

**Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings**

(2002/C 227 E/07)

(Text with EEA relevance)

COM(2002) 259/2 final — 2002/0112(COD)

*(Submitted by the Commission on 28 May 2002)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

provided an option for Member States to permit or require the application of adopted IAS in the preparation of annual accounts and to permit or require the application of adopted IAS by unlisted companies.

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission,

(4) The IAS Regulation provides that to adopt an international accounting standard for its application in the Community, it is necessary that it meets the basic requirement of 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<sup>(2)</sup> and of Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts<sup>(3)</sup>, that is to say that its application results in a true and fair view of the financial position and performance of an enterprise; this principle being considered in the light of the said Council Directives without implying a strict conformity with each and every provision of those Directives.

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The Lisbon European Council of 23-24 March 2000 emphasised the need to accelerate completion of the internal market for financial services, set the deadline of 2005 to implement the Commission's Financial Services Action Plan and urged that steps be taken to enhance the comparability of financial statements prepared by Community companies whose securities are listed on a regulated market (hereinafter: 'listed companies').

(5) As the annual and consolidated accounts of undertakings covered by Directive 78/660/EEC and Directive 83/349/EEC which are not prepared in accordance with the IAS Regulation will continue to have those Directives as the primary source of their Community accounting requirements, it is important that a level playing field exist between Community companies which apply IAS and those which do not.

(2) On 13 June 2000, the Commission published its Communication on 'EU Financial Reporting Strategy: The Way Forward'<sup>(1)</sup> in which it was proposed that all listed companies prepare their consolidated accounts in accordance with one single set of accounting standards, namely International Accounting Standards (IAS), at the latest by 2005.

(6) For the purposes both of the adoption of IAS and the application of Directive 78/660/EEC and Directive 83/349/EEC, it is desirable that those Directives reflect developments in international accounting. In this respect, the Communication of the Commission on 'Accounting Harmonisation: A New Strategy vis-à-vis International Harmonisation'<sup>(4)</sup> called for the European Union to work to maintain consistency between Community Accounting Directives and developments in international accounting standard setting, in particular within the International Accounting Standards Committee (IASC).

(3) Regulation (EC) No ... of the European Parliament and of the Council on the application of international accounting standards (hereinafter: 'the IAS Regulation') introduced the requirement that, from 2005 onwards, all listed companies prepare their consolidated accounts in accordance with IAS adopted for application within the Community. It also

<sup>(2)</sup> OJ L 222, 14.8.1978, p. 11, Directive as last amended by Directive 2001/65/EEC (OJ L 283, 27.10.2001, p. 28).

<sup>(3)</sup> OJ L 193, 18.7.1983, p. 1, Directive as last amended by Directive 2001/65/EEC (OJ L 283, 27.10. 2001, p. 28).

<sup>(4)</sup> COM(1995) 508, 14.11.1995.

<sup>(1)</sup> COM(2000) 359, 13.6.2000.

(7) The annual report and the consolidated annual report are important elements of financial reporting. Enhancement, in line with current best practice, of the existing requirement for these to present a fair review of the development of the business and of its position is necessary to promote greater consistency and give additional guidance on the information content expected of a 'fair review'. The information should not be restricted to the financial aspects of the company's business. It is expected that this will lead to an analysis of environmental, social and other aspects relevant to an understanding of the company's development and position. This is consistent also with the Commission Recommendation 2001/453/EC of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies <sup>(1)</sup>.

(8) Differences in the preparation and presentation of the 'audit report' reduce comparability and detract from the user's understanding of this vital aspect of financial reporting. Increased consistency is achieved by amendments, consistent with current international best practice, to the specific requirements concerning the format and content of an audit report.

(9) Directive 78/660/EEC and Directive 83/349/EEC should accordingly be amended. Consequently, it is also necessary to amend Council Directive 91/674/EEC of 19 December 1991 on the annual and consolidated accounts of insurance undertakings <sup>(2)</sup>. These amendments will remove all inconsistencies between Directive 78/660/EEC, Directive 83/349/EEC and Directive 91/674/EEC and IAS in existence at 1 May 2002,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 78/660/EEC is amended as follows:

1. In Article 2(1) the following subparagraph is added:

'Member States may allow or require the inclusion of other statements in the annual accounts in addition to the documents referred to in the first paragraph.'

2. In Article 4 the following paragraph 6 is added:

'6. Member States may allow or require that the presentation of amounts within items in the profit and loss account and balance sheet shall have regard to the substance of the reported transaction or arrangement. Such permission or requirement may be restricted to

certain classes of company or to consolidated accounts as defined in Council Directive 83/349/EEC (\*).

(\*) OJ L 193, 18.7.1983, p. 1.'

3. In Article 8 the following paragraph is added:

'Member States may allow or require companies to adopt the presentation of the balance sheet set out in Article 10a as an alternative to those otherwise prescribed or permitted.'

4. In Article 9, under 'Liabilities', in point B the title 'Provisions for liabilities and charges' is replaced by 'Provisions'.

5. In Article 10, point J, the title 'Provisions for liabilities and charges' is replaced by 'Provisions'.

6. The following Article 10a is inserted:

#### 'Article 10a

Instead of the presentation of balance sheet items in accordance with Articles 9 and 10, Member States may allow or require companies, or certain classes of companies, to present those items based upon a distinction between current and non-current items provided that the information content given is at least equivalent to that otherwise required by Articles 9 and 10.'

7. Article 20 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'Provisions are intended to cover liabilities 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.'

(b) Paragraph 3 is replaced by the following:

'Provisions may not be used to adjust the values of assets.'

8. In Article 22, the following paragraph is added:

'By way of derogation from Article 2(1), Member States may allow or require all companies, or any classes of companies, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Articles 23 to 26, provided that the information content given is at least equivalent to that otherwise required by those Articles.'

<sup>(1)</sup> OJ L 156, 13.6.2001, p. 33.

<sup>(2)</sup> OJ L 374, 31.12.1991, p. 7.

9. Article 31 is amended as follows:
- (a) In paragraph 1(c), the point (bb) is replaced by the following:
- ‘account must be taken of all liabilities 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;’
- (b) The following paragraph 1(a) is inserted:
- ‘1(a) In addition to those amounts recorded further to Article 31(1)(c)(bb), Member States may permit or require account to 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.’
10. In Article 33(1), the point (c) is replaced by the following:
- ‘revaluation of fixed assets’
11. In Article 42, the first paragraph is replaced by the following:
- ‘Provisions may not exceed in amount the sums which are necessary.’
12. The following Articles 42e and 42f are inserted:
- Article 42e*
- By way of derogation from Article 32, Member States may permit or require in respect of all companies or any classes of companies the valuation of specified categories of assets other than financial instruments at amounts determined by reference to fair value.
- Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.
- Article 42f*
- Notwithstanding Article 31(1)(c), Member States may permit or require in respect of all companies or any classes of companies that, where an asset is valued in accordance with Article 42e, a change in the value shall be included in the profit and loss account.’
13. In Article 43(1)(6) the reference to ‘Articles 9 and 10’ is replaced by a reference to ‘Articles 9, 10 and 10a’.
14. Article 46 is amended as follows:
- (a) Paragraph 1 is replaced by the following:
- ‘The annual report must include at least a fair review of the development of the company’s business and of its position.
- The review shall include a balanced and comprehensive analysis of the development of the company’s business and of its position. The information included shall not be restricted to the financial aspects of the company’s business.
- In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.’
- (b) In paragraph 2, point (b) is replaced by the following:
- ‘the company’s likely future development including any significant uncertainties and risks which may affect that development;’
15. In Article 48, the third sentence is deleted.
16. In Article 49, the third sentence is replaced by the following:
- ‘The report of the person or persons responsible for auditing the annual accounts (hereinafter: “the statutory auditors”), may not accompany this publication, but it must be disclosed whether the audit opinion was issued with or without qualification, or whether the statutory auditors were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditors included a reference to any matters by way of emphasis to which the statutory auditors drew attention without qualifying the audit opinion.’
17. Article 51(1) is replaced by the following:
- ‘The annual accounts of companies shall be audited by one or more persons approved by Member States to carry out statutory audits on the basis of Directive 84/253/EEC (\*).
- The statutory auditors must also verify that the annual report is consistent with the annual accounts for the same financial year.
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- (\*) OJ L 126, 12.5.1984, p. 20.’
18. The following Article 51a is inserted:
- Article 51a*
1. The report of the statutory auditors shall include:
- (a) an introduction which shall at least identify the annual accounts which are the subject of the statutory audit;

- (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
- (d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
- (e) an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.
2. The report shall be signed and dated by the statutory auditors.'

19. Article 53(1) is deleted.

20. The following Article 53a is inserted:

*'Article 53a*

Member States shall not make available the exemptions set out in Articles 11, 27, 46, 47 and 51 in the case of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC (\*).

(\*) OJ L 141, 11.6.1993, p. 27.'

21. In Article 56(1) the reference to 'Articles 9, 10' is replaced by a reference to 'Articles 9, 10, 10a'.
22. In Article 60, first paragraph, the words 'on the basis of their market value' are replaced by 'on the basis of their fair value'.
23. In Article 61a, the reference to 'Articles 42a to 42d' is replaced by a reference to 'Articles 42a to 42f'.

*Article 2*

Directive 83/349/EEC is amended as follows:

1. In Article 1, paragraph 2 is replaced by the following:

'Apart from the cases mentioned in paragraph 1, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if:

- (a) that undertaking (a parent undertaking) actually exercises dominant influence over another undertaking (the subsidiary undertaking); or
- (b) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.'

2. In Article 3(1), the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.

3. Article 6 is amended as follows:

- (a) Paragraph 4 is replaced by the following:

'This Article shall not apply where one of the undertakings to be consolidated is a company whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC (\*).

(\*) OJ L 141, 11.6.1993, p. 27.'

- (b) Paragraph 5 is deleted.

4. Article 7 is amended as follows:

- (a) In paragraph 1(b), the second subparagraph is deleted.
- (b) In paragraph 2(a), the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.
- (c) Paragraph 3 is replaced by the following:

'A Member State may not apply paragraphs 1 and 2 to companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.'

5. In Article 11(1)(a) the reference to 'Articles 13, 14 and 15' is replaced by a reference to 'Articles 13 and 15'.

6. Article 14 is deleted.

7. In Article 16(1) the following subparagraph is added:

'Member States may allow or require the inclusion of other statements in the consolidated accounts in addition to the documents referred to in the first paragraph.'

8. In Article 17(1) the reference to 'Articles 3 to 10' is replaced by a reference to 'Articles 3 to 10a'.

9. In Article 34(2)(b) the terms 'Articles 13 and 14 and, without prejudice to Article 14(3),' are replaced by a reference to 'Article 13 and'.
10. In Article 34(5) the words 'and those excluded pursuant to Article 14' are deleted.
11. Article 36 is amended as follows:
- (a) Paragraph 1 is replaced by the following:
- '1. The consolidated annual report must include at least a fair review of the development of the business and the position of the undertakings included in the consolidation taken as a whole.
- The review shall include a balanced and comprehensive analysis of the development of the business and of its position. The information included shall not be restricted to the financial aspects of the business.
- In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.'
- (b) In paragraph 2, point (b) is replaced by the following:
- '(b) the likely future development of those undertakings taken as a whole including any significant uncertainties and risks which may affect that development.'
- (c) The following paragraph 3 is added:
- '3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.'
12. Article 37 is replaced by the following:
- '1. The consolidated accounts of companies shall be audited by one or more persons approved by the Member State whose laws govern the parent undertaking to carry out statutory audits on the basis of Council Directive 84/253/EEC (\*).
- The person or persons responsible for auditing the consolidated accounts (hereinafter: "the statutory auditors") must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.
2. The report of the statutory auditors shall include:
- (a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit;
- (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; that audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
- (d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
- (e) an opinion concerning the consistency or otherwise of the consolidated annual report with the consolidated accounts for the same financial year.
3. The report shall be signed and dated by the statutory auditors.
4. In the case where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the statutory auditors required by this Article may be combined with any report of the statutory auditors on the annual accounts of the parent undertaking required by Article 51 of Directive 78/660/EEC.
- (\*) OJ L 126, 12.5.1984, p. 20.'
13. In Article 38, the following paragraph 7 is added:
- '7. Paragraphs 2 and 3 of this Article shall not be applied in respect of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.'

*Article 3*

Directive 91/674/EEC is amended as follows:

1. In Article 1, paragraphs 1 and 2 are replaced by the following:

'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, 42a to 42f, 43(1), points 1 to 7 and 9 to 14, 45(1), 46(1) and (2), 48 to 50, 50a, 51(1), 51a, 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the undertakings mentioned in Article 2 of this Directive, except where this Directive provides otherwise. Articles 46, 47, 48, 51 and 53 of this Directive shall not apply in respect to assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9, 10 and 10a (balance sheet) or to Articles 22 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Article 6 (balance sheet) or to Article 34 (profit and loss account) of this Directive as appropriate.'

2. In Article 6, under 'Liabilities', in point E, the title 'Provisions for other risks and charges' is replaced by 'Other provisions'.

3. Article 46 is amended as follows:

(a) In paragraph 5, the following subparagraph is added:

'Member States may permit derogations from the first subparagraph.'

(b) Paragraph 6 is replaced by the following:

'The method(s) applied to each investment item shall be stated in the notes to the accounts, together with the amounts so determined.'

*Article 4*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 5*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 6*

This Directive is addressed to the Member States.

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