

**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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

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

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

(3) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽⁴⁾ (hereinafter: the IAS Regulation) introduced the requirement that, from 2005 onwards, all listed companies prepare their consolidated accounts in accordance with IAS adopted for application within the Community. It also provided an option for Member States to permit or require the application of adopted IAS in the preparation of annual accounts and to permit or require the application of adopted IAS by unlisted companies.

(4) The IAS Regulation provides that, to adopt an international accounting standard for its application in the Community, it is necessary that it meets the basic requirement of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ⁽⁵⁾ and of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ⁽⁶⁾, that is to say that its application results in a true and fair view of the financial position and performance of an enterprise — this principle being considered in the light of the said Directives without implying a strict conformity with each and every provision of those Directives.

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

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

(7) Member States should be able to modify the presentation of the profit and loss account and balance sheet in accordance with international developments, as expressed through standards issued by the International Accounting Standards Board (IASB).

(8) Member States should be able to permit or require the application of revaluations and of fair value in accordance with international developments, as expressed through standards issued by the IASB.

⁽¹⁾ OJ C 227 E, 24.9.2002, p. 336.

⁽²⁾ OJ C 85, 8.4.2003, p. 140.

⁽³⁾ Opinion of the European Parliament of 14 January 2003 (not yet published in the Official Journal), and Council Decision of 6 May 2003.

⁽⁴⁾ OJ L 243, 11.9.2002, p. 1.

⁽⁵⁾ OJ L 222, 14.8.1978, p. 11. 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).

⁽⁶⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC.

- (9) The annual report and the consolidated annual report are important elements of financial reporting. Enhancement, in line with current best practice, of the existing requirement for these to present a fair review of the development of the business and of its position, in a manner consistent with the size and complexity of the business, is necessary to promote greater consistency and give additional guidance concerning the information a 'fair review' is expected to contain. The information should not be restricted to the financial aspects of the company's business. It is expected that, where appropriate, this should lead to an analysis of environmental and social aspects necessary for an understanding of the company's development, performance or position. This is consistent also with Commission Recommendation 2001/453/EC of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies ⁽¹⁾. However, taking into account the evolving nature of this area of financial reporting and having regard to the potential burden placed on undertakings below certain sizes, Member States may choose to waive the obligation to provide non-financial information in the case of the annual report of such undertakings.
- (10) Differences in the preparation and presentation of the audit report reduce comparability and detract from the user's understanding of this vital aspect of financial reporting. Increased consistency should be achieved by amendments, consistent with current international best practice, to the specific requirements concerning the format and content of an audit report. The fundamental requirement that an audit opinion states whether the annual or consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in which it is expressed.
- (11) Directives 78/660/EEC and 83/349/EEC should accordingly be amended. Furthermore, it is also necessary to amend Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions ⁽²⁾.
- (12) The IASB is developing and refining the accounting standards applicable to insurance activities.
- (13) Insurance undertakings should also be allowed to use fair-value accounting as expressed through appropriate standards issued by the IASB.
- (14) Consequently Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings ⁽³⁾ should be amended.

- (15) These amendments will remove all inconsistencies between Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the one hand and IAS in existence at 1 May 2002, on the other,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

1. in Article 2(1) the following subparagraph shall be added:

'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.'
2. in Article 4, the following paragraph shall be added:

'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 (*).
3. in Article 8 the following paragraph shall be added:

'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.'
4. in Article 9, under 'Liabilities', in point B, the title 'Provisions for liabilities and charges' shall be replaced by 'Provisions';
5. in Article 10, point J, the title 'Provisions for liabilities and charges' shall be replaced by 'Provisions';
6. the following Article shall be inserted:

'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.'

⁽¹⁾ OJ L 156, 13.6.2001, p. 33.

⁽²⁾ OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2001/65/EC.

⁽³⁾ OJ L 374, 31.12.1991, p. 7.

7. Article 20 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'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) Paragraph 3 shall be replaced by the following:

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

8. in Article 22, the following paragraph shall be added:

'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.';

9. Article 31 shall be amended as follows:

(a) in paragraph 1(c), point (bb) shall be replaced by the following:

'(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) the following paragraph shall be inserted:

'(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.';

10. in Article 33(1), point (c) shall be replaced by the following:

'(c) revaluation of fixed assets';

11. in Article 42, the first paragraph shall be replaced by the following:

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

12. the following Articles shall be inserted:

'Article 42e

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

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.';

13. in Article 43(1)(6) the reference to 'Articles 9 and 10' shall be replaced by a reference to 'Articles 9, 10 and 10a';

14. Article 46 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'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 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) the following paragraph shall be added:

'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.';

15. in Article 48, the third sentence shall be deleted;

16. in Article 49, the third sentence shall be replaced by the following:

'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.';

17. Article 51(1) shall be replaced by the following:

'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 (*).

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.

(*) OJ L 126, 12.5.1984, p. 20.;

18. the following Article shall be inserted:

'Article 51a

1. The report of the statutory auditors shall include:

- (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.;

19. Article 53(1) shall be deleted;

20. the following Article shall be inserted:

'Article 53a

Member States shall not make available the exemptions set out in Articles 11, 27, 46, 47 and 51 in the case of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (*).

(*) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).;

21. in Article 56(1) the reference to 'Articles 9, 10' shall be replaced by a reference to 'Articles 9, 10, 10a';

22. in Article 60, first paragraph, the words 'on the basis of their market value' shall be replaced by 'on the basis of their fair value';

23. in Article 61a, the reference to 'Articles 42a to 42d' shall be replaced by a reference to 'Articles 42a to 42f'.

Article 2

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

1. in Article 1, paragraph 2 shall be replaced by the following:

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

- (a) that undertaking (a parent undertaking) has the power to exercise, or actually exercises, dominant influence or control over another undertaking (the subsidiary undertaking); or
- (b) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.;

2. in Article 3(1), the reference to 'Articles 13, 14 and 15' shall be replaced by a reference to 'Articles 13 and 15';

3. Article 6 shall be amended as follows:

(a) paragraph 4 shall be replaced by the following:

'4. This Article shall not apply where one of the undertakings to be consolidated is a company whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (*).

(*) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).;

(b) paragraph 5 shall be deleted;

4. Article 7 shall be amended as follows:

- (a) in paragraph 1(b), the second sentence shall be deleted;
- (b) in paragraph 2(a), the reference to 'Articles 13, 14 and 15' shall be replaced by a reference to 'Articles 13 and 15';
- (c) paragraph 3 shall be replaced by the following:

'3. This Article shall not apply to companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.;

5. in Article 11(1)(a) the reference to 'Articles 13, 14 and 15' shall be replaced by a reference to 'Articles 13 and 15';

6. Article 14 shall be deleted;

7. in Article 16(1) the following subparagraph shall be added:

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

8. in Article 17(1) the reference to 'Articles 3 to 10' shall be replaced by a reference to 'Articles 3 to 10a';

9. Article 34 shall be amended as follows:

(a) in point (2)(b) the terms 'Articles 13 and 14 and, without prejudice to Article 14(3),' shall be replaced by a reference to 'Article 13 and';

(b) in point (5) the words 'and those excluded pursuant to Article 14' shall be deleted;

10. Article 36 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such 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.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.');

(b) The following paragraph shall be added:

'3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.');

11. Article 37 shall be replaced by the following:

'Article 37

1. The consolidated accounts of companies shall be audited by one or more persons approved by the Member State whose laws govern the parent undertaking to carry

out statutory audits on the basis of 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 (*).

The person or persons responsible for auditing the consolidated accounts (hereinafter: the statutory auditors) shall also express an opinion concerning the consistency or otherwise of the consolidated annual report with the consolidated accounts for the same financial year.

2. The report of the statutory auditors shall include:

(a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit, 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 consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; 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 consolidated annual report with the consolidated accounts for the same financial year.

3. The report shall be signed and dated by the statutory auditors.

4. Where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the statutory auditors required by this Article may be combined with any report of the statutory auditors on the annual accounts of the parent undertaking required by Article 51 of Directive 78/660/EEC.

(*) OJ L 126, 12.5.1984, p. 20.;

12. in Article 38, the following paragraph shall be added:

'7. Paragraphs 2 and 3 shall not be applied in respect of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.'

Article 3

Directive 86/635/EEC is hereby amended as follows:

1. in Article 1, paragraphs 1 and 2 shall be replaced by the following:

'1. Articles 2, 3, 4(1), (3) to (6), Articles 6, 7, 13, 14, 15(3) and (4), Articles 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 42a to 42f, 45(1), 46(1) and (2), Articles 48 to 50, 50a, 51(1) and 51a, 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise. However, Articles 35(3), 36, 37 and 39(1) to (4) of this Directive shall not apply with respect to assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9, 10 and 10a (balance sheet) or to Articles 22 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Articles 4 and 4a (balance sheet) or to Articles 26, 27 and 28 (profit and loss account) of this Directive.'

2. Article 4 shall be amended as follows:

- (a) the first sentence shall be replaced by the following:

'The Member States shall prescribe the following layout for the balance sheet. As an alternative, Member States may permit or require credit institutions to adopt the presentation of the balance sheet set out in Article 4a.'

- (b) under 'Liabilities', in point 6, the title 'Provisions for liabilities and charges' shall be replaced by 'Provisions';

3. the following Article shall be inserted:

'Article 4a

Instead of the presentation of balance sheet items in accordance with Article 4, Member States may permit or require credit institutions, or certain classes of credit institution, to present those items classified by their nature and in order of their relative liquidity provided that the information given is at least equivalent to that otherwise required by Article 4.'

4. in Article 26, the following paragraph shall be added:

'By way of derogation from Article 2(1) of Directive 78/660/EEC, Member States may permit or require all credit institutions, or any classes of credit institution, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Articles 27 or 28, provided that the information given is at least equivalent to that otherwise required by those Articles.'

5. Article 43(2)(f) shall be deleted.

Article 4

Directive 91/674/EEC is hereby amended as follows:

1. in Article 1, paragraphs 1 and 2 shall be replaced by the following:

'1. Articles 2, 3, 4(1), (3) to (6), 6, 7, 13, 14, 15(3) and (4), 16 to 21, 29 to 35, 37 to 41, 42, 42a to 42f, 43(1), points 1 to 7 and 9 to 14, 45(1), 46(1) and (2), 48 to 50, 50a, 51(1), 51a, 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the undertakings mentioned in Article 2 of this Directive, except where this Directive provides otherwise. Articles 46, 47, 48, 51 and 53 of this Directive shall not apply in respect of assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.

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

2. Article 4 shall be replaced by the following:

'Article 4

1. This Directive shall apply to the association of underwriters known as Lloyd's. For the purpose of this Directive both Lloyd's and Lloyd's syndicates shall be deemed to be insurance undertakings.

2. By way of derogation from Article 65(1), Lloyd's shall prepare aggregate accounts instead of consolidated accounts required by Directive 83/349/EEC. Aggregate accounts shall be prepared by cumulation of all syndicate accounts.'

3. in Article 6, under 'Liabilities', in point E, the title 'Provisions for other risks and charges' shall be replaced by 'Other provisions';

4. Article 46 shall be amended as follows:

- (a) in paragraph 5, the following sentence shall be added:

'Member States may permit derogations from this requirement.'

- (b) paragraph 6 shall be replaced by the following:

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

5. the following Article shall be inserted:

'Article 46a

1. Where assets and liabilities are valued in accordance with Section 7a of Directive 78/660/EEC, paragraphs 2 to 6 of this Article shall apply.

2. The investments shown as assets under D shall be shown at their fair value.

3. Where investments are shown at their purchase price, their fair value shall be disclosed in the notes on the accounts.

4. Where investments are shown at their fair value, their purchase price shall be disclosed in the notes on the accounts.

5. The same valuation method shall be applied to all investments included in any item denoted by an arabic numeral or shown as assets under C(I). Member States may permit derogations from this requirement.

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

6. the Annex shall be deleted.

Article 5

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 6

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 7

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 2003.

For the European Parliament

The President

P. COX

For the Council

The President

G. DRYS