

II

(Preparatory Acts)

COMMISSION

Amendments to the proposal for a Council Directive concerning the annual accounts of banks and other financial institutions (*)*COM(84) 124 final**(Submitted by the Commission to the Council pursuant to Article 149 (2) of the EEC Treaty on 14 March 1984)**(84/C 83/06)*

ORIGINAL PROPOSAL

AMENDED PROPOSAL

Recitals 1 to 12 unchanged

Whereas, taking account of the importance of banking networks which extend beyond national frontiers and their constant development, it is important that the annual accounts of a credit institution having its head office in one Member State, should be published in all the Member States where it is established and that this publication should be made in the official languages of the Member States concerned;

Whereas, taking account of the importance of banking networks which extend beyond national frontiers and their constant development, it is important that the annual accounts of a credit institution having its head office in one Member State, **should be published in all the Member States where it is established;**

Article 1 unchanged

Article 2

1. The coordination measures prescribed by this Directive shall apply to all credit institutions within the meaning of Article 1 of Directive 77/780/EEC, where such institutions are companies or firms within the meaning of the second paragraph of Article 58 of the Treaty.

2. This Directive shall also apply to all other companies or firms whose principal activity is to receive deposits or other repayable funds, for their own account or to grant credits (including guarantees), to acquire participating interests or make investments, in so far as such companies or firms have not been made subject to Directive 78/660/EEC.

3. This Directive shall not apply to:

(a) the credit institutions listed in Article 2 (2) of Directive 77/780/EEC;

Article 2

Unchanged.

2. This Directive shall also apply to all other companies or firms whose principle activity is **to grant credit facilities (including guarantees), to acquire participating interests or to make investments**, in so far as such companies or firms have not been made subject to Directive 78/660/EEC.

Unchanged.

(*) OJ No C 130, 1. 6. 1981, p. 1.

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(b) the following credit institutions:

- the Netherlands: credit institutions which by virtue of Article 8 of the 'Wet Toezicht Kredietwezen' ⁽¹⁾ are not subject to Article 11 of the aforesaid law,
- in the United Kingdom: 'Friendly Societies' and 'Industrial and Provident Societies'.

4. Member States may defer application of this Directive to:

(a) the credit institutions referred to in Article 2 (5) of Directive 77/780/EEC, and included in the Commission communication of 14 October 1978 ⁽²⁾, for so long as the application of them of Directive 77/780/EEC is deferred;

(b) other specialized credit institutions, where, because of the nature of their business, immediate application would create serious problems; in this case, these institutions must be notified to the Commission within six months of the notification of this Directive. Member States may decide to defer application of this Directive to these institutions pending further coordination and until 1 January 1988 at the latest.

4. Member States may defer application of this Directive to:

(a) the credit institutions referred to in Article 2 (5) of Directive 77/780/EEC, and included in the Commission **communications** of 14 October 1978 ⁽¹⁾ **and of 6 October 1981** ⁽²⁾, for so long as the application of them of Directive 77/780/EEC is deferred;

(b) other specialized credit institutions, where, because of the nature of their business, immediate application would create serious problems; in this case these institutions must be notified to the Commission within six months of the notification of this Directive. Member States may decide to defer application of this Directive to these institutions pending further coordination and until at the latest **five years following the notification of this Directive.**

Article 3 unchanged

Article 4

The Member States shall prescribe the following layout for the balance sheet:

Assets

Items 1 to 7 unchanged

8. Shares and other variable-yield securities, including:

- participating interests,
- shares in affiliated undertakings.

Article 4

Unchanged.

Assets

8. **Shares and other variable-yield securities.**

9. **Participating interests.**

9a. **Shares in affiliated undertakings.**

⁽¹⁾ Adopted on 13 April 1978 — *Staatsblad* 1978, No 255.

⁽²⁾ OJ No C 244, 14. 10. 1978, p. 2.

⁽¹⁾ OJ No C 244, 14. 10. 1978, p. 2.

⁽²⁾ OJ No C 254, 6. 10. 1981, p. 1.

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<p>9. Assets as listed in Article 9, Assets B, C I and C II (2), (3) and (4) of Directive 78/660/EEC, including:</p> <ul style="list-style-type: none"> — formation expenses, — goodwill, to the extent that it was acquired for valuable consideration, — assets listed in Article 9 C II (2), (3) and (4) of Directive 78/660/EEC. 	<p>10. Assets as listed in Article 9, Assets B, C I and C II (2), (3) and (4) of Directive 78/660/EEC, including:</p> <ul style="list-style-type: none"> — formation expenses, — goodwill, to the extent that it was acquired for valuable consideration, — assets listed in Article 9, Assets C II (2), (3) and (4) of Directive 78/660/EEC.
10. Land and buildings.	11. Land and buildings.
<p>11. Subscribed capital unpaid,</p> <ul style="list-style-type: none"> — called-up capital (unless national law provides for called-up capital to be included under liabilities, in which case capital called but not yet paid up must be included either in item 11 of the assets or in item 14 of the assets). 	<p>12. Subscribed capital unpaid,</p> <ul style="list-style-type: none"> — called-up capital (unless national law provides for called-up capital to be included under liabilities, in which case capital called but not yet paid up must be included either in item 11 of the assets or in item 14 of the assets).
12. Own shares	13. Own shares
— in addition: nominal/accounting per value.	— in addition: nominal/accounting per value.
13. Other assets.	14. Other assets.
14. Subscribed capital, called but not paid-up (unless national law provides that called-up capital be shown as an asset under item 11).	15. Subscribed capital, called but not paid-up (unless national law provides that called-up capital be shown as an asset under item 11).
15. Accruals and deferred income.	16. Accruals and deferred income.
16. Loss for the financial year (unless national law provides for its inclusion under item 13 of the liabilities).	17. Loss for the financial year (unless national law provides for its inclusion under item 13 of the liabilities).
<i>Total assets</i>	<i>Total assets</i>

‘Liabilities’ unchanged

‘Below the Line items’ unchanged

<i>Article 5</i>	<i>Article 5</i>
<p>1. The Member States shall describe that the following shall be shown separately in sub-items to the respective items:</p> <ul style="list-style-type: none"> — claims, whether or not represented by certificates, on affiliated undertakings and contained in ‘Assets’ items 3 to 7, — claims, whether or not represented by certificates, on undertakings with which the credit institution is linked by virtue of a participating interest and contained in ‘Assets’ items 3 to 7, 	<p>1. The following shall be shown separately in sub-items to the respective items:</p> <p>Unchanged.</p> <p>Unchanged.</p>

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- liabilities, whether or not represented by certificates, to affiliated undertakings and contained in 'Liabilities' items 1, 2, 3 and 8,
 - liabilities whether or not represented by certificates, to undertakings with which the credit institution is linked by virtue of a participating interest and contained in 'Liabilities' items 1, 2, 3 and 8.
2. The Member States may, however, permit this information, broken down by the items referred to in paragraph 1, to be shown in the notes.

Unchanged.

Unchanged.

Unchanged.

Articles 6 to 8 unchanged

Article 9

1. The classification by maturity of certain assets and liabilities shall be based on the originally agreed maturity or period of notice. However, where a credit institution has acquired an existing loan not represented by a certificate, it shall classify that loan on the basis of the remaining maturity as at the date on which it was acquired.

2. The originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment. The period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made.

3. If loans and advances or other claims are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or other claims arose and the date on which the last instalment falls due.

4. Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of not more than 24 hours or one working day has been agreed shall be regarded as repayable on demand.

5. The Member States may permit deviations from the provisions of paragraphs 2 to 4 provided that this is necessary to provide a true and fair view of the credit institution's assets, liabilities, financial position and profit or loss. In such cases, credit institutions shall indicate in the notes the extent to which they have deviated from these provisions.

Article 9

1. The classification by maturity of certain assets and liabilities shall be based on the remaining maturity as at the balance sheet date.

2. If loans and advances or other claims are redeemable by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which the last instalment falls due.

3. Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of not more than 24 hours or one working day has been agreed shall be regarded as repayable on demand.

4. For five years from the date referred to in Article 44 (2), the Member States may require or permit the classification by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. However, where a credit institution has acquired an existing loan not represented by a certificate, the Member States shall require classification of that loan to be based on the remaining maturity as at the date on which it was acquired.

5. For the purposes of paragraph 4, the originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment; the period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made; if loans and advances or other claims are redeemable by

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Article 10

1. Sale and repurchase transactions are transactions which involve the transfer by a credit institution or customer (the 'transferor') to another credit institution or customer (the 'transferee') of assets which belong to it, in particular, bills, claims or securities against payment of a specified amount, subject to an agreement that the same assets be repurchased by the transferor, at the purchase price or a different amount determined in advance, at a specified or still to be specified date.

2. If the transferee undertakes to return the assets at a date determined in advance or to be determined by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.

3. If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance at a specified or still to be specified date, the transaction in question shall be deemed to be a sale with an option to repurchase.

4. In the case of the genuine sale and repurchase transactions referred to in paragraph 2, the assets transferred shall continue to be carried on the balance sheet of the transferor; the purchase price received by the transferor shall be entered as an amount owed to the transferee.

5. In the case referred to in paragraph 3, however, the transferor is not entitled to enter in his balance sheet the assets transferred, and these items shall be carried as assets in the transferee's balance sheet. The transferor shall enter in item 3 below the line a contingent liability equal to the amount agreed in the event of repurchase.

6. Forward exchange transactions, options, transactions involving the issue of debentures with a commitment to repurchase all or part of the issue before maturity and any similar transactions shall not be regarded as sale and repurchase transactions within the meaning of this Article.

*Article 11***Assets: Item 1**

Cash in hand and balances with central banks and postal cheque offices

1. Cash in hand shall comprise legal tender including foreign notes and coin.

instalments, the agreed maturity shall be the period between the date on which such loans and advances or other claims arose and the date on which the last instalment falls due.

Article 10

Unchanged.

Unchanged.

Unchanged.

Unchanged.

5. In the case referred to in paragraph 3, however, the transferor is not entitled to enter in his balance sheet the assets transferred, and these items shall be carried as assets in the transferee's balance sheet. The transferor shall enter in item 3 below the line **an amount equal to the price agreed** in the event of repurchase.

Unchanged.

*Article 11***Assets: Item 1**

Cash in hand and balances with central banks and postal cheque offices

Unchanged.

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2. This item may include only balances with the central bank and postal cheque offices of the country in which the registered office of the credit institution drawing up the balance sheet is located, together with balances of the credit institution's branches with such bodies in their respective host countries. These balances must be readily available at any time. Other claims on such bodies shall be shown as loans and advances to credit institutions ('Assets' item 3) or as loans and advances to customers ('Assets' item 5).

2. This item may include only balances with the central bank and postal cheque offices of the country in which the registered office of the credit institution drawing up the balance sheet is located, together with balances of the credit institution's branches with such bodies in their respective host countries. These balances must be readily available at any time. **However, immediate availability shall not be affected by monetary policy or banking supervisory requirements.** Other claims on such bodies shall be shown as loans and advances to credit institutions ('Assets' item 3) or as loans and advances to customers ('Assets' item 5).

Articles 12 to 27 unchanged

Article 28

For the presentation of the profit and loss account, Member States shall prescribe one or both of the layouts contained in Articles 29 and 30. If a Member State prescribes both layouts it may allow credit institutions to choose between them.

Article 28

For the presentation of the profit and loss account, Member States shall prescribe the **layout contained in Article 30. They may also authorize presentation in accordance with the layout set out in Article 29.**

Articles 29 and 30 unchanged

Article 31

Article 29, items 1 and 4 (vertical layout) and Article 30, items A.1 and B.1 (horizontal layout).

Article 31

Article 29, item 1 and 4 (vertical layout) and Article 30, items A.1 and B.1 (horizontal layout).

Interest receivable and interest payable

1. Interest receivable shall include all income arising from the assets shown in 'Assets', items 1 to 7, of the balance sheet regardless of the form in which such income is calculated. Interest receivable shall also include income arising, through the spreading of the discount on a time basis, in the case of assets acquired below par value.

2. Interest payable shall include all charges for liabilities shown under 'Liabilities', items 1 to 3, regardless of the form in which such charges are calculated. Interest payable shall also include charges arising, through the spreading of the premium on a time basis, in the case of liabilities entered into above par value.

3. Fees and commissions computed on a time basis and by reference to the amount of the claim or liability shall also be regarded as interest.

Interest receivable and interest payable**These items shall include:**

1. All income arising from the assets shown in 'Assets', items 1 to 7, of the balance sheet regardless of the form in which such income is calculated. **This shall also include** income arising, through the spreading of the discount on a time basis, in the case of assets acquired below par value.

2. All charges for liabilities shown under 'Liabilities', items 1 to 3, regardless of the form in which such charges are calculated. **This shall also include** charges arising, through the spreading of the premium on a time basis, in the case of liabilities entered into above par value.

Unchanged.

Article 32 unchanged

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Article 33

Article 29, items 3 and 5 (vertical layout) and Article 30, items A.2 and B.3 (horizontal layout).

Commissions receivable and commissions payable

Commissions receivable shall include income in respect of all services supplied for the account of third parties, and commissions payable shall include charges for the use of services of third parties, notably:

- commissions for guarantees, loans administration for the account of other lenders and securities transactions for the account of third parties,
- commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities,
- commissions for foreign currency transactions and for the sale and purchase of coin and precious metals for the account of third parties,
- commissions earned for brokerage services in connection with loans, savings or insurance contracts.

Articles 34 to 35 unchanged

Article 36

1. 'Assets', item 9, shall always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are intended for use on a continuing basis in the normal course of the credit institution's activities.

2. Where reference is made to 'Financial fixed assets' in Section 7 of Directive 78/660/EEC, this term shall in the case of credit institutions be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of the credit institution's activities.

Article 37

Article 39 of Directive 78/660/EEC shall be applied in the valuation of credit institutions' loans and advances subject to the following provisions:

1. Loans and advances to credit institutions and customers ('Assets', items 3 and 5), may be shown at a lower value than permitted under Article 39 (1) (b) and (c) of Directive 78/660/EEC, where this is necessary in view of the prudence dictated by the particular risk attaching to banking business. Nevertheless, the difference between this

Article 33

Article 29, items 3 and 5 (vertical layout) and Article 30, items A.2 and B.3 (horizontal layout).

Commissions receivable and commissions payable

Without prejudice to the provisions of Article 31, commissions receivable shall include income in respect of all services supplied for the account of third parties, and commissions payable shall include charges for the use of services of third parties, notably:

Unchanged.

Unchanged.

Unchanged.

Unchanged.

Article 36

1. 'Assets', item 10, shall always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are intended for use on a continuing basis in the normal course of the credit institution's activities.

Unchanged.

Article 37

Unchanged.

Unchanged.

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lower value and that which would result from the application of the provisions mentioned above must not be greater than 5 %.

2. The valuations thus established may be maintained until the credit institution drawing up the balance sheet wishes to write up the items in order to avoid undue fluctuations in value adjustment charges.

Unchanged.

3. **The authorities in the Member States responsible for supervising banks and other financial institutions shall ensure that the application of the provisions of paragraphs 1 and 2 is not used to withhold from customers and other credit institutions the information they need to gain an accurate impression of the position of their business partners. The credit institutions shall supply the supervisory authorities with all the data necessary for this purpose.**

Article 38 unchanged

*Article 39**Article 39*

1. Article 43 of Directive 78/660/EEC shall apply subject to the following provisions.

Unchanged.

2. In place of the information required under Article 43 (1) (6) of Directive 78/660/EEC, credit institutions shall, in the notes on the accounts, provide an analysis of fixed term claims and liabilities in respect of credit institutions and customers other than credit institutions ('Assets', items 3 (b), (bb), 5 (b) and 7 and 'Liabilities', items 1 (b), (bb), 2 (b) and (c), 3 (b) and 8) in accordance with the following periods:

2. In place of the information required under Article 43 (1) (6) of Directive 78/660/EEC, credit institutions shall, in the notes on the accounts, provide an analysis of fixed term claims and liabilities in respect of credit institutions and customers other than credit institutions ('Assets', items 3 (b), (bb), 5 (b) and 7 and 'Liabilities', items 1 (b), (bb), 2 (b) and (c), 3 (b) and 8) **in accordance with Article 9 for the following periods:**

- up to and including one year,
- more than one year but less than five years,
- five years and over.

- **up to one year,**
- **more than one and up to two years,**
- **more than two and up to five years,**
- **more than five years.**

In addition, credit institutions shall indicate, in respect of the balance sheet items specified above and also in respect of 'Assets', item 6, debt securities held in portfolio, and 'Liabilities', item 3 (a), debt securities issued, what proportion of assets and liabilities with an original maturity of five years or more will become due within one year of the balance sheet date.

Unchanged.

The Member States may stipulate that this information be given in the balance sheet.

Unchanged.

Lastly, credit institutions shall provide information on the assets which have been pledged as security for their own liabilities (including contingent liabilities); the information should be in sufficient detail to

Unchanged.

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indicate, for each item under 'Liabilities' and for each item below the line, the total amount of the assets pledged as security.

3. Where credit institutions have to provide information within the meaning of Article 43 (1) (7) of Directive 78/660/EEC in the items below the line, such information need not be repeated in the notes on the accounts.

4. In place of the information required under Article 43 (1) (8) of Directive 78/660/EEC, credit institutions shall indicate in the notes the proportion of their operating income (items 1 to 3 and 6 of the profit and loss account) which arises from domestic and foreign markets respectively.

5. By way of derogation from Article 43 (1) (13) of Directive 78/660/EEC, credit institutions need indicate only the amounts of advances and credits granted to the members of their administrative, managerial and supervisory bodies, and the commitments entered into on their behalf by way of guarantees of any kind.

Unchanged.

Unchanged.

Unchanged.

*Article 40**Article 40*

1. The information required under Article 15 (3) of Directive 78/660/EEC shall apply to fixed assets as defined in Article 36 of this Directive.

Unchanged.

2. The Member States shall require credit institutions to give in addition the following information in the notes on the accounts:

Unchanged.

(a) a breakdown of the securities included in 'Assets', items 6, 7 and 8 into listed and unlisted securities and into securities which, pursuant to Article 36 of this Directive, were or were not valued as fixed assets;

(a) a breakdown of the securities included in 'Assets', items 6, 7, 8 and 9 into listed and unlisted securities and into securities which, pursuant to Article 36 of this Directive, were or were not valued as fixed assets;

(b) information on the value of leasing transactions apportioned between the relevant balance sheet items;

Unchanged.

(c) the book values, separately of land and buildings, included in 'Assets', item 10, occupied by the credit institution and land and buildings held for resale;

(c) the book values, separately of land and buildings, included in 'Assets', item 11, occupied by the credit institution and land and buildings held for resale;

(d) a breakdown of 'Assets', item 13, 'Liabilities', item 4, charges items 11 and 15 in the vertical layout or A.7 and 9 in the horizontal layout and income items 6 and 14 in the vertical layout or B.6 and 8 in the horizontal layout into their main component amounts, where such amounts are important for the purpose of assessing the annual accounts, as well as explanations of their nature and amount;

(d) a breakdown of 'Assets', item 14, 'Liabilities', item 4, charges items 11 and 15 in the vertical layout or A.7 and 9 in the horizontal layout and income items 6 and 14 in the vertical layout or B.6 and 8 in the horizontal layout into their main component amounts, where such amounts are important for the purpose of assessing the annual accounts, as well as explanations of their nature and amount;

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(e) information on the amounts of interest which the credit institutions have received for subordinated assets in the year under review or have expended for subordinated liabilities.

Unchanged.

SECTION 9

Certain provisions not applicable

SECTION 9

**Certain provisions not applicable
to smaller companies**

Article 41 unchanged

Article 42

1. The properly authorized annual accounts of credit institutions, together with the annual report and the opinion of the person responsible for auditing the accounts, shall be published in the manner required by the legislation in each Member State in accordance with Article 3 of Council Directive 68/151/EEC (1).

However, for credit institutions not having one of the legal forms specified in Article 1 (1) of Directive 78/660/EEC and not subject to the national legislation concerning publication referred to above, Member States shall lay down appropriate requirements which will at least make the abovementioned documents available to the public, on demand and without charge, at the registered office of the credit institution.

2. The annual accounts of a credit institution shall be published in all Community countries where the credit institution has branches as defined by Article 1, third indent, of Directive 77/780/EEC, in the official language of each country concerned.

Article 42

1. The properly authorized annual accounts of credit institutions, together with the annual report and the opinion of the person responsible for auditing the accounts, shall be published in the manner required by the legislation in each Member State in accordance with Article 3 of Council Directive 68/151/EEC (1).

2. **However, where the credit institution which drew up the consolidated accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents on request. The price of such a copy must not exceed its administrative cost.**

3. The annual accounts of a credit institution shall be published in **each Member State** where the credit institution has branches as defined by Article 1, third indent, of Directive 77/780/EEC. **Such Member States may require that the publication of these documents is made in its official language.**

Articles 43 to 45 unchanged

(1) OJ No L 65, 14. 3. 1968, p. 8.

(1) OJ No L 65, 14. 3. 1968, p. 8.