiring company' shall mean the new company.

2. The registration of the merger shall state the date when the new company acquired legal personality.

Article 273g

[Expiry of SE]

The SE shall cease to exist from the day on which the new company acquires legal personality. As from that date the new company shall assume the liabilities of the SE and the shareholders of the SE shall become shareholders of the new company.

Article 273h

[Protection of creditors of SE]

Except in so far as more stringent provision is made by the law applicable to the new company, creditors of the SE may require the new company to give them security. Article 27 shall apply correspondingly.

Article 273i

[Shareholding of one of the merging companies in one of the other merging companies]

1. The provisions of this Section shall further apply where one of the merging companies holds all or part of the shares of the SE.

2. Where one of the merging companies holds all the shares of one of the other merging

companies the same person may, notwithstanding the provisions of Article 15(1), be appointed as an auditor for both companies.

Article 274

(deleted)

Title XII

Taxation

SECTION ONE

Formation

Article 275

1. Where a European holding company within the meaning of Articles 2 and 3 is formed by companies limited by shares incorporated under the law of one of the Member States or by SE's allotment to the shareholders of those companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any tax liability.

2. Where such shares form part of the assets of an undertaking, the Member States may waive this rule if the shares in the European holding company are not shown in the balance sheet for tax purposes of that undertaking at the same value at which the shares in the companies limited by shares or in the SE's were shown.

SECTION TWO

Tax domicile

Article 276

[Determination of tax domicile]

1. For purposes of taxation, the SE shall be treated as resident in the Member State in which the centre of its effective management is located.

2. Action to remove any difficulties or doubts which arise in connection with the application of paragraph 1 shall be taken by Member States if a competent authority in a Member State shall consider it necessary or if the SE shall request it to do so.

3. The competent authorities in Member States may communicate with each other direct with a view to reaching an agreement for purposes of the preceding paragraph. The SE interested in or affected by such action, or its representative, shall at its request be allowed to present its case.

4. In default of agreement in pursuance of paragraphs 2 and 3, each State concerned may refer the matter to the Court of Justice, whose decision shall be final. The SE shall be entitled to be heard.

5. For so long as the centre of effective management shall not definitively have been determined by such actions as aforesaid, the liability of the SE for payment of tax shall at its request be suspended.

Article 277

[Transfer of tax residence]

Where an SE, which for purposes of taxation has been resident in a Member State for not less than five years, transfers its effective management to another Member State, the State in which the centre of effective management was located prior to the transfer:

(a) shall not impose any charge to tax on any increase in value of the assets of the SE, i.e. on the amount of the difference between the real value of such assets and their value as shown in the balance sheet of the SE for tax purposes, to the extent that such assets are from an accounting point of view attributed at the same value to a permanent establishment of the SE in that State and contribute towards the taxable income of the establishment concerned;

(b) shall authorize any such permanent establishment as is referred to in (a) above to take over and continue free from liability to tax under general law any provisions and reserves created by the SE in that State and which are exempt in whole or in part from liability to tax;

(c) shall permit such permanent establishment to take over and set off, in accordance with general law, losses incurred by the SE which have not yet been set off for tax purposes in that State;

(d) shall from the date of transfer relinquish all right to impose any charge to tax in respect of the activities of the SE carried on outside its territory, in so far as for tax purposes, the SE includes such activities with those that it carries on in the State to which it transfers its centre of effective management. Where they are so included, paragraphs (b) and (c) above shall not apply to the extent that the provisions, reserves or losses therein referred to relate to activities carried on outside the territory of the State in which the centre of effective management was located prior to the transfer.

SECTION THREE

Permanent establishments and subsidiaries

Article 278

[Principles regarding the taxation of permanent establishments in Member States]

1. Where an SE whose domicile for tax purposes is in a Member State has a permanent establishment in another Member State, only the latter Member State shall have the right to charge to tax the profits of that establishment.

2. If during any tax period the overall result of the operations of an SE's permanent establishment in that State shows a loss, that loss shall be deductible from the taxable profits of the SE in the State in which it is resident for tax purposes.

3. Subsequent profits made by those permanent establishments shall constitute taxable income of the SE in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction under paragraph 2 above.

4. The amount of the loss deductible under paragraph 2 above and the amount of profits chargeable to tax under paragraph 3 above shall be determined in accordance with the law of the State in which the permanent establishments are located.

Article 279

[Tax procedure]

The tax treatment of a permanent establishment which an SE resident for tax purposes in one Member State maintains in another Member State shall not result in a greater charge to tax for that permanent establishment than would arise in the case of a company which carries on a business of the same nature and is resident for tax purposes in that other State.

Article 280

[Term 'permanent establishment']

1. The term 'permanent establishment' means a fixed place of business in which the business of an SE is wholly or partly carried on.

2. The term 'permanent establishment' shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, quarry or other place of extraction of natural resources;

(*g*) a building site or construction or assembly project which exists for more than twelve months.

3. Permanent establishments shall not be deemed to include facilities and maintenance meeting the conditions listed in sub-paragraphs (a) to (e) below whether these conditions are fulfilled singly or severally:

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to a company;

(*b*) the maintenance of a stock of goods or merchandise belonging to a company solely for the purpose of storage, display or delivery;

(*c*) the maintenance of a stock of goods or merchandise belonging to a company solely for the purposes of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for a company;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for a company.

4. A person acting in one Member State on behalf of an SE of another Member State, other than an agent of an independant status to whom paragraph 5 applies, shall be deemed to be a 'permanent establishment' in the first-mentioned State if he has and habitually exercises in that state an authority to conclude contracts in the name of the SE, unless his activities are limited to the purchase of goods or merchandise for the SE.

5. An SE of one Member State shall not be deemed to have a permanent establishment in another Member State merely because it carries on business in the other Member State through a broker, general commissions agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.

6. The fact that an SE of one Member State controls or is controlled by a company that is subject to the law of another Member State or which carries on business in the other Member State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 281

[Taxable subsidiaries]

1. Where an SE holds not less than 50% of the capital of another company liable to a tax on profits and whose operations in any tax period result in a loss, that loss shall be deductible, in proportion to the holding, from the profits chargeable to tax of the SE in the State in which the SE is resident for tax purposes.

2. A deduction made pursuant to paragraph 1 above shall be final if, under the law applicable to the company whose capital is held as aforesaid, the loss referred to in the said paragraph cannot be carried forward to other tax periods. Where this is not the case, the subsequent profits of that company shall constitute taxable income of the SE in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction and *pro rata* to the capital held at the time those profits were earned.

3. Where the holding falls below 50%, any loss deducted from the profits of the SE under paragraph 1 above during the preceeding five tax periods shall, notwithstanding the provisions of paragraph 2, be added back to the taxable profits of that SE.

4. Where such holding as is referred to in paragraph 1 above is in the capital of a company resident in a Member State, the amount of the loss deductible under paragraph 1 above and the amount of the subsequent profits taxable under paragraph 2 above shall be determined in accordance with the law of that Member State.

Title XIII

Offences

Article 282

1. The Member States shall introduce into their law appropriate provisions for creating the offences set out in Annex IV.

2. Provisions of national law applicable to breach of regulations relating to companies shall not apply to breach of any of the provisions of this Statute.

Title XIV

Final provisions

Article 283

The Member States shall implement the requirements of Article 282 within twelve months of the making of this regulation.

Article 284

This regulation shall be binding in its entirety and directly applicable in each Member State.

It shall enter into force twelve months after publication in the Official Journal of the European Communities.

Annex I

National employees' representative bodies pursuant to Article 102(1) of this Regulation

(1) at establishment level

Belgium: The 'ondernemingsraden' or 'conseils d'entreprise', established under the Act on the organization of the economy, of 20 September 1948

Denmark: The 'samarbejdsudvalg' established under the Agreement on cooperation and cooperation committees, concluded between the Danish Employers' Confederation and the Danish Federation of Trade Unions on 2 October 1970

Federal Republic of Germany: The 'Betriebsräte' established under the Works Constitution Act of 15 January 1972

France: The 'comités d'entreprise' established pursuant to the Decree of 22 February 1945

Ireland:[1]

Italy: The 'rappresentanze dei lavoratori' within the meaning of Act No 300 of 30 May 1970, i.e. the 'commissioni interne d'azienda' established pursuant to the Wages Agreement between Employers and the Employee organizations of 18 April 1966, or the 'consigli di fabbrica'

Luxembourg: The 'délégations ouvrières principales' established under the Grand-Ducal Decree of 30 October 1958 as amended by the Act of 20 November 1962, and the 'délégations d'employés' established under the Act of 20 April 1962

Netherlands: The 'ondernemingsraden' established under the Works Councils Act of 28 January 1971

United Kingdom:[1]

(2) at undertaking level

Belgium:[2]

Denmark:[2]

Federal Republic of Germany: The 'Gesamtbetriebsräte' established under the Works Constitution Act of 15 January 1972

France: The 'comités centraux d'entreprise' under the Decree of 22 February 1945

Ireland:[1]

Italy: The 'rappresentanze dei lavoratori' within the meaning of Act No 300 of 30 May 1970, in so far as they exist at undertaking level

Luxembourg: The The 'comités mixtes d'entreprise' under the Act instituting joint committees in private sector undertakings and establishing employee representation in limited liability companies, of 6 May 1974

Netherlands: The 'centrale ondernemingsraden' under the Works Councils Act of 28 January 1971

United Kingdom:[1]

[1] In neither Ireland nor the United Kingdom does institutional representation of employees on a statutory or negotiated basis exist as yet.
[2] In neither Belgium nor Denmark does statutory representation of employees exist as yet at undertakings level.

Annex II

Rules for the election of members of the European Works Council

SECTION I

General provisions

Article 1

Employees of the SE who have reached the age of 16 years on the date of the election and have been employed in or have carried out their principal duties in an establishment of the SE for at least four months shall be entitled to vote.

Article 2

1. All persons entitled to vote in an establishment who on the date of the election:

— have reached the age of 18 years,

— have been employed for a total of more than six months in the establishment of the SE or one of its founder companies

shall be eligible for election as representatives of the establishment.

2. Persons debarred from public office by judicial decision under the law of the Member States shall not be eligible.

Article 3

1. Representatives shall be elected to the European Works Council by secret direct ballot.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 100 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. The number of candidates on a list shall not exceed twice the number of seats for employees' representatives on the European Works Council. An alternate shall be named for each candidate. No candidate or alternate shall appear on more than one list of candidates at the same time.

Article 4

1. Where only one representative is to be elected to the European Works Council, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, the seat shall be allocated by lot.

Article 5

1. Where more than one representative is to be elected to the European Works Council and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.

2. Each person entitled to vote may vote for one list of candidates. In addition, he may cast a preference vote for a candidate whose name appears on the list for which he has voted.

3. If an elector votes for a candidate, his vote shall count as a vote for the list on which the candidate appears and as a preference vote for the candidate concerned.

Article 6

1. The seats on the European Works Council which are to be attributed to the lists of candidates in proportion to the numbers of votes cast for the latter shall be allocated as follows. The numbers of valid votes cast for each list shall be successively divided by one, two, three, four, and so on, until the number of quotients computed for each list corresponds to the number of seats for allocation. The number of seats allocated to each list shall be equal to the number of qualifying quotients it obtains when the quotients are taken in descending order.

2. Where more than one list has the last quotient to qualify for a seat, the seat shall be allocated to the list which has so far received none. If all the lists have already received a seat, the last seat shall be allocated by lot.

3. The seats allocated to a list shall be filled by the candidates nominated therein in the order in which they appear on that list, unless the number of preference votes cast for the individual candidates results in a different sequence.

4. If a list does not contain enough candidates to fill all the seats allocated to it, the remaining seats shall be allocated to the other lists on the basis of the number of qualifying quotients obtained pursuant to paragraph 1.

Article 7

Where only one list of candidates is submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes. Each elector has one vote. In the event of a tie, the decision shall be taken by lot.

Article 8

1. Votes shall be cast on ballot papers.

2. Ballot papers not marked in accordance with these election rules shall be null and void.

SECTION II

Preparation and conduct of elections

(a) Composition of electoral commissions

Article 9

1. No later than ten days after the formation of the SE or after the conditions set out in Article 100 of this statute for the formation of a European Works Council have been met, the Board of Management of the SE shall, for the purposes of the election of the European Works Council, publish in each installation of the SE in which staff are employed a list of all the establishments in which representatives are to be elected to the European Works Council. Where a European Works Council has already been formed, a list fulfilling the same requirements shall be published at least 100 days before the expiry of the Council's term of office.

2. This list shall be decisive in regard to the composition of the electoral commissions and their areas of responsibility, unless its completeness or accuracy is contested within 15 days pursuant to Article 10. The Board of Management shall draw attention to this provision in the list.

3. If the Board of Management fails to publish the list, electoral commissions may nevertheless be formed pursuant to Article 11 of this annex in

order to conduct the elections. The Board of Management shall have eight days from receipt of the norification referred to in Article 13(4) of this annex in which to contest the formation of electoral commissions or their proposed areas of responsibility, pursuant to Article 10.

Article 10

1. The court within whose jurisdiction the establishment is situate shall rule on any contestation of the list referred to in Article 9.

2. Application for such a ruling may be made by:

(a) the Board of Management of the SE;

(b) not less than three persons employed in an establishment of the SE or a union with members employed therein.

3. Contestation of a list or decision shall not have suspensive effect.

4. If the court rules that the conditions for the proper conduct of an election which has already taken place were not fulfilled, the election shall be null and void. If the election has not yet taken place, it shall be held in those establishments in respect of which a court decision has established that the necessary conditions are met.

Article 11

1. An electoral commission shall be responsible for arranging and conducting the election.

2. An electoral commission shall be set up in every establishment which is to elect representatives to the European Works Council, no later than thirty days after the conditions set out in Article 100 of this statute have been met. Where a European Works Council has already been elected, the electoral commissions shall be formed at least 75 days before the expiry of its term of office.

3. The electoral commission shall be appointed by the bodies representing the employees in the establishments, referred to in Annex I to this Statute.

In Member States in which no such body exists, the electoral commission shall be appointed by the recognized employees' representatives in the establishment, in agreement with the Board of Management of the SE. In the absence of any representative body referred to in Annex I of this Statute or any recognized employees' representatives in the establishment, the Board of Management of the SE shall in good time convene a staff meeting to elect the members of the electoral commission.

4. The electoral commission shall have three members in establishments with fewer than 1 000 employees, five members in those with fewer than 5 000 employees and seven members in those with 5 000 or more employees.

5. Members of the electoral commission must satisfy the conditions for membership of the European Works Council laid down in Article 2. They shall not stand for election to the European Works Council. From their appointment until 30 days after the election results have been announced, they shall enjoy the protection in the matter of dismissal afforded by Article 112 and shall be covered by the provisions of Article 113 of this Statute.

Article 12

1. If, within the period specified in Article 11(2), an electoral commission has not been formed in an establishment which is to elect representatives to the European Works Council, the court within whose jurisdiction the establishment is situate may, upon application, take the necessary action for its formation.

The court may dismiss members of an electoral commission for breach of their obligations and, in urgent cases, appoint new members.

The court may also appoint persons not employed by the SE to serve on an electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishment, by three persons entitled to vote or by the Board of Management of the SE. The court shall hear the Board of Management of the SE and the trade unions represented in the establishment before reaching its decision.

Article 13

1. The members of the electoral commission shall appoint a chairman from their midst. If no chairman is appointed, the oldest member shall take the chair.

2. The chairman shall convene the electoral commission on his own initiative or at the request of one of its members and shall preside over its meetings.

3. Decisions of the electoral commission shall be taken by majority vote of the members present. Its acts shall be valid if all its members have been convened and more than half are present.

4. The electoral commission shall immediately notify the Board of Management of the SE and the chairman of the European Works Council, if one has already been set up, of its formation and membership.

(b) Preparation of elections

Article 14

1. The electoral commission shall fix, in agreement with the Board of Management, the date and duration of the election, which shall be held during the establishment's normal working hours, and the place within the establishment where polling shall take place. The election shall take place within 75 days of the formation of the SE or of the date on which the conditions of Article 100 are met. Where a European Works Council has already been elected, the new election shall take place at least thirty days before the expiry of its term of office.

2. The electoral commission shall, in accordance with the provisions of this Statute, make arrangements for conducting the election and shall announce the number of representatives to be elected to the European Works Council from the establishment. Employees entitled to vote who are absent on the day of the election shall be granted a postal vote under arrangements to be established by the electoral commission.

3. At least 30 days before the election, the electoral commission shall publish an election notice stating the date and place of the election. This notice shall include the following information:

(a) the names of the chairman and other members of the electoral commission;

(b) the address in the establishment to which communications to the commission should be sent;

(c) the number of representatives which the establishment is to elect to the European Works Council;

(d) the place at which the electoral roll referred to in Article 15 will be displayed and the period during which it may be inspected;

(e) the closing date for the submission of lists of candidates, pursuant to Article 16.

4. The election notice shall also set out in full the provisions of this Statute which are applicable to the election and the rules for conducting the poll laid down by the electoral commission, particularly the arrangements concerning postal votes

5. The electoral commission shall take steps to enable employees not familiar with the language or languages in which the election notice appears to acquaint themselves with its contents.

Article 15

1. The electoral commission shall draw up an electoral roll and display it in the establishment together with the election notice until the date of the election, so that it can be seen by persons entitled to vote. The Board of Management of the SE shall make available the documents required for drawing up the electoral roll.

2. Any objections concerning the accuracy or completeness of the roll shall be lodged with the electoral commission within ten days of its display. The electoral commission shall rule on such objections within five days. If the electoral commission fails to make a ruling within this period, the objection shall be deemed to be overruled.

If the electoral commission does not grant the objection, an appeal may be made within five days to the court within whose jurisdiction the establishment is situate. The court shall give a final ruling within three days.

An appeal to the court shall not have the effect of suspending the election proceedings.

3. Only persons registered on the electoral roll at least one day before the election shall be entitled to vote.

Article 16

1. The lists of candidates shall be submitted to the electoral commission within ten days of the publication of the election notice. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.

2. The electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the trade unions or persons who have submitted lists of candidates to amend them so that they conform to the rules.

3. If no lists of candidates are received within the period stipulated in paragraph 1, the electoral commission shall immediately announce the fact in the same manner as that followed in announcing the election and shall call for the submission of lists of candidates within a stipulated period of at least five days.

4. A notice showing the lists of candidates which comply with the rules, in the order in which they were received, shall be put on display at least ten days before the election. Any objections to the lists on legal grounds shall be lodged with the electoral commission within three days of their publication. The right to lodge objections shall be mentioned in the notice.

5. At least three days before the election, the electoral commission shall notify the electors of the lists finally approved and of the manner in which they may exercise their voting rights. Article 14(5) of this annex shall apply.

(c) Conduct of elections

Article 17

1. The electoral commission may appoint election officials, under its own responsibility, to assist in conducting the election.

2. Throughout the period fixed for the election at least one member of the electoral commission shall be in constant attendance at the polling station and, with the aid of the electoral roll, ensure that voting is properly conducted.

3. The electoral commission shall be responsible for counting votes and allocating seats, and shall notify candidates, the Board of Management of the SE and the chairman of the European Works Council, if it has already been set up, of the results of the election. It shall also announce the results to the electors.

4. Each trade union and group of employees who have submitted lists of candidates may appoint up to three observers to be present during the election procedures and the counting of the votes.

Article 18

1. All decisions of the electoral commission, the result of the ballot and the allocation of seats shall be recorded in an election report signed by the chairman of the electoral commission.

2. The electoral commission shall answer any objections immediately in writing.

3. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period for contesting the validity of the election.

4. A copy of the election report shall be forwarded to the Board of Management of the SE or, if a European Works Council already exists, to its chairman. The report shall be handed over to the chairman of the newly elected European Works Council.

Article 19

1. The court within whose jurisdiction the establishment is situate may, upon application or at its own initiative, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court pursuant to paragraph 1 may be made by the electoral commission, a trade union represented in the establishment, a group of employees entitled to submit lists of candidates under Article 3, or the Board of Management of the SE.

3. The period originally set for the election shall remain valid for the purposes of determining employees' voting rights and the eligibility of candidates.

SECTION III

Contestation of validity of elections

Article 20

1. The validity of the election of representatives to the European Works Council may be contested in the court within whose jurisdiction the establishment is situate if the election regulations have been infringed, altered or influenced the results of the election.

2. The validity of the election may be contested by a trade union represented in the establishment, by the Board of Management of the SE, by one tenth of the persons entitled to vote in the establishment or 100 such persons.

3. Any such contestation must be made within 15 days of the announcement of the results.

4. The elected members of the European Works Council shall remain in office until and unless the court declares the election null and void.

Annex III

Rules for the election of employees' representatives to the Supervisory Board

SECTION I

General provisions

Article 1

1. The employees' representatives on the Supervisory Board of the SE shall be elected by electoral delegates where an SE and its dependent group undertakings situated within the Member States comprise more than one establishment.

2. In each establishment of the SE and its dependent group undertakings situated within the Member States the employees entitled to vote shall elect two electoral delegates. Where the number of employees entitled to vote in an establishment exceeds 100, one further delegate shall be elected for each 100 employees or fraction thereof.

3. Where an SE comprises only one establishment, the employees' representatives on the Supervisory Board shall be elected directly by the employees entitled to vote in that establishment.

Article 2

Employees of the SE and its dependent group undertakings having their registered offices within the Member States who have reached the age of 16 years on the date of the election and have been employed in or assigned to the establishment concerned for at least four months shall be entitled to vote pursuant to Article 1(2) and (3).

SECTION II

Election of employees' representatives by electoral delegates

(a) Election of delegates

Article 3

1. The delegates charged with electing the employees' representatives to the Supervisory Board of the SE shall be elected in the establishments of the SE and its dependent group undertakings situated in the Member States by secret direct ballot in accordance with the provisions of Articles 3, 4, 5, 6, 7 and 8 of Annex II to this Statute.

2. They must satisfy the conditions of eligibility laid down in Article 2 of the abovementioned annex.

3. Electoral delegates and their alternates shall enjoy the protection in the matter of dismissal afforded by Article 112 of this Statute until the conclusion of the procedure for the election of employees' representatives to the Supervisory Board of the SE. The provisions of Article 113 shall apply *mutatis mutandis*.

Article 4

1. No later than ten days after the formation of the SE or, if employees' representatives have already been elected to the Supervisory Board of the SE, at least 100 days before the expiry of their term of office, the Board of Management shall, for the purposes of the election of delegates charged with the election of employees' representatives to the Supervisory Board of the SE, publish in each installation of the SE a list of all the SE establishments for which delegates are to be elected.

2. The Board of Management shall publish a list of all undertakings controlled by the SE in whose establishments delegates charged with the election of employees' representatives to the Supervisory Board are to be elected.

3. The management bodies of group undertakings shall compile the list referred to in paragraph 1 for their establishments and shall publish it by the date fixed in paragraph 1. For this purpose the Board of Management of the SE shall notify the management bodies of its dependent group undertakings of the forthcoming election at least seven days before that date.

4. Articles 9(2) and (3) and 10 of Annex II to this Statute shall apply to the lists referred to in paragraphs 1 and 3.

5. Where there is disagreement as to whether an undertaking is controlled by an SE, the undertaking in question shall take part in elections to the Supervisory Board of the SE only after the Court of Justice of the European Communities has ruled according to Article 225 that it is a member of the group within the meaning of this Statute.

Article 5

1. Electoral commissions shall be set up in every establishment of the SE and its dependent group undertakings no later than 30 days after the formation of the SE, to arrange and conduct the election of electoral delegates. Where employees' representatives have already been elected to the Supervisory Board of the SE, an electoral commission shall be formed no later than 75 days before the expiry of their term of office.

2. The electoral commission shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute.

In the case of dependent group undertakings, the management body shall take the place of the Board of Management of the SE, provided that the relevant provisions so permit.

Articles 12 and 13 of Annex II shall apply *mutatis mutandis* to the electoral commissions.

Article 6

1. The electoral commissions shall fix, in agreement with the Board of Management of the SE or the management bodies of its dependent group undertakings, the date and duration of the elections to be held in their establishments. Elections shall take place within 75 days of the formation of the SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, at least 30 days before the expiry of their term of office.

2. Articles 14, 15, 16, 17 and 18 of Annex II to this Statute shall also apply to the arrangement and conduct of these elections.

3. Notwithstanding Article 18(4) of Annex II, the report shall be forwarded to the central electoral commission referred to in Article 14 below after the election results have been announced.

(b) Election of employees' representatives

Article 7

1. The electoral delegates shall elect employees' representatives to the Supervisory Board of the SE jointly, by means of a secret ballot. They shall exercise their voting rights freely and shall not be bound by any instructions.

2. Lists of candidates for election as employees' representatives may be submitted by the European Works Council, by trade unions represented in the establishments of the SE, by one

twentieth of the electoral delegates or by at least one tenth of the employees of the SE who are entitled to vote.

3. The Group Works Council, trade unions represented in the establishments of dependent group undertakings having their registered offices within the Member States, or at least one tenth of the employees of a group undertaking who are entitled to vote, may submit lists of candidates for election to the Supervisory Board of an SE which is the controlling company of a group.

4. Lists of candidates submitted by employees or electoral delegates shall be signed by all persons supporting them. No person shall sign more than one list of candidates.

Article 8

1. The number of candidates on each list shall not exceed twice the number of seats for employees' representatives on the Supervisory Board. An alternate shall be named for each candidate.

2. The list of candidates may include a number of persons not employed in an establishment of the SE not exceeding twice the number of employees' representatives not belonging to the SE permitted under Article 137(2). Such candidates shall be specially indicated on the lists.

3. The name of a candidate or alternate shall not appear on more than one list of candidates at the same time.

Article 9

1. Where only one employees' representative is to be elected to the Supervisory Board, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, there shall be a second ballot between these candidates. If no candidate receives a majority in the second ballot, the seat shall be allocated by lot.

Article 10

1. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.

2. Each electoral delegate participating in the election may vote for one list only.

3. In addition, each delegate may cast a preference vote for a candidate whose name appears on the list that he has chosen.

4. If an elector votes for a candidate, his vote shall count as a vote for the list on which the said candidate appears and as a preference vote for the candidate concerned.

Article 11

1. Where an election is subject to the principle of proportional representation, the seats on the Supervisory Board shall be allocated to the lists of candidates in accordance with the procedure laid down in Article 6(1) of Annex II to this Statute.

2. Where more than one list has the last quotient to qualify for a seat, Article 6(2) of Annex II shall apply.

3. The seats allocated to a list shall be filled by the candidates nominated therein in the order in which they appear on the list, unless the number of preference votes cast for the individual candidates results in a different sequence.

However, if a seat should be allotted to a candidate not employed in an establishment of the SE or of a group undertaking controlled by it, and if the seats already allocated to the individual lists of candidates have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, to the candidate so employed who is next upon the same list.

4. If a list does not contain enough candidates to fill all the seats allocated to it, the remaining seats shall be allocated to the other lists on the basis of the number of qualifiying quotients obtained pursuant to paragraph 1.

Article 12

1. Where only one list of candidates has been submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes.

However, if a seat should be allotted in this case to a candidate not employed in an establishment of the SE or of a group undertaking controlled by it, and if seats have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, upon the allotting of the seat, to the candidate who has obtained the highest number of votes.

2. In the event of a tie between one or more candidates when there are more candidates than seats available, the allocation of the seat or seats concerned shall be decided by a second ballot. If no majority is obtained at the second ballot, the seat or seats shall be allocated by lot.

Article 13

1. Votes shall be cast on ballot papers.

2. A ballot paper not marked in accordance with these election rules shall be null and void.

Article 14

1. A central electoral commission shall be responsible for arranging and conducting the election of employees' representatives to the Supervisory Board of the SE by the electoral college.

2. The central electoral commission shall consist of the chairmen of the electoral commissions responsible for conducting the election of electoral delegates in the three establishments with the largest number of employees. Where delegates are elected in only two establishments, the central electoral commission shall consist of the chairmen of the electoral commissions of these two establishments and the oldest member of the electoral commission of the establishment with the largest number of employees.

3. The central electoral commission shall hold its first meeting within 80 days of the formation of the SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, at least 25 days before the expiry of their term of office, at the place at which the SE has its effective seat of management. It may decide to hold its meeting elsewhere if this is more convenient for the conduct of the election.

4. In all other respects, Article 13 of Annex II to this Statute shall apply.

Article 15

1. If the central electoral commission is not formed within the period laid down in Article 14(3) above, the court of jurisdiction may, upon application, take the necessary action for its formation. The court may dismiss members of an electoral commission for breach of their obligations and, in urgent cases, appoint new members. It may appoint persons not employed by the SE to serve on the electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishments of the SE or its dependent undertakings, having their registered offices within the Member States, by three electoral delegates or by the Board of Management of the SE.

3. The court competent to take the action referred to in paragraph 1 shall be the court within whose jurisdiction the central electoral commission meets.

Article 16

1. In agreement with the Board of Management, the central electoral commission shall fix the date and place of the meeting of the electoral college. The electoral college shall meet to elect the employees' representatives to the Supervisory Board within 100 days of the formation of the SE. Where employees' representatives have already been elected to the Supervisory Board of the SE, the electoral college shall meet at least 10 days before expiry of their term of office.

2. The central electoral commission shall summon the electors in writing to the meeting of the electoral college at least 10 days before the date set for the meeting pursuant to paragraph 1.

The summons shall contain the following information:

(a) the date and place of the meeting of the electoral college determined in accordance with paragraph 1 above;

(b) the names of the chairman and other members of the central electoral commission and their addresses at their place of meeting;

(c) the number of employees' representatives to be elected and the number of representatives who, pursuant to Article 137(2), may be persons not employed by the SE or its controlled group undertaking.

A copy of the list of electoral delegates, drawn up in accordance with Article 17 below, shall also be attached to the summons.

3. The information specified in paragraphs 1 and 2 above, together with copies of the list of electoral delegates, shall at the same time be forwarded to the electoral commissions formed in the different establishments, which shall publish them in those establishments together with an invitation for the submission of lists of candidates. The said invitation shall contain the statutory provisions which apply to the submission of candidates. Article 14(5) of Annex II to this statute shall apply to the electoral commissions formed in the establishments.

Article 17

1. The central electoral commission shall compile a list of all electoral delegates and their alternates, giving their addresses in the establishments at which they were elected.

2. Any objection to this list on the grounds of inaccuracy or incompleteness shall be lodged with the central electoral commission no later than at the beginning of the meeting of the electoral college. The central electoral commission shall rule on the objection immediately.

3. Only persons whose names appear on the list of electoral delegates shall be entitled to vote at the meeting of the electoral college.

Article 18

1. Lists of candidates nominated by the electoral delegates shall be submitted to the central electoral commission by a deadline which the commission shall announce at the beginning of the meeting of the electoral college. The deadline shall allow at least three hours for the submission of lists of candidates. The delegates may, by a unanimous decision, agree to ignore this deadline.

2. Any other lists of candidates must reach the central electoral commission no later than the day before the meeting of the electoral college.

3. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.

4. A list of candidates not submitted by electoral delegates shall also state the name of the person authorized to submit it to the electoral college and, in particular, to alter it, combine it with other lists or withdraw it.

5. If a list of candidates does not name the person authorized to submit it to the electoral college, or if the person so named fails to attend the meeting of the electoral college, the said list shall be null and void, unless an electoral delegate undertakes to sponsor it.

6. The central electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the electoral delegates or the persons so authorized by the trade unions or persons who have submitted lists of candidates to amend them.

Article 19

1. The central electoral commission shall direct the proceedings of the meeting of the electoral college.

2. Acts of the electoral college shall be valid if all the electoral delegates have been summoned and half of them are present or represented by alternates.

3. After expiry of the deadline referred to in Article 18, the central electoral commission shall put the lists of candidates complying with the election rules to the vote and inform the delegates of the manner in which they may exercise their voting rights.

4. The central electoral commission shall make the necessary arrangements to ensure that the voting proceeds in accordance with the rules.

5. The electoral commission shall count the votes cast, allocate the seats for employees' representatives on the Supervisory Board of the SE and notify the electoral college, the candidates, the Supervisory Board, the Board of Management of the SE and the employees entitled to vote of the results of the election.

Article 20

1. All decisions of the central electoral commission, the result of the ballot, the allocation of seats and the proceedings of the electoral college shall be recorded in an election report signed by the chairman of the central electoral commission. The list of electoral delegates shall be attached to the report as an integral part thereof.

2. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period within which the validity of the election may be contested.

3. A copy of the election report shall be forwarded to the chairman of the Supervisory Board of the SE.

Article 21

1. The court of jurisdiction may, upon application, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court of jurisdiction pursuant to paragraph 1 may be made by the central electoral commission, a trade union or group of electoral delegates or of employees entitled to submit lists of candidates under Article 7, or the Board of Management of the SE.

3. The court of jurisdiction shall be the court within whose jurisdiction the central electoral commission meets.

(c) Contestation of validity of elections

Article 22

1. The validity of an election of employees' representatives to the Supervisory Board of the SE may be contested in the court within whose jurisdiction the electoral commission meets if the election rules have been infringed and if such infringement may have altered or influenced the results of the election.

2. The validity of an election may be contested by trade unions, groups of electoral delegates or of employees entitled to submit lists of candidates, or the Board of Management of the SE.

3. Any such contestation shall be made within 15 days of the announcement of the election results.

4. The elected employees' representatives shall remain in office unless and until the court pronounces the election null and void.

SECTION III

Direct election of employees' representatives

Article 23

1. Where a direct election is held pursuant to Article 1(3) of this Annex, the employees' representatives on the Supervisory Board of the SE shall be elected in their respective establishments by secret ballot of all employees entitled to vote.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 100 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. Lists of candidates shall comply with the provisions of Article 8 of this Annex.

Article 24

1. Where only one employees' representative is to be elected to the Supervisory Board, Article 9 of this annex shall apply.

2. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates has been submitted, Articles 10 and 11 shall apply.

3. Where only one list of candidates is submitted for election, Article 12(1) and (2) shall apply. If two or more candidates receive the same number of votes and seats are not available for all candidates, the seat or seats in question shall be allocated by lot.

4. Article 13 shall apply to the voting procedure.

Article 25

1. No later than 30 days after the formation of the SE, an electoral commission shall be formed in the establishment in which employees' representatives are to be elected to the Supervisory Board of the SE, in order to arrange and conduct the election. Where employees' representatives have already been elected to the Supervisory Board of the SE, the electoral commission shall be formed at least 75 days before expiry of their term of office.

2. The electoral commission shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute. Articles 12 and 13 of Annex II shall apply *mutatis mutandis* to the electoral commission.

Article 26

1. In agreement with the Board of Management of the SE, the electoral commission shall fix the date and duration of the election to be held in its establishment. The election shall be held within 75 days of the formation of the SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, at least 30 days before expiry of their term of office.

2. In all other respects the arrangement and conduct of elections shall be governed by Articles 14, 15, 16, 17, 18 and 19 of Annex II to this Statute.

3. Contestation of the validity of elections shall be governed by Article 22 of the present Annex.

Annex IV

Penalties for infringements of the Statute

The following persons shall be liable to payment of fines or other penalty:

I. Any member, as such, of the Board of Management, of the Supervisory Board or of any other governing body of a founder company who wilfully makes any false statement in or omits material facts from the report on formation, or the annexes thereto, in respect of:

(a) the amount of the share capital or the nominal value and number of the shares;

(b) the valuation of capital subscribed in kind or the source of such capital;

(c) the expenses incurred in connection with formation;

(d) the privileges and benefits granted to persons who took part in the formation of the company.

II. Any member, as such, of the Board of Management or of the Supervisory Board of an SE who wilfully makes any false statement or omits material facts with a view to registration of an increase or reduction in the share capital of an SE.

III. Any person who wilfully issues any share before the nominal amount thereof has been fully paid up.

IV. Any person who, in order to exercise a right of vote at a General Meeting, wilfully makes use of shares of another person which he has obtained for that purpose by granting or promising special benefits or who, for that same purpose, transfers shares to another person in return for or in consideration of the promise of special benefits.

V. Any member of the Board of Management or of the Supervisory Board who wilfully makes any false statement in or omits material facts from the annual accounts, consolidated annual accounts, part-consolidated annual accounts or in the report, consolidated report or part-consolidated report.

VI. Any member of the Board of Management or of the Supervisory Board who, by deliberate act or omission, causes false or incomplete information to be used in the preparation of the auditor's report.

VII. Any auditor who, as such auditor, wilfully prepares a false or incomplete auditor's report.

VIII. Any person who wilfully fails to fulfil the obligations imposed upon him under Articles 46a or 82.

IX. Any person who wilfully fails to observe the obligation of secrecy laid upon him by the Statute.

X. Any person who wilfully obstructs or falsifies the election of employees' representatives to the Supervisory Board of the SE or of members of the European Works Council or of the Group Works Council and any person who, by causing or by threatening disadvantages or by granting or by promising benefits, influences such elections.

XI. Any person who unlawfully uses the term 'European Company' or the abbreviation 'SE' or any other term or abbreviation that might be confused with this term or abbreviation.

XII. Any person who, on behalf of the SE, issues written matter not conforming with the conditions laid down in Article 10 of the Statute.

Proposal for a Thirteenth Council Directive on company law concerning takeover and other general bids
(COM(88) 823 final)

Proposal for a

THIRTEENTH COUNCIL DIRECTIVE

on Company Law concerning takeover and other general bids

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 it is necessary to coordinate certain safeguards which Member States require of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty for the protection of members and others, in order to make such safeguards equivalent throughout the Community;

Whereas it is necessary to protect the interests of the shareholders of public companies limited by shares when these are the subject of a takeover or other general bid;

Whereas shareholders who are in the same position should be treated equally;

Whereas this equality of treatment requires that the obligation to make a bid is imposed on persons wishing to attain a certain level of participation in a company and in order to ensure the protection of minority shareholders and to avoid purely speculative partial bids, it is necessary to require that these persons make a bid for all the shares of that company;

Whereas each Member State should designate a supervisory authority or authorities to ensure that parties to a takeover or other general bid fulfil their obligations; and whereas it is necessary to determine which authority has territorial jurisdiction in the case of cross-frontier bids and to provide for the mutual recognition of offer documents within the Community; whereas the different authorities must cooperate with one another and their present or former officers and servants should be bound to preserve confidentiality;

Whereas to reduce the scope for insider dealing offerors should be required to announce their intention of launching a bid as soon as possible and to inform the supervisory authority and the offeree company's board of the precise terms of the bid before they are made public;

Whereas to avoid operations which frustrate the bid it is necessary to limit the powers of the board of directors of the offeree company to engage in operations of an exceptional nature;

Whereas to help ensure compliance with the obligations resulting from the Directive it should be compulsory for offerors to be represented by a person or credit institution licensed to deal on the financial markets;

Whereas the addressees of a takeover or other general bid should be properly informed of the terms of the bid by means of an offer document and, where the consideration offered includes securities, should be provided with certain additional information about the company issuing those securities;

Whereas the offeror should be required to bring the offer document to the attention of all addressees of the bid and where the offer document contains insufficient information to clarify the real intentions of the offeror, the supervisory authority should be able either to forbid the publication of the offer document or to make the offeror publish a revised document;

Whereas it is necessary to set a time-limit for takeover bids;

Whereas, in the interests of the offeree company and the addressees of the bid, it should be provided that once an offer document has been made public the bid may not be withdrawn except in certain specified circumstances;

Whereas the board of the offeree company should be required to report in writing to its shareholders its view of the bid, and whereas where the consideration offered in the bid includes securities for which at the time the bid is made no official stock exchange listing has been applied for it should also be required to obtain and make available to all addressees of the bid an additional report by an independent expert;

Whereas offerors are entitled to revise their bids; whereas limits should be placed on that right in order to maintain an orderly market in the shares and it should be ensured that the addressees of the bid are informed in time; whereas it is necessary that the offeror draw up and make public a fresh document setting out the amendments to the original bid and whereas addressees who have already accepted the bid should be entitled to accept the revised bid;

Whereas in order to ensure equal treatment of addressees of the bid, any acquisition by the offeror, or by certain persons associated with him, of shares which are the subject of the bid at a higher price than that laid down in the offer document or one of its revisions, must itself be considered as a revision;

Whereas to be able to perform their functions satisfactorily, supervisory authorities need to be able to find out at any time how many acceptances have been received to date and whereas, from the time the intention to make a bid is announced by the offeror, any dealing in the securities concerned must be made public by any person already having a significant shareholding;

Whereas the result of the bid must be made public and notified to the supervisory authority;

Whereas taking into account the social policy of the Community, it is necessary that representatives of the employees of the offeree company be informed with regard to the bid and that they should receive all the documents concerning that bid;

Whereas competing bids for the securities of a company are necessarily to the advantage of its shareholders; whereas all such bids should be subject to the same rules as the original bid and the original offeror should be entitled to withdraw his bid in such a case;

Whereas this Directive does not until subsequent coordination affect the capacity of Member States to forbid a takeover or other general bid where the offeror is either a national or a company from a third country, in particular where Community nationals and companies do not benefit from reciprocal treatment as regards the acquisition of shares by means of such a bid in a company governed by the law of that third country,

HAS ADOPTED THIS DIRECTIVE:

Article 1
(Scope)

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to takeover and other general bids addressed, on the same terms, to all holders of the securities, or the securities of a particular class or classes, of any of the following types of company:

- in Germany:
  die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien,

- in Belgium:
  la société anonyme/de naamloze vennootschap, la societé en commandite par actions/ de commanditaire vennootschap op aandelen,

- in Denmark:
  aktieselskaber, kommanditaktieselskaber,

- in Spain:
  la sociedad anonima, la sociedad en comandita por acciones,

- in France:
  la société anonyme, la société en commandite par actions,

- in Greece:
  Η ανώνυμη εταιρία, η ετερόρρυθμη κατά μετοχές εταιρία,

- in Ireland:
  the public company limited by shares,

- in Italy:
  la società per azioni, la società in accomandita per azioni,

- in Luxembourg:
  la société anonyme, la société en commandite par actions,

- in the Netherlands:
  de naamloze vennootschap,

- in Portugal:
  sociedade anonima, sociedade em comandita por accoes,

- in the United Kingdom:
  the public company limited by shares.

Article 2
(Definitions)

1. For the purposes of this Directive, "offeree company" shall mean a company whose securities are the subject of a takeover or other general bid (hereinafter referred to as "a bid").

2. For the purposes of this Directive, "offeror" shall mean any person or company including, where appropriate, the directors of the offeree company, who launches a bid in accordance with the obligation set out in Article 4 or on a voluntary basis.

3. For the purposes of this Directive, "securities" shall mean securities carrying voting rights in a company or which can be converted into securities carrying such rights.

4. For the purposes of this Directive, "parties to the bid" shall mean the offeror, the representative of the offeror within the meaning of Article 9, the directors of the offeror, if the latter is a company, the addressees of the bid and the directors of the offeree company.

5. For the purposes of this Directive, "persons acting in concert" shall mean persons who, pursuant to an agreement, cooperate with one another with the aim of acquiring the securities of a company.

Article 3
(Equal treatment)

Shareholders who are in the same position shall be treated equally.

Article 4
(Obligation to make a bid)

1. Any person aiming to acquire a number or percentage of securities, which, added to any existing holdings, gives him a percentage of the voting rights in a company which may not be fixed at more than 33 1/3%, shall be obliged to make a bid to acquire all the securities of that company.

2. To calculate the threshold referred to in paragraph 1, the following must be added to the voting rights held by the offeror:

(a) voting rights held by persons acting in their own name but on behalf of the offeror;

(b) where appropriate, voting rights held by companies belonging with the offeror to the same group of undertakings within the meaning of Article 1 of Council Directive 83/349/EEC[1];

(c) voting rights held by persons acting in concert with the offeror;

(d) where appropriate, voting rights held by directors of the offeror company.

3. The supervisory authority may grant exemptions to the rule laid down in paragraph 1, giving reasons for its decision and adopting all measures necessary to ensure equal treatment of all shareholders.

Article 5

(Exemptions on the basis of size of the offeree company)

Article 4 shall not apply:

(a) where the securities of the offeree company have not been admitted to official stock exchange listing or have not been the subject of a request for such admission at the moment when the bid is announced in accordance with Article 7, and

(b) where the offeree company, or, where appropriate, the group of undertakings within the meaning of Article 1 of Directive 83/349/EEC to which the company belongs, do not exceed, at the balance-sheet date, the amounts of two of the three criteria laid down in Article 27 of Council Directive 78/660/EEC[2].

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1 OJ No L 193 of 18.7.1983, p. 1

2 OJ No L 222 of 14.8.1978 p. 11

Article 6

(Supervisory authority)

1. Member States shall designate the authority or authorities which must discharge the functions specified in this Directive. The authorities thus designated may delegate all or part of their powers to other authorities or to associations or private bodies. Member States shall inform the Commission of these designations and of any delegation of powers and shall specify all divisions of functions that may be made.

2. The authorities and, where appropriate, the associations or private bodies referred to in paragraph 1 must have all the necessary powers to ensure that this Directive is put into effect and, in any case, either the power to forbid the publication of an offer document which is incomplete by reference to the requirements of this Directive or the power to oblige the offeror to correct an inadequate offer document and to make it public by the means set out in Article 11 (1).

3. The authority competent for supervising the drawing-up and publication of the offer document shall be that of the Member State in which the offeree company has its registered office. Where the bid is made in several Member States simultaneously, the offer document as prepared under the supervision of the national authority responsible shall be accepted in the other Member States, without their supervisory authorities having the right to require the inclusion of any additional particulars in the document.

4. After an offer document has been made public in accordance with Article 11 (1), the competent authorities of the Member States shall give each other any cooperation required for the performance of their duties and for this purpose shall supply each other with any information that may be necessary.

5. All present or former officers or servants of supervisory authorities shall be bound by the rules of professional secrecy. Information that has come to their knowledge in the course of performing their professional duties shall not be disclosed to any person or body not legally entitled to receive it.

6. This Directive shall not affect the legislation of Member States concerning the liability of competent authorities.

Article 7

(Procedure prior to publication of the offer document)

1. As soon as it decides to make a bid, the offeror shall make public its intention of doing so by one of the means provided for in Article 11 (1). It shall inform the competent supervisory authority accordingly.

2. The offeror shall then immediately draw up an offer document in accordance with Article 10 and make it public in accordance with Article 11 (1).

3. Before the offer document is made public, the offeror shall communicate it to the competent supervisory authority and to the board of the offeree company.

Article 8

(Restriction of the powers of the board of the offeree company)

After receiving the information referred to in Article 7 (1) and until the expiry of the period for accepting the bid, the board of the offeree company shall not, without the authorization of the general meeting of shareholders, decide:

(a) to issue securities carrying voting rights or which may be converted into such securities;

(b) to engage in transactions which do not have the character of current operations concluded under normal conditions unless the competent supervisory authority has authorized them, giving its reasons for such authorization.

Article 9

(Representative of the offeror)

The offeror shall be represented either by a qualified person authorized to deal on the Community financial markets or by a credit institution authorized within the Community.

Article 10

(Offer document)

1. The offeror shall draw up an offer document in respect of the bid stating at least:

(a) the type, name and registered office of the offeree company;

(b) the name and address of the offeror or, where the offeror is a company, the type, name and registered office of that company;

(c) the name and address or, where appropriate, name and registered office of the representative of the offeror referred to in Article 9,

(d) the securities or class or classes of securities for which the bid is made;

(e) the securities, or the securities of the relevant class or classes, already held by:

(aa) the offeror,
(bb) other persons for the account of the offeror,
(cc) companies belonging with the offeror to the same group of undertakings within the meaning of Article 1 of Directive 83/349/EEC,
(dd) persons acting in concert with the offeror,
(ee) where the offeror is a company, its directors,

and the voting rights attached to those securities and the date and the price at which they were acquired;

(f) where the offeror is a company, the securities, or the securities of a particular class or classes, of the offeror held by the offeree company, and the voting rights attached to them and the date and the price at which they were acquired;

(g) the consideration offered for each security and the basis of the valuation used in determining it and, in the case of a cash consideration, the guarantees provided by the offeror regarding payment of that consideration, and, where appropriate, a statement concerning any future indebtedness of the offeree company to finance the bid;

(h) where the consideration comprises securities, the date from which those securities will entitle their holders to a share in the profits and any special conditions affecting that entitlement;

(i) any condition authorized by the competent supervisory authority which the offeror places on the bid;

(j) the latest date on which the bid may be accepted;

(k) the steps to be taken by the addressees of the bid in order to signify their acceptance and to receive the consideration for the securities which they transfer to the offeror;

(l) the intentions of the offeror, explicitly expressed, regarding the continuation of the business of the offeree company, including the use of its assets, the composition of its board and its employees;

(m) any special advantages which the offeror intends to grant to the directors of the offeree company;

(n) all agreements concerning the exercise of the voting rights attached to the securities of the offeree company.

2. In addition, the offer document shall identify:

(a) any person for whose account the offeror is acting;

(b) any companies belonging with the offeror to the same group of undertakings within the meaning of Article 1 of Directive 83/349/EEC;

(c) any person acting in concert with the offeror.

3. Where the consideration offered includes newly-issued securities for which at the time of the bid an official stock exchange listing has been applied for, the offer document shall be accompanied by the listing particulars required by Council Directive 80/390/EEC.[1]

4. Where the consideration offered includes securities for which at the time of the bid no official stock exchange listing has been applied for, the offer document shall contain all the facts necessary to enable the addressees of the bid to form an informed judgment as to the assets and liabilities, financial position, record and prospects of the issuer.

Article 11

(Publication of the offer document)

1. The offer document and, where appropriate, the documents required by Article 10(3) or (4) shall be either:

(a) published in full in one or more national or mass-circulation newspapers and in the national gazette designated under Article 3(4) of Council Directive 68/151/EEC,[2] or

(b) made available to the addressees of the bid at addresses announced in notices in the newspapers and the gazette referred to at (a) or by equivalent means approved by the competent supervisory authority, or

(c) where all the securities comprised in the bid are registered, circulated to all addressees of the bid.

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1 OJ L 100, 17.4.1980, p. 1

2 OJ L 65, 14.3.1968, p. 8

2. The offer document and, where appropriate, the documents referred to in Article 10 (3) and (4) shall also be filed with the competent supervisory authority.

Article 12

(Period for acceptance)

1. The period for accepting the bid indicated in the offer document in accordance with Article 10 (1) (j) may not be less than four weeks or more than ten weeks from the date of publication of the document in accordance with Article 11 (1).

2. The period may not be modified without the authorization of the supervisory authority, giving its reasons, without prejudice to Article 20.

Article 13

(Withdrawal of bids)

1. Once a bid has been made public by the means provided for in Article 11 (1), it may be withdrawn only in the following circumstances:

(a) where there are competing bids and the offeror decides to withdraw his bid in accordance with Article 20 (4);

(b) in a bid in which new securities are offered in exchange for the securities bid for, where the approval of the general meeting of the offeror company is not obtained for the issue of the new securities;

(c) in a bid in which securities are offered in exchange for the securities bid for, where the securities fail to obtain an official stock exchange listing as the offeror intended;

(d) where the necessary judicial or administrative authorization is not obtained for the acquisition of the securities for which the bid is made, and in particular in the event of lack of authorization of the acquisition by the merger control authorities;

(e) where a condition of the bid announced in the offer document in accordance with Article 10 (1)(i) and approved by the competent supervisory authority is not fulfilled;

(f) in exceptional circumstances and with the authorization of the supervisory authority, giving reasons, where the bid cannot be put into effect for reasons beyond the control of the parties to the bid.

2. The withdrawal of the bid shall be made public by the means provided for in Article 11 (1) and communicated to the competent supervisory authority.

Article 14

(Report of board of offeree company)

1. The board of the offeree company shall draw up a detailed report giving its views on the bid and setting out the arguments for and against acceptance. The report shall state whether the board is in agreement with the offeror on the bid and specify any agreements on the exercise of the voting rights attached to the securities of the offeree company.

2. Where the consideration offered comprises securities for which at the time of the bid no official stock exchange listing has been applied for, the board's report shall be accompanied by the report of an expert independent of the parties to the bid appointed or approved by the competent supervisory authority. This report shall in all cases state whether, in the expert's opinion, the consideration offered is fair and reasonable and shall give the expert's views on the basis of valuation used to determine the consideration.

3. The reports shall, in good time before the expiry of the period for acceptance, be made public by the means provided for in Article 11 (1) and filed with the competent supervisory authority.

4. Where the board of the offeree company is in agreement with the offeror, the board's report, accompanied, where appropriate, by the expert's report as referred to in paragraph 2, may be attached to the offer document provided for in Article 10.

5. The provisions of this Article shall also apply to revisions of the bid and to competing bids.

Article 15
(Revision of bids)

1. At any time before the last week of the period for acceptance announced in accordance with Article 10 (1)(j), the offeror may revise the terms of the bid. Article 7 (1) shall apply as regards the public announcement of the offeror's intention to revise the bid.

2. Where a bid is revised, the previous period for acceptance shall be automatically extended by one week.

3. The offeror shall draw up a document setting out the amendments to the offer document and making it public by the means provided for in Article 11 (1).

4. Member States shall ensure that persons who have already accepted the previous bid by the offeror may accept the revised bid.

5. The periods provided for in paragraphs 1 and 2 may be modified with the authorization of the competent supervisory authority, which must set out the reasons on which it is based.

Article 16

(Automatic revision)

The acquisition by the offeror, by persons acting in concert with him or by persons acting in their own name but on behalf of the offeror, during the acceptance period, of securities in respect of which the bid is made at a price higher than that established in the offer document or one of its revisions, will itself be considered as a revision of the bid and have the effect of increasing the consideration offered to those who have accepted previously.

Article 17

(Provision of information to the supervisory authority)

1. Throughout the period for acceptance of the bid the offeror shall provide the competent supervisory authority at any time on request with information as to the number of acceptances received to date.

2. From the time a bid is publicly announced in accordance with Article 7 (1), the offeror or any holder of 1 % or more of the voting rights of the offeree company, of the offeror company if the offeror is a company, or of any other company whose securities are offered by way of consideration, shall declare to the competent supervisory authority all acquisitions of securities of the said companies by the offeror or the holder, persons acting in concert with them or persons acting in their own name but for their account, and the purchase price of such securities.

Article 18

(Publication of result of bid)

Once the period for acceptance has expired, the result of the bid shall made public by the means provided for in Article 11 (1) and shall be communicated to the competent supervisory authority by the offeror.

Article 19

(Information for representatives of employees of the target company)

The board of the offeree company shall communicate to its workers' representatives, as designated by national legislation or customary practice in Member States, the offer document and, where appropriate, the documents referred to in Article 10(3) and (4), as well as its own report as referred to in Article 14 and, if appropriate, the expert's report as referred to in Article 14(2).

Article 20

(Competing bids)

1. Where competing bids are made for the securities of the offeree company, this Directive shall apply to each such bid.

2. Competing bids shall be publicly announced in accordance with Article 7 (1). The offeror shall draw up an offer document in accordance with Article 10 and shall make it public by the means provided for in Article 11 (1) before the period for acceptance of the initial bid expires.

3. Except with the authorization of the competent supervisory authority, which must set out the reasons on which it is based, persons acting in concert with the offeror or acting in their own name but for the account of the offeror may not make a bid competing with the initial bid.

4. Where there are competing bids and the initial offeror does not withdraw its bid, the period for acceptance of the initial bid shall be extended automatically to the date of expiry of the period for acceptance of the competing bid. The extension shall be made public by the means provided for in Article 11(1) and communicated to the competent supervisory authority.

Article 21

(Contact Committee)

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) without prejudice to the provisions of Articles 169 and 170 of the Treaty, to facilitate the uniform application of this Directive through regular consultations on, in particular, practical problems arising in its implementation;

(b) to ensure concerted action upon the policies followed by the Member States in order to obtain reciprocal treatment for Community nationals and companies as regards the acquisition of securities of a company by means of a takeover bid;

(c) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The Chairman shall be a representative of the Commission. Secretarial services shall be provided by the Commission.

3. The Committee shall be convened by the Chairman either on his own initiative or at the request of one of its members.

Article 22
(Transposition of the Directive)

1. Member States shall adopt before ..... the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States shall fix the date of entry into force of these provisions in any case at the latest by .....

3. 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 23

(Addressees of the Directive)

This Directive is addressed to the Member States.

Done at Brussels

For the Council

European Communities — Commission

Harmonization of company law in the European Community
Measures adopted and proposed — Situation as at 1 January 1989

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