

DIRECTIVE 2003/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 July 2003
amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain
types of companies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 44(2)(g) 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 referred to in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community ⁽⁴⁾ governs compulsory disclosure of a series of documents and particulars by limited liability companies.
- (2) In the context of the fourth phase of the Simplification of the Legislation on the Internal Market process (SLIM), launched by the Commission in October 1998, a Company Law Working Group issued in September 1999 a Report on the simplification of the First and Second Company Law Directives which contained certain recommendations.
- (3) The modernisation of Directive 68/151/EEC along the lines set out in those recommendations should not only help to meet the important objective of making company information more easily and rapidly accessible by interested parties, but should also simplify significantly the disclosure formalities imposed upon companies.
- (4) The list of companies covered by Directive 68/151/EEC should be updated to take account of the new types of companies created or the types of companies abolished at national level since the adoption of that Directive.
- (5) Several Directives have been adopted since 1968 with the aim of harmonising the requirements applicable to the accounting documents which must be prepared by

companies, namely the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ⁽⁵⁾, the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ⁽⁶⁾, Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions ⁽⁷⁾ and Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings ⁽⁸⁾. The references in Directive 68/151/EEC to the accounting documents which are required to be published in accordance with those Directives should be amended accordingly.

- (6) In the context of the modernisation pursued, and without prejudice to substantive requisites and formalities established by the national law of the Member States, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means.
- (7) Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means.
- (8) Member States should be allowed to decide to keep the national gazette, appointed for publication of compulsory documents and particulars, in paper form or electronic form, or to provide for disclosure by equally effective means.
- (9) Cross-border access to company information should be improved by allowing, in addition to the mandatory disclosure made in one of the languages permitted in the company's Member State, voluntary registration in additional languages of the required documents and particulars. Third parties acting in good faith should be able to rely on these translations.
- (10) It is appropriate to clarify that the statement of the compulsory particulars set out in Article 4 of Directive 68/151/EEC should be included in all company letters and order forms, whether they are in paper form or use any other medium. In the light of technological developments, it is also appropriate to provide that these statements be placed on any company website.
- (11) Directive 68/151/EEC should be amended accordingly,

⁽¹⁾ OJ C 227 E, 24.9.2002, p. 377.

⁽²⁾ OJ C 85, 8.4.2003, p. 13.

⁽³⁾ Opinion of the European Parliament of 12 March 2003 (not yet published in the Official Journal) and Council Decision of 11 June 2003.

⁽⁴⁾ OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.

⁽⁵⁾ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Council Directive 2003/38/EC (OJ L 120, 15.5.2003, p. 22).

⁽⁶⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC (OJ L 178, 17.7.2003, p. 16).

⁽⁷⁾ OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2003/51/EC.

⁽⁸⁾ OJ L 374, 31.12.1991, p. 7.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/151/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) the third indent shall be replaced by the following:

‘— *in France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée, la société par actions simplifiée;’

(b) the sixth indent shall be replaced by the following:

‘— *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;’

(c) the ninth indent shall be replaced by the following:

‘— *in Denmark:*

aktieselskab, kommanditaktieselskab, anpartsselskab;’

(d) the 14th indent shall be replaced by the following:

‘— *in Finland:*

yksityinen osakeyhtiö/privat aktiebolag, julkinen osakeyhtiö/publikt aktiebolag;’

2. Article 2:

(a) Article 2(1)(f) shall be replaced by the following:

‘(f) The accounting documents for each financial year, which are required to be published in accordance with Council Directives 78/660/EEC (*), 83/349/EEC (**), 86/635/EEC (***) and 91/674/EEC (****).

(*) OJ L 222, 14.8.1978, p. 11. Directive as last amended by Council Directive 2003/38/EC (OJ L 120, 15.5.2003, p. 22).

(**) OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC (OJ L 178, 17.7.2003, p. 16).

(***) OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2003/51/EC.

(****) OJ L 374, 31.12.1991, p. 7.’

(b) paragraph 2 shall be deleted.

3. Article 3 shall be replaced by the following:

Article 3

1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed pursuant to Article 2 shall be kept in the file, or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

Member States shall ensure that, by 1 January 2007, the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which must be disclosed pursuant to Article 2 will be possible by electronic means.

In addition, Member States may require all, or certain categories of, companies to file all, or certain types of, such documents and particulars by electronic means.

All documents and particulars referred to in Article 2 which are filed as from 1 January 2007 at the latest, whether by paper means or by electronic means, must be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means as from 1 January 2007 at the latest are converted by the register to electronic form.

The documents and particulars referred to in Article 2 that have been filed by paper means up to 31 December 2006 shall not be required to be converted automatically into electronic form by the register. Member States shall nevertheless ensure that they are converted into electronic form by the register upon receipt of an application for disclosure by electronic means submitted in accordance with the rules adopted to give effect to paragraph 3.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable on application. As from 1 January 2007 at the latest, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

As from a date to be chosen by each Member State, which shall be no later than 1 January 2007, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses. This shall apply in the case of all documents and particulars, irrespective of whether they were filed before or after the chosen date. However, Member States may decide that all, or certain types of, documents and particulars filed by paper means on or before a date which may not be later than 31 December 2006 shall not be obtainable from the register by electronic means if a specified period has elapsed between the date of filing and the date of the application submitted to the register. Such specified period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied shall be certified as “true copies”, unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as “true copies”, unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (*).

4. Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full text or of a partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette appointed for that purpose may be kept in electronic form.

Member States may decide to replace publication in the national gazette with equally effective means, which shall entail at least the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform.

5. The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the 16th day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

6. Member States shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 4 and what appears in the register or file.

However, in cases of discrepancy, the text disclosed in accordance with paragraph 4 may not be relied on as against third parties; such third parties may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

7. Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

8. For the purposes of this Article, "by electronic means" shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.

(*) OJ L 13, 19.1.2000, p. 12.'

4. The following Article shall be inserted:

'Article 3a

1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up and filed in one of the languages permitted by the language rules applicable in the Member State in which the file referred to in Article 3(1) is opened.

2. In addition to the mandatory disclosure referred to in Article 3, Member States shall allow documents and particulars referred to in Article 2 to be disclosed voluntarily in accordance with Article 3 in any official language(s) of the Community.

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to facilitate access by third parties to the translations voluntarily disclosed.

3. In addition to the mandatory disclosure referred to in Article 3, and to the voluntary disclosure provided for under paragraph 2 of this Article, Member States may allow the documents and particulars concerned to be disclosed, in accordance with Article 3, in any other language(s).

Member States may stipulate that the translation of such documents and particulars be certified.

4. In cases of discrepancy between the documents and particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the mandatory disclosure.'

5. Article 4 shall be replaced by the following:

'Article 4

Member States shall stipulate that letters and order forms, whether they are in paper form or use any other medium, shall state the following particulars:

- (a) the information necessary to identify the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register;
- (b) the legal form of the company, the location of its registered office and, where appropriate, the fact that the company is being wound up.

Where, in these documents, mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Member States shall prescribe that company websites shall contain at least the particulars mentioned in the first paragraph and, if applicable, the reference to the capital subscribed and paid up.'

6. Article 6 shall be replaced by the following:

'Article 6

Member States shall provide for appropriate penalties at least in the case of:

- (a) failure to disclose accounting documents as required by Article 2(1)(f);
- (b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 4.'

Article 2

1. Member States shall bring into force before 31 December 2006 the laws, regulations and administrative provisions necessary for them to comply with this Directive. 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 a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

3. The Commission shall present to the European Parliament and to the Council, by 1 January 2012, a report, together with a proposal, if appropriate, for the amendment of this Directive in the light of the experience acquired in applying it, of its aims and of the technological developments observed at the time.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 15 July 2003.

For the European Parliament
The President
P. COX

For the Council
The President
G. TREMONTI
