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Supplement 6/83

The structure of public limited companies

Amended proposal for a Fifth Directive

Commission
of the European Communities

Supplements 1983

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6/83 The structure of public limited companies. Amended proposal for a Fifth Directive

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Amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs

(presented by the Commission to the Council on 19 August 1983)

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Explanatory memorandum

Introduction

The proposal for a fifth directive on the structure of public limited companies,[1] based on Article 54 (3) (g) of the EEC Treaty, was first presented to the Council in 1972. In 1975, in response to the diverse views taken of certain provisions of its proposal, the Commission published a 'green paper' dealing with the main controversial issues, namely, the board structure of public limited companies and procedures for employee participation.[2]

The Economic and Social Committee has issued two opinions on the proposal, the first in 1974[3] and the second in 1978[4] after the publication of the green paper.

The European Parliament debated the proposal and the green paper exhaustively both in its committees and on two occasions in plenary session in 1979 and 1982, at the last of which it adopted its opinion.[5]

The purpose of this amended proposal for a directive is essentially to take account of these opinions. In particular, more flexible provisions have been included as regards both board structure and employee participation. The operation in practice of these provisions will be reviewed on the basis of a report by the Commission to be made not more than five years after the date by which the directive must be applied. This increased flexibility was the main theme of the opinions of both the European Parliament and the Economic and Social Committee.

As to board structure, Member States now have a choice between requiring public limited companies to have a two-tier board structure with a supervisory and a management board, or giving such companies themselves a choice between a two-tier structure and a one-tier structure with a single administrative board. One-tier structures must however be endowed with certain characteristics designed to harmonize their functioning with that of two-tier structures.

Employee participation is to be regulated by the Member States in accordance with one of four alternative models:

first, participation through employee representatives on supervisory or administrative boards;

second, participation in the appointment of members of supervisoty boards through co-optation procedures;

third, participation through employees' representative bodies at company level but separate from company boards themselves;

fourth, participation through collectively agreed procedures analogous to one of the three preceding models.

In all the proposed models, certain common principles apply to the election of employee representatives to company boards on representative bodies. The provisions of the directive will apply to public limited companies employing, directly or through subsidiaries, a number of persons which the Member States cannot fix at more than 1 000. This in no way prejudges the subsequent coordination of employee participation in groups.

The provisions of this directive concerning employee participation are entirely distinct from the provisions of the proposed directive on procedures for informing and consulting employees of undertakings with complex structures, in particular transitional undertakings.[6] The provisions of each directive are accordingly without prejudice to those of the other.

Comments on the articles

Chapter I

Scope of Application

Article 1

The first paragraph now includes the appropriate corporate forms in Member States that joined the

[1] OJ C 131, 13.12.1972; Supplement 10/72 – Bull. EC.
[2] Supplement 8/75 – Bull. EC.
[3] OJ C 109, 19.9.1974.
[4] OJ C 94, 10.4.1979.
[5] OJ C 149, 14.6.1982.
[6] OJ C 297, 15.11.1983; Supplement 3/80 – Bull. EC.

Community after the original proposal was made in 1972.

The second paragraph has been modified to require public limited companies to which the directive has not been applied on the grounds that they are cooperatives to describe themselves as such in certain basic documents made available to the public in accordance with Article 4 of the first company law directive.[1] Similar provisions have been included in the second[2] and third[3] company law directives.

Chapter II

Structure of the company

Article 2 (1)

This article provides in accordance with the recommendations of both the European Parliament and the Economic and Social Committee for an option as to the board structure of public limited companies. Member States may either require a two-tier board structure with a supervisory and management board, or permit such companies themselves to choose between a two-tier structure or a one-tier structure with a single administrative board.

This provision should be read bearing in mind that the operation in practice of the two types of structure will be reviewed in accordance with Article 63c on the basis of a report to be made by the Commission not more than five years after the directive must by applied by the Member States.

Limiting the application of this article to companies employing more than 100 persons as suggested by the Parliament does not seem desirable given the specific function of the public limited company as a vehicle for raising risk capital and the protection offered in particular to shareholders by appropriate board structures.

Chapter III

The two-tier system

SECTION I

The management organ and the supervisory organ

Article 3 (1)

Article 3 (1) now refers explicitly to the fundamental characteristics of a two-tier board structure. The company is to be managed by a management board which is normally appointed by a supervisory board and then supervised by it.

Following the precedent set by the third company law directive,[4] the English text uses the phrase 'the memorandum and articles of association' in this article and throughout.

Article 3 (2)

The addition of the words 'more particularly', as suggested by the European Parliament, is to make clear that the designation of a personnel director does not relieve the other members of the management board of their fundamental responsibility to act in the interests of the company on all matters affecting the management of the company including personnel questions.

Article 4 (1)

In accordance with the view taken by the European Parliament, a threshold of 1 000 employees is proposed below which the Member States may provide that members of the supervisory board are to be appointed exclusively by the general meeting, unless advantage is taken of the limited flexibility offered by Article 4a.

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[1] Directive 68/151/EEC, OJ L 65, 14.3.1968.
[2] Article 1 (2) of Directive 77/91/EEC, OJ L 26, 31.1.1977.
[3] Article 1 (2) of Directive 78/855/EEC, OJ L 295, 20.10.1978.
[4] Directive 78/855/EEC, OJ L 295, 20.10.1978.

In order to prevent thresholds being evaded through the creation of subsidiary undertakings, provision is made for the employees of subsidiaries to be included in the calculation of a company's average number of employees. In this context, a definition of subsidiary by reference to relevant provisions of the seventh directive on consolidated accounts[1] should ensure a sufficiently uniform and objective approach throughout the Community. This shall not affect the provisions of the proposed directive on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings.

Reference has been made to the average number of employees in order to align this provision with the disclosure requirement in Article 43 (1) 9 of the fourth company law directive.[2]

Article 4 (2)

This provision contains the four alternative models as to employee participation from among which the Member States may choose in the context of two-tier board structures:

first, participation through employee representatives on supervisory boards;

second, participation in the appointment of members of supervisory boards through co-optation procedures;

third, participation through employees' representative bodies at company level but outside company boards themselves;

fourth, participation through collectively agreed procedures analogous to one of the three preceding models. Each of the alternatives is dealt with in greater detail in one of the separate sections of Chapter III that follow (sections 2 to 5). The provisions relevant to one-tier structures are to be found in sections 1 to 4 of Chapter IV.

Parliament recommended that the employee participation models should apply unless a majority of the employees have expressed opposition to such participation. The last sentence of Article 4 (2) authorizes the Member States to provide for this qualification.

Article 4 (3)

Discussion of threshold provisions in the context of the fourth and seventh company law directives suggests that some flexibility is desirable as regards fluctuations that take a company above or below a given threshold. Provision has accordingly been made that such changes need not affect the application or otherwise of the employee participation requirements until they have lasted for two consecutive years.

Article 4a

The possibility that some members of the supervisory board might be appointed otherwise than by the shareholders in general meeting, by the employees, or through the co-optation procedures prescribed by Article 4c ensures a necessary degree of flexibility. It may be used for the benefit of particular shareholders or creditors, or to accommodate representatives of general interest. In this way the provisions included in the amended proposal for a European company statute[3] are covered as in the German 'coal and steel' system of participation. However, this flexibility is not without limit: not more than one-third of the board may be so appointed and, where employee representatives are included in the board pursuant to the directive, the minimum specified for their share of the seats must be respected.

SECTION 2

Employee participation in the appointment of members of the supervisory board

Article 4b

In accordance with the view expressed by the European Parliament where employee representatives are appointed to the supervisory board, they shall constitute at least one-third but not more than one-half of its members. Where they constitute one-half of the board, other than through Article 4a, specific rules must be prescribed to avoid a blockage in the Board's decision-making ability. In such cases it must be ensured that decisions may ultimately be taken by the members appointed by the shareholders in general meeting.

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[1] Directive 83/349/EEC, OJ L 193, 18.7.1983.
[2] Directive 78/660/EEC, OJ L 222, 14.8.1978.
[3] Supplement 4/75 – Bull. EC (Article 74a).

The Parliament also recommend that after a transitional period to be fixed by the Council, shareholders and employees should be represented equally on the supervisory board. As is expressly stated in the preamble, this issue is to form part of the review to take place within five years of the directive's application in accordance with Article 63c.

Article 4c

The provision relating to the co-optation model have been revised with a view to greater clarity and to bringing their formulation closer to relevant national provisions.

SECTION 3

Employee participation through a body representing company employees

Article 4d

Following the opinion of the European Parliament, the information, consultation and participation rights of the body representing a company's employees have been assimilated as closely as possible to those of members of a company's supervisory board. In particular, where the supervisory board decides not to accept an opinion from the employees' representative body on a matter as to which consultation is obligatory, it must in turn explain why it has not done so.

The granting to the body representing employees of the same information rights as are conferred on supervisory board members necessarily requires the imposition by the third paragraph of correlative duties concerning information of a confidential nature.

SECTION 4

Employee participation through collectively agreed systems

Article 4e

This article expresses the principle, recommended by the European Parliament, that employee participation systems either within or outside the board may be created by collective agreements.

In order to ensure a sufficient degree of equivalence between these systems and the others contemplated by the directive, it is specified that they should all respect the following provisions of Section 4 and the provisions of Article 4i concerning the principles to be applied to the appointment of employee representatives.

Article 4f

This article specifies in its first paragraph that employee participation within the supervisory board may be realized on the basis of collective agreements either through the appointment of employee representatives or through co-optation procedures.

The second paragraph specifies that in either case Articles 5 to 21 shall apply in order to ensure a sufficient degree of equivalence between the collectively agreed and the legally based systems.

Article 4g

This article provides that employee participation outside the board may be realized on the basis of collective agreements. An important aspect of the flexibility offered by this approach is that employees need not be represented by a single body as required for legally based systems under Article 4d.

In order to ensure a sufficient degree of equivalence between the collectively agreed and the legally-based representation systems, the provisions of this article have been drafted to parallel closely the relevant provisions of Article 4d.

Article 4h

Where employee participation systems may be settled by collective agreement, provision has to be made for situations in which the parties fail to agree. In order to provide a sufficient incentive for the parties to reach agreement, and also to ensure the application of employee participation regimes where nevertheless the parties have not been able to agree, the first paragraph of this article provides for one of the legally based participation

systems to apply if agreement is not reached within one year of the directive coming into force.

Similar provision is made in the second paragraph of this article as regards collective agreements that come to an end. If a new agreement is not concluded within one year, one of the legally-based participation systems shall apply.

These provisions are without prejudice to Article 4 (2) according to which the Member States may provide that employee participation shall not be implemented in respect of a company when a majority of the employees has expressed its opposition to such participation.

SECTION 5

Principles as to appointment of employee representatives

Article 4j

The European Parliament recommended that the directive should lay down certain principles as to the appointment of employee representatives or employee members of the supervisory or administrative board. These principles would be designed to guarantee the democratic character of all the employee participation systems for which the directive provides, while leaving the Member States free to prescribe the specific rules applicable in accordance with their national laws and practices.

Such an approach is contained in this article, which seeks to define the principles in general terms so as to leave the choice of particular electoral techniques to the Member States.

SECTION 6

Members of the management and supervisory organs

Article 7

The first paragraph has been modified in accordance with the recommendation of the European Parliament to remove members of the management board from the prohibition on appointments other than for a specified period not exceeding six years.

On the other hand, the requirement that management should be reappointed within a certain period plays a particularly important role in the context of corporate structures in which provision is made for employee participation in the supervision of management. For this reason, the second paragraph retains the requirement as to appointment for specified periods not exceeding six years in the case of companies falling within the directive's employee participation requirements.

Article 8

This article now expresses the view of the European Parliament that just as board members should not fix their own remuneration, so the management board should not fix the remuneration of the members of the supervisory board.

Article 9 (2)

The deletion of the words 'each year' is designed to make it clear that the general meeting need be informed only once and not every year.

Article 9 (3)

This provision accepts Parliament's view that instead of limiting the number of supervisory board appointments that a person may hold, those responsible for making the appointments should be informed of all activities carried on for other undertakings. The drafting has been aligned with that of Article 9 (1).

Article 10 (2)

This provision now makes clear that the prohibition on an interested member participating in the discussion or decision on a relevant agreement is without prejudice to his right to be heard on the matter.

Article 10 (3)

The deletion of the words 'each year' is designed to make it clear that the general meeting need be informed only once and not every year.

Article 10a

The European Parliament considered that the directive should contain explicit provisions concerning the nature of the responsibility of supervisory and management board members, however they may be appointed. Article 10a contains these provisions.

The first paragraph specifies that all members of the supervisory and management boards have the same rights and duties as the other members of the same organ, even if, for example, pursuant to Article 3 (2), certain functions such as the personnel function are more particularly allocated to certain members. Such an allocation does not relieve the others of their duty in respect of such matters nor deprive them of any rights relating thereto, for example, the right to be fully informed.

The second paragraph begins by specifying that the fundamental responsibility of board members is to carry out their functions in the interest of the company, having regard to the interests of both shareholders and employees. It concludes with provisions that explicitly protect information of a confidential nature obtained by members in the performance of their functions.

SECTION 7

Information of and authorization by the supervisory organ

Article 11 (2)

In accordance with Parliament's recommendation, the period within which the management board must present the anual accounts and the draft annual report to the supervisory board has been increased from three to five months. Three months might in some cases be insufficient.

Article 11 (3)

The amended text makes it clear that the management board must comply with a request for a special report.

Article 11 (4)

This text embodies the changes suggested by the European Parliament. In particular, while the power of one-third of the members to obtain information from management is maintained, the power to initiate investigations is to be exercised by the board as a whole, acting if necessary by a majority.

Article 14 (2)

The text voted by the European Parliament provided that a board member might exonerate himself from liability by proving that no fault is attributable to him personally or 'that his actions may reasonably be excused'. The addition does not appear to add anything of substance to the original proposal since if the member's actions may reasonably be excused, no fault will be attributable to him. For this reason, the proposed addition has not been included.

Article 16

The addition of the words 'on behalf of and also in the name of the company' to the first paragraph of this article was suggested by the European Parliament to make it quite clear that the proceedings are to be brought by the minority shareholders on behalf of the company.

The ECU is defined in Article 63a, which also makes provision for periodic revision of amounts referred to in the directive to take account of economic and monetary trends.

In order to ensure that proceedings are not begun frivolously, a second paragraph has been added at the suggestion of Parliament authorizing courts to order shareholders who begin proceedings without reasonable cause to pay all or part of the costs.

Article 17 (2)

This paragraph has been added at the recommendation of the European Parliament to authorize a

further safeguard against minority shareholders beginning proceedings frivolously. The Member States may require that minorities obtain the permission of the court prior to bringing proceedings. Such permission may be refused where the court considers the claim clearly unfounded.

Articles 19 and 20

The European Parliament considered that the directive should not include substantive provisions concerning enforcement of the responsibility of members of supervisory and management board to the company by creditors. Likewise it should not seek to regulate the liability of these members for damage sustained personally by shareholders and third parties. Instead the directive should leave this matter to be regulated by national law. Article 19 now contains such a reference.

Article 21

Since Article 19 now contains a simple reference to national law and Article 20 has been deleted, the reference to those articles in Article 21 is no longer appropriate.

Chapter IV

The one-tier system

Many of the articles in this chapter are necessarily parallel to articles relating to the two-tier system. In such cases, the explanation of the text has not been repeated where reference can be made *mutatis mutandis* to that for an earlier article.

SECTION 1

The administrative organ

Article 21a (1)

Article 21a (1) defines the fundamental characteristics of a one-tier board structure incorporating a non-executive function designed to make its operation as equivalent as possible to that of the two-tier structure described in Article 3. The company is to be managed by the executive members of an administrative organ. These executive members are normally to be appointed by non-executive members of the administrative organ and then supervised by them. In order to reinforce the position of the non-executive directors, it is specified that they shall be greater in number than the executive directors. Their number should also be divisible by three in order to facilitate the participation of employee representatives.

Article 21a (2)

Reference should be made to the explanation of Article 3 (2).

Article 21a (3)

In the interest of preserving equal possibilities for the Member States under both one-tier and two-tier systems, this provision recognizes that the Member States may make an appointment to the administrative board contingent on the absence of any objection from board members appointed by the employees. Its inclusion was recommended by the European Parliament.

Article 21b (1)

Reference should be made to the explanation of Article 4 (1).

Article 21b (2)

This provision contains the alternative models as to employee participation in one-tier structures. It parallels Article 4 (2) except for the deletion, in accordance with the views of the European Parliament, of a model based on co-optation procedures. Such procedures presently exist only in the context of two-tier structures and their application to one-tier structure is not contemplated or even seriously discussed in any Member State. Consequently, their inclusion in this article would under present conditions introduce an unnecessary degree of complication.

For other aspects of this provision, reference should be made to the explanation of Article 4 (2).

Article 21b (3)

Reference should be made to the explanation of Article 4 (3).

Article 21b (4)

This provision parallels Article 4 (4).

Article 21c

Reference should be made to the explanation of Article 4a.

SECTION 2

Employee participation in the appointment of non-executive members of the administrative organ

Article 21d

Reference should be made to the explanation of Article 4b. In the opinion of the European Parliament, appointment by the employees of a minimum proportion of non-executive directors should be treated as equivalent to the appointment by the employees of a similer proportion of a company's supervisory board.

SECTION 3

Employee participation through a body representing company employees

Article 21e

Reference should be made to the explanation of Article 4d. In this context, of course, the rights and duties of the body representing employees have been assimilated to those of the non-executive members of the administrative board.

The fourth paragraph of this article requires the body representing employees to be given certain information prior to each board meeting. Its inclusion was recommended by the European Parliament. It applies to full board meetings at which non-executive members will be present, and not to the probably more frequent meetings of the executive members as a committee of the full board.

SECTION 4

Employee participation through collectively agreed systems

Article 21f

Reference should be made to the explanation of Article 4e. In this context, the principles to be applied to the appointment of employee representatives are to be found in Article 21j.

Article 21g

The first paragraph of this article specifies that employee participation in the appointment of non-executive members of the administrative board may be realized on the basis of collective agreements. Since employee participation through co-optation procedures has not been included for legally-based one-tier structures, it is not included as a contractual system either.

The second paragraph, following the precedent set by Article 4f for two-tier structures, ensures a sufficient degree of equivalence between the collectively agreed and the legally-based systems by means of a reference to a number of subsequent articles.

Article 21h

Reference should be made to the explanation of Article 4g, bearing in mind that the legally-based system for employee participation through a representative body outside the board is dealt with by Article 21e for one-tier structures.

Article 21i

Reference should be made to the explanation of Article 4h.

SECTION 5

Principles as to appointment of employee representatives

Article 21j

Reference should be made to the explanation of Article 4i.

SECTION 6

Members of the administrative organ

Article 21k

This article parallels Article 5.

Article 21l

This article parallels Article 6.

Article 21m

Reference should be made to the explanation of Article 7.

Article 21n

Reference should be made to the explanation of Article 8.

Article 21o

Reference should be made to the explanation of Article 9 (2) and (3).

Article 21p

Reference should be made to the explanation of Article 10 (2) and (3).

Article 21q

As proposed by the European Parliament, the provisions concerning the nature of the responsibility of the members of the administrative board are the same as those that will apply to supervisory and management board members. Reference should be made to the explanation of Article 10a.

SECTION 7

Information of and authorization by the non-executive members of the administrative organ

Article 21r

This article parallels Article 11. Reference should be made to the explanations of Article 11 (2), (3) and (4).

Article 21s

In accordance with the views of the European Parliament, this article ensures that the non-executive members of the administrative board will have the opportunity to influence the major decisions to which the article refers.

SECTION 8

Dismissal of members of the administrative organ

Article 21t

This article parallels Article 13. However, it was unnecessary in the context of one-tier structure to make particular provision in the second paragraph for the dismissal of board members appointed through co-optation procedures since

these apply only in the context of two-tier structures.

SECTION 9

Civil liability

Article 21u

This article follows the European Parliament's recommendation that the directive's provisions on civil liability should apply to the executive and non-executive members of the administrative board.

Chapter V

The general meeting

Article 22

Paragraph 2 has been amended to take account of the changes made to the provisions relating to the structure of the company.

This paragraph, being clearly minimal in nature, leaves open the possibility of national legislation providing for the general meeting to be convened at the request of other company organs, tribunals, administrative authorities or other persons.

Articles 24 and 25

Article 24 (1) lays down the forms of notice which must be used for convening the general meeting.

Where the shares are not registered, the notice convening the meeting must be published. A harmonized system of disclosure was established by the first directive[1] which provides for publication in the national gazette. It appears useful to continue with this system as a minimum while leaving Member States and companies free to provide for additional publication (for example in a national circulation daily newspaper as suggested by the European Parliament).

Where all the shares are registered, the Member States may provide for a system which permits each shareholder to be contacted individually. As it is necessary to be able to verify that the notice has in fact been sent to all shareholders in the same way, the initial proposal required it to be sent by registered letter. However, such a method seems to be too limited and too rigid having regard to the different postal techniques existing in the Member States. On the other hand, the simple letter proposed by the Parliament does not provide evidence that the notice has been sent to all shareholders.

The chosen method emphasized the desired aim (the ability to verify that the notice has been sent to all shareholders) without being limited to a single postal method and takes account of possible developments in telegraphy and data-transmission techniques.

The notice convening the meeting is the starting point for a number of time-limits laid down in Articles 24 (3) and 25 (2) and (3). The fact that these time-limits must be capable of being calculated exactly is another reason for requiring publication in the national gazette or communication by some means establishing a sure date.

Finally, Article 24 (3) has been amended as a result of the changes made to paragraph 1. In accordance with the European Parliament's opinion, the minimum periods between the date of the first notice of meeting or the first publication of the notice of meeting and the date of the general meeting have been unified and reduced to 21 days. As a consequence of the reduction of this period, and in accordance with the opinion of the European Parliament, the period during which requests for inclusion of new items in the agenda may be addressed to the company has been reduced from 10 to 7 days in Article 25.

Article 27 (3)

It appeared useful to specify the starting point for the period during which records of appointments must be retained by the company.

Article 30

Since the initial proposal was published, the fourth directive on the annual accounts of certain

[1] Directive 68/151/EEC, OJ L 65, 14.3.1968.

types of companies[1] has been adopted. It is now possible, therefore, to list the documents relating to the annual accounts as follows:

firstly, the annual accounts (balance-sheet, profit and loss account and notes on the accounts);

secondly, the proposed appropriation of profit or treatment of loss where this does not appear in the annual accounts as permitted by Article 50 of the fourth directive;

thirdly, the annual report provided for in Article 46 of the fourth directive;

fourthly, the opinion of the persons responsible for auditing the accounts.

In this respect account has been taken of the view of the European Parliament that a distinction should be made between the opinion of the persons responsible for auditing the accounts and the detailed report which they also draw up. The latter need only be made available to any shareholder wishing to consult it at the company's registered office and at the place where the general meeting is to be held, while on the other hand the former is covered by the same provisions as the annual accounts. It must be available to every shareholder and therefore obtainable free of charge upon request.

The rules applicable to the auditors' opinion also apply to contracts requiring the approval of the general meeting. Although infrequent, such contracts are important and shareholders must be able to vote on them in full knowledge of their contents.

Article 31

The changes to paragraph 3 are intended to align the text with that adopted in Article 45 (1) (b) of the fourth directive.[1]

Article 32

Following the opinion of the European Parliament, it was considered that the passing of resolutions not appearing in the meeting agenda, concerning the dismissal and replacement of directors in office could have a destabilizing effect on a company's operations.

Article 33

The time-limit of one month introduced into paragraph 3 in accordance with the European Parliament's opinion is intended to avoid the possibility that a company, by making calls immediately prior to a general meeting, could unfairly disenfranchise a number of shareholders.

Article 38

In order to simplify the text, and in accordance with the opinion of the European Parliament, it has been made clear that where the notice convening the general meeting is published, national law may limit itself to requiring a simple reference to the text of the proposed alteration to the memorandum or articles of association. In a parallel requirement to that of Article 30, the complete text of the proposed alteration must then be made available as easily as possible to shareholders.

Articles 40 (1), 42 (g) and 43 (g)

A general rule has been made of the requirement for a separate vote for each class of shareholder whose rights may be affected by a given resolution. To do this, the formula already used in Articles 25 (3) and 31 of the second directive[2] and Article 7 (2) of the third directive[3] has been adopted.

In accordance with the opinion of the European Parliament, non-observation of the above rule results in the resolution of the general meeting being void or voidable.

Article 46

The system of publication of judgements declaring resolutions of the general meeting void, has been clarified drawing on the example of Article 22 (1) (e) of the third directive.[3]

[1] Directive 78/660/EEC, OJ L 222, 14.8.1978.
[2] Directive 77/91/EEC, OJ L 26, 31.1.1977.
[3] Directive 78/855/EEC, OJ L 295, 20.10.1978.

Chapter VI

The adoption and audit of the annual accounts

Article 48

Only one amendment has been made to this article concerning its reference to the fourth directive on annual accounts.[1]

The European Parliament requested that the annual accounts might also be decided by the supervisory board and then submitted for adoption by the general meeting. The Commission considers that an amendment of the text of the original proposal is not necessary for Parliament's request to be taken into account. For when this text prescribes in its first paragraph that the general meeting should decide the accounts, it is referring to the act which definitely closes the procedure for adoption of the annual accounts and which is followed only by their publication. The Member States accordingly remain free to provide for the intervention of other organs of the company before the general meeting has made its definite decision.

Article 49 (1)

The terminology used in this provision has been adapted to conform with that of the fourth directive.[1]

Article 49 (2)

The Commission accepts the proposal of the European Parliament to permit the subscribed capital to be increased through a transfer from the legal reserve, since this has the effect of reinforcing rather than weakening the position of creditors, on condition, of course, that the legal reserve is reconstituted in accordance with the provisions of the first paragraph. In accordance with the views of the Parliament and the Economic and Social Committee, the nature of the reserves to which recourse must be made before the legal reserve is touched has been clarified (available reserves).

Article 49 (3)

This provision has been included to take account of the European Parliament's demand for the possible exemption from these requirements of certain investment companies which have practically no creditors and the operations of which would be significantly hampered by a requirement for a legal reserve. This temporary derogation is limited to investment companies which, having variable capital, are not subject to the provisions of the second directive on the formation of public limited companies and the maintenance and alteration of their capital.[2]

Article 50 (1)

This provision has been amended to take account of Article 15 (1) of the second directive.[2]

Article 51 (1)

This provision has been deleted since on the one hand the principle of a statutory audit for the accounts of public limited companies has already been established by Article 51 of the fourth directive,[1] and on the other, the nature and conditions required as regards persons responsible for these audits are the subject of the amended proposal for an eighth directive.[3]

Article 51 (2)

This provision has also been deleted since its content is better included in Article 58 (1) concerning the scope of the statutory audit of accounts.

Article 52

Since the principles of independence and the approval of auditors now figure in the amended proposal for an eighth directive,[3] this provision has been deleted.

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[1] Directive 78/855/EEC, OJ L 295, 20.10.1978.
[2] Directive 77/91/EEC,OJ L 26, 31.1.1977.
[3] OJ C 317, 18.12.1979.

The European Parliament requested that the directive should indicate which Member State is competent to give authorization for the auditing of the annual accounts of the company, that is, the State where the company has its head office or is actually established. The Commission considers that such an indication would be more appropriate in a directive on the freedom of establishment of persons responsible for auditing accounts, whereas the provisions in question have as their sole object the coordination of the guarantees required of companies for the protection of their members and third parties. In addition, a future Community instrument concerning mutual recognition of diplomas, certificates and other qualifications should not be prejudged by the provisions of the present directive.

Articles 53 and 54

These two articles have been the subject of several essentially editorial changes in order to take account of amendments made to provisions concerning the structure of the company.

Article 55 (1)

The European Parliament proposed that the persons responsible for auditing the accounts might be appointed not only by the general meeting but also by the supervisory board. The Commission considers that it is not in a position to accept this suggestion since, in its view, the appointment of auditors should fall within the competence of the general meeting as required by the laws of nine of the Member States. It does not seem particularly desirable to permit the supervisory board to have an exclusive role in this respect when it is already charged with other important tasks of supervision of the management board. In addition, at the time when at the beginning of its life a company's organs may possibly not be functioning normally, the directive leaves open the possibility of appointment by other organs of the company in accordance with national law.

Article 55 (2)

In accordance with its position on the first paragraph of this article, the European Parliament has also requested that when a person appointed is unable to carry out his duties, the supervisory board should designate a replacement. Recourse to the general meeting for such a replacement would be much too complicated. While the Commission shares the concern that the replacement of the person unable to perform his duties should take place as soon as possible, it is not in favour of giving this task to the supervisory board for the reasons already given and it prefers the intervention of an impartial body such as a judicial or administrative authority (these two types of authority have been treated equally in order to take account of the particular features of certain national laws). The supervisory board has the right, together with others, to ask the judicial or administrative authority to intervene. This procedure should enable a replacement to be appointed within a sufficiently short time ensuring maximal safeguards for all interested parties.

Article 55 (3)

This provision has been amended to take into account the amendments made to provisions concerning the structure of the company as well as those made to paragraph 2 of this article concerning the judicial or administrative authority. In addition, the power of dismissal for good cause given to the judicial or administrative authority must apply to all auditors including those appointed by the authority itself.

Article 56

The European Parliament suggested that auditors might be appointed for either unlimited or fixed periods. The Commission considers that it is important to strike a balance between the risks of too close an association of the auditor with the company audited and the uncertainty that would result if the auditor could be replaced at the pleasure of the company. For these reasons, it has maintained in its amended proposal a maximum period of six years and a minimum period of three years. Nothing prevents the same auditor from being appointed again, but this requires a fresh decision of the general meeting.

This system should give the general meeting a greater ability to decide with full knowledge of

the facts than a system of appointment for unlimited duration combined with a power of dismissal.

Article 57 (1)

All references to the organs that appoint the auditors of accounts have been deleted from this paragraph (as in addition has the whole of the third paragraph) since this issue is settled by Article 55. The present article deals exclusively with the problem of the auditors' remuneration. In the explanatory memorandum to the original proposal, it was emphasized that the remuneration to be fixed in advance need not be determined as a total amount in every case, but that reference might also be made to a scale. The text of the amended proposal makes this alternative explicit both in the interests of clarity and in accordance with the wishes expressed by the Economic and Social Committee. In addition, it indicates the two criteria which, according to the European Parliament, are to be taken into consideration in calculating the remuneration, that is, the nature and importance of the duties to be carried out.

In addition, the Commission takes as its assumption that the competence for fixing the remuneration of auditors, or its method of calculation, accompanies the competence for their appointment.

Article 58 (1)

Article 51 of the fourth directive[1] has already established the principle of audits for annual accounts. The present provision accordingly deals with the content of the auditing function. Certain changes have been made to take account of the final version of the fourth directive.

Accordingly, explicit provision has been made to the effect that the auditor shall examine whether the annual accounts are drawn up so as to ensure respect for the fundamental principle that they should give a true and fair view, and shall also extend his audit to the annual report in order to ensure that it contains no inconsistency with the annual accounts. These amendments embody the substance of the observations made by the European Parliament.

Article 58 (2)

The drafting of this paragraph has been improved in order to take account of the wishes expressed by the European Parliament.

Article 60

The European Parliament has suggested that the auditor's report should be drawn up exclusively for the benefit of the supervisory board or of the non-executive members of the administrative board. The Commission considers that this report has a more general purpose and is addressed to all shareholders. This general purpose is evidenced in particular by the fact that it is the shareholders in general meeting who appoint the auditors and can dismiss them for good cause.

Subparagraph (a) has been deleted having become superfluous by reason of the changes made to Article 58 (2) which also affect the results of the application of subparagraph (d) of this Article. The subparagraphs (b) and (c) have been subject to an amendment designed to limit the scope of the auditor's observations concerning any infringements of the law or the memorandum or articles of association which he has found while carrying out his audit. However, the Commission considers (subparagraph c) that observations should be made not only concerning facts constituting a serious danger for the survival of the company but concerning all facts which constitute a serious danger for its financial situation, even if an immediate risk as to the company's existence cannot be established. The real purpose of these observations is to serve as an alarm bell.

Article 61

The European Parliament proposed two different dismissal provisions according to whether the auditor is nominated for an unlimited or fixed period. In accordance with its position on Article 56, the Commission is not able to accept Parliament's proposal in favour of two distinct systems. Accordingly, only the dismissal of an auditor for good cause by the general meeting is dealt with in this article, since dismissal by a

[1] Directive 78/660/EEC, OJ L 222, 14.8.1978.

tribunal or other authority is already dealt with in Article 55 (3). Dismissal by the supervisory board is not acceptable since this organ is not competent as regards the appointment of the auditor (see Article 55 (1)).

Article 62

The changes made to the text follow from the deletion of Article 20 recommended by the European Parliament.

Article 63

The European Parliament asked that subparagraphs 1 (d) and 1 (e) be amended in order to take account of the possibility of the auditor being appointed or dismissed by the supervisory board. This possibility being considered unacceptable by the Commission in the context of both Article 55 on appointment and Article 61 on dismissal, no change has been made to the text of this provisions.

Future coordination in the field of auditing of accounts

The European Parliament proposed a new Article 51a which would have made reference to further coordination of legal rules relating to auditing of the annual accounts of companies. The Commission considers that a provision of this kind is not necessary given its right of initiative deriving directly from the Treaty. Furthermore the process of harmonization on this subject has already been begun with the proposal for an eighth directive.[1]

Chapter VII

General provisions

Article 63a

This article defines the ECU for the purposes of the directive, and in particular of Article 16.

The second paragraph permits amounts expressed in ECU to be revised from time to time to take account of economic and monetary trends.

Article 63b

The European Parliament recommended that the main provisions of the directive should not apply to companies which are members of a group.

The Commission considers that such an exclusion would deprive the directive of much of its practical significance. On the other hand, some of the directive's provisions cannot always be applied when a company is a group member. Article 63b accordingly permits the Member States, pending subsequent harmonization of national laws concerning employee participation within groups of companies, to derogate from particular articles for specified purposes and subject to certain conditions. These conditions are designed to ensure that, when advantage is taken of the possibilities for derogation, certain interests are nevertheless protected, in particular those of the employees, shareholders and creditors of subsidiary public companies. Moreover these derogations shall also apply to subgroups.

Article 63c

This review provision forms an integral part of the amended proposal's policy of including a range of alternative solutions in the first three chapters of the directive.

The Commission's report is to be submitted within five years of the date on which the directive must be applied by the Member States.

Article 63d

In view of the provisions existing in one Member State, derogations should be allowed from certain provisions concerning employee participation in so far as is necessary to safeguard the freedom of the press.

Article 64

The changes in Article 64 incorporate more recent practice as regards the bringing into force of Community directives in the company law field.

[1] OJ C 317, 18.12.1979.

The structure of public limited companies

Amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs[1]

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Proposal for a Fifth Directive to coordinate the safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the EEC Treaty, as regards the structure of *sociétés anonymes* and the powers and obligations of their organs	Amended proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs
The Council of the European Communities,	Unchanged.
Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,	
Having regard to the proposal from the Commission,	Having regard to the proposal from the Commission,[1]
Having regard to the opinion of the European Parliament,	Having regard to the opinion of the European Parliament,[2]
Having regard to the opinion of the Economic and Social Committee,	Having regard to the opinion of the Economic and Social Committee,[3]
Whereas the coordination provided for in Article 54 (3) (g) was begun by Directive 68/151/EEC of 9 March 1968 governing the disclosure, validity of obligations entered into by the representative organs and the nullity of *sociétés anonymes, sociétés en commandite par actions* and *sociétés à responsabilité limitée*,[2]	Whereas the coordination provided for in Article 54 (3) (g) was begun by Council Directive 68/151/EEC[4] governing the disclosure, validity of obligations entered into by the representative organs, and the nullity of public limited companies and private limited companies;
Whereas the coordination of national laws relating to such limited liability companies was continued by Directive ... of ...[3] on the annual accounts;	Whereas the coordination of national laws relating to such limited liability companies was continued by Council Directive 78/660/EEC[5], on the annual accounts of such companies and by Council Directive 83/349/EEC[6] on consolidated accounts;
Whereas, further, the coordination of laws relating to *sociétés anonymes* must be given priority because these companies, much more than others, carry on cross-frontier activities;	Whereas further coordination of laws relating to public limited companies has been given priority owing to their relative importance as regards cross-frontier economic activities;

[1] OJ C 131, 13.12.1972; Supplement 10-1972, Bull. EC.
[2] Where the French terms are used in the recitals of this proposal, they are to be taken to include a reference to the corresponding types of company existing in each of the 10 Member States.
[3] OJ C 7, 28.1.1972.

[1] OJ C 131, 13.12.1972, p. 49.
[2] OJ C 149, 14.6.1982, p. 17.
[3] OJ C 109, 19.9.1974, p. 9.
[4] OJ L 65, 14.3.1968, p. 8.
[5] OJ L 222, 14.8.1978, p. 11.
[6] OJ L 193, 18.7.1983, p. 1.

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Whereas the laws of the Member States relating to the formation and capital of *sociétés anonymes* were coordinated by Directive ... of ...[1] and those relating to mergers of such companies were coordinated by Directive ... of ...;[2]

Whereas so that the protection afforded to the interests of members and others is made equivalent, the laws of the Member States relating to the structure of *sociétés anonymes* and to the powers and obligations of their organs must be coordinated;

Whereas in the fields aforesaid equivalent legal conditions must be created in the Community for *sociétés anonymes*;

Whereas so far as concerns the organization of the administration of this type of company two different sets of arrangements at present obtain in the Community; whereas one of these provides for one administrative organ only while the other provides for two, namely, a management organ responsible for managing the business of the company and an organ responsible for controlling the management body; whereas in practice, even under the arrangement which provides for only one administrative organ, a *de facto* distinction is made between active members who manage the business of the company and passive members who confine themselves to supervision; whereas in order to delimit clearly the responsibilities of the persons who are charged respectively with one or other of these duties it is preferable that there be separate organs whose responsibility it is to carry them out; whereas, further, the two-tier system will facilitate the formation of *sociétés anonymes* by members or groups of members from different Member States and, thereby, interpenetration of undertakings within the Community; whereas to this end the introduction of the two-tier system on an optional basis would not be sufficient; whereas that structure must be made compulsory for all *sociétés anonymes*;

[1] OJ C 48, 24.4.1970.
[2] OJ C 89, 14.7.1970.

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Whereas, accordingly, the laws of the Member States relating to the formation and capital of public limited companies were coordinated by Council Directive 77/91/EEC[1] and those relating to mergers and divisions of such companies were coordinated by Council Directives 78/855/EEC[2] and 82/891/EEC[3] respectively;

Whereas, so that the protection afforded to the interests of members and others is made equivalent, the laws of the Member States relating to the structure of public limited companies and to the powers and obligations of their organs must also be coordinated;

Whereas, in the fields aforesaid, equivalent legal conditions must be created in the Community for competing public limited companies;

Whereas, so far as concerns the organization of the administration of this type of company, two different sets of arrangements at present obtain in the Community; whereas one of these provides for one administrative organ only while the other provides for two, namely a management organ responsible for managing the business of the company and an organ responsible for controlling the management body; whereas, in practice, even under the arrangement which provides for only one administrative organ, a *de facto* distinction is often made between executive members who manage the business of the company and non-executive members who confine themselves to supervision; whereas in both systems a clear delimitation is desirable between the responsibilities of the persons charged with one or other of these duties; whereas the general introduction of such a distinction will facilitate the formation of public limited companies by members or groups of members from different Member States and, thereby, interpenetration of undertakings within the Community; whereas the general introduction of the two-tier system on a compulsory basis is for the time being impracticable though such systems should be made generally available at least as an option for public limited companies, whereas one-tier systems may therefore be maintained provided that they are endowed with

[1] OJ L 26, 31.1.1977, p. 1.
[2] OJ L 295, 20.10.1978, p. 36.
[3] OJ L 378, 31.12.1982, p. 47.

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	certain characteristics designed to harmonize their functioning with that of two-tier structures;
Whereas the laws of certain Member States provide for worker participation within the supervisory body but no such provision exists in other Member States; whereas differences in the laws relating to this field must be eliminated not least because they constitute a barrier to the application of the Community rules which are necessary to facilitate transnational operations involving reconstruction and interpenetration of undertakings, in particular in so far as concerns the giving of effect to Article 220 of the Treaty which provides *inter alia* for international merger and transfer of the seat; whereas in order to make provision for worker participation in appointing and dismissing members of the supervisory organ the Directive does not make rules uniform for all the Member States but leaves them to choose between a number of equivalent arrangements;	Whereas the laws of certain Member States provide for employee participation within the supervisory or administrative organ but no such provision exists in other Member States; whereas provision should be made for such participation in all Member States, but in some Member States employee participation through a body representing company employees or through collectively agreed systems is a necessary first step; whereas differences in the laws relating to this field must be eliminated not least because they constitute a barrier to the application of the Community rules which are necessary to facilitate transnational operations involving reconstruction and interpenetration of undertakings, in particular in so far as concerns the giving of effect to Article 220 of the Treaty which provides *inter alia* for international mergers and transfers of seat, whereas, in order to make provision for employee participation, the Directive does not make rules uniform for all the Member States but leaves them to choose between a number of equivalent arrangements; whereas certain common principles are nevertheless necessary in particular as to the appointment of employee representatives;
	Whereas the operation of this Directive's provisions concerning the organization of the company's administration and employee participation should be reviewed within five years after the date from which the provisions of the Directive are to be applied; whereas this review should examine the question whether, and if so to what extent, further harmonization is desirable, including the question of the desirability of the general introduction of equal representation of shareholders and employees on the supervisory or administrative organ;
	Whereas the provisions of this Directive are without prejudice to the provisions of Directive ... on procedures for informing and consulting the employees of undertakings with complex structures, in particular transnational undertakings;[1]
Whereas the members of the management and supervisory organs must be made subject to special rules relating to civil liability which provide for joint and several liability, reverse the burden of proof in respect of liability for wrongful	Unchanged.

[1] See proposal for this Directive – OJ C 297, 15.11.1980 and Supplement 3/80 – Bull. EC.

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acts and ensure that the bringing of proceedings on behalf of the company for the purpose of making those persons liable is not improperly prevented;	
Whereas, as regards the preparation and holding of general meetings, the shareholders must be protected by equivalent provisions relating to the form, content and period of notice, the right to attend and to be represented at meetings, written or oral information, exercise of the right to vote, the majorities required for the passing of resolutions and, finally, the right to bring proceedings in respect of void or voidable resolutions;	Unchanged.
Whereas certain rights of shareholders should be capable of being exercised by a minority of them;	
Whereas, in the interests of members and others, the audit of the annual accounts should be carried out by experts whose independence is guaranteed by special provisions,	Whereas, in the interests of members and others, provisions are also necessary concerning the adoption of the annual accounts, and in particular the independence and responsibility of the auditors of those accounts;
	Whereas, pending subsequent coordination, the application of certain provisions of this Directive may need to be qualified where a public limited company is a member of a group,
HAS ADOPTED THIS DIRECTIVE:	Unchanged.
	CHAPTER I
Scope of application	**Scope of application**
Article 1	*Article 1*
1. The coordination measures prescribed by this Directive apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:	*1.* The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:
– in Germany: *die Aktiengesellschaft*,	– in Germany: *die Aktiengesellschaft*,
– in Belgium: *la société anonyme / de naamloze vennootschap*,	– in Belgium: *la société anonyme / de naamloze vennootschap*,
– in France: *la société anonyme*,	– in Denmark: *aktieselskabet*,
– in Italy: *la società per azioni*,	– in France: *la société anonyme*,
– in Luxembourg: *la société anonyme*,	– in Greece: ανώνυμη εταιρία,

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– in the Netherlands: *de naamloze vennootschap*	– in Ireland: the public company limited by shares and the public company limited by guarantee and having a share capital, – in Italy: *la società per azioni*, – in Luxembourg: *la société anonyme*, – in the Netherlands: *de naamloze vennootschap*, – in the United Kingdom: the public company limited by shares and the public company limited by guarantee and having a share capital.
2. It shall be permissible for the Member States not to apply the provisions of this Directive to cooperatives whose legal form is that of one of the types of company indicated in the foregoing paragraph.	*2.* It shall be permissible for the Member States not to apply this Directive to cooperatives set up in one of the legal forms indicated in paragraph 1. To the extent that the laws of the Member States make use of this possibility, they shall require these companies to include the word 'cooperative' on all the documents to which reference is made in Article 4 of Directive 68/151/EEC.
CHAPTER I	CHAPTER II
Structure of the company	**Structure of the company**
Article 2	*Article 2*
1. The Member States shall make provision so that the structure of the company takes the form provided for in Chapters II and III of this Directive, the company thereby having not less than three separate organs: (a) the management organ responsible for managing and representing the company; (b) the supervisory organ responsible for controlling the management organ; (c) the general meeting of shareholders.	*1.* The Member States shall provide that the company shall be organized according to a two-tier system (management organ and supervisory organ) in accordance with Chapter III. They may, however, permit the company to have a choice between a two-tier system organized in accordance with Chapter III and a one-tier system (administrative organ) in accordance with the provisions of Chapter IV.
2. They shall, further, make provision for the annual accounts to be drawn up and audited in manner provided in Chapter IV of this Directive.	*2.* The Member States shall in addition make provision for the general meeting of shareholders in accordance with Chapter V and the drawing up and auditing of annual accounts in accordance with Chapter VI.

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CHAPTER II

The management organ and the supervisory organ

Article 3

1. The members of the management organ shall be appointed by the supervisory organ.

2. Where the management organ has more than one member, the supervisory organ shall specify which member of the management organ is responsible for questions of personnel and worker relations.

3. The provisions of this Article shall be without prejudice to national laws under which the appointment or dismissal of any member of the management organ cannot be effected against the wishes of the majority of the members of the supervisory organ who were appointed by the workers or by their representatives.

Article 4

1. The laws of the Member States shall make provisions that, at any rate for companies which employ 500 staff or more, the appointment of members of the supervisory organ shall be made in manner provided in paragraphs 2 or 3.

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CHAPTER III

The two-tier system

SECTION 1

The management organ and the supervisory organ

Article 3

1. (a) The company shall be managed by a management organ under the supervision of a supervisory organ.

(b) The members of the management organ shall be appointed by the supervisory organ. However, the members of the first management organ may be appointed in the memorandum or articles of association.

2. Where the management organ has several members, the supervisory organ shall specify which member of the management organ is more particularly responsible for questions of personnel and employee relations.

3. The provisions of this Article shall be without prejudice to national laws under which the appointment or dismissal of any member of the management organ cannot be effected against the wishes of the majority of the members of the supervisory organ who were appointed by the employees.

Article 4

1. In companies employing in the Community on average less than a number of persons which the legislation of the Member States cannot fix at more than 1 000, the members of the supervisory organ shall be appointed by the general meeting. For the purposes of this calculation, persons employed by subsidiary undertakings of a company according to the legislation applicable to that company in conformity with Article 1 of Direc-

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	tive 83/349/EEC shall be considered to be employees of that company.
2. Without prejudice to the provisions contained in the following subparagraphs, the members of the supervisory organ shall be appointed by the general meeting. Not less than one-third of the members of the supervisory organ shall be appointed by the workers or their representatives or upon proposal by the workers or their representatives. The laws of the Member States may provide in relation to the appointment of members of the supervisory board that some of those who are not appointed in manner provided in the preceding subparagraphs may be appointed otherwise, than by the general meeting.	2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with paragraph 1, the Member States shall provide for employee participation in the appointment of members of the supervisory organ in accordance with Articles 4b or 4c. However, as an alternative to employee participation in accordance with these articles, Member States may provide for employee participation through a body representing the company's employees in accordance with Article 4d or through collectively agreed systems in accordance with Article 4e. In all cases, Member States may provide that employee participation shall not be implemented in respect of a company when a majority of the employees has expressed its opposition to such participation.
3. The members of the supervisory organ shall be appointed by that organ. However, the general meeting or the representatives of the workers may object to the appointment of a proposed candidate on the ground either that he lacks the ability to carry out his duties or that if he were appointed there would, having regard to the interests of the company, the shareholders or the workers, be imbalance in the composition of the supervisory organ. In such cases the appointment shall not be made unless the objection is declared unfounded by an independent body existing under public law.	3. Where the average number of a company's employees rises above or falls below the number fixed in accordance with paragraph 1, that fact need not affect the application of paragraphs 1 or 2 until the average number of employees has exceeded or fallen below that number for two consecutive years.
4. As regards companies which employ a lesser number of workers than that fixed in pursuance of paragraph 1, the members of the supervisory organ shall be appointed by the general meeting.	4. The members of the first supervisory organ may be appointed in the memorandum or articles of association.
5. The Members of the first management organ and of the first supervisory organ may be appointed in the statutes or in the instrument of constitution.	Deleted (but see Article 4 (4) above).
	Article 4a
(See Article 4 (2) above).	By way of derogation from Articles 4 (1), 4b (1), and 4c (1), the laws of the Member States may

provide that not more than one-third of the members of the supervisory organ may be appointed otherwise than as provided in those Articles. However, where Article 4b (1) applies, the minimum employee representation therein specified shall always be respected unless the conditions specified in the last sentence of Article 4 (2) have been fulfilled.

SECTION 2

Employee participation in the appointment of members of the supervisory organ

Article 4b

(See Article 4 (2) above).

1. The members of the supervisory organ shall be appointed by the general meeting as regards a maximum of two-thirds and by employees of the company as regards a minimum of one-third but subject to a maximum of one-half.

2. Where employees appoint one-half of the members of the supervisory organ, its voting procedures shall ensure that decisions may ultimately be taken by the members appointed by the general meeting.

Article 4c

(See Article 4 (3) above).

1. The members of the supervisory organ shall be appointed by co-optation by that organ. However, the general meeting or a committee of shareholders designated by that meeting or the representatives of the employees may object to the appointment of a proposed candidate on the ground either that he lacks the ability to carry out his duties or that if he were appointed the supervisory organ would, having regard to the interests of the company, the shareholders and the employees, be improperly constituted. In such cases, the appointment shall not be made unless the objection is declared unfounded by an independent body existing under public law.

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SECTION 3

Employee participation through a body representing company employees

Article 4d

1. A body representing the employees shall have the right, in relation to the company's management organ, to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation and investment plans. It shall also have the same rights to information as those conferred on the members of the supervisory organ by Article 11.

2. In addition, in the cases referred to in Article 12 (1), the body representing the employees must be consulted before the supervisory organ considers whether to grant authorization. Where the supervisory organ does not comply with the opinion given, it shall communicate its reasons to the body representing the employees. The law, the memorandum or the articles of association may take other operations subject to this duty of consultation.

3. The second and third sentences of Article 10a (2) shall apply to the members of the body representing the employees.

4. The body representing the employees shall meet at regular intervals, and at least immediately prior to each meeting of the supervisory organ, and shall be given all the documentation and information connected with the agenda of the meeting of the supervisory organ needed for its deliberations. At the request of the body representing the employees, the chairman of the supervisory organ, his deputy or a member of the management organ shall attend it.

SECTION 4

Employee participation through collectively agreed systems

Article 4e

1. Employee participation shall be regulated in accordance with collective agreements concluded

between the company or an organization representing the company and organizations representing its employees.

2. Collective agreements concluded pursuant to paragraph 1 shall respect the provisions of this Section and of Article 4i and make provisions at least for employee participation in the supervisory organ in accordance with Article 4f or for employee representation in accordance with Article 4g.

Article 4f

1. The members of the supervisory organ shall be appointed in accordance with Articles 4b or 4c.

2. Articles 5 to 21 shall apply.

Article 4g

1. Employee representatives shall have the right in relation to the company's management organ to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation, and investment plans. They shall also have the same rights to information as those conferred on the members of the supervisory organ by Article 11.

2. In addition, in the cases referred to in Article 12 (1), the law or the collective agreements concluded pursuant to Article 4e shall provide at least that employee representatives must be consulted before the supervisory organ considers whether to grant authorization. Where the supervisory organ does not comply with the opinion given, it shall communicate its reasons to the employee representatives. The law, the collective agreements, the memorandum or the articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 10a (2) shall apply to employee representatives who receive information of a confidential nature pursuant to paragraphs 1 and 2.

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4. Article 4d (4) shall apply to the employee representatives.

Article 4h

1. The Member States shall provide that, where collective agreements are not concluded pursuant to Article 4e before the end of a period of not more than one year after the expiry of the period referred to in Article 64 (2), employee participation shall be regulated in accordance with Articles 4b, 4c or 4d.

2. The Member States shall further provide that, where a collective agreement concluded pursuant to Article 4e comes to an end and a subsequent agreement is not concluded within a period of one year, employee participation shall be regulated in accordance with Articles 4b, 4c or 4d.

SECTION 5

Principles as to appointment of employee representatives

Article 4i

To the extent that the employees must participate in the appointment of members of the supervisory organ in accordance with Articles 4b or 4c or through a body representing the company's employees in accordance with Article 4d or through collectively agreed systems in accordance with Article 4e, the Member States shall ensure that the following principles are observed:

(a) the relevant members of the supervisory organ and representatives of the employees shall be elected in accordance with systems of proportional representation ensuring that minorities are protected;

(b) all employees must be able to participate in the election;

(c) the elections shall be by secret ballot;

(d) free expression of opinion shall be guaranteed.

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	SECTION 6
	Members of the management and supervisory organs
Article 5	*Article 5*
1. Only natural persons may be appointed as members of the management organ.	Unchanged.
2. Where the laws of the Member States provide that legal persons may be members of the supervisory organ, those legal persons shall designate a permanent representative who shall be subject to the same conditions and obligations as if he were personally a member of the supervisory organ, but without prejudice to the liability of the legal person which he represents.	
Article 6	*Article 6*
No person may be at the same time a member of the management organ and of the supervisory organ.	Unchanged.
Article 7	*Article 7*
The members of the management organ and of the supervisory organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.	*1.* The members of the supervisory organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointments.
	2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with Article 4 (1), the members of the management organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.
Article 8	*Article 8*
The management organ and the supervisory organ shall not fix the remuneration of their own members.	The management organ and the supervisory organ shall not fix the remuneration of their own members. The management organ shall not fix the remuneration of the members of the supervisory organ.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Article 9	*Article 9*
1. The members of the management organ shall not, without the authorization of the supervisory organ, carry on within another undertaking any activity, whether remunerated or not, for their own account of any other person.	*1.* Unchanged.
2. The general meeting shall be informed each year of the authorizations given.	*2.* The general meeting shall be informed of the authorizations given.
3. A natural person shall not be a member of the supervisory organ of more than 10 companies.	*3.* Before a natural person can be appointed a member of the supervisory organ, the organs or persons which are empowered to make or object to appointments shall be informed of any activity carried on by that person within another undertaking, whether remunerated or not, for his own account or for the account of any other person.
Article 10	*Article 10*
1. Every agreement to which the company is party and in which a member of the management organ or of the supervisory organ has an interest, even if only indirect, must be authorized by the supervisory organ at least.	*1.* Unchanged.
2. Where a member of the management organ or supervisory organ becomes aware that such circumstances as are described in paragraph 1 obtain, he shall inform those two organs thereof. The interested member shall not take part either in the discussion or decision relating to the giving of the authorization required under paragraph 1 within the supervisory organ.	*2.* Where a member of the management organ or supervisory organ becomes aware that such circumstances as are described in paragraph 1 obtain, he shall inform those two organs thereof. The interested member shall have the right to be heard but may not take part in the discussion or in the decision relating to the relevant agreement within the management organ or the decision relating to the giving of the authorization required under paragraph 1 within the supervisory organ.
3. The general meeting shall be informed each year of the authorizations given under paragraph 1.	*3.* The general meeting shall be informed of the authorizations given under paragraph 1.
4. Want of authorization by the supervisory organ or irregularity in the decision giving authorization shall not be adduced as against third parties save where the company proves that the third party was aware of the want of authorization or of the irregularity in the decision, or that in view of the circumstances he could not have been unaware thereof.	*4.* Unchanged.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Article 10a
	1. All members of the management and supervisory organs shall have the same rights and duties as other members of the same organ, without prejudice to provisions which make it possible for the functions of these organs to be allocated among their members.
	2. All the members of the management and supervisory organs shall carry out their functions in the interest of the company, having regard to the interests of the shareholders and employees. They shall exercise a proper discretion in respect of information of a confidential nature concerning the company. This duty shall continue to apply even after they have ceased to hold office.
	SECTION 7
	Information of and authorization by the supervisory organ
Article 11	*Article 11*
1. The management organ shall, not less than every three months, send to the supervisory organ a report on the progress of the company's affairs.	*1.* The management organ shall, not less than every three months, send to the supervisory organ a written report on the progress of the company's affairs.
2. The management organ shall, within three months following the end of each financial year, present to the supervisory organ the draft annual accounts and draft annual report within the meaning of Articles 2 and 43 of Directive ... of ...	*2.* The management organ shall, within five months following the end of each financial year, present to the supervisory organ the draft annual accounts and draft annual report within the meaning of Articles 2 and 46 of Directive 78/660/EEC.
3. The supervisory organ may at any time request from the management organ a special report on the affairs of the company or on certain aspects thereof.	*3.* At the request of the supervisory organ, the management organ shall furnish a special report on the affairs of the company or on certain aspects thereof.
4. The supervisory organ or one-third of the members thereof shall be entitled to obtain from the management organ all information and relevant documents and to undertake all such investigations as may be necessary. The supervi-	*4.* The supervisory organ shall be entitled to undertake or cause to be undertaken all investigations which may be necessary. At the request of at least one-third of the members of the supervisory organ the management organ shall furnish all

ORIGINAL PROPOSAL	AMENDED PROPOSAL
sory organ may authorize one or more of its members or one or more experts to exercise these powers.	information and documents necessary to the exercise of its supervision.
5. Each member of the supervisory organ shall be entitled to examine all reports, documents and information supplied by the management organ to the supervisory organ.	*5.* Unchanged.
Article 12	*Article 12*
1. The authorization of the supervisory organ shall be obtained for decisions of the management organ relating to:	*1.* Unchanged.
(a) the closure or transfer of the undertaking or of substantial parts thereof;	
(b) substantial curtailment or extension of the activities of the undertaking;	
(c) substantial organizational changes within the undertaking;	
(d) establishment of long-term cooperation with other undertakings or the termination thereof.	
2. The law or the statutes may provide that the authorization of the supervisory organ must be obtained also for the effecting of other operations.	*2.* The law, the memorandum or the articles of association may provide that the authorization of the supervisory organ must be obtained also for the effecting of other operations.
3. The provisions of Article 10 (4) shall apply as regards third parties.	*3.* Unchanged.
	SECTION 8
	Dismissal of members of management and supervisory organs
Article 13	*Article 13*
1. The members of the management organ may be dismissed by the supervisory organ.	*1.* Unchanged.
2. The members of the supervisory organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures. However, the members of the supervisory	*2.* The members of the supervisory organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures. However, the members of the supervisory

ORIGINAL PROPOSAL	AMENDED PROPOSAL
organ who were appointed by it under Article 4 (3) may be dismissed only where proper grounds for dismissal are found to exist by judgment of the court in proceedings brought in that behalf by the supervisory organ, the general meeting or the workers' representatives.	organ who were appointed by it under Article 4c may be dismissed only where proper grounds for dismissal are found to exist by judgment of a court in proceedings brought by the supervisory organ, the general meeting or the employees' representatives.
	SECTION 9
	Civil liability
Article 14	*Article 14*
1. The laws of the Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that, at minimum, compensation is made for all damage sustained by the company as a result of breaches of law or of the statutes or of other wrongful acts committed by the members of those organs in carrying out their duties.	*1.* The laws of the Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that, at minimum, compensation is made for all damage sustained by the company as a result of breaches of law or of the memorandum or articles of association or of other wrongful acts committed by the members of those organs in carrying out their duties.
2. Each member of the organ in question shall be jointly and severally liable without limit. He may, however, exonerate himself from liability if he proves that no fault is attributable to him personally.	*2.* Unchanged.
3. The provisions of the preceding paragraphs shall apply even where the powers vested in the organ have been allocated among its members.	*3.* Unchanged.
4. The authorization given by the supervisory organ shall not have the effect of exempting the members of the management organ from civil liability.	*4.* Unchanged.
5. Furthermore, any discharge, instruction or authorization given by the general meeting shall not have the effect of exempting the members of the management organ or of the supervisory organ from civil liability.	*5.* Unchanged.
Article 15	*Article 15*
1. Proceedings on behalf of the company to enforce the liability referred to in Article 14 shall be commenced if the general meeting so resolves.	*1.* Unchanged.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. Neither the law nor the statutes may require for the passing of a resolution in that behalf a majority greater than an absolute majority of votes of the shareholders present or represented.	2. Neither the law nor the memorandum nor the articles of association may require for the passing of such a resolution a majority greater than an absolute majority of votes of the shareholders present or represented.
Article 16	*Article 16*
It shall be provided that proceedings on behalf of the company to enforce the liability referred to in Article 14 shall also be commenced if so requested by one or more shareholders:	1. It shall be provided that proceedings on behalf of the company to enforce the liability referred to in Article 14 may also be commenced if so requested on behalf of and also in the name of the company by one or more shareholders:
(a) who hold shares of a certain nominal value or proportional value which the Member States shall not require to be greater than 5% of the capital subscribed;	(a) who hold shares of a certain nominal or accounting par value which the Member States shall not require to be greater than 5% of the subscribed capital;
or	or
(b) who hold shares of a certain nominal value or proportional value which the Member States shall not require to be greater than 100 000 units of account. This figure may vary up to not more than 10% for purposes of conversion into national currency.	(b) who hold shares of a certain nominal or accounting par value which the Member States shall not require to be greater than 100 000 ECU. This figure may vary up to not more than 10% for purposes of conversion into national currency.
	2. Should the court dismiss the proceedings referred to in paragraph 1, it may order the shareholders concerned personally to pay all or part of the costs of the case where it considers that no reasonable grounds existed for commencing the proceedings.
Article 17	*Article 17*
The bringing of proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be made subject, whether by law, the statutes or any agreement:	1. The bringing of proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be made subject, whether by law, the memorandum or articles of association or any agreement:
(a) to prior resolution of the general meeting or other organ of the company;	(a) to prior resolution of the general meeting or other organ of the company;
or	or
(b) to prior decision of the court in respect of wrongful acts of the members of the management organ or of the supervisory organ, or in respect of the dismissal or replacement of members thereof.	(b) to prior decision of the court in respect of wrongful acts of the members of the management organ or of the supervisory organ, or in respect of the dismissal or replacement of members thereof.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	2. The provisions of the preceding paragraph shall not in any way prejudice the right of Member States to prescribe by law that the proceedings referred to in Article 16 may not be brought without prior permission from the court. The court may refuse such permission if it considers that the action is clearly unfounded.
Article 18	*Article 18*
1. Renunciation by the company of the right to bring proceedings on behalf of the company to enforce the liability referred to in Article 14 shall not be implied:	*1.* Unchanged.
(a) from the sole fact that the general meeting has approved the accounts relating to the financial year during which the acts giving rise to damage occurred;	
(b) from the sole fact that the general meeting has given discharge to the members of the management organ or of the supervisory organ in respect of that financial year.	
2. For renunciation to take place the following minimum conditions must be satisfied:	*2.* For renunciation to take place the following conditions must be satisfied:
(a) an act giving rise to damage must actually have occurred;	(a) an act giving rise to damage must actually have occurred;
(b) the general meeting must expressly resolve to renounce; the resolution shall in no way affect the right conferred by Article 16 on one or more shareholders who satisfy the requirements of that article, provided they voted against the resolution or made objection thereto which was recorded in the minutes.	(b) the general meeting must expressly resolve to renounce; the resolution shall in no way affect the right conferred by Article 16 on one or more shareholders who satisfy the requirements of that article, provided they voted against the resolution or made objection thereto which was recorded in the minutes.
3. This article shall apply to all compromises relating to the bringing of proceedings to enforce the liability aforesaid which have been agreed between the company and the member whose liability is in question.	*3.* Unchanged.
Article 19	*Article 19*
1. Proceedings on behalf of the company to enforce the liability referred to in Article 14 may also be brought by a creditor of the company who is unable to obtain payment from it.	The provisions of Articles 14 to 18 shall in no way restrict the personal liability of members of the organs of the company towards shareholders personally and towards third parties, pursuant to

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2. Action by the creditor under the preceding paragraph shall in no way be affected by such renunciation or transactions as are referred to in Article 18.

Article 20

1. The Member States shall make such provision relating to the civil liability of the members of the management organ and of the supervisory organ as to ensure that compensation is made for all damage sustained personally by shareholders and third parties as a result of breaches of law or of statutes or of other wrongful acts committed by the members of those organs in carrying out their duties.

2. The provisions of Article 14 (2) to (5) shall apply.

Article 21

The period in which action to enforce the liability referred to in Articles 14, 19 or 20 may be brought shall not be less than three years from the date of the act giving rise to damage or, if the act has been disssembled, from the time when it has become known.

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the general civil law set down in national legislation.

Article 20

Deleted.

Article 21

The period in which an action to enforce the claim for damages referred to in Article 14 may be brought shall not be less than three years from the date of the act giving rise to damage or, if the act has been dissembled, from the time when it has become known.

CHAPTER IV

The one-tier system

SECTION 1

The administrative organ

Article 21a

1. (a) The company shall be managed by the executive members of an administrative organ

under the supervision of the non-executive members of that organ. The number of non-executive members shall be divisible by three and greater than the number of executive members.

(b) The executive members of the administrative organ shall be appointed by the non-executive members acting if necessary by a majority. However, the executive members of the first administrative organ may be appointed in the memorandum or articles of association.

2. Where the administrative organ has more than one executive member, the non-executive members, acting if necessary by a majority, shall specify which executive member is more particularly responsible for questions of personnel and employee relations.

3. The provisions of this article shall be without prejudice to national laws under which the appointment or dismissal or any member of the administrative organ cannot be effected against the wishes of the majority of the members of the administrative organ who were appointed by the employees.

Article 21b

1. In companies employing in the Community on average less than a number of persons which the Member States shall not fix at more than 1 000, the non-executive members shall be appointed by the general meeting. For the purposes of this calculation, persons employed by subsidiary undertakings of a company according to the legislation applicable to that company in conformity with Article 1 of Directive 83/349/EEC shall be considered to be employees of that company.

2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with paragraph 1, the Member States shall provide for employee participation in the appointment of the non-executive members of the administrative organ in accordance with Article 21d. However, as an alternative to employee participation in accordance with this Article, Member States may provide for employee participation through a

body representing the company's employees in accordance with Article 21e or through collectively agreed systems in accordance with Article 21f. In all cases, Member States may provide that employee participation shall not be implemented in respect of a company when a majority of the employees has expressed its opposition to such participation.

3. Where the average number of a company's employees rises above or falls below the number fixed in accordance with paragraph 1, that fact need not affect the application of paragraphs 1 or 2 until the average number of employees has exceeded or fallen below that number for two consecutive years.

4. The non-executive members of the first administrative organ may be appointed in the memorandum or articles of association.

Article 21c

By way of derogation from Articles 21b (1) and 21d, the laws of the Member States may provide that not more than one-third of the members of the administrative organ may be appointed otherwise than as provided in those articles. However, where Article 21d applies, the minimum employee representation therein specified shall always be respected unless the conditions specified in the last sentence of Article 21b (2) have been fulfilled.

SECTION 2

Employee participation in the appointment of non-executive members of the administrative organ

Article 21d

1. The non-executive members of the administrative organ shall be appointed by the general meeting as regards a maximum of two-thirds and by employees of the company as regards a

minimum of one-third but subject to a maximum of one-half.

2. Where employees appoint one-half of the non-executive members of the administrative organ, its voting procedures shall ensure that decisions of the non-executive members may ultimately be taken by the members appointed by the general meeting.

SECTION 3

Employee participation through a body representing company employees

Article 21e

1. A body representing the employees shall have the right in relation to the company administrative organ to regular information and consultation on the administration, situation, progress and prospects of the company, its competitive position, credit situation and investment plans. It shall also have the same rights to information as those conferred on the non-executive members of the administrative organ by Article 21r.

2. In addition, in the cases referred to in Article 21s (1), the body representing the employees must be consulted before the administrative organ considers whether to grant authorization. Where the administrative organ does not comply with the opinion given, it shall communicate its reasons to the body representing the employees. The law or the memorandum or articles of association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 21q (2) shall apply to the members of the body representing the employees.

4. The body representing the employees shall meet at regular intervals, and at least immediately prior to each meeting of the administrative organ, and shall be given all the documentation and

information connected with the agenda of the meeting of the administrative organ needed for its deliberations. At the request of the body representing the employees, the chairman of the administrative organ or his deputy or an executive member of the administrative organ shall attend these meetings.

SECTION 4

Employee participation through collectively agreed systems

Article 21f

1. Employee participation shall be regulated in accordance with collective agreements concluded between the company or an organization representing the company and organizations representing its employees.

2. Collective agreements concluded pursuant to paragraph 1 shall respect the provisions of this Section and of Article 21j and make provisions at least for employee participation in the administrative organ in accordance with Article 21g or for employee representation in accordance with Article 21h.

Article 21g

1. The non-executive member of the administrative organ shall be appointed in accordance with Article 21d.

2. Articles 21j to 21u shall apply.

Article 21h

1. Employee representatives shall have the right in relation to the company's administrative organ to regular information and consultation on the administration, progress and prospects of the company, its competitive position, credit situation, and investment plans. They shall also have the same rights to information as those conferred

on the non-executive members of the administrative organ by Article 21r.

2. In addition, in the cases referred to in Article 21s, the law or the collective agreements concluded pursuant to Article 21f (1) shall provide at least that employee representatives must be consulted before the administrative organ considers whether to grant authorization. Where the administrative organ does not comply with the opinion given, it shall communicate its reasons to the employee representatives. The law, the collective agreements or the memorandum or articles or association may make other operations subject to this duty of consultation.

3. The second and third sentences of Article 21q (2) shall apply to employee representatives who receive information of a confidential nature pursuant to paragraphs 1 and 2.

4. Article 21e (4) shall apply to the employee representatives.

Article 21i

1. The Member States shall provide that, where collective agreements are not concluded pursuant to Article 21f before the end of a period of not more than one year after the expiry of the period referred to in Article 64 (2), employee participation shall be regulated in accordance with Article 21d or 21e.

SECTION 5

Principles as to appointment of employee representatives

Article 21j

To the extent that the employees must participate in the appointment of non-executive members of the administrative organ in accordance with Article 21d, or through a body representing the employees in accordance with Article 21e, or through collectively agreed systems in accordance

with Article 21f, the Member States shall ensure that the following principles are observed:

(a) the relevant members of the administrative organ and representatives of the employees shall be elected in accordance with systems of proportional representation ensuring that minorities are protected;

(b) all employees must be able to participate in the elections;

(c) the elections shall be by secret ballot;

(d) free expression of opinion shall be guaranteed.

SECTION 6

Members of the administrative organ

Article 21k

1. Only natural persons may be appointed as executive members of the administrative organ.

2. Where the laws of the Member States provide that legal persons may be non-executive members of the administrative organ, those legal persons shall designate a permanent representative who shall be subject to the same conditions and obligations as if he were personally a member of the administrative organ, but without prejudice to the liability of the legal person which he represents.

Article 21l

No person may be at the same time an executive and a non-executive member of the administrative organ.

Article 21m

1. The non-executive members of the administrative organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.

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2. In respect of companies employing on average a number of persons which equals or exceeds the number fixed in accordance with Article 21b (1), the executive members of the administrative organ shall be appointed for a specified period not exceeding six years. They shall be eligible for reappointment.

Article 21n

Neither the executive nor the non-executive members of the administrative organ shall fix their own remuneration. The executive members of the administrative organ shall not fix the remuneration of the non-executive members of the administrative organ.

Article 21o

1. The executive members of the administrative organ shall not, without the authorization of the non-executive members, carry on within another undertaking any activity, whether remunerated or not, for their own account or for account of any other person.

2. The general meeting shall be informed of the authorizations given.

3. Before a natural person can be appointed a non-executive member of the administrative organ, the organs or persons which are empowered to make appointments shall be informed of any activity carried on by that person within another undertaking, whether remunerated or not, for his own account or for the account of any other person.

Article 21p

1. Every agreement to which the company is party and in which a member, whether executive or non-executive of the administrative organ has an interest, even if only indirect, shall require the authorization at least of the non-executive members of the administrative organ.

2. Where an executive or non-executive member of the administrative organ becomes aware

that such circumstances as are described in paragraph 1 obtain, he shall inform the administrative organ thereof. The interested member shall have the right to be heard but may not take part in the discussion or in the decision of the executive members relating to the relevant agreement or in the decision of the non-executive members of the administrative organ relating to the giving of the authorization referred to in paragraph 1.

3. The general meeting shall be informed of the authorizations given under paragraph 1.

4. Want of authorization by the administrative organ or irregularity in the decision giving authorization shall not be adduced as against third parties save where the company proves that the third party was aware of the want of authorization or of the irregularity in the decision, or that in view of the circumstances he could not have been unaware thereof.

Article 21q

1. All the executive members of the administrative organ shall have the same rights and duties, without prejudice to provisions making it possible for the functions of this organ to be allocated amongst its members. The same shall apply to the non-executive members.

2. All the members of the administrative organ shall carry out their functions in the interest of the company, having regard to the interest of the shareholders and the employees. They shall exercise a proper discretion in respect of information of a confidential nature concerning the company. This duty shall continue to apply even after they have ceased to hold office.

SECTION 7

Information of, and authorization by, the non-executive members of the administrative organ

Article 21r

1. The executive members of the administrative organ shall, not less than every three months,

present to the non-executive members a written report on the progress of the company's affairs.

2. The executive members of the administrative organ shall, within five months following the end of each financial year, present to the non-executive members the draft annual accounts and draft annual report within the meaning of Articles 2 and 46 of Directive 78/660/EEC.

3. At the request of the non-executive members of the administrative organ, the executive members shall furnish a special report on the affairs of the company or on certain aspects thereof.

4. The non-executive members of the administrative organ shall be entitled to undertake or cause to be undertaken all investigations which may be necessary. At the request of at least one-third of the non-executive members, the executive members shall furnish all information and documents necessary to the exercise of their supervision.

5. Each non-executive member of the administrative organ shall be entitled to examine all reports, documents and information supplied by the executive members to another non-executive member.

Article 21s

1. The administrative organ shall not be able to delegate power to decide on the following operations:

(a) the closure or transfer of the undertaking or of substantial parts thereof;

(b) substantial curtailment or extension of the activities of the undertaking;

(c) substantial organizational changes within the undertaking;

(d) establishment of long-term cooperation with other undertakings or the termination thereof.

2. The law or the memorandum or articles of association may prohibit delegation of the power to decide on other operations.

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	3. The provisions of Article 21p (4) shall apply as regards third parties.
	SECTION 8
	Dismissal of members of the administrative organ
	Article 21t
	1. The executive members of the administrative organ may be dismissed by the non-executive members acting by majority.
	2. The non-executive members of the administrative organ may be dismissed at any time by the organs or persons who appointed them and under the same procedures.
	SECTION 9
	Civil liability
	Article 21u
	The provisions of Articles 14 to 21 shall apply to the executive and non-executive members of the administrative organ.
CHAPTER III	CHAPTER V
General meeting	**General meeting**
Article 22	*Article 22*
1. The general meeting shall be convened at least once each year.	*1.* Unchanged.
2. It may be convened at any time by the management organ.	*2.* It may be convened at any time by the management organ or by the executive members of the administrative organ.

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Article 23	*Article 23*
1. It shall be provided that one or more shareholders who satisfy the requirements of Article 16 may request the company to convene the general meeting and settle the agenda therefor.	*1.* It shall be provided that one or more shareholders who satisfy the requirements of Article 16 (1) may request the company to convene the general meeting and settle the agenda therefor.
2. If, following a request made under paragraph 1, no action has been taken by the company within one month, the competent court must have power to convene the general meeting or to authorize it to be convened either by the shareholders who requested that it be convened or by their agents.	*2.* Unchanged.
Article 24	*Article 24*
1. The laws of the Member States may provide that the general meeting of a company all of whose shares are registered may be convened by notice sent by registered letter. In every other case the meeting shall be convened by notice published at least in the company's national gazette designated in that behalf pursuant to Article 3 (4) of Directive 68/151/EEC of 9 March 1968.	*1.* (a) The laws of the Member States may provide that the general meeting of a company all of whose shares are registered may be convened by notice sent by any means of communication which permits verification that it has been sent to every shareholder and the date on which it was sent. (b) In every other case the meeting shall be convened by notice published at least in the national gazette designated pursuant to Article 3 (4) of Directive 68/151/EEC.
2. The notice shall contain the following particulars at least:	*2.* (a) to (c) unchanged;
(a) the name of the company and the address of its registered office;	
(b) the place and date of the meeting;	
(c) the type of general meeting (ordinary, extraordinary or special);	
(d) a statement of the formalities, if any, prescribed by the statutes for attendance at the general meeting and for the exercise of the right to vote;	(d) a statement of the formalities, if any, prescribed by the memorandum or articles of association for attendance at the general meeting and for the exercise of the right to vote;
(e) any provisions of the statutes which require the shareholder, where he appoints an agent, to appoint a person who falls within certain specified categories of persons;	(e) any provisions of the memorandum or articles of association which require the shareholder, where he appoints an agent, to appoint a person who falls within certain specified categories of persons;

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(f) the agenda;	(f) and (g) unchanged.
(g) the wording of proposed resolutions concerning each of the items on the agenda.	
3. The length of the period between the date of dispatch by registered letter of the first notice of meeting and the date of the first meeting of the general meeting shall be not less than two weeks, and the length of the period between the date of first publication of the notice of meeting and the date of the first meeting of the general meeting shall be not less than one month.	*3.* The length of the period between the date of either the dispatch of the first notice of general meeting by the means referred to in paragraph 1 (a), or the first publication of the notice of general meeting in accordance with paragraph 1 (b), and the date of the first general meeting shall be not less than 21 days.
Article 25	*Article 25*
1. It shall be provided that one or more shareholders who satisfy the requirements of Article 16 may request that one or more new items be included in the agenda of a general meeting of which notice had already been given.	*1.* It shall be provided that one or more shareholders who satisfy the requirements of Article 16 (1) may request that one or more new items be included in the agenda of a general meeting of which notice has already been given.
2. Requests for inclusion of new items in the agenda shall be sent to the company within five days following the date of dispatch by registered letter of the first notice of general meeting or within 10 days following the first publication of the notice of general meeting.	*2.* Requests for inclusion of new items in the agenda shall be sent to the company within seven days following the date of either dispatch of the first notice of general meeting by the means referred to in Article 24 (1) (a) or the first publication of the notice of general meeting in accordance with Article 24 (1) (b).
3. The items whose inclusion in the agenda has been requested under the last foregoing paragraph shall be communicated or published in the same way as the notice of meeting, not less than five days or 10 days, respectively, before the meeting.	*3.* Items whose inclusion in the agenda has been requested under paragraph 2 shall be communicated or published in the same way as the notice of meeting, not less than seven days before the meeting.
Article 26	*Article 26*
Every shareholder who has completed the formalities prescribed by law or by the statutes shall be entitled to attend the general meeting.	Every shareholder who has completed the formalities prescribed by law or by the memorandum and articles of association shall be entitled to attend the general meeting.
Article 27	*Article 27*
1. Every shareholder shall be entitled to appoint a person to represent him at the general meeting.	*1.* Unchanged.

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2. The statutes may restrict the choice of representative to one or more specified categories of persons. Every shareholder must, however, have the right to appoint another shareholder to represent him.	*2.* The memorandum or articles of association may restrict the choice of representative to one or more specified categories of persons. Every shareholder must, however, have the right to appoint another shareholder to represent him.
3. The appointment shall be made in writing which shall be sent to the company and be retained by it for not less than three years.	*3.* The appointment shall be made in writing, sent to the company and be retained by it for not less than three years from the date of the general meeting.
Article 28	*Article 28*
1. If any person publicly invites shareholders to send their forms of proxy to him and offers to appoint agents for them, Article 27 and the following provisions shall apply:	*1.* Where national law allows any person to publicly invite shareholders to send their forms of proxy to him and to offer to appoint agents for them, Article 27 and the following provisions shall apply:
(a) the appointment shall relate only to one meeting; it shall, however, be valid for a second meeting having the same agenda;	(a) to (g) unchanged.
(b) the appointment shall be revocable;	
(c) the invitation shall be sent in writing to every shareholder whose name and permanent address are known;	
(d) the invitation shall contain the following particulars at least:	
(aa) the agenda of the meeting;	
(bb) the wording of proposed resolutions concerning each of the items on the agenda;	
(cc) a statement to the effect that the documents referred to in Article 30 are available to any shareholder who requests them;	
(dd) a request for instructions concerning the exercise of the right to vote in respect of each item on the agenda;	
(ee) a statement of the way in which the agent will exercise the right to vote if the shareholder gives no instructions;	
(e) the right to vote shall be exercised in accordance with the instructions of the shareholder or, if none are given by him, in accordance with the statement made to the shareholder;	

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(f) the agent may, however, depart from the instructions given by the shareholder or from the statement made to him if circumstances arise which were not known at the time the instructions or invitation were sent and the interests of the shareholder might be detrimentally affected;	
(g) where the right to vote has been exercised in a manner contrary to the shareholder's instructions or to the statement made to him, the agent shall forthwith inform the shareholder and explain the reasons therefor.	
2. The provisions of the foregoing paragraph shall apply where the company invites the shareholder to send his form of proxy to it and it appoints an agent for him.	2. Unchanged.
Article 29	*Article 29*
A list of persons present shall be drawn up in respect of each general meeting before any business is transacted. The list shall contain the following particulars at least:	
(a) the name and permanent address of each shareholder present;	(a) unchanged;
(b) the name and permanent address of each shareholder represented and of the person representing him;	(b) unchanged;
(c) the number, class, nominal or proportional value and number of votes attaching to the shares of each shareholder present or represented.	(c) the number, class and nominal value, or in the absence of a nominal value, the accounting par value and the number of votes attaching to the shares of each shareholder present or represented.
Article 30	*Article 30*
1. The documents relating to the annual accounts within the meaning of Article 2 (1) of Directive ... of ...[1] together with the report of the persons responsible for auditing the accounts (Article 60 of this Directive) shall be available to every shareholder at latest from the date of dispatch or of publication of the notice of general meeting convened to examine or adopt the annual	1. The annual accounts within the meaning of Article 2 (1) of Directive 78/660/EEC, the proposed appropriation of profit or treatment of loss where it does not appear in the annual accounts, the annual report within the meaning of Article 46 of Directive 78/660/EEC, and the opinion of the persons responsible for auditing the accounts within the meaning of Article 58 (2) of this Directive shall be available to every shareholder at the latest from the date of dispatch or publication of the notice of general meeting convened to adopt the annual accounts and to

[1] OJ C 7, 28.1.1972.

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accounts and the appropriation of the results of the financial year.	decide on the appropriation of profit or treatment of loss or, where it is not competent to adopt the annual accounts, solely to decide on the appropriation of profit or treatment of loss. Every shareholder shall be able to obtain a copy of such documents free of charge upon request. From that same date, the report of the persons responsible for auditing the accounts within the meaning of Article 60 of this Directive shall be made available to any shareholder wishing to consult it at the company's registered office and at the place where the general meeting is to be held.
2. Paragraph 1 shall apply also to contracts in respect of which the approval of the general meeting is required.	*2.* The first and second sentences of paragraph 1 shall also apply to contracts in respect of which the approval of the general meeting is required.
Article 31	*Article 31*
1. Every shareholder who so requests at a general meeting shall be entitled to obtain correct information concerning the affairs of the company if such information is necessary to enable an objective assessment to be made of the items on the agenda.	*1.* Unchanged.
2. The management organ shall supply the information.	*2.* The management organ or the executive members of the administrative organ shall supply the information.
3. The communication of information may be refused only where:	*3.* The communication of information may only be refused where:
(a) communication might cause material detriment to the company;	(a) it would be seriously prejudicial to the company;
or	or
(b) the company is under legal obligation not to divulge the information in question.	(b) the company is under a legal obligation not to divulge the information in question.
4. Disputes as to whether a refusal to supply information was justified shall be determined by the court.	*4.* Unchanged.
Article 32	*Article 32*
1. The general meeting shall not pass any resolution concerning items which do not appear on the agenda.	*1.* Unchanged.

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2. Paragraph 1 shall not apply provided all the shareholders are present or are represented at the general meeting and no shareholder requires his objection that the business in question should not be discussed to be recorded in the minutes.	2. Unchanged.
3. It shall, however, be permissible for the Member States not to apply paragraph 1 to resolutions relating to the following matters:	3. It shall, however, be permissible for the Member States not to apply paragraph 1 to resolutions relating to the following matters:
(a) dismissal of members of the management organ or supervisory organ or of the persons responsible for auditing the accounts, provided that at the same meeting of the general meeting other persons are appointed to replace them;	(a) deleted;
(b) the bringing of proceedings on behalf of the company to enforce the liability of the members of the management organ or of the supervisory organ, provided that the annual accounts have been discussed or been the subject of a resolution at the same meeting;	(b) the bringing of proceedings on behalf of the company to enforce the liability of the members of the administrative, management or supervisory organ, provided that the annual accounts have been discussed or have been the subject of a resolution at the same meeting;
(c) the calling of a new meeting.	(c) unchanged.
Article 33	*Article 33*
1. The shareholder's right to vote shall be proportionate to the fraction of capital subscribed which the share represents.	1. The shareholder's right to vote shall be proportionate to the fraction of the subscribed capital which the shares represent.
2. Notwithstanding paragraph 1, the laws of the Member States may authorize the statutes to allow:	2. Notwithstanding paragraph 1, the laws of the Member States may authorize the memorandum and the articles of associaton to allow:
(a) restriction or exclusion of the right to vote in respect of shares which carry special advantages;	(a) and (b) unchanged.
(b) restriction of votes in respect of shares allotted to the same shareholder, provided the restriction applies at least to all shareholders of the same class.	
3. In no case may the right to vote be exercised where payment up of calls made by the company has not been effected.	3. Any shareholder who, at the date of the general meeting, has not paid up calls made by the company at least one month earlier may not exercise his right to vote.
Article 34	*Article 34*
Neither a shareholder nor his representative shall exercise the right to vote attached to his shares or	Unchanged.

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to shares belonging to third persons where the subject matter of the resolution relates to:	
(a) discharge of that shareholder;	
(b) rights which the company may exercise against that shareholder;	
(c) the release of that shareholder from his obligations to the company;	
(d) approval of contracts made between the company and that shareholder.	
Article 35	*Article 35*
Agreements whereby a shareholder undertakes to vote in any of the following ways shall be void:	Unchanged.
(a) that he will always follow the instructions of the company or of one of its organs;	
(b) that he will always approve proposals made by the company or by one of its organs;	
(c) that he will vote in a specified manner, or abstain, in consideration of special advantages.	
Article 36	*Article 36*
1. Resolutions of the general meeting shall be passed by absolute majority of votes cast by all the shareholders present or represented, unless a greater majority or other requirements be prescribed by law or by the statutes.	*1.* Resolutions of the general meeting shall be passed by absolute majority of votes cast by all the shareholders present or represented, unless a greater majority or other additional requirements are prescribed by the law or the memorandum or articles of association.
2. The foregoing paragraph shall not apply to the appointment of members of the management organ of the supervisory organ or of the persons responsible for auditing the accounts of the company.	*2.* Paragraph 1 shall not apply to the appointment of members of the company organs or of the persons responsible for auditing the accounts of the company.
Article 37	*Article 37*
1. A resolution of the general meeting shall be required for any alteration of the statutes.	*1.* A resolution of the general meeting shall be required for any alteration of the memorandum or articles of association.
2. The laws of the Member States may, however, provide that the general meeting may	*2.* The laws of the Member States may, however, provide that the general meeting may

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authorize another organ of the company to alter the statutes, provided:	authorize another organ of the company to alter the memorandum or articles of association, provided:
(a) the alteration is effected only for the purpose of giving effect to a resolution already passed by the general meeting;	(a) unchanged;
or	
(b) the alteration is imposed by an administrative authority whose approval is necessary in order for alterations of the statutes to be valid;	(b) the alteration is imposed by an administrative authority whose approval is necessary in order for alterations of the memorandum or articles of association to be valid;
(c) the alteration is effected solely in order that the statutes comply with compulsory provisions of law.	(c) the alteration is effected solely in order that the memorandum and articles of association comply with compulsory provisions of law.
Article 38	*Article 38*
The complete text of the statutes which is to be put before the general meeting shall be set out in the notice of meeting.	*1.* The complete text of the alteration to the memorandum or articles of association which is to be put before the general meeting shall be set out in the notice of meeting.
	2. The laws of the Member States may, however, provide that if the general meeting is convened by notice published pursuant to Article 24 (1) (b), the text of the alteration referred to in paragraph 1 shall be made available to shareholders at the latest from the date of publication. Every shareholder shall be able to obtain a copy of such text free of charge upon request.
Article 39	*Article 39*
1. A majority of not less than two-thirds either of votes carried by shares represented at the meeting or of the capital subscribed which is represented thereat shall be required for the passing by the general meeting of resolutions altering the statutes.	*1.* A majority of not less than two-thirds either of votes carried by shares represented at the meeting or of the subscribed capital which is represented thereat shall be required for the passing by the general meeting of resolutions altering the memorandum or articles of association.
2. Where, however, the laws of the Member States provide that the general meeting may validly transact business only if at least one-half of the capital subscribed is represented, resolutions for alteration of the statutes shall require a majority not less than that required under Article 36.	*2.* The laws of the Member States may, however, provide that where at least half of the subscribed capital is represented, the majority provided for in Article 36 (1) shall suffice.

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3. Resolutions of the general meeting which would have the effect of increasing the liabilities of the shareholders shall require in any event the approval of all shareholders involved.	*3.* Unchanged.
Article 40	*Article 40*
1. A resolution of the general meeting shall, where the share capital is divided into different classes and the resolution is detrimental to the holder of shares of those classes, be valid only if consented to by separate vote at least of each class.	*1.* Where the share capital is divided into different classes, a resolution of the general meeting shall be valid only if consented to by separate vote at least of each class of shareholders whose rights are affected by the resolution in question.
2. Article 39 shall apply.	*2.* Unchanged.
Article 41	*Article 41*
1. Minutes shall be prepared of every meeting of the general meeting.	Unchanged.
2. The minutes shall contain the following particulars at least:	
(a) the place and date of the meeting;	
(b) the resolution passed;	
(c) the result of the voting;	
(d) objections made by shareholders to discussion of particular items of business.	
3. There shall be annexed to the minutes:	
(a) the list of persons present;	
(b) the documents relating to the calling of the general meeting.	
4. The minutes and the documents annexed thereto shall be held at the disposal at least of the shareholders and shall be kept for not less than three years.	
Article 42	*Article 42*
The Member States shall ensure that, without prejudice to rights acquired in good faith by third parties, all resolutions of the general meeting are void or voidable where:	Unchanged.

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(a) the general meeting was not called in conformity with Article 24 (1), (2) (b) and (d) and (3);	(a) to (f) unchanged;
(b) the subject matter of the resolution was not communicated and published in conformity with Article 24 (2) (f) or Article 25 (3), but without prejudice to the provisions of Article 32 (2) or (3);	
(c) contrary to Article 26, a shareholder was not allowed to attend the general meeting;	
(d) contrary to Article 30, a shareholder was unable to examine a document or, contrary to Article 31, information was refused to him;	
(e) in the course of transacting business, the provisions of Articles 33 and 34 relating to the exercise of the right of vote were not observed and as a result thereof the outcome of the vote was decisively affected;	
(f) the majority required under Articles 36 or 39 was not obtained.	
	(g) contrary to Article 40 (1), the separate vote did not take place.
Article 43	*Article 43*
Proceedings under Article 42 for nullity or voidability may be brought at least:	Unchanged
(a) in the case of Article 42 (a), by any shareholder who was not present or represented at the general meeting;	(a) to (f) unchanged;
(b) in the case of Article 42 (b), by any shareholder unless he was present or represented at the general meeting but did not cause to be recorded in the minutes his objection that the business in question should not be discussed;	
(c) in the case of Article 42 (c), by any shareholder who was not allowed to attend the general meeting;	
(d) in the case of Article 42 (d), by any shareholder who was unable to examine any document or to whom information was refused;	
(e) in the case of Article 42 (e), by any shareholder who was excluded from voting or who disputes the right to vote of some other shareholder who voted;	

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(f) in the case of Article 42 (f), by any shareholder.	
	(g) in the case of Article 42 (g), by any shareholder belonging to the class of shareholders whose rights were affected by the resolution of the general meeting.
Article 44	*Article 44*
Proceedings for nullity or voidability shall be brought within a period which the Member States shall fix at not less than three months nor more than one year from the time when the resolution of the general meeting could be adduced as against the person who claims that the resolution is void or voidable.	Unchanged.
Article 45	*Article 45*
A resolution of the general meeting shall not be declared void where it has been replaced by another resolution passed in conformity with the law or the statutes. The competent court must have power to allow the company time to do this.	A resolution of the general meeting shall not be declared void where it has been replaced by another resolution passed in conformity with the law or memorandum and articles of association. The competent court must have power to allow the company time to do this.
Article 46	*Article 46*
The question whether a decision of nullity pronounced by a court of law in respect of a resolution of the general meeting may be relied on as against third parties shall be governed by Article 12 (1) of Directive 68/151/EEC of 9 March 1968.	*1.* Any judgment declaring a resolution of the general meeting void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC. *2.* The question whether a judgment declaring a resolution of the general meeting void may be relied on as against third parties shall be decided in accordance with Article 12 (1) of Directive 68/151/EEC.
Article 47	*Article 47*
Where the laws of the Member States provide for special meetings of holders of certain classes of shares, the provisions of Chapter 3 shall apply to such meetings and to the resolutions thereof.	Where the laws of the Member States provide for special meetings of holders of certain classes of shares, the provisions of Chapter V shall apply *mutatis mutandis* to such meetings and to the resolutions thereof.

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CHAPTER IV

The adoption and audit of the annual accounts

Article 48

1. The annual accounts within the meaning of Article 2 of Directive ... of ... shall be adopted by the general meeting.

2. The laws of the Member States may, however, provide that the annual accounts shall be adopted not by the general meeting but by the management organ and the supervisory organ, unless those two organs decide otherwise or fail to agree.

Article 49

1. Five per cent of the result for each year, reduced where appropriate by losses brought forward from previous years, shall be appropriated to legal reserve until that reserve amounts to not less than 10 % of the capital subscribed.

2. So long as the legal reserve does not exceed the amount specified in the foregoing paragraph, it shall not be used except to set off losses and then only if other reserves are inadequate for that purpose.

Article 50

1. The general meeting shall decide how the result for each year, reduced where appropriate by the amount of the losses brought forward from previous years, are to be appropriated.

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CHAPTER VI

The adoption and audit of the annual accounts

Article 48

1. The annual accounts within the meaning of Article 2 of Directive 78/660/EEC shall be adopted by the general meeting.

2. The laws of the Member States may, however, provide that in companies organized according to the two-tier system, the annual accounts shall be adopted not by the general meeting but by the management organ and the supervisory organ, unless those two organs decide otherwise or do not reach agreement on adoption of the annual accounts.

Article 49

1. Five per cent of any profit for the financial year, reduced where appropriate by losses brought forward, shall be appropriated to a legal reserve until that reserve amounts to not less than 10% of the subscribed capital.

2. So long as the legal reserve does not exceed the amount specified in the foregoing paragraph, it shall not be used except to increase the subscribed capital or to set off losses and then only if other available reserves are inadequate for those purposes.

3. Pending subsequent coordination, the Member States need not apply this article to investment companies with variable capital as defined in Article 1 (2) of Directive 77/91/EEC.

Article 50

1. The general meeting shall decide how the profit or loss for the financial year, increased where appropriate by profits brought forward and drawings from reserves available for that purpose, and reduced where appropriate by losses brought forward and amounts taken to reserves

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	in accordance with the law or the memorandum or articles of association, is appropriated or treated.
2. The statutes may, however, provide for the appropriation of a maximum of 50 % of the result referred to in paragraph 1.	2. The memorandum or articles of association may, however, provide for the appropriation of a maximum of 50 % of any profit referred to in paragraph 1.
Article 51	*Article 51*
1. One of more persons shall be made responsible for auditing the accounts of the company.	Deleted.
2. The audit shall in any event cover the annual accounts within the meaning of Article 2 of Council Directive ... of ... and the annual report within the meaning of Article 43 of that Directive.	
Article 52	*Article 52*
Only persons who are independent of the company and who are nominated or approved by a judicial or administrative authority may be charged with the responsibility of auditing the accounts of the company.	Deleted.
Article 53	*Article 53*
1. The audit of the accounts shall in no case be undertaken by persons who are members, or who during the last three years have been members, of the management organ, supervisory organ or staff of the company whose accounts are to be audited.	1. The audit of the accounts shall in no case be undertaken by persons who are members, or who during the last three years have been members, of the administrative, management or supervisory organs, or of the staff of the company whose accounts are to be audited.
2. Further, the audit of the accounts shall in no case be undertaken by companies or firms whose members or partners, members of the management organ or supervisory organ, or of which the persons who have power of representation are members, or during the last three years have been members, of the management organ, supervisory organ or staff of the company whose accounts are to be audited.	2. Further, the audit of the accounts shall in no case be undertaken by companies or firms whose members or partners, members of the administrative, management or supervisory organs, or of which the persons who have power of representation are members, or during the last three years have been members, of the administrative, management or supervisory organ or staff of the company whose accounts are to be audited.

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Article 54	*Article 54*
1. The persons who have audited the accounts shall in no case be or, for a period of three years following cessation of their duties, become members of the management organ, supervisory organ or staff of the company whose accounts have been audited.	*1.* The persons who have audited the accounts shall in no case become members of the administrative, management or supervisory organs or of the staff of the company whose accounts have been audited less than three years after cessation of their duties.
2. Further, the members or partners, members of the management organ or supervisory organ or the persons who have power of representation of the companies or firms who have audited the accounts shall in no case become members of the management organ, supervisory organ or staff of the company whose accounts have been audited, less than three years after cessation of their duties.	*2.* Further, the partners, members of the administrative, management or supervisory organs, or the persons having the power of representation of the companies or firms who have audited the accounts shall in no case become members of the administrative, management or supervisory organ or of the staff of the company whose accounts have been audited less than three years after cessation of their duties.
Article 55	*Article 55*
1. The persons who are to audit the accounts shall be appointed by the general meeting. This Directive shall, however, be without prejudice to the provisions of law of the Member States relating to the appointment of such persons at the time of formation of the company.	*1.* Unchanged.
2. Where appointment by the general meeting has not been made in due time or where any of the persons appointed is unable to carry out his duties, the management organ, the supervisory organ or any shareholder must have the right to apply to the court for appointment of one or more persons to audit the accounts.	*2.* Where appointment by the general meeting has not been made in due time or where any of the persons appointed is unable to carry out his duties, the administrative, management or supervisory organ or any shareholder must have the right to apply to a judicial or administrative authority for appointment of one or more persons to audit the accounts.
3. Further, the court must have power to dismiss, where there are proper grounds, any person appointed by the general meeting to audit the accounts, and must also have power to appoint some other person for that purpose if application is made by the management organ, supervisory organ or by one or more shareholders who satisfy the requirements of Article 16. Such application shall be made within two weeks following the date of the appointment by the general meeting.	*3.* Further, the judicial or administrative authority must have power to dismiss, where there are proper grounds, any person appointed by the general meeting to audit the accounts, and must also have power to appoint some other person for that purpose if application is made by the administrative, management or supervisory organ or by one or more shareholders who satisfy the requirements of Article 16 (1). Such application shall be made within two weeks of the appointment by the general meeting.

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Article 56	*Article 56*
The persons who audit the accounts shall be appointed for a certain period of not less than three years nor more than six years. They shall be eligible for reappointment.	The persons who audit the accounts shall be appointed for a specified period of not less than three years nor more than six years. They shall be eligible for reappointment.
Article 57	*Article 57*
1. The remuneration of the persons appointed by the general meeting to audit the accounts shall be fixed for the whole of their period of office before it commences.	*1.* The remuneration, or its method of calculation, of the persons responsible for auditing the accounts shall be fixed for the whole of their period of office before it commences, taking account of the nature and importance of the duties to be carried out.
2. Apart from the remuneration fixed pursuant to paragraph 1, no remuneration or benefit shall be accorded to the persons in question in respect of their auditing of the accounts.	*2.* Unchanged.
3. The provisions of paragraph 2 shall apply to the persons appointed by the court to audit the accounts.	*3.* Deleted.
Article 58	*Article 58*
1. The persons appointed to audit the accounts shall in all cases examine whether the annual accounts within the meaning of Article 2 of Directive ... of ...[1] and the annual report within the meaning of Article 43 of that Directive are in conformity with the law and the statutes.	*1.* The persons responsible for auditing the accounts shall in all cases examine whether the annual accounts within the meaning of Article 2 of Directive 78/660/EEC give a true and fair view of the company's assets, liabilities, financial position and profit or loss. They shall also verify the consistency of the annual report within the meaning of Article 46 of the above Directive with the annual accounts for the same financial year.
2. If they have no reservation to make, the persons responsible for the audit shall so certify on the annual accounts; otherwise they shall issue their certificate subject to reservations or shall refuse their certificate.	*2.* If they have no reservation to make, the persons responsible for the audit shall deliver an opinion on the annual accounts that the requirements imposed in paragraph 1 have been met; otherwise they shall issue their opinion subject to reservations or shall withold their opinion.
Article 59	*Article 59*
The persons responsible for auditing the accounts shall be entitled to obtain from the company all	Unchanged.

[1] OJ C 7, 28.1.1972.

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information and relevant documents and to undertake all such investigations as may be necessary.	
Article 60	*Article 60*
The persons responsible for auditing the accounts shall prepare a detailed report relating to the results of their work. The report shall contain the following at least:	The persons responsible for auditing the accounts shall prepare a detailed report relating to the results of their work. The report shall contain the following at least:
(a) an indication of whether the provisions of Article 58 (1) have been observed;	(a) deleted;
(b) observations concerning any infringements of law or of the statutes which have been found in the company's accounts, in its annual accounts or in the management report;	(b) observations concerning any infringements of law or of the memorandum or articles of association which have been found in the company's accounts, annual accounts or annual report in the course of the audit;
(c) observations concerning any facts noted which constitute a serious danger to the financial situation of the company;	(c) observations concerning any facts noted in the course of the audit which constitute a serious danger to the financial position of the company;
(d) the complete text of the certificate given pursuant to Article 58 (2). Where reservations have been withheld, the reasons therefore shall be specified.	(d) the complete text of the opinion delivered pursuant to Article 58 (2). Where reservations have been made or where the opinion has been withheld, the reasons therefore shall be specified.
Article 61	*Article 61*
Save where proper grounds exist, the persons responsible for auditing the accounts shall not be dismissed by the general meeting before the end of their period of office.	Unchanged.
Article 62	*Article 62*
Articles 14 to 21 of this Directive shall apply in respect of the civil liability of the persons responsible for auditing the accounts, so as to ensure that compensation is made for any damage sustained by the company, any shareholder or third party as a result of wrongful acts committed by those persons aforesaid in carrying out their duties.	Articles 14 to 19 and 21 shall apply in respect of the civil liability of the persons responsible for auditing the accounts, so as to ensure that compensation is made for any damage sustained by the company as a result of wrongful acts committed by the aforesaid persons in carrying out their duties.
Articles 63	*Articles 63*
1. The Member States shall ensure that, without prejudice to rights acquired in good faith by third	*1*. Unchanged.

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parties, all resolutions of the organ whose responsibility it is to adopt annual accounts are void or voidable where:	
(a) the annual accounts have not been audited in conformity with Article 58 (1);	(a) unchanged;
(b) the certificate relating to the annual accounts has been refused in accordance with Article 58 (2);	(b) the opinion relating to the annual accounts has been withheld in accordance with Article 58 (2);
(c) the annual accounts have not been audited by a person nominated or approved in manner required by Article 52;	(c) to (e) unchanged.
(d) the annual accounts have been audited by a person who, under Article 53, should not have been made responsible for the audit, or who has been dismissed by the court in conformity with Article 55 (3) or by the general meeting in conformity with Article 61;	
(e) the annual accounts have been audited by a person who, contrary to Article 55 (1), was not appointed by the general meeting or who, contrary to Article 55 (2) or (3), was not appointed by the court.	
2. Proceedings for nullity or voidability may be brought at least by any shareholder.	*2.* Unchanged.
3. Articles 44 to 46 shall apply.	*3.* Unchanged.
CHAPTER V	CHAPTER VII
General provisions	**General provisions**
	Article 63a
	1. For the purposes of this Directive, the ECU shall he that defined by Regulation (EEC) No 3180/78.[1] The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.
	2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in

[1] OJ L 379, 30.12.1978, p. 1.

ECU in this Directive, in the light of economic and monetary trends in the Community.

Article 63b

1. Pending subsequent coordination where the company is the parent undertaking of a group, the Member States:

(a) may derogate from Articles 4 and 21b in so far as may be necessary to permit the employees of subsidiary undertakings of that group to be included in the system of participation or representation of employees applicable to that parent undertaking in accordance with this Directive:

(b) need not apply Articles 10a (2) first sentence and 21q (2), first sentence, in respect of decisions concerning a subsidiary undertaking of that group.

*1*a. Pending subsequent coordination, the Member States may derogate from Articles 4 to 4i and 21b to 21i where the company is:

(a) a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC or

(b) the parent undertaking of an international group and its sole object is the coordination of the management and financing of subsidiary undertakings.

2. Pending subsequent coordination, where the company is a subsidiary undertaking of a group, the Member States:

(a) need not apply Articles 4 and 21b provided that the employees of that subsidiary undertaking are included in the system of participation or representation of employees applicable to the parent undertaking of that group in accordance with this Directive;

(b) may, provided tha the employees' participation or representation rights are guaranteed in accordance with subparagraph (a), derogate from Articles 12, 14 and 21s in so far as may be necessary to allow that subsidiary undertaking to be managed in accordance with group strategy, and on condition that the parent undertaking assumes responsibility for the liabilities of the subsidiary undertaking towards third parties and

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	as regards Article 14 for the liabilities to which that Article refers.
	(c) may derogate from Articles 3 (1) (b) and 13 (1) where the members or the supervisory organ of the subsidiary undertaking are appointed in accordance with Article 4c.
	Article 63c
	1. Not more than five years after the expiry of the period referred to in Article 64 (2), the Commission shall submit a report to the Council and Parliament on the experience of Member States as regards the application of this Directive and in particular Articles 2 to 4i, 11, 12 and 21b to 21s thereof.
	In that report the Commission shall devote particular attention to the view communicated to it regarding the application of those Articles by the organizations of employers and employees involved in their application.
	2. The Commission shall include, where appropriate, in the report referred to in paragraph 1, more detailed proposals concerning the matters governed by this Directive in general and by the Articles referred to in paragraph 1.
	Article 63d
	The Member States may derogate from Articles 4 to 4i and 21b to 21i with respect to companies whose sole or principal object is:
	(a) political, religious, humanitarian, charitable, educational, scientific or artistic; or
	(b) related to public information or expression of opinion.
	Such special provision must be limited to that which is necessary to ensure that such undertakings enjoy the freedom to which they are entitled under the national laws to which they are subject.
Article 64	*Article 64*
1. The Member States shall bring into force within 18 months following the notification of	*1.* The Member States shall bring into force before ... the laws, regulation and administrative

ORIGINAL PROPOSAL	AMENDED PROPOSAL
this Directive all such amendments to their laws, regulations or administrative provisions as may be necessary to comply with the provisions of this Directive and shall inform the Commission thereof.	provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.
2. The Member States may provide that the amendments to their laws as referred to in paragraph 1 shall not apply to companies already in existence at the time of entry into force of those amendments until 18 months after that time.	*2.* The Member States may provide that the laws, regulations and administrative provisions referred to in paragraph 1 shall not apply to companies already in existence at the time of entry into force thereof until the end of a period of 18 months after the date referred to in paragraph 1. The period of 18 months may, however, be four years in respect of the application of Article 2 (1).
3. The Member States shall communicate to the Commission, for information, the texts of the draft laws and regulations, together with the grounds therefor, relating to the field governed by this Directive. The texts shall be communicated not later than six months before the proposed date of entry into force of the drafts.	*3.* Unchanged.
Article 65	*Article 65*
This Directive is addressed to the Member States.	Unchanged.

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The structure of public limited companies. Amended proposal for a Fifth Directive

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