

COUNCIL DIRECTIVE

of 8 November 1990

amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives

(90/605/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament ⁽²⁾,

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

Whereas Directive 78/660/EEC ⁽⁴⁾, as last amended by Directive 90/604/EEC ⁽⁵⁾, applies to the annual accounts of public and private limited liability 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 Directive 83/349/EEC ⁽⁶⁾, as last amended by Directive 90/604/EEC, Member States need require only companies covered by Directive 78/660/EEC to draw up consolidated accounts;

Whereas, within the Community, there is a substantial and constantly growing number of partnerships and limited partnerships all of the fully liable members of which are constituted either as public or as private limited liability companies;

Whereas these fully liable members may also be companies which do not fall within the law of a Member State but which have a legal status comparable to that referred to in Directive 68/151/EEC ⁽⁷⁾;

Whereas it would run counter to the spirit and aims of those Directives to allow such partnerships and partnerships with limited liability not to be subject to Community rules;

Whereas the provisions covering the scope of the two Directives in question should therefore be explicitly supplemented;

Whereas it is of importance that the name, head office and legal status of any undertaking of which a limited liability company is a fully liable member should be indicated in the notes to the accounts of such member;

Whereas the obligation to draw up, publish and to have audited the accounts of partnerships and limited liability partnerships may also be imposed on the fully liable

member; whereas it should also be possible to include these companies in consolidated accounts, drawn up by such member or established at a higher level;

Whereas some of the partnerships covered by this Directive are not subject, in the Member State where they have their head office, to entry in a register, which makes it difficult to apply accounting obligations to them; whereas, in particular in these cases, special rules are necessary according to whether the fully liable members are undertakings which fall within the law of the same Member State, another Member State or a third country,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. the following subparagraphs are added to Article 1 (1):

'The coordination measures prescribed by this Directive shall also apply to the Member States' laws, regulations and administrative provisions 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 commandité simple/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 simple;

(g) in Ireland:

partnerships, limited partnerships, unlimited companies;

⁽¹⁾ OJ No C 144, 11. 6. 1986, p. 10.

⁽²⁾ OJ No C 125, 11. 5. 1987, p. 140.

⁽³⁾ OJ No C 328, 22. 12. 1986, p. 43.

⁽⁴⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁵⁾ See page 57 of this Official Journal.

⁽⁶⁾ OJ No L 193, 18. 7. 1983, p. 1.

⁽⁷⁾ OJ No L 65, 14. 3. 1968, p. 8.

- (h) in Italy :
la società in nome collettivo, la società in accoman-
dita semplice ;
- (i) in Luxembourg :
la société en nom collectif, la société en comman-
dite simple ;
- (j) in the Netherlands :
de vennootschap onder firma, de commanditaire
vennootschap ;
- (k) in Portugal :
sociedade em nome colectivo, sociedade em
comandita simples ;
- (l) in the United Kingdom :
partnerships, limited partnerships, unlimited
companies,

where all members having unlimited liability are
companies of the types set out in the first subpara-
graph or companies which are not governed by the
laws of a Member State but which have a legal form
comparable to those referred to in Directive
68/151/EEC.

This Directive shall also apply to the types of compa-
nies or firms referred to in the second subparagraph
where all members having unlimited liability are
themselves companies of the types set out in that or
the first subparagraph ;

2. the following subparagraph is added in Article 43 (1),
point 2 :

'the name, the head or registered office and the legal
form of each of the undertakings of which the
company or firm is a member having unlimited liabi-
lity. This information may be omitted where for the
purposes of Article 2 (3) it is of negligible importance
only' ;

3. the following paragraph is inserted in Article 47 :

'1a. The Member State of a company or firm
referred to in Article 1 (1), second and third subpara-
graphs (entity concerned) may exempt that entity from
publishing its accounts in accordance with Article 3 of
Directive 68/151/EEC, provided that those accounts
are available to the public at its head office, where :

- (a) all the members having unlimited liability of the
entity concerned are the companies referred to in
the first subparagraph of Article 1 (1) governed by
the laws of Member States other than the Member
State whose law governs that entity and none of
those companies publishes the accounts of the
entity concerned with its own accounts ; or
- (b) all the members having unlimited liability are
companies which are not governed by the laws of a
Member State but which have a legal form compa-
rable to those referred to in Directive 68/151/EEC.

Copies of the accounts must be obtainable upon
request. The price of such a copy may not exceed its
administrative cost. Appropriate sanctions must be

provided for failure to comply with the publication
obligation imposed in this paragraph ;

4. the following Article is inserted :

Article 57a

1. Member States may require the companies
referred to in the first subparagraph of Article 1 (1)
governed by their law, which are members having
unlimited liability of any of the companies and firms
listed in Article 1 (1), second and third subparagraphs
(entity concerned), to draw up, have audited and
publish, with their own accounts, the accounts of the
entity concerned in conformity with the provisions of
this Directive.

In this case, the requirements of this Directive do not
apply to the entity concerned.

2. Member States need not apply the requirements
of this Directive to the entity concerned where :

- (a) the accounts of this entity are drawn up, audited
and published in conformity with the provisions of
this Directive by a company which is a member
having unlimited liability of the entity and is
governed by the law of another Member State ;
- (b) the entity concerned is included in consolidated
accounts drawn up, audited and published in accord-
ance with Directive 83/349/EEC by a member
having unlimited liability or where the entity
concerned is included in the consolidated accounts
of a larger body of undertakings drawn up, audited
and published in conformity with Council Direc-
tive 83/349/EEC by a parent undertaking governed
by the law of a Member State. The exemption must
be disclosed in the notes on the consolidated
accounts.

3. In these cases, the entity concerned must reveal
to whomsoever so requests the name of the entity
publishing the accounts.'

Article 2

Directive 83/349/EEC is hereby amended as follows :

1. the following subparagraph is inserted in Article 4 (1) :

'The first subparagraph 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), second or third
subparagraph of Directive 78/660/EEC.' ;

2. In Article 4, paragraph 2 is replaced by the following :

'2. The Member States may, however, grant exemp-
tion 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 in Article 1 (1), second or third subpara-
graph 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 1993. They shall forthwith inform the Commission thereof.
2. Member States may provide that the provisions referred to in paragraph 1 shall first apply to the annual accounts and consolidated accounts for financial years beginning on 1 January 1995 or during the 1995 calendar year.
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 4

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA
