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Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents

Official Journal L 126 , 12/05/1984 P. 0020 - 0026

Finnish special edition: Chapter 17 Volume 1 P. 0073

Spanish special edition: Chapter 17 Volume 1 P. 0136

Swedish special edition: Chapter 17 Volume 1 P. 0073

Portuguese special edition Chapter 17 Volume 1 P. 0136

EIGHTH COUNCIL DIRECTIVE of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (84/253/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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, under Directive 78/660/EEC (4), the annual accounts of certain types of company must be audited by one or more persons entitled to carry out such audits from which only the companies mentioned in Article 11 of that Directive may be exempted;

Whereas the aforementioned Directive has been supplemented by Directive 83/349/EEC (5) on consolidated accounts;

Whereas the qualifications of persons entitled to carry out the statutory audits of accounting documents should be harmonized ; whereas it should be ensured that such persons are independent and of good repute;

Whereas the high level of theoretical knowledge required for the statutory auditing of accounting documents and the ability to apply that knowledge in practice must be ensured by means of an examination of professional competence;

Whereas the Member States should be given the power to approve persons who, while not fulfilling all the conditions imposed concerning theoretical training, nevertheless have engaged in professional activities for a long time, affording them sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence;

Whereas the Member States should also be authorized to adopt transitional provisions for the benefit of professional persons; (1) OJ No C 112, 13.5.1978, p. 6 ; OJ No C 317, 18.12.1975, p. 6. (2) OJ No C 140, 5.6.1979, p. 154. (3) OJ No C 171, 9.7.1979, p. 30. (4) OJ No L 222, 14.8.1978, p. 11. (5) OJ No L 193, 18.7.1983, p. 1.

Whereas the Member States will be able to approve both natural persons and firms of auditors which may be legal persons or other types of company, firms or partnership;

Whereas natural persons who carry out the statutory audits of accounting documents on behalf of such firms of auditors must fulfill the conditions of this Directive;

Whereas a Member State will be able to approve persons who have obtained qualifications outside that State which are equivalent to those required by this Directive;

Whereas a Member State which, when this Directive is adopted, recognizes categories of natural persons who fulfil the conditions imposed in this Directive, but whose level of examination of professional competence is below university, final examination level, should be allowed to continue, under certain conditions and until subsequent coordination, to grant such persons special approval for the purpose of carrying out the statutory audits of the accounting documents of companies and bodies of undertakings, of limited size, when such Member State has not made use of the possibilities for exemption afforded by Community Directives in respect of the preparation of consolidated accounts;

Whereas this Directive does not cover either the right of establishment or the freedom to provide services with regard to persons responsible for carrying out the statutory audits of accounting documents;

Whereas recognition of the approval given to nationals of other Member States for the purpose of carrying out such audits will be specifically regulated by Directives on the taking up and pursuit of activities in the fields of finance, economics and accountancy, as well as on the freedom to provide services in those fields,

HAS ADOPTED THIS DIRECTIVE:

SECTION I Scope

Article 1

1. The coordination measures prescribed in this Directive shall apply to the laws, regulations and administrative provisions of the Member States concerning persons responsible for: (a) carrying out statutory audits of the annual accounts of companies and firms and verifying that the annual reports are consistent with those annual accounts in so far as such audits and such verification are required by Community law;

(b) carrying out statutory audits of the consolidated accounts of bodies of undertakings and verifying that the consolidated annual reports are consistent with those consolidated accounts in so far as such audits and such verification are required by Community law.

2. The persons referred to in paragraph 1 may, depending on the legislation of each Member State, be natural or legal persons or other types of company, firm or partnership (firms of auditors as defined in this Directive).

SECTION II Rules on approval

Article 2

1. Statutory audits of the documents referred to in Article 1 (1) shall be carried out only by approved persons. The authorities of the Member States may approve only: (a) natural persons who satisfy at least the conditions laid down in Articles 3 to 19;

(b) firms of auditors which satisfy at least the following conditions: (i) the natural persons who carry out statutory audits of the documents referred to in Article 1 on behalf of firms of auditors must satisfy at least the conditions imposed in Articles 3 to 19 ; the Member States may provide that such natural persons must also be approved;

(ii) a majority of the voting rights must be held by natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19 with the exception of Article 11 (1) (b) ; the Member States may provide that such natural persons or firms of auditors must also be approved. However, those Member States which do not impose such majority at the time of the adoption of this Directive need not impose it provided that all the shares in a firm of auditors are registered and can be transferred only with the agreement of the firm of auditors and/or, where the Member State so provides, with the approval of the competent authority;

(iii) a majority of the members of the administrative or management body of a firm of auditors must be natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19 ; the Member States may provide that such natural persons or firms of auditors must also be approved. Where such body has no more than two members, one of those members must satisfy at least those conditions.

Without prejudice to Article 14 (2), the approval of a firm of auditors must be withdrawn when any of the conditions imposed in (b) is no longer fulfilled. The Member States may, however, provide for a period of grace of not more than two years for the purpose of meeting the requirements imposed in (b) (ii) and (iii).

2. For the purposes of this Directive, the authorities of the Member States may be professional associations provided that they are authorized by national law to grant approval as defined in this Directive.

Article 3

The authorities of a Member State shall grant approval only to persons of good repute who are not carrying on any activity which is incompatible, under the law of that Member State, with the statutory auditing of the documents referred to in Article 1 (1).

Article 4

A natural person may be approved to carry out statutory audits of the documents referred to in Article 1 (1) only after having attained university entrance level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university, final examination level organized or recognized by the State.

Article 5

The examination of professional competence referred to in Article 4 must guarantee the necessary level of theoretical knowledge of subjects relevant to the statutory auditing of the documents referred to in Article 1 (1) and the ability to apply such knowledge in practice.

Part at least of that examination must be written.

Article 6

The text of theoretical knowledge included in the examination must cover the following subjects in particular: (a) - auditing,

- analysis and critical assessment of annual accounts,
- general accounting,
- consolidated accounts,
- cost and management accounting,
- internal audit,
- standards relating to the preparation of annual and consolidated accounts and to methods of valuing balance sheet items and of computing profits and losses,
- legal and professional standards relating to the statutory auditing of accounting documents and to those carrying out such audits;

(b) in so far as they are relevant to auditing: - company law,

- the law of insolvency and similar procedures,
- tax law,
- civil and commercial law,
- social-security law and law of employment,
- information and computer systems,
- business, general and financial economics,
- mathematics and statistics,
- basic principles of the financial management of undertakings.

Article 7

1. By way of derogation from Articles 5 and 6, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

2. By way of derogation from Article 5, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of the ability to apply in practice his theoretical knowledge of such subjects when he has received practical training in them attested by an examination or diploma recognized by the State.

Article 8

1. In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee must complete a minimum of three years' practical training in inter alia the auditing of annual accounts, consolidated accounts or similar financial statements. At least two-thirds of such practical training must be completed under a person approved under the law of the Member State in accordance with this Directive ; the Member State may, however, permit practical training to be carried out under a person approved by the law of another Member State in accordance with this Directive.

2. Member States shall ensure that all training is carried out under persons providing adequate guarantees regarding training.

Article 9

Member States may approve persons to carry out statutory audits of the documents referred to in Article 1 (1) even if they do not fulfil the conditions imposed in Article 4, if they can show either: (a) that they have, for 15 years, engaged in professional activities which have enabled them to acquire sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence referred to in Article 4, or

(b) that they have, for seven years, engaged in professional activities in those fields and have, in addition, undergone the practical training referred to in Article 8 and passed the examination of professional competence referred to in Article 4.

Article 10

1. Member States may deduct periods of theoretical instruction in the fields referred to in Article 6 from the years of professional activity referred to in Article 9, provided that such instruction is attested by an examination recognized by the State. Such instruction must last not less than one year, nor may it reduce the period of professional activity by more than four years.

2. The period of professional activity as well as the practical training must not be shorter than the programme of theoretical instruction and the practical training required by Article 4.

Article 11

1. The authorities of a Member State may approve persons who have obtained all or part of their qualifications in another State provided they fulfil the following two conditions: (a) the competent authorities must consider their qualifications equivalent to those required under the law of that Member State in accordance with this Directive ; and

(b) they must have furnished proof of the legal knowledge required in that Member State for purposes of the statutory auditing of the documents referred to in Article 1 (1). The authorities of that Member State need not, however, require such proof where they consider legal knowledge obtained in another State sufficient.

2. Article 3 shall apply.

Article 12

1. A Member State may consider to be approved, in accordance with this Directive, those professional persons who were approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).

2. The admission of a natural person to a professional association recognized by the State where, according to the law of that State, such admission confers on the members of that association the right to carry out statutory audits of the documents referred to in Article 1 (1), may be considered as approval by individual act for the purposes of paragraph 1 of this Article.

Article 13

Until the application of the provisions referred to in Article 30 (2), a Member State may consider approved, in accordance with this Directive, those professional persons who have not been approved by individual acts of the competent authorities but who have nevertheless the same qualifications in that Member State as persons approved by individual acts who on the date of approval are carrying out statutory audits of the documents referred to in Article 1 (1) on behalf of such approved persons.

Article 14

1. A Member State may consider to be approved in accordance with this Directive those firms of auditors which have been approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).

2. The conditions imposed in Article 2 (1) (b) (ii) and (iii) must be complied with no later than the end of a period which may not be fixed at more than five years from the date of application of the provisions referred to in Article 30 (2).

3. Those natural persons who, until the application of the provisions referred to in Article 30 (2), carried out statutory audits of the documents referred to in Article 1 (1) in the name of a firm of auditors may, after that date, be authorized to continue to do so even if they do not fulfil all the conditions imposed by this Directive.

Article 15

Until one year after the application of the provisions referred to in Article 30 (2), those professional persons who have not been approved by individual acts of the competent authorities but who are nevertheless qualified in a Member State to carry out statutory audits of the documents referred to in Article 1 (1) and have in fact carried on such activities until that date may be approved by that Member State in accordance with this Directive.

Article 16

For one year after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of professional persons who, after that date, maintain the right to audit the annual accounting documents of certain types of company or firm not subject to statutory audit but who will no longer be able to carry out such audits upon the introduction of new statutory audits unless special measures are enacted for their benefit.

Article 17

Article 3 shall apply to Articles 15 and 16.

Article 18

1. For six years after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of persons already undergoing professional or practical training

when those provisions are applied who, on completion of their training, would not fulfil the conditions imposed by this Directive and would therefore be unable to carry out statutory audits of the documents referred to in Article 1 (1) for which they had been trained.

2. Article 3 shall apply.

Article 19

None of the professional persons referred to in Articles 15 and 16 or of those persons referred to in Article 18 may be approved by way of derogation from Article 4 unless the competent authorities consider that they are fit to carry out statutory audits of the documents referred to in Article 1 (1) and have qualifications equivalent to those of persons approved under Article 4.

Article 20

A Member State which does not make use of the possibility provided for in Article 51 (2) of Directive 78/660/EEC and in which, at the time of the adoption of this Directive, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (a) of this Directive, may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (a) in the case of a company which does not exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, natural persons acting in their own names who:

(a) fulfil the conditions imposed in Articles 3 to 19 of this Directive save that the level of the examination of professional competence may be lower than that required in Article 4 of this Directive ; and

(b) have already carried out the statutory audit of the company in question before it exceeded the limits of two of the three criteria established in Article 11 of Directive 78/660/EEC.

However, if a company forms part of a body of undertakings to be consolidated which exceeds the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, such persons may not carry out the statutory audit of the documents referred to in Article 1 (1) (a) of this Directive in the case of that company.

Article 21

A Member State which does not make use of the possibility provided for in Article 6 (1) of Directive 83/349/EEC and in which, when this Directive is adopted, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (b) of this Directive may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (b), a person approved pursuant to Article 20 of this Directive if on the parent undertaking's balance sheet date, the body of undertakings to be consolidated does not, on the basis of those undertakings' latest annual accounts, exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, provided that he is empowered to carry out the statutory audit, of the documents referred to in Article 1 (1) (a) of this Directive, of all the undertakings included in the consolidation.

Article 22

A Member State which makes use of Article 20 may allow the practical training of the persons concerned as referred to in Article 8 to be completed under a person who has been approved under the law of that Member State to carry out the statutory audits referred to in Article 20.

SECTION III Professional integrity and independence

Article 23

Member States shall prescribe that persons approved for the statutory auditing of the documents referred to in Article 1 (1) shall carry out such audits with professional integrity.

Article 24

Member States shall prescribe that such persons shall not carry out statutory audits which they have required if such persons are not independent in accordance with the law of the Member State which requires the audit.

Article 25

Articles 23 and 24 shall also apply to natural persons who satisfy the conditions imposed in Articles 3 to 19 and carry out the statutory audit of the documents referred to in Article 1 (1) on behalf of a firm of auditors.

Article 26

Member States shall ensure that approved persons are liable to appropriate sanctions when they do not carry out audits in accordance with Articles 23, 24 and 25.

Article 27

Member States shall ensure at least that the members and shareholders of approved firms of auditors and the members of the administrative, management and supervisory bodies of such firms who do not personally satisfy the conditions laid down in Articles 3 to 19 in a particular Member State do not intervene in the execution of audits in any way which jeopardizes the independence of the natural persons auditing the documents referred to in Article 1 (1) on behalf of such firms of auditors.

SECTION IV Publicity

Article 28

1. Member States shall ensure that the names and addresses of all natural persons and firms of auditors approved by them to carry out statutory audits of the documents referred to in Article 1 (1) are made available to the public.

2. In addition, the following must be made available to the public in respect of each approved firm of auditors: (a) the names and addresses of the natural persons referred to in Article 2 (1) (b) (i) ; and

(b) the names and addresses of the members or shareholders of the firm of auditors;

(c) the names and addresses of the members of the administrative or management body of the firm of auditors.

3. Where a natural person is permitted to carry out statutory audits of the documents referred to in Article 1 (1) in the case of a company according to the conditions referred to in Articles 20, 21 and 22, paragraph 1 of this Article shall apply. The category of company or firm or the bodies of undertakings in respect of which such an audit is permitted must, however, be indicated.

SECTION V Final provisions

Article 29

The Contact Committee set up by 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.

Article 30

1. Member States shall bring into force before 1 January 1988 the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 shall not apply until 1 January 1990.

3. 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.

4. Member States shall also ensure that they communicate, to the Commission, lists of the examinations organized or recognized pursuant to Article 4.

Article 31

This Directive is addressed to the Member States.

Done at Brussels, 10 April 1984.

For the Council

The President

C. CHEYSSON