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**ELEVENTH COUNCIL DIRECTIVE**

**of 21 December 1989**

**concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State**

(89/666/EEC)

(OJ L 395, 30.12.1989, p. 36)

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**▼B****ELEVENTH COUNCIL DIRECTIVE****of 21 December 1989****concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State**

(89/666/EEC)

## SECTION I

**Branches of companies from other Member States***Article 1*

1. Documents and particulars relating to a branch opened in a Member State by a company which is governed by the law of another Member State and to which Directive 68/151/EEC applies shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 3 of that Directive.

2. Where disclosure requirements in respect of the branch differ from those in respect of the company, the branch's disclosure requirements shall take precedence with regard to transactions carried out with the branch.

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3. The documents and particulars referred to in Article 2(1) shall be made publicly available through the system of interconnection of central, commercial and companies registers established in accordance with Article 4a(2) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent<sup>(1)</sup> ('the system of interconnection of registers'). Article 3b and Article 3c(1) of that Directive shall apply *mutatis mutandis*.

4. Member States shall ensure that branches have a unique identifier allowing them to be unequivocally identified in communication between registers through the system of interconnection of registers. That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the branch number in that register, and, where appropriate, features to avoid identification errors.

**▼B***Article 2*

1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars only:

- (a) the address of the branch;
- (b) the activities of the branch;

<sup>(1)</sup> OJ L 258, 1.10.2009, p. 11.

*Editorial note:* the title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty.

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- (c) the register in which the company file mentioned in Article 3 of Council Directive 68/151/EEC is kept, together with the registration number in that register;
- (d) the name and legal form of the company and the name of the branch if that is different from the name of the company;
- (e) the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings;
  - as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 2 (1) (d) of Directive 68/151/EEC,
  - as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;
- (f) the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of Directive 68/151/EEC,
  - insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;
- (g) the accounting documents in accordance with Article 3;
- (h) the closure of the branch.

2. The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 1, of

- (a) the signature of the persons referred to in paragraph 1 (e) and (f) of this Article;
- (b) the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument in accordance with Article 2 (1) (a), (b) and (c) of Directive 68/151/EEC, together with amendments to those documents;
- (c) an attestation from the register referred to in paragraph 1 (c) of this Article relating to the existence of the company;
- (d) an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those securities.

*Article 3*

The compulsory disclosure provided for by Article 2 (1) (g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directives 78/660/EEC, 83/349/EEC and 84/253/EEC.

*Article 4*

The Member State in which the branch has been opened may stipulate that the documents referred to in Article 2 (2) (b) and Article 3 must be published in another official language of the Community and that the translation of such documents must be certified.

**▼B***Article 5*

Where a company has opened more than one branch in a Member State, the disclosure referred to in Article 2 (2) (b) and Article 3 may be made in the register of the branch of the company's choice.

In this case, compulsory disclosure by the other branches shall cover the particulars of the branch register of which disclosure was made, together with the number of that branch in that register.

**▼M1***Article 5a*

1. The register of the company shall, through the system of inter-connection of registers, make available, without delay, the information on the opening and termination of any winding-up or insolvency proceedings of the company and on the striking-off of the company from the register, if this entails legal consequences in the Member State of the register of the company.

2. The register of the branch shall, through the system of inter-connection of registers, ensure the receipt, without delay, of the information referred to in paragraph 1.

3. The exchange of information referred to in paragraphs 1 and 2 shall be free of charge for the registers.

4. Member States shall determine the procedure to be followed upon receipt of the information referred to in paragraphs 1 and 2. Such procedure shall ensure that, where a company has been dissolved or otherwise struck off the register, its branches are likewise struck off the register without undue delay.

5. The second sentence of paragraph 4 shall not apply to branches of companies that have been struck off the register as a consequence of any change in the legal form of the company concerned, a merger or division, or a cross-border transfer of its registered office.

**▼B***Article 6*

The Member States shall prescribe that letters and order forms used by a branch shall state, in addition to the information prescribed by Article 4 of Directive 68/151/EEC, the register in which the file in respect of the branch is kept together with the number of the branch in that register.

## SECTION II

**Branches of companies from third countries***Article 7*

1. Documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company to which Directive 68/151/EEC applies shall be disclosed in accordance with the law of the Member State of the branch as laid down in Article 3 of that Directive.

2. Article 1 (2) shall apply.

**▼B***Article 8*

The compulsory disclosure provided for in Article 7 shall cover at least the following documents and particulars:

- (a) the address of the branch;
- (b) the activities of the branch;
- (c) the law of the State by which the company is governed;
- (d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;
- (e) the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to these documents;
- (f) the legal form of the company, its principal place of business and its object and, at least annually, the amount of subscribed capital if these particulars are not given in the documents referred to in subparagraph (e);
- (g) the name of the company and the name of the branch if that is different from the name of the company;
- (h) the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings:
  - as a company organ constituted pursuant to law or as members of any such organ,
  - as permanent representatives of the company for the activities of the branch.

The extent of the powers of the persons authorized to represent the company must be stated, together with whether they may do so alone or must act jointly;
- (i) — the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation;
  - insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;

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- (j) the accounting documents in accordance with Article 9;

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- (k) the closure of the branch.

*Article 9*

1. The compulsory disclosure provided for by Article 8 (1) (j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company. Where they are not drawn up in accordance with or in a manner equivalent to Directives 78/660/EEC and 83/349/EEC, Member States may require that accounting documents relating to the activities of the branch be drawn up and disclosed.

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2. Articles 4 and 5 shall apply.

*Article 10*

The Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. Where the law of the State by which the company is governed requires entry in a register, the register in which the company is entered, and the registration number of the company in that register must also be stated.

## SECTION III

**Indication of branches in the company's annual report***Article 11*

The following subparagraph is added to Article 46 (2) of Directive 78/660/EEC:

‘(e) the existence of branches of the company’.

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## SECTION IIIA

**DATA PROTECTION***Article 11a*

The processing of personal data carried out in the context of this Directive shall be subject to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.

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## SECTION IV

**Transitional and final provisions***Article 12*

The Member States shall provide for appropriate penalties in the event of failure to disclose the matters set out in Articles 1, 2, 3, 7, 8 and 9 and of omission from letters and order forms of the compulsory particulars provided for in Articles 6 and 10.

*Article 13*

Each Member State shall determine who shall carry out the disclosure formalities provided for in this Directive.

*Article 14*

1. Articles 3 and 9 shall not apply to branches opened by credit institutions and financial institutions covered by Directive 89/117/EEC <sup>(2)</sup>.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ No L 44, 16. 2. 1989, p. 40.

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2. Pending subsequent coordination, the Member States need not apply Articles 3 and 9 to branches opened by insurance companies.

*Article 15*

Article 54 of Directive 78/660/EEC and Article 48 of Directive 83/349/EEC shall be deleted.

*Article 16*

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1992. They shall forthwith inform the Commission thereof.

2. Member States shall stipulate that the provisions referred to in paragraph 1 shall apply from 1 January 1993 and, with regard to accounting documents, shall apply for the first time to annual accounts for the financial year beginning on 1 January 1993 or during 1993.

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

*Article 17*

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, the 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 any additions or amendments to this Directive.

*Article 18*

This Directive is addressed to the Member States.