

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July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC) (repealed)

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*

<sup>F1</sup> .....

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.

**Textual Amendments**

**F1** Deleted by [Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings \(Text with EEA relevance\).](#)

*<sup>F2</sup>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 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.]

**Textual Amendments**

**F2** Substituted by [Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts](#)

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of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance).

<sup>F3</sup>Article 54

**Textual Amendments**

- F3** Deleted by Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC).

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.

<sup>F4</sup>Article 56

1 The obligation to show in annual accounts the items prescribed by [<sup>F5</sup>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:

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- a the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;
- b the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;
- c the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.

#### **Textual Amendments**

- F4** Inserted by [Seventh Council Directive of 13 June 1983 based on the Article 54 \( 3 \) \( G \) of the Treaty on Consolidated accounts \(83/349/EEC\)](#).
- F5** Substituted by [Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings \(Text with EEA relevance\)](#).

#### *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.]

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#### Textual Amendments

- F4** Inserted by [Seventh Council Directive of 13 June 1983 based on the Article 54 \(3\) \(G\) of the Treaty on Consolidated accounts \(83/349/EEC\)](#).

#### *[<sup>F6</sup>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 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.]

#### Textual Amendments

- F6** Inserted by [Council Directive of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives \(90/605/EEC\)](#).

#### *[<sup>F4</sup>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;

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- (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.

#### Textual Amendments

- F4** Inserted by [Seventh Council Directive of 13 June 1983 based on the Article 54 \(3\) \(G\) of the Treaty on Consolidated accounts \(83/349/EEC\)](#).

#### Article 59

1 A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items ‘shares in affiliated undertakings’ or ‘participating interests’, as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the ‘shareholders’ or ‘members’ voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2 When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

- a at its book value calculated in accordance with [F7Section 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 [F7Section 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.
- 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.

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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’.

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- 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).]

#### Textual Amendments

- F4** Inserted by [Seventh Council Directive of 13 June 1983 based on the Article 54 \(3\) \(G\) of the Treaty on Consolidated accounts \(83/349/EEC\)](#).
- F7** Substituted by [Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions](#).

#### 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 [<sup>F5</sup>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.

#### Textual Amendments

- F5** Substituted by [Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings \(Text with EEA relevance\)](#).

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### *[<sup>F8</sup>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.]

#### **Textual Amendments**

**F8** Inserted by [Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings \(Text with EEA relevance\).](#)

### *[<sup>F4</sup>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.]

#### **Textual Amendments**

**F4** Inserted by [Seventh Council Directive of 13 June 1983 based on the Article 54 \( 3 \) \( G \) of the Treaty on Consolidated accounts \(83/349/EEC\).](#)

### *[<sup>F2</sup>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.]

#### **Textual Amendments**

**F2** Substituted by [Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings \(Text with EEA relevance\).](#)

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### *Article 62*

This Directive is addressed to the Member States.