

Second amended proposal for a Council Directive concerning the annual accounts and consolidated accounts of banks and other financial institutions ⁽¹⁾

COM(85) 755 final

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 26 December 1985

(85/C 351/09)

FIRST AMENDED PROPOSAL

First amended proposal

Amended proposal for a Council Directive concerning the annual accounts of banks and other financial institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 78/660/EEC ⁽²⁾ concerning the annual accounts of limited companies need not be applied to banks and other financial institutions, hereinafter referred to as 'credit institutions', pending subsequent coordination; whereas, in view of the central importance of these undertakings in the Community, such coordination cannot be delayed any longer following implementation of Directive 78/660/EEC;

Whereas such coordination has also become urgent because more and more credit institutions are operating across national frontiers; whereas, for creditors, debtors and members and for the general public, improved comparability of the annual accounts of these institutions is therefore of crucial importance;

⁽¹⁾ OJ No C 83, 24. 3. 1984, p. 6.

⁽²⁾ OJ No L 222, 14. 8. 1978, p. 11.

SECOND AMENDED PROPOSAL

Second amended proposal

Second amended proposal for a Council Directive concerning the annual accounts and consolidated accounts of banks and other financial institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission ⁽³⁾,

Having regard to the opinion of the European Parliament ⁽⁴⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁵⁾,

Whereas Council Directive 78/660/EEC ⁽⁶⁾, as last amended by Directive 84/564/EEC ⁽⁷⁾, concerning the annual accounts of limited companies need not be applied to banks and other financial institutions pending subsequent coordination; whereas, in view of the central importance of these undertakings in the Community, such coordination cannot be delayed any longer following implementation of that Directive;

Whereas Council Directive 83/349/EEC ⁽⁸⁾ on consolidated accounts provides for derogations for credit institutions only until expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also contain provisions specific to credit institutions in respect of consolidated accounts;

Whereas such coordination has also become urgent because more and more credit institutions are operating across national frontiers; whereas, for creditors, debtors and members and for the general public, improved comparability of the annual accounts **and consolidated accounts** of these institutions is therefore of crucial importance;

⁽³⁾ OJ No C 130, 1. 6. 1981, p. 1 and No C 83, 24. 3. 1984, p. 6.

⁽⁴⁾ OJ No C 163, 10. 7. 1978, p. 60; OJ No C 242, 12. 9. 1983, p. 33.

⁽⁵⁾ OJ No C 112, 3. 5. 1982, p. 17.

⁽⁶⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁷⁾ OJ No L 314, 4. 12. 1984, p. 28.

⁽⁸⁾ OJ No L 193, 18. 7. 1983, p. 1.

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Whereas, in virtually all the Member States of the Community, institutions of differing legal forms are in competition with one another in the credit sector; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope which is in line with that of Council Directive 77/780/EEC ⁽¹⁾ relating to the taking up and pursuit of the business of credit institutions;

Whereas the link with the coordination of legislation relating to credit institutions is also important because aspects of the provisions governing annual accounts will inevitably have an impact on other areas of such coordination, such as authorization requirements and the indicators used for supervisory purpose;

Whereas, although in view of the specific characteristics of credit institutions, it appears appropriate to propose a separate Directive on annual accounts for such undertakings, this must not result in a set of standards being established which is separate from Directive 78/660/EEC; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law, since, given the central place which they occupy, credit institutions cannot be excluded from the framework of standards devised for undertakings generally; whereas, for this reason only the particular characteristics of credit institutions are taken into account, and this Directive therefore deals only with exceptions to the rules contained in Directive 78/660/EEC;

Whereas in each Member State an essential characteristic of credit institutions is the difference in structure and content of their balance sheets; whereas this Directive must therefore lay down the same structure and the same item designations for the balance sheets of all credit institutions in the Community;

Whereas, if the annual accounts are to be comparable, a number of basic questions regarding the presentation of certain transactions in the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of certain balance sheet items be determined precisely;

Whereas the same also applies to the composition and definition of certain items in the profit and loss account;

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Whereas, in virtually all the Member States of the Community, institutions of differing legal forms are in competition with one another in the credit sector; whereas it is therefore appropriate not to confine coordination to the legal forms covered by Directive 78/660/EEC, but to choose a scope which **includes all companies or firms as defined in the second paragraph of Article 58 of the Treaty, where these are credit institutions within the meaning of Council Directive 77/780/EEC ⁽²⁾ relating to the business of credit institutions or financial institutions within the meaning of Council Directive 83/350/EEC ⁽³⁾ relating to the supervision of credit institutions on a consolidated basis;**

Whereas the link with the coordination of legislation relating to credit institutions is also important because aspects of the provisions governing annual accounts and **consolidated accounts** will inevitably have an impact on other areas of such coordination, such as authorization requirements and the indicators used for supervisory purposes;

Whereas, although in view of the specific characteristics of credit institutions, it appears appropriate to propose a separate Directive on the annual accounts **and consolidated accounts** of such undertakings, this must not result in a set of standards being established which is separate from **Directives 78/660/EEC and 83/349/EEC**; whereas such separate standards would be neither appropriate nor consistent with the principles underlying the coordination of company law, since, given the central place which they occupy in the economy of the Community, credit institutions cannot be excluded from the framework of standards devised for undertakings generally; whereas, for this reason, only the particular characteristics of credit institutions are taken into account, and this Directive therefore deals only with exceptions to the rules contained in **Directives 78/660/EEC and 83/349/EEC**;

Unchanged.

Whereas, if the annual accounts **and consolidated accounts** are to be comparable, a number of basic questions regarding the presentation of certain transactions in the balance sheet must be settled;

Unchanged.

Unchanged.

⁽¹⁾ OJ No. L 322, 17. 12. 1977, p. 30.

⁽²⁾ OJ No L 322, 17. 12. 1977, p. 30.

⁽³⁾ OJ No L 193, 18. 7. 1983, p. 18.

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Whereas the comparability of figures in the balance sheet and profit and loss account also depends crucially on the values at which assets or liabilities are entered in the balance sheet; whereas, in view of the principle of prudence and the need to maintain confidence in the stability of the credit industry, it is necessary to allow credit institutions some flexibility in the valuation of loans and advances; whereas credit institutions should also be permitted to show in the profit and loss account only the balance resulting from the set-off between charges corresponding to value adjustments in respect of certain items and income from the writing-back of such value adjustments;

Whereas, in view of the special nature of credit institutions, certain changes are also necessary with regard to the notes on the annual accounts;

Whereas, in line with the intention to cover as many credit institutions as possible, as was the case with Council Directive 77/780/EEC, derogations are not provided for small and medium-sized credit institutions, such as are provided for under the terms of Directive 78/660/EEC; whereas, nevertheless if, in the light of experience, such derogations prove necessary, it will be possible to provide for them in a subsequent measure of coordination;

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;

Whereas the examination of problems which arise in connection with the present Directive, notably concerning its application, require the cooperation of representatives of the Member States and the Commission in the form of a Contact Committee; whereas, in order to avoid the proliferation of such committees, it is desirable that the said cooperation be achieved by means of the committee provided for in Article 52 of Directive 78/660/EEC; whereas, nevertheless, when examining problems concerning credit institutions, the committee will be appropriately constituted;

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Unchanged.

Unchanged.

Whereas, in line with the intention to cover as many credit institutions as possible, as was the case with Directive 77/780/EEC, derogations are not provided for small and medium-sized credit institutions, such as are provided for under the terms of Directive 78/660/EEC; whereas, nevertheless if, in the light of experience, such derogations prove necessary, it will be possible to provide for them in a subsequent measure of coordination; **whereas for the same reasons, the scope allowed Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirement if the undertakings to be consolidated do not together exceed a certain size has not been extended to credit institutions;**

Whereas the specific application of the provisions on consolidated accounts to credit institutions requires a number of adjustments to some of the general rules applicable to all industrial and commercial companies; whereas accordingly specific rules have been provided for in the case of mixed groups and exemption from sub-consolidation is made subject to an additional condition;

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 **and consolidated 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;

Unchanged.

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Whereas, in view of the complexity of the matter, the credit institutions covered by this Directive must be allowed a longer period than usual to implement the provisions thereof; whereas, pending subsequent coordination, the Member States should also be allowed to defer the application of certain provisions of this Directive to certain specialized credit institutions where immediate application would cause major adjustment problems,

HAS ADOPTED THIS DIRECTIVE:

Articles 1 to 41 unchanged.

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Unchanged.

SECTION 9a

Provisions relating to consolidated accounts

Article 41a

The credit institutions referred to in Article 2 shall draw up consolidated accounts and a consolidated annual report in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.

Article 41b

Directive 83/349/EEC shall apply subject to the following provisions:

1. Articles 4, 5, 6, 15 and 40 shall not apply.
2. The requirement or option provided for in Articles 7, 8 and 11 whereby Member States shall or may exempt a parent undertaking governed by their national laws which is a credit institution, and is also a subsidiary undertaking, from the requirement of drawing up consolidated accounts and a consolidated annual report, shall apply only if its own parent undertaking has in addition declared that it guarantees the commitments entered into by the credit institution. The declaration shall be published by the credit institution in accordance with Article 38.
3. The information referred to in the first two indents of Article 9 (2), namely:
 - the amount of the fixed assets,
 - the net turnover,
 of shall be replaced by:
 - the sum of items 1 to 3 and 6 in Article 29 or B.1 to 3 and 6 in Article 30 of this Directive.
4. Where the parent undertaking is a credit institution, Article 13 (3) (c) shall not apply if shares in a subsidiary undertaking which is a credit institution or a financial institution are temporarily held as a result of a financial assistance operation with a view to the reorganization or rescue of the undertaking in question.

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5. Article 14, with the exception of paragraph 2 thereof, shall apply subject to the following provision:

Where the parent undertaking is a credit institution and where one or more subsidiary undertakings to be consolidated do not have that status, such subsidiary undertakings may not be excluded from the consolidation if their activities are a direct extension of banking activities or concern services ancillary to banking activities such as leasing, factoring, the management of unit trusts, the management of data-processing services or any other similar activity.

6. For the purposes of the layout of consolidated accounts

(a) the reference in Article 17 to Articles 9 and 10 (balance sheet) and 23 to 26 (profit and loss account) of Directive 78/660/EEC shall be deemed to be a reference to Articles 4 (balance sheet) and 29 and 30 (profit and loss account) of this Directive. Articles 3, 5 to 28 and 31 to 35 of this Directive shall also apply;

(b) the reference in Article 17 to Article 15 (3) of Directive 78/660/EEC shall apply to the items deemed to be fixed assets pursuant to Article 36 of this Directive.

7. For the purpose of valuing assets and liabilities to be included in consolidated accounts, the reference in Articles 29 and 33 to Articles 31 to 42 and 60 of Directive 78/660/EEC shall be deemed to be a reference to those Articles as amended in their application by Articles 36 to 38 of this Directive.

8. Concerning Article 34 relating to the consolidated accounts:

(a) In place of the information required in point 6, credit institutions shall in the notes on the consolidated accounts state separately for each of the Assets items 4 (b) and 5 and the Liabilities items 1 (b), 2 (b) and (c) and 3 (b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

- not more than three months,
- more than three months but not more than one year,
- more than one year but not more than five years,
- more than five years.

For Assets item 5, the following shall also be shown:

- indefinite-period accounts in credit

(a) repayable on demand;

(b) other.

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If loans and advances or liabilities involve payments by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

However, for five years after the date referred to in Article 44 (2), Member States may require or permit the listing by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. In that event, where a credit institution has acquired an existing loan not represented by a certificate, the Member State shall require classification of that loan to be based on the remaining maturity as at the date on which it was required. For the purposes of this subparagraph, 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 liabilities are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or liabilities arose and the date on which the last instalment falls due.

- (b) In addition, credit institutions shall, in respect of the consolidated balance sheet items specified in subparagraph (a) and also in respect of Assets item 6 (debt securities held in portfolio) and Liabilities item 3 (a) (debt securities issued) indicate what proportion of assets and Liabilities with an original maturity of five years or more will become due within one year of the consolidated balance sheet date.
- (c) Member States may stipulate that the information referred to in (a) and (b) be given in the consolidated balance sheet.
- (d) The notes on the consolidated accounts shall in addition include information on the assets which have been pledged as security for the consolidating credit institution's own liabilities (including contingent liabilities); the information should be in sufficient detail to indicate for each item below the line, the total amount of the assets pledged as security.
- (e) Where the information referred to in point 7 has to be provided in items below the line, it need not be repeated in the notes on the consolidated accounts;

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- (f) In place of the information required in point 8, credit institutions shall, in the notes on the consolidated accounts, indicate their operating income (items 1 to 3 and 6 of Article 29 or items B.1 to B.3 and B.6 of Article 30) broken down into geographical markets in so far as, taking account of the manner in which the credit institution is organized, these markets differ substantially from one another.
- (g) The reference in point 10 to Articles 31 and 34 to 42 of Directive 78/660/EEC shall be deemed to be a reference to those Articles as amended in their application by Articles 36 to 38 of this Directive.
- (h) By way of derogation from point 13, credit institutions need indicate only the amounts of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings and the commitments entered into on their behalf by way of guarantees of any kind with an indication of the total for each category.
9. Member States shall require credit institutions to give the following further information in the notes on the consolidated accounts:
- (a) a breakdown of the securities included in Assets items 6, 8, 9 and 9a into listed and unlisted securities and into securities which, pursuant to Article 36 of this Directive, were or were not considered fixed assets;
- (b) the value of leasing transactions apportioned between the relevant items in the consolidated balance sheet;
- (c) a breakdown of Assets item 14, Liabilities item 4, items 11 and 15 in the vertical layout or A.7 and 9 in the horizontal layout and items 6 and 14 in the vertical layout or B.6 and 8 in the horizontal layout of the consolidated profit and loss account into their main component amounts, where such amounts are important for the purpose of assessing the consolidated accounts, as well as explanations of their nature and amount;
- (d) the amounts of interest which the undertakings included in the consolidation have received for subordinated assets in the year under review, or have expended for subordinated liabilities.

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SECTION 10

Publication*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 annual 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 be made in their official language.

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SECTION 10

Publication*Article 42*

1. The duly approved annual accounts of credit institutions, together with the annual report and the opinion submitted by the person responsible for auditing the accounts shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC ⁽²⁾.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost.

(1a) Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual report and the opinion submitted by the person responsible for auditing the accounts.

2. However, where a credit institution which has drawn up annual accounts or **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 **paragraphs 1 and 1a** 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 **and consolidated accounts** of a credit institution must be published in every Member State in which the credit institution has branches, within the meaning of the third indent of Article 1 of Directive 77/780/EEC. Such Member States may require that the publication of those documents be effected in their official language.

4. Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

Articles 43 to 45 unchanged.

⁽¹⁾ OJ No L 65, 14. 3. 1968, p. 8.

⁽²⁾ OJ No L 65, 14. 3. 1968, p. 8.