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► **B****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 L 222, 14.8.1978, p. 11)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Seventh Council Directive 83/349/EEC, of 13 June 1983	L 193	1	18.7.1983
► <u>M2</u>	Council Directive 84/569/EEC, of 27 November 1984	L 314	28	4.12.1984
► <u>M3</u>	Eleventh Council Directive 89/666/EEC, of 21 December 1989	L 395	36	30.12.1989
► <u>M4</u>	Council Directive 90/604/EEC, of 8 November 1990	L 317	57	16.11.1990
► <u>M5</u>	Council Directive 90/605/EEC, of 8 November 1990	L 317	60	16.11.1990
► <u>M6</u>	Council Directive 94/8/EC of 21 March 1994	L 82	33	25.3.1994
► <u>M7</u>	Council Directive 1999/60/EC of 17 June 1999	L 162	65	26.6.1999
► <u>M8</u>	Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001	L 283	28	27.10.2001
► <u>M9</u>	Council Directive 2003/38/EC of 13 May 2003	L 120	22	15.5.2003
► <u>M10</u>	Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003	L 178	16	17.7.2003
► <u>M11</u>	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006	L 157	87	9.6.2006
► <u>M12</u>	Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006	L 224	1	16.8.2006
► <u>M13</u>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <u>A1</u>	Act of Accession of Greece	L 291	17	19.11.1979
► <u>A2</u>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <u>A3</u>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <u>A4</u>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

▼B**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

⁽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.

▼B

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 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;

▼A1

— in Greece:

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

▼A2

— in Spain:

la sociedad anónima, la sociedad comanditara por acciones, la sociedad de responsabilidad limitada;

— in Portugal:

▼ A2

a sociedade anónima, de responsabilidade limitada, a sociedade em comandita por ações, a sociedade por quotas de responsabilidade limitada;

▼ A3

— in Austria:

die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

— in Finland:

osakeyhtiö/aktiebolag;

— in Sweden:

aktiebolag;

▼ A4

— in the Czech Republic:

společnost s ručením omezeným, akciová společnost;

— in Estonia:

aktsiaselts, osaühing;

— in Cyprus:

Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

— in Latvia:

akciju sabiedrība, sabiedrība ar ierobežotu atbildību;

— in Lithuania:

akcinės bendrovės, uždariosios akcinės bendrovės;

— in Hungary:

részvénytársaság, korlátolt felelősségű társaság;

— in Malta:

kumpanija pubblika —public limited liability company, kumpanija privata —private limited liability company,

soċjeta in akkomandita bil-kapital maqsum f'azzjonijiet —partnership en commandite with the capital divided into shares;

— in Poland:

spółka akcyjna, spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna;

— in Slovenia:

delniška družba, družba z omejeno odgovornostjo, komanditna delniška družba;

— in Slovakia:

akciová spoločnosť, spoločnosť s ručením obmedzeným;

▼ M13

— in Bulgaria:

акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;

— in Romania:

societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.

▼ M5

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:

▼ M5

- (a) in Germany:
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- (b) in Belgium:
la société en nom collectif/de vennootschap onder firma, la société en commandité (SIC! commandite) 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 εταιρία, η ετερόρρυθμος εταιρία;
- (f) in Spain:
sociedad colectiva, sociedad en comandita simple;
- (g) in Ireland:
partnerships, limited partnerships, unlimited companies;
- (h) in Italy:
la società in nome collettivo, la società in accomandita semplice;
- (i) in Luxembourg:
la société en nom collectif, la société en commandite 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;

▼ A3

- (m) in Austria:
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- (n) in Finland:
avoin yhtiö/ öppet bolag, kommandiittiyhtiö/kommanditbolag;
- (o) in Sweden:
handelsbolag, kommanditbolag;

▼ A4

- (p) in the Czech Republic:
veřejná obchodní společnost, komanditní společnost, družstvo;
- (q) in Estonia:
täisühing, usaldusühing;
- (r) in Cyprus:
Ομόρρυθμες και ετερόρρυθμες εταιρείες (συνεταιρισμοί);
- (s) in Latvia:
pilnsabiedrība, komanditsabiedrība;
- (t) in Lithuania:
tikrosios ūkinės bendrijos, komandinės ūkinės bendrijos;

▼ A4

(u) in Hungary:

közkereseti társaság, betéti társaság, közös vállalat, egyesülés;

(v) in Malta:

Soċjeta fisem kollettiv jew soċjeta in akkomandita, bil-kapital li mhux maqsum f'azzjonijiet meta s-soċji kollha li għandhom responsabbilita' llimitata huma soċjetajiet tat-tip deskritt f'sub paragrafu 1 —Partnership *en nom collectif* or partnership *en commandite* with capital that is not divided into shares, when all the partners with unlimited liability are partnerships as described in sub-paragraph 1;

(w) in Poland:

spółka jawna, spółka komandytowa;

(x) in Slovenia:

družba z neomejeno odgovornostjo, komanditna družba;

(y) in Slovakia:

verejná obchodná spoločnosť, komanditná spoločnosť;

▼ M13

(z) in Bulgaria:

събирателно дружество, командитно дружество;

(aa) in Romania:

asocietate în nume colectiv, societate în comandită simplă

▼ M5

where all members having unlimited liability are companies of the types set out in the first subparagraph 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 companies 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.

▼ B

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.

▼ M10

Member States may permit or require the inclusion of other statements in the annual accounts in addition to the documents referred to in the first subparagraph.

▼ B

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.

▼B

4. Where the application of the provision 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

▼B

profit and loss account item for which there is no amount shall not be shown.

▼M10

6. Member States may permit or require the presentation of amounts within items in the profit and loss account and balance sheet to have regard to the substance of the reported transaction or arrangement. Such permission or requirement may be restricted to certain classes of company and/or to consolidated accounts as defined in the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ⁽¹⁾.

▼B*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 ⁽²⁾.

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 foregoing 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.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

⁽²⁾ OJ No L 26, 31. 1. 1977, p. 1

▼B

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

▼M10

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

▼B

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.

▼B

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**

▼B

(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. ►M10 Provisions ◀

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**

▼B

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 (11) (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

▼B

(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 be coming 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.

▼B

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. ►M10 Provisions ◀

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*****▼M10***Article 10a*

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

▼B*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:

- ►M12 balance sheet total: EUR 4 400 000 ◀,
- ►M12 net turnover: EUR 8 800 000 ◀,
- average number of employees during the financial year: 50

▼B

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.

▼M4

Member States may waive the application of Article 15 (3) (a) and (4) to the abridged balance sheet.

▼M9

In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts specified in the first paragraph shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of ► **M12** any Directive setting those amounts. ◀

▼B*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.

▼B

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.

▼B*Article 20***▼M10**

1. 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

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.

▼M10

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

▼B*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.

▼M10

By way of derogation from Article 2(1), Member States may permit or require all companies, or any classes of company, 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 given is at least equivalent to that otherwise required by those Articles.

▼B*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:

▼B

- (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.

▼B

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.

▼B

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:

- ► **M12** balance sheet total: EUR 17 500 000 ◀,
- ► **M12** net turnover: EUR 35 000 000 ◀,
- average number of employees during the financial year: 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits:

- (a) in Article 23: 1 to 5 inclusive may be combined under one item called 'Gross profit or loss';

▼B

- (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.

▼M9

In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts specified in the first paragraph shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of ►**M12** any Directive setting those amounts. ◀

▼B

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'.

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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,

▼M10

- (bb) 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 become apparent only between the date of the balance sheet and the date on which it is drawn up,

▼B

- (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.

▼M10

1a. In addition to those amounts recorded pursuant to paragraph (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.

▼B

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:

▼B

- (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;

▼M10

- (c) revaluation of fixed assets.

▼B

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

▼B

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.

▼B

- (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,

▼B

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***▼M10**

Provisions may not exceed in amount the sums which are necessary.

▼B

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

▼M8

SECTION 7a

Valuation at fair value*Article 42a*

1. By way of derogation from Article 32 and subject to the conditions set out in paragraphs 2 to 4 of this Article, Member States shall permit or require in respect of all companies or any classes of

▼M8

companies valuation at fair value of financial instruments, including derivatives.

Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.

2. For the purpose of this Directive commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when:

- (a) they were entered into and continue to meet the company's expected purchase, sale or usage requirements;
- (b) they were designated for such purpose at their inception; and
- (c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1 shall apply only to liabilities that are:

- (a) held as part of a trading portfolio; or
- (b) derivative financial instruments.

4. Valuation according to paragraph 1 shall not apply to:

- (a) to non-derivative financial instruments held to maturity;
- (b) to loans and receivables originated by the company and not held for trading purposes; and
- (c) to interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the company, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, should be accounted for differently from other financial instruments.

5. By way of derogation from Article 32, Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.

▼M12

5a. By way of derogation from the provisions of paragraphs 3 and 4, Member States may, in accordance with international accounting standards as adopted by Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽¹⁾, as amended until 5 September 2006, permit or require valuation of financial instruments, together with the associated disclosure requirements which are provided for in international accounting standards adopted 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⁽²⁾.

▼M8*Article 42b*

1. The fair value referred to in Article 42a shall be determined by reference to:

- (a) a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its

⁽¹⁾ OJ L 261, 13.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 108/2006 (OJ L 24, 27.1.2006, p. 1).

⁽²⁾ OJ L 243, 11.9.2002, p. 1.

▼M8

components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument; or

- (b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.

2. Those financial instruments that cannot be measured reliably by any of the methods described in paragraph 1, shall be measured in accordance with Articles 34 to 42.

Article 42c

1. Notwithstanding Article 31(1)(c), where a financial instrument is valued in accordance with Article 42b, a change in the value shall be included in the profit and loss account. However, such a change shall be included directly in equity, in a fair value reserve, where:

- (a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or
- (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity.

2. Member States may permit or require a change in the value on an available for sale financial asset, other than a derivative financial instrument, to be included directly in equity, in the fair value reserve.

3. The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of paragraphs 1 and 2.

Article 42d

Where valuation at fair value of financial instruments has been applied, the notes on the accounts shall disclose:

- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 42b(1)(b);
- (b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
- (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year.

▼M10*Article 42e*

By way of derogation from Article 32, Member States may permit or require in respect of all companies or any classes of company 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.

▼M10*Article 42f*

Notwithstanding Article 31(1)(c), Member States may permit or require in respect of all companies or any classes of company that, where an asset is valued in accordance with Article 42e, a change in the value is included in the profit and loss account.

▼B

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;

▼M5

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 liability. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only;

▼B

- (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 ►**M10** Articles 9, 10 and 10a ◄;

▼B

- (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;

▼M12

- (7a) the nature and business purpose of the company's arrangements that are not included in the balance sheet and the financial impact on the company of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company.

Member States may permit the companies referred to in Article 27 to limit the information required to be disclosed by this point to the nature and business purpose of such arrangements;

- (7b) transactions which have been entered into with related parties by the company, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.

Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed in this point unless those companies are of a type referred to in Article 1(1) of Directive 77/91/EEC, in which case Member States may limit disclosure to, as a minimum, transactions entered into directly or indirectly between:

- (i) the company and its major shareholders,
- and
- (ii) the company and the members of the administrative, management and supervisory bodies.

Member States may exempt transactions entered into between two or more members of a group provided that subsidiaries which are party to the transaction are wholly owned by such a member.

‘Related party’ has the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002;

▼B

- (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 ►M8 Articles 31 and 34 to 42c ◄, 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;

▼B

- (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;

▼M8

- 14. where valuation at fair value of financial instruments has not been applied in accordance with Section 7a:
 - (a) for each class of derivative financial instruments:
 - (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1);
 - (ii) information about the extent and the nature of the instruments; and
 - (b) for financial fixed assets covered by Article 42a, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa):
 - (i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
 - (ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered;

▼M11

- (15) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

Member States may provide that this requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 1 of Directive 83/349/EEC, provided that such information is given in the notes to the consolidated accounts.

▼B

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

▼M4

- 3. Member States may waive the requirement to provide the information referred to in paragraph 1 point 12 where such information makes it possible to identify the position of a specific member of such a body.

▼M4*Article 44***▼M11**

1. 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), (14)(a) and (15). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned.

▼M4

2. Member States may also permit the companies referred to in paragraph 1 to be exempted from the obligation to disclose in the notes on their accounts the information prescribed in Article 15 (3) (a) and (4), Articles 18, 21 and 29 (2), the second subparagraph of Article 30, Article 34 (2), Article 40 (2) and the second subparagraph of Article 42.

3. Article 12 shall apply.

▼B*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.

▼M11

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

The Member States may permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(8). The Member States may also permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(15), provided that such information is delivered to the public oversight system referred to in Article 32 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts ⁽¹⁾ when requested by such a public oversight system.

▼B

SECTION 9

Contents of the annual report*Article 46***▼M10**

1. (a) The annual report shall include at least a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the company's business

⁽¹⁾ OJ L 157, 9.6.2006, p. 87.

▼M10

and of its position, consistent with the size and complexity of the business;

- (b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters;
- (c) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

▼B

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.

▼M3

- (e) the existence of branches of the company;

▼M8

- (f) in relation to the company's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss,
 - the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
 - the company's exposure to price risk, credit risk, liquidity risk and cash flow risk.

▼M4

3. Member States may waive the obligation on companies covered by Article 11 to prepare annual reports, provided that the information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.

▼M10

4. Member States may choose to exempt companies covered by Article 27 from the obligation in paragraph 1(b) above in so far as it relates to non-financial information.

▼M12*Article 46a*

1. A company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽¹⁾ shall include a corporate governance statement in its annual report. That statement shall be included as a specific section of the annual report and shall contain at least the following information:

- (a) a reference to:
 - (i) the corporate governance code to which the company is subject,
 - and/or
 - (ii) the corporate governance code which the company may have voluntarily decided to apply,

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

▼M12

and/or

- (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

Where points (i) and (ii) apply, the company shall also indicate where the relevant texts are publicly available; where point (iii) applies, the company shall make its corporate governance practices publicly available;

- (b) to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so;
- (c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
- (d) the information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁽¹⁾, where the company is subject to that Directive;
- (e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;
- (f) the composition and operation of the administrative, management and supervisory bodies and their committees.

2. Member States may permit the information required by this Article to be set out in a separate report published together with the annual report in the manner set out in Article 47 or by means of a reference in the annual report where such document is publicly available on the company's website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in paragraph 1, point (d) is made available. Article 51(1), second subparagraph shall apply to the provisions of paragraph 1, points (c) and (d) of this Article. For the remaining information, the statutory auditor shall check that the corporate governance statement has been produced.

3. Member States may exempt companies which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of Article 4(1), point (14) of Directive 2004/39/EC, from the application of the provisions of paragraph 1, points (a), (b), (e) and (f), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point (15) of Directive 2004/39/EC.

▼B

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

⁽¹⁾ OJ L 142, 30.4.2004, p. 12.

▼B

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. ►**M1** 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. ◀

▼M5

1a. The Member State of a company or firm referred to in Article 1 (1), second and third subparagraphs (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 comparable 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.

▼B

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 (11) in Article 10, but in total for all the items concerned; and

▼M4

- (b) abridged notes on their accounts in accordance with Article 44.

▼B

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',

▼B

- the information required in brackets in D (11) 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.

► **M10** ————— ◀

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. ► **M10** The report of the person or persons responsible for auditing the annual accounts (hereinafter: the statutory auditors) shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, 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 to which the statutory auditors drew attention by way of emphasis without qualifying the audit opinion. ◀

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.

▼M4*Article 50a*

Annual accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the

▼M4

balance sheet date. That rate shall be disclosed in the notes on the accounts.

▼M12

SECTION 10A

Duty and liability for drawing up and publishing the annual accounts and the annual report*Article 50b*

Member States shall ensure that the members of the administrative, management and supervisory bodies of the company have collectively the duty to ensure that the annual accounts, the annual report and, when provided separately, the corporate governance statement to be provided pursuant to Article 46a are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002. Such bodies shall act within the competences assigned to them by national law.

Article 50c

Member States shall ensure that their laws, regulations and administrative provisions on liability apply to the members of the administrative, management and supervisory bodies referred to in Article 50b, at least towards the company, for breach of the duty referred to in Article 50b.

▼B

SECTION 11

Auditing*Article 51***▼M10**

1. 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 the Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents ⁽¹⁾.

The statutory auditors shall also express an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.

▼B

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.

▼M10*Article 51a*

1. The report of the statutory auditors shall include:

⁽¹⁾ OJ L 126, 12.5.1984, p. 20.

▼M10

- (a) an introduction which shall at least identify the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
 - (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.

▼B

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***▼M10****▼B**

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.

▼M12*Article 53a*

Member States shall not make available the exemptions set out in Articles 11, 27, 43(1), points (7a) and (7b), 46, 47 and 51 in the case

▼M12

of companies whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC.

▼M3**▼B***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 account 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.

▼M1*Article 56*

1. The obligation to show in annual accounts the items prescribed by ►M10 Articles 9, 10, 10a ◀ 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;

▼ M1

- (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 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.

▼ M5*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 accordance with Directive 83/349/EEC by

▼M5

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 Directive 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.

▼M1*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 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 ►M8 Section 7 or 7a ◀. 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 ►M8 Section 7 or 7a ◀ 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 account must indicate whether (a) or (b) above has been used.

▼ **M1**

- (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).

▼ **B***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 ► **M10** on the basis of their fair 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.

▼ M12*Article 60a*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

▼ M1*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.

▼ M12*Article 61a*

Not later than 1 July 2007, the Commission shall review the provisions in Articles 42a to 42f, Article 43(1)(10) and (14), Article 44(1), Article 46(2)(f) and Article 59(2)(a) and (b) in the light of the experience acquired in applying provisions on fair value accounting, with particular regard to IAS 39 as endorsed in accordance with Regulation (EC) No 1606/2002, and taking account of international developments in the field of accounting and, if appropriate, submit a proposal to the European Parliament and the Council with a view to amending the abovementioned Articles.

▼ B*Article 62*

This Directive is addressed to the Member States.