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► **B****SEVENTH COUNCIL DIRECTIVE**

**of 13 June 1983**

**based on the Article 54 (3) (g) of the Treaty on consolidated accounts**

**(83/349/EEC)**

**(OJ L 193, 18.7.1983, p. 1)**

Amended by:

|                    |   | Official Journal |      |            |
|--------------------|---|------------------|------|------------|
|                    |   | No               | page | date       |
| ► <b><u>M1</u></b> | Eleventh Council Directive 89/666/EEC of 21 December 1989                               | L 395            | 36   | 30.12.1989 |
| ► <b><u>M2</u></b> | Council Directive 90/604/EEC of 8 November 1990   | L 317            | 57   | 16.11.1990 |
| ► <b><u>M3</u></b> | Council Directive 90/605/EEC of 8 November 1990   | L 317            | 60   | 16.11.1990 |
| ► <b><u>M4</u></b> | Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 | L 283            | 28   | 27.10.2001 |
| ► <b><u>M5</u></b> | Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003      | L 178            | 16   | 17.7.2003  |
| ► <b><u>M6</u></b> | Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006       | L 157            | 87   | 9.6.2006   |
| ► <b><u>M7</u></b> | Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006      | L 224            | 1    | 16.8.2006  |
| ► <b><u>M8</u></b> | Council Directive 2006/99/EC of 20 November 2006  | L 363            | 137  | 20.12.2006 |
| ► <b><u>M9</u></b> | Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009      | L 164            | 42   | 26.6.2009  |

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|                    |   |              |         |                       |
|--------------------|---|--------------|---------|-----------------------|
| ► <b><u>A1</u></b> | Act of Accession of Spain and Portugal  | L 302        | 23      | 15.11.1985            |
| ► <b><u>A2</u></b> | Act of Accession of Austria, Sweden and Finland<br>(adapted by Council Decision 95/1/EC, Euratom, ECSC)   | C 241<br>L 1 | 21<br>1 | 29.8.1994<br>1.1.1995 |
| ► <b><u>A3</u></b> | Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded | L 236        | 33      | 23.9.2003             |

Corrected by:

- **C1** Corrigendum, OJ L 211, 3.8.1983, p. 31 (83/349/EEC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



**SEVENTH COUNCIL DIRECTIVE**

**of 13 June 1983**

**based on the Article 54 (3) (g) of the Treaty on consolidated accounts**

(83/349/EEC)

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC <sup>(4)</sup> on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

►C1 Whereas, in the determination of the conditions for consolidation, account must be taken not only of cases in ◀ which the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it is sufficient to exceed the limit of one only of the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive;

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all

<sup>(1)</sup> OJ No C 121, 2.6.1976, p. 2.

<sup>(2)</sup> OJ No C 163, 10.7.1978, p. 60.

<sup>(3)</sup> OJ No C 75, 26.3.1977, p. 5.

<sup>(4)</sup> OJ No L 222, 14.8.1978, p. 11.

**▼B**

the undertakings consolidated taken as a whole; whereas, therefore consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

## SECTION 1

**Conditions for the preparation of consolidated accounts***Article 1*

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

- (a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or
- (c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for each contracts or clauses shall not be required to apply this provision; or
- (d) is a shareholder in or member of an undertaking, and:
  - (aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
  - (bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary under-

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taking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

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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.

**▼ B***Article 2*

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

- (a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or
- (b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (d), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

*Article 3*

1. Without prejudice to ►**M5** Articles 13 and 15 ◀, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

2. For the purposes of paragraph 1 above any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertaking to be consolidated.

**▼B***Article 4*

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) *in Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) *in Belgium:*

la société anonyme / de naamloze vennootschap — la société en commandite par actions / de commanditaire vennootschap op aandelen — la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) *in Denmark:*

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

(d) *in France:*

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

(e) *in Greece:*

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) *in Ireland:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) *in Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) *in Luxembourg:*

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

(i) *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) *in the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

**▼A1**

(k) *in Spain:*

la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;

(l) *in Portugal:*

a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acções, a sociedade por quotas de responsabilidade limitada;

**▼A2**

(m) *in Austria:*

die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

(n) *in Finland:*

osakeyhtiö / aktiebolag;

**▼ A2**

(o) *in Sweden:*

aktiebolag;

**▼ A3**

(p) *in the Czech Republic:*

společnost s ručením omezeným, akciová společnost;

(q) *in Estonia:*

aktsiaselts, osäühing;

(r) *in Cyprus:*

Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

(s) *in Latvia:*

akciju sabiedrība, sabiedrība ar ierobežotu atbildību;

(t) *in Lithuania:*

akcinės bendrovės, uždariosios akcinės bendrovės;

(u) *in Hungary:*

részvénytársaság, korlátolt felelősségű társaság;

(v) *in Malta:*

kumpanija pubblika—public limited liability company, kumpanija privata—private limited liability company,

soċjeta in akkomandita bil-kapital maqsum f'azzjonijiet—partnership *en commandite* with the capital divided into shares;

(w) *in Poland:*

spółka akcyjna, spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna;

(x) *in Slovenia:*

delniška družba, družba z omejeno odgovornostjo, komanditna delniška družba;

(y) *in Slovakia:*

akciová spoločnosť, spoločnosť s ručením obmedzeným;

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(z) *in Bulgaria:*

акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;

(aa) *in Romania:*

societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.

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The first subparagraph shall also apply where either the parent undertaking or one or more subsidiary undertakings is constituted as one of the types of company mentioned in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.

2. The Member States may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not constituted as one of the types of company mentioned in Article 4 (1) of this Directive or in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.

**▼B***Article 5*

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:
- (a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;
  - (b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;
  - (c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and
  - (d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.
2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).
- (b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

*Article 6*

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.
2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.
3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

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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

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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 <sup>(1)</sup>.

**▼B***Article 7*

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

- (a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or
- (b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

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2. Exemption shall be conditional upon compliance with all of the following conditions:

- (a) the exempted undertaking and, without prejudice to ►**M5** Articles 13 and 15 ◀, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;
- (b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;
- (bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;
- (c) the notes on the annual accounts of the exempted undertaking must disclose:
  - (aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and
  - (bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

<sup>(1)</sup> 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).



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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.

**▼B***Article 8*

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10 % for public limited liability companies and for limited partnerships with share capital, and at not more than 20 % for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

*Article 9*

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

- the amount of the fixed assets,
- the net turnover,
- the profit or loss for the financial year and the amount of the capital and reserves,
- the average number of persons employed during the financial year.

*Article 10*

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

- for the information of employees of their representatives, or
- by an administrative or judicial authority for its own purposes.

**▼B***Article 11*

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

- (a) the exempted undertaking and, without prejudice to ►**M5** Articles 13 and 15 ◀, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;
- (b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;
- (c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.

2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

*Article 12*

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

- (a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or
- (b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

*Article 13*

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).

2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated

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accounts if, as a whole, they are material for the purposes of Article 16 (3).

**▼ M9**

2a. Without prejudice to Article 4(2) and Articles 5 and 6, any parent undertaking governed by the national law of a Member State which only has subsidiary undertakings which are not material for the purposes of Article 16(3), both individually and as a whole, shall be exempted from the obligation imposed in Article 1(1).

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3. In addition, an undertaking need not be included in consolidated accounts where:

- (a) severe long-term restrictions substantially hinder:
  - (aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or
  - (bb) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 12 (1); or
- (b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or
- (c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

**▼ M5****▼ B***Article 15*

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.

2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.

3. Where use is made of this derogation either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

**SECTION 2****The preparation of consolidated accounts***Article 16*

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

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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.

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2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.

3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

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4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.

5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

*Article 17*

1. ►**M5** Articles 3 to 10a ◀, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.

2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

*Article 18*

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

*Article 19*

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:

- (a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.
- (b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.
- (c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.

2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

**▼B***Article 20*

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:
  - (a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91 EEC <sup>(1)</sup>;
  - (b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and
  - (c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of nominal value, of the accounting par value of the shares issued.
2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.
3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

*Article 21*

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

*Article 22*

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

*Article 23*

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

*Article 24*

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

*Article 25*

1. The methods of consolidation must be applied consistently from one financial year to another.
2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

<sup>(1)</sup> OJ No L 26, 31.1.1977, p. 1.

**▼B***Article 26*

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:
  - (a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.
2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.
3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

*Article 27*

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.
2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the note on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.
3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

*Article 28*

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

**▼B***Article 29***▼M4**

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Sections 7 and 7a and Article 60 of Directive 78/660/EEC.

**▼B**

2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.

(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given.

3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.

4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

*Article 30*

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item 'goodwill'.

2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

*Article 31*

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

(a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or

(b) in so far as such a difference corresponds to a realized gain.

**▼B***Article 32*

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.
2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.
3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

*Article 33*

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.
2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:
  - (a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or
  - (b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.
  - (c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.
  - (d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.
3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2), they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes on the accounts. A Member State may require such revaluation.
4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's



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capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.

5. In so far as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).

6. The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit-and-loss account as a separate item under an appropriate heading.

7. The eliminations referred to in Article 26 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.

8. Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 16 (3).

*Article 34*

In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.
2. (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.
  - (b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to ►M5 Article 13 and ◀ an explanation must be given for the exclusion of the undertakings referred to in Article 13.
3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
  - (b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.

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4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation ►**M5** ————— ◀, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.
6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.
7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

**▼M7**

- 7a. The nature and business purpose of any arrangements that are not included in the consolidated balance sheet, and the financial impact of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the undertakings included in the consolidation taken as a whole.
- 7b. The transactions, save for intra-group transactions, entered into by the parent undertaking, or by other undertakings included in the consolidation, with related parties, including the amounts of such transactions, the nature of the related party relationship as well as other information about the transactions necessary for an understanding of the financial position of the undertakings included in the consolidation taken as a whole, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position of the undertakings included in the consolidation taken as a whole.

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8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the

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consolidation taken as a whole are organized, these categories and markets differ substantially from one another.

9.
  - a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.
  - b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.
10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in ►**M4** Articles 31 and 34 to Article 42c ◀ of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.
11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.
12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.
13. The amount 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, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

**▼M4**

14. Where valuation at fair value of financial instruments has been applied in accordance with Section 7a of Directive 78/660/EEC:
  - (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 42b(1)(b) of that Directive;
  - (b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as, in accordance with Article 42c of that Directive, changes included in the fair value reserve;
  - (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including

**▼M4**

- significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year.
15. Where valuation at fair value of financial instruments has not been applied in accordance with Section 7a of Directive 78/660/EEC:
- (a) for each class of derivative instruments:
- (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1) of that Directive;
- (ii) information about the extent and the nature of the instruments; and
- (b) for financial fixed assets covered by Article 42a of that Directive, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa) of that Directive:
- (i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
- (ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.

**▼M6**

16. Separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of the consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

**▼B***Article 35*

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):
- (a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;
- (b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.
2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

## SECTION 3

**The consolidated annual report***Article 36***▼M5**

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.

**▼M5**

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.

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2. In respect of those undertakings, the report shall also give an indication of:

- (a) any important events that have occurred since the end of the financial year;
- (b) the likely future development of those undertakings taken as a whole;
- (c) the activities of those undertakings taken as whole in the field of research and development;
- (d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts;

**▼M4**

- (e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,
  - the financial risk management objectives and policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used, and
  - the exposure to price risk, credit risk, liquidity risk and cash flow risk<sup>36</sup>;

**▼M7**

- (f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(1)</sup>. In the event that the consolidated annual report and the annual report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 46a of Directive 78/660/EEC.

If a Member State permits the information required by paragraph 1 of Article 46a of Directive 78/660/EEC to be set out in a separate report published together with the annual report in the manner prescribed by Article 47 of that Directive, the information provided under the first subparagraph shall also form part of that separate report. Article 37(1), second subparagraph of this Directive shall apply.

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

**▼ M5**

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.

**▼ M7**

## SECTION 3A

**Duty and liability for drawing up and publishing the consolidated accounts and the consolidated annual report***Article 36a*

Member States shall ensure that the members of the administrative, management and supervisory bodies of undertakings drawing up the consolidated accounts and the consolidated annual report have collectively the duty to ensure that the consolidated accounts, the consolidated annual report and, when provided separately, the corporate governance statement to be provided pursuant to Article 46a of Directive 78/660/EEC are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards <sup>(1)</sup>. Such bodies shall act within the competences assigned to them by national law.

*Article 36b*

Member States shall ensure that their laws, regulations and administrative provisions on liability apply to the members of the administrative, management and supervisory bodies referred to in Article 36a, at least towards the undertaking drawing up the consolidated accounts, for breach of the duty referred to in Article 36a.

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## SECTION 4

**The auditing of consolidated accounts****▼ M5***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 <sup>(2)</sup>.

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;

<sup>(1)</sup> OJ L 243, 11.9.2002, p. 1.

<sup>(2)</sup> OJ L 126, 12.5.1984, p. 20.

**▼M5**

- (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.

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## SECTION 5

**The publication of consolidated accounts***Article 38*

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.
2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.
3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: '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.'
4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 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 upon request. The price of such a copy must not exceed its administrative cost.
5. Articles 48 and 49 of Directive 78/660/EEC shall apply.
6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

**▼M5**

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.

▼ **M2***Article 38a*

Consolidated accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the consolidated balance sheet date. That rate shall be disclosed in the notes on the accounts.

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## SECTION 6

**Transitional and final provisions***Article 39*

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1) account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.

2. Paragraph 1 above shall apply *mutatis mutandis* to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.

3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:

- (a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and
- (b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

*Article 40*

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:

- (a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;
- (b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.

They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.

2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law



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implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:

- (a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;
- (b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.

3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

*Article 41*

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.

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1a. 'Related party' has the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

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2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.

3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.

4. Articles 2 and 3 (2) shall apply.

5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by that Member State to draw up consolidated accounts in accordance with the provisions of this Directive as well as parent undertakings with a similar legal form.

*Article 42*

The following shall be substituted for Article 56 of Directive 78/660/EEC:

*'Article 56*

1. The obligation to show in annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated

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undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

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

*Article 43*

The following shall be substituted for Article 57 of Directive 78/660/EEC:

*'Article 57*

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

- (a) the parent undertaking must be subject to the laws of a Member State;
- (b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;
- (c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;
- (d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;
- (e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;
- (f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.'

*Article 44*

The following shall be substituted for Article 58 of Directive 78/660/EEC:

**▼B***Article 58*

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

- (a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;
- (b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;
- (c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.'

*Article 45*

The following shall be substituted for Article 59 of Directive 78/660/EEC:

*Article 59*

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.
2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:
  - (a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or
  - (b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.
  - (c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the account must indicate whether (a) or (b) above has been used.
  - (d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.

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3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.
4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.
5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item "goodwill".
6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.
- (b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.
- (c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.
7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.
8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.
9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).'

*Article 46*

The following shall be substituted for Article 61 of Directive 78/660/EEC:

*'Article 61*

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

- (a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or

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- (b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.’

*Article 47*

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

- (a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;
- (b) advise the Commission, if necessary, on additions or amendments to this Directive.

**▼ M1****▼ M7***Article 48*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

**▼ B***Article 49*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.
2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.
3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 50*

1. Five years after the date referred to in Article 49 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1 (1) (d) (second subparagraph), 4 (2), 5, 6, 7 (1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.
2. Paragraph 1 above shall not affect Article 53 (2) of Directive 78/660/EEC.

**▼ M4***Article 50a*

Not later than 1 January 2007, the Commission shall review the provisions in Article 29(1), Article 34(10), (14) and (15) and Article 36(2)(e) in the light of the experience acquired in applying provisions on fair value accounting and taking account of international developments in the field of accounting and, if appropriate, submit a

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proposal to the European Parliament and the Council with a view to amending the abovementioned Articles.

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*Article 51*

This Directive is addressed to the Member States.