

Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance)

DIRECTIVE 2006/46/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 14 June 2006

amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) On 21 May 2003, the Commission adopted an Action Plan announcing measures to modernise company law and enhance corporate governance in the Community. As a short-term priority, the Community was to confirm the collective responsibility of board members, increase transparency in transactions with related parties and off-balance-sheet arrangements and improve disclosure about corporate governance practices applied in a company.
- (2) Pursuant to that Action Plan, members of the administrative, management and supervisory bodies of a company were, as a minimum requirement, to be collectively responsible towards the company for drawing up and publishing annual accounts and annual reports. The same approach was also to apply to members of the administrative, management and supervisory bodies of undertakings drawing up consolidated accounts. Those bodies act within the competences assigned to them by national law. This should not prevent Member States from going further and providing for direct responsibility towards shareholders or even other stakeholders. On the other hand, Member States were to refrain from opting for a system of responsibility limited to individual board

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members. However, this should not preclude the ability of courts or other enforcement bodies in the Member States to impose penalties on an individual board member.

- (3) Liability for drawing up and publishing annual accounts and consolidated accounts as well as annual reports and consolidated annual reports is based on national law. Appropriate liability rules, as laid down by each Member State under its national law or regulations, should be applicable to members of the administrative, management and supervisory bodies. Member States should remain free to determine the extent of the liability.
- (4) In order to promote credible financial reporting processes across the European Union, members of the company body that is responsible for the preparation of the company's financial reports should have the duty to ensure that the financial information included in a company's annual accounts and annual reports gives a true and fair view.
- (5) On 27 September 2004 the Commission adopted a Communication on preventing and combating financial and corporate malpractice outlining '*inter alia*' the Commission policy initiatives regarding internal control in companies and responsibility of board members.
- (6) At present Fourth Council Directive 78/660/EEC⁽³⁾ and Seventh Council Directive 83/349/EEC⁽⁴⁾ only provide for disclosure of transactions between a company and the company's affiliated undertakings. With the objective of bringing companies whose securities are not admitted to trading on a regulated market closer to companies applying the international accounting standards for their consolidated accounts, disclosure should be extended to cover other types of related parties, such as key management members and spouses of board members, but only where such transactions are material and not carried out at arm's length. Disclosure of material transactions with related parties that are not carried out under normal market conditions can assist users of annual accounts to assess the financial position of the company as well as, when the company belongs to a group, the financial situation of the group as a whole. Intra-group related party transactions should be eliminated in the preparation of consolidated financial statements.
- (7) Definitions of a related party as set out in the international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁽⁵⁾ should apply to Directives 78/660/EEC and 83/349/EEC.
- (8) Off-balance-sheet arrangements may expose a company to risks and benefits which are material for an assessment of the financial position of the company and, when the company belongs to a group, the financial position of the group as a whole.
- (9) Such off-balance-sheet arrangements could be any transactions or agreements which companies may have with entities, even unincorporated ones, that are not included in the balance sheet. Such off-balance-sheet arrangements may be associated with the creation or use of one or more Special Purpose Entities (SPEs) and offshore activities designed to address, *inter alia*, economic, legal, tax or accounting objectives. Examples of

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such off-balance-sheet arrangements include risk and benefit-sharing arrangements or obligations arising from a contract such as debt factoring, combined sale and repurchase agreements, consignment stock arrangements, take or pay arrangements, securitisation arranged through separate companies and unincorporated entities, pledged assets, operating leasing arrangements, outsourcing and the like. Appropriate disclosure of the material risks and benefits of such arrangements that are not included in the balance sheet should be set out in the notes to the accounts or the consolidated accounts.

- (10) Companies whose securities are admitted to trading on a regulated market and which have their registered office in the Community should be obliged to disclose an annual corporate governance statement as a specific and clearly identifiable section of the annual report. That statement should at least provide shareholders with easily accessible key information about the corporate governance practices actually applied, including a description of the main features of any existing risk management systems and internal controls in relation to the financial reporting process. The corporate governance statement should make clear whether the company applies any provisions on corporate governance other than those provided for in national law, regardless of whether those provisions are directly laid down in a corporate governance code to which the company is subject or in any corporate governance code which the company may have decided to apply. Furthermore, where relevant, companies may also provide an analysis of environmental and social aspects necessary for an understanding of the company's development, performance and position. There is no need to impose the requirement of a separate corporate governance statement on undertakings drawing up a consolidated annual report. However, the information concerning the group's risk management system and internal control system should be presented.
- (11) The various measures adopted under this Directive should not necessarily apply to the same types of companies or undertakings. Member States should be able to exempt small companies, as described in Article 11 of Directive 78/660/EEC, from the requirements concerning related parties and off-balance-sheet arrangements under this Directive. Companies which already disclose information about transactions with related parties in their accounts pursuant to international accounting standards as adopted in the European Union should not be required to disclose further information under this Directive, as the application of the international accounting standards already results in a true and fair view of such a company. The provisions of this Directive concerning the corporate governance statement should apply to all companies, including banks, insurance and reinsurance undertakings and companies which have issued securities other than shares admitted to trading on a regulated market insofar as they are not exempted by Member States. The provisions of this Directive concerning duties and liabilities of board members as well as penalties should apply to all companies to which Council Directives 78/660/EEC, 86/635/EEC⁽⁶⁾ and 91/674/EEC⁽⁷⁾ apply and to all undertakings which draw up consolidated accounts in accordance with Directive 83/349/EEC.
- (12) At present Directive 78/660/EEC makes provision for examination every five years of, *inter alia*, the maximum thresholds for balance sheet and net turnover which Member States may apply in determining which companies may be exempted from

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certain disclosure requirements. In addition to those five-yearly examinations, an additional one-off increase in those balance sheet and net turnover thresholds may also be appropriate. There is no obligation on Member States to make use of those increased thresholds.

- (13) Since the objectives of this Directive, namely facilitating cross-border investments and improving EU-wide comparability and public confidence in financial statements and reports through enhanced and consistent specific disclosures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (14) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.
- (15) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making⁽⁸⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (16) Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 294, 25.11.2005, p. 4.](#)
- (2) Opinion of the European Parliament of 15 December 2005 (not yet published in the Official Journal) and Council Decision of 22 May 2006.
- (3) [OJ L 222, 14.8.1978, p. 11.](#) Directive as last amended by Directive 2006/43/EC of the European Parliament and of the Council ([OJ L 157, 9.6.2006, p. 87](#)).
- (4) [OJ L 193, 18.7.1983, p. 1.](#) Directive as last amended by Directive 2006/43/EC.
- (5) [OJ L 243, 11.9.2002, p. 1.](#)
- (6) [OJ L 372, 31.12.1986, p. 1.](#) Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council ([OJ L 178, 17.7.2003, p. 16](#)).
- (7) [OJ L 374, 31.12.1991, p. 7.](#) Directive as amended by Directive 2003/51/EC.
- (8) [OJ C 321, 31.12.2003, p. 1.](#)