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***I
REPORT

on the proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 83/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies
(COM(2000) 80 – C5-0106/2000 – 2000/0043(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: The Lord Inglewood

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

CONTENTS

Page

PROCEDURAL PAGE

By letter of 24 February 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 44 of the EC Treaty, the proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 83/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies (COM(2000) 80 - 2000/0043 (COD)).

At the sitting of 17 March 2000 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0106/2000).

The Committee on Legal Affairs and the Internal Market appointed The Lord Inglewood rapporteur at its meeting of 25 May 2000.

The committee considered the Commission proposal and draft report at its meetings of 27 February, 20 March, 11 April and 24 April 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Willi Rothley, acting chairman; Rainer Wieland and Ward Beysen, vice-chairmen;The Lord Inglewood, rapporteur; Luis Berenguer Fuster (for Carlos Candal), Maria Berger, Philip Charles Bradbourn (for Bert Doorn), Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Othmar Karas (for Hans-Peter Mayer pursuant to Rule 153(2)), Klaus-Heiner Lehne, Luís Marinho, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Gary Titley (for Jean-Maurice Dehousse), Feleknas Uca, Theresa Villiers (for Joachim Wuermeling), Diana Wallis, Stefano Zappalà.

The Committee on Industry, External Trade, Research and Energy decided on 19 April 2000 not to deliver an opinion.

The report was tabled on 24 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 83/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies (COM(2000) 80 – C5-0106/2000 – 2000/0043(COD))

The proposal is amended as follows:

Text proposed by the Commission [1]	Amendments by Parliament

(Amendment 1)
RECITAL 1 OF THE PROPOSAL

(1) Article 32 of the Directive 78/660/EEC based on Article 54(3)(g) ***(now 44(2)(g))*** of the Treaty requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.	(1) Article 32 of the ***Council*** Directive 78/660/EEC ***of 25 July 1978*** based on Article 54(3)(g) of the Treaty ***on the annual accounts of certain types of companies*** requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.

Justification

Some editorial changes have been made.

(Amendment 2)
RECITAL 3 OF THE PROPOSAL

(3) Article 29 of Directive 83/349/EEC based on Article 54(3)(g) ***(now 44(2)(g))***[1] of the Treaty requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.	(3) Article 29 of ***Council*** Directive 83/349/EEC ***of 13 June 1983*** based on Article 54(3)(g)[1] of the Treaty ***on consolidated accounts*** requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.
OJ No L 193, 18. 7. 1983, p 1. Directive	[1] OJ No L 193, 18. 7. 1983, p 1. Directive

[1] OJ C 311, 31.10.2000, p. 1.

as last amended by Directive 90/605/EC (OJ No L 317, 16. 11. 1990, p. 60).

as last amended by Directive 90/605/EC (OJ No L 317, 16. 11. 1990, p. 60).

Justification

Some editorial changes have been made.

(Amendment 3)
RECITAL 3 BIS NEW OF THE PROPOSAL

(***3 BIS) Article 1 of Council Directive 86/635/EEC of 8 December 1986 based on Article 54(3)(g)[1] of the Treaty on the annual accounts and consolidated accounts of banks and other financial institutions requires assets and liabilities to be valued in accordance with Articles 31 to 42 of Directive 78/660/EEC, except when Directive 86/635/EEC provides otherwise.***

[1] OJ No L 372, 31. 12. 1986, p. 1.

Justification

In the Commission Proposal, recital 4 refers both to banks and other financial institutions as well as to insurance undertakings. The inclusion of banks and financial institutions calls for a separate recital.

(Amendment 4)
RECITAL 4 OF THE PROPOSAL

(4) ***The annual and consolidated accounts of banks and other financial institutions are prepared in accordance to Council Directive 86/635/EEC, and the*** annual and consolidated accounts of insurance undertakings are prepared in accordance

(4) ***The*** annual and consolidated accounts of insurance undertakings are prepared in accordance with Directive 91/674/EEC***[1]***. The amendments in Directive***s 78/660/EEC and 83/349/EEC*** do not ***concern*** the provisions of Directive 91/674/EEC, but the

with ***Council*** Directive 91/674/EEC. The amendments in ***this*** Directive do not ***amend*** the provisions of Directive***s 86/635/EEC and*** 91/674/EEC, but the Commission may bring forward similar proposals to amend ***these*** Directive***s*** after having consulted the relevant advisory committee***s***.

Commission may bring forward similar proposals to amend ***that*** Directive after having consulted the relevant advisory committee.

OJ No L 374, 31. 12. 1991, p. 7.

Justification

The recital now deals only with insurance undertakings.

(Amendment 5)
RECITAL 5 OF THE PROPOSAL

(5) The dynamic nature of international financial markets has resulted in the widespread use of not only traditional primary financial instruments such as shares and bonds, but also various forms of derivative financial instruments as futures, options, forward contracts and swaps.

(5) The dynamic nature of international financial markets has resulted in the widespread use of not only traditional primary financial instruments such as shares and bonds, but also various forms of derivative financial instruments ***such*** as futures, options, forward contracts and swaps.

Justification

A minor editorial change has been made.

(Amendment 6)
RECITAL 7 OF THE PROPOSAL

(7) The Communication of the Commission on “Accounting Harmonisation: A New Strategy vis à vis International Harmonisation[1], called for the EU to work to

(7) The Communication of the Commission on “Accounting Harmonisation: A New Strategy vis à vis International Harmonisation”[1], called for the EU to work

maintain consistency between Directives ***78/660/EEC and 83/349/EEC*** and developments in international accounting standard setting.

COM(95) 508.

to maintain consistency between ***Community Accounting*** Directives and developments in international accounting standard setting ***in particular within the International Accounting Standards Committee (IASC).***

COM(95) 508.

Justification

An explicit reference is now made to the International Accounting Standards Committee (IASC).

(Amendment 7)
RECITAL 8 OF THE PROPOSAL

(8) In order to maintain consistency between internationally recognised accounting standards and Directives 78/660/EEC ***and*** Directive 83/349/EEC, it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report ***in line*** with current international developments.

(8) In order to maintain ***such*** consistency between internationally recognised accounting standards and Directives 78/660/EEC, 83/349/EEC ***and 86/635/EEC,*** it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report ***in conformity*** with current international developments.

Justification

Adjusted for the inclusion of banks and other financial institutions.

(Amendment 8)
RECITAL 8 BIS NEW OF THE PROPOSAL

(8 BIS) This amendment to Directives 78/660/EEC, 83/349/EEC and 86/635/EEC

is in line with the Commission's Communication on the EU financial reporting strategy[1] which proposes the use of recognised International Accounting Standards for the preparation of consolidated financial statements by listed companies. The purpose of this amendment is to allow the application of the International Accounting Standard dealing with the recognition and measurement of financial instruments.

[1] COM(2000) 359 final, 13.6.2000.

Justification

The Commission Communication on the financial reporting strategy was adopted after the Directive Proposal. In the amended text there is a clear statement of the purpose of the Directive.

(Amendment 9)
RECITAL 9 OF THE PROPOSAL

(9) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting. Member States ***may*** permit ***or require*** the adoption of that system ***to*** all ***or certain categories*** of companies ***and to*** both the annual and consolidated accounts or ***to*** consolidated accounts only.

(9) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting ***for certain financial instruments.*** Member States ***should*** permit the adoption of that system ***by*** all ***companies or any classes*** of companies ***subject to the above mentioned Directives of 1978, 1983 and 1986 in respect of*** both the annual and consolidated accounts or ***in respect of*** consolidated accounts only. ***Further, Member States should be permitted to require the adoption of that system in respect of all companies or any classes of companies for both the annual and consolidated accounts or for the consolidated accounts only.***

Justification

Editorial changes have been made.

(Amendment 10)
RECITAL 10 OF THE PROPOSAL

(10) Fair value accounting should only be possible for those items where there is a ***sufficiently*** developed international consensus that fair value accounting is appropriate. ***Fair*** value accounting should ***therefore*** not be applied to all financial assets and liabilities.	(10) Fair value accounting should only be possible for those items where there is a ***well*** developed international consensus that fair value accounting is appropriate***. The current consensus is that fair*** value accounting should not be applied to all financial assets and liabilities***, for instance not to most of those relating to the banking book.***

Justification

Reflects that valuation at cost is still in many instances proper accounting.

(Amendment 11)
RECITAL 11 OF THE PROPOSAL

(11) The notes on the accounts should include certain information concerning ***the items*** in the balance sheet which have been measured at fair value. The annual report should give an indication of the company's risk management objectives and ***strategies*** in relation to its use of financial instruments.	(11) The notes on the accounts should include certain information concerning ***financial instruments*** in the balance sheet***,*** which have been measured at fair value. The annual report should give an indication of the company's risk management objectives and ***policies*** in relation to its use of financial instruments.

Justification

Editorial changes have been made.

(Amendment 12)
RECITAL 11 BIS NEW OF THE PROPOSAL

	(11 BIS) Derivative financial instruments can have a significant impact on the financial position of companies; disclosures on derivative financial instruments and their fair value are considered appropriate even if the company does not use fair value accounting. In order to limit the administrative burden for small companies, Member States should be allowed to derogate small companies from this disclosure requirement.

Justification

Made consistent with amendment 5.

(Amendment 13)
RECITAL 12 OF THE PROPOSAL

Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a ***periodic*** review. ***This review should be carried out through the Contact Committee on the Accounting Directives in order to give*** Member States ***the opportunity to report on their experiences*** with fair value accounting in practice.	(12) Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a review ***by the Commission on the experiences of*** Member States with fair value accounting in practice.

Justification

The text has been shortened.

(Amendment 14)
ARTICLE 1 OF THE PROPOSAL

Section 7a Article 42a Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows: **1) The following Section 7a is inserted:**	Directive 78/660/EEC is hereby amended as follows: **1) The following Section 7a is inserted:**
"SECTION 7a Valuation at fair value Article 42a	"SECTION 7a Valuation at fair value Article 42a
1. By way of derogation from Article 32, Member States shall permit or require in respect of all companies or any classes of companies valuation at fair value of ***all balance sheet items, including derivative*** financial instruments, ***except for the items listed in paragraph 3.***	1. By way of derogation from Article 32 ***and subject to the conditions in paragraphs 2 to 4 of this Article***, Member States shall permit or require in respect of all companies or any classes of companies valuation at fair value of financial instruments, ***including derivatives***.
2. ***Member States may restrict the*** permission or requirement ***set out in paragraph 1*** to consolidated accounts as defined in Directive 83/349/EEC.	***Such*** permission or requirement ***may be restricted*** to consolidated accounts as defined in Directive 83/349/EEC.
3. The following items shall not be valued at fair value: ***(a) balance sheet items that are not financial instruments;*** ***(b) liabilities, with the exception of liabilities which are:*** ***(i) held as part of a trading portfolio;*** ***(ii) accounted for as hedged items; or*** ***(iii) derivative financial instruments.***	

4. Notwithstanding paragraph 1, Member States may:	
(a) exclude items held-to-maturity, other than derivative financial instruments, from valuation at fair value;	
(b) exclude originated loans and advances not held for trading purposes from valuation at fair value;	
(c) restrict the valuation at fair value to items held for trading purposes. Where this restriction is applied, all derivative financial instruments are deemed to be held for trading purposes;	
(d) exclude commodity-based contracts that ***were originally designate for the purposes of meeting a*** company's expected purchase, sale or usage requirements ***in that commodity and which are expected to be settled by delivery of the commodity.***	***2. For the purpose of this Directive*** commodity based contracts that ***give either contracting party the right to settle in cash or some other financial instrument, shall be considered to be derivative financial instruments, except when they:*** ***(a were entered into and continue to meet the*** company's expected purchase, sale or usage requirements; ***(b) were designated for such purpose at their inception; and*** ***(c) are expected to be settled by delivery of the commodity.*** ***3. Paragraph 1 shall apply only to such liabilities that are:*** ***(a) held as part of a trading portfolio; or*** ***(b) derivative financial instruments.***

4. Valuation according to paragraph 1 shall not apply to:

(a) non-derivative financial instruments held to maturity;

(b) loans and receivables originated by the company and not held for trading purposes; and

(c) interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the company, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, should be accounted for differently from other financial instruments.

5. By way of derogation from Article 32, Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.

Justification:

This amendment is basically to clarify:

- *the scope of application of companies to which fair value accounting can be applied and*
- *financial instruments and commodity based contracts to which fair value should be applied under fair value accounting,*
- *A more strict alignment with IAS concerning financial instruments that may be fair valued.*

The rest of the modifications relate to a more adequate wording of the proposal.

(Amendment 15)
ARTICLE 1 OF THE PROPOSAL

Section 7a Article 42b Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows: **1) The following Section 7a is inserted:**	Directive 78/660/EEC is hereby amended as follows: **1) The following Section is inserted:**
"SECTION 7a Valuation at fair value	"SECTION 7a Valuation at fair value
Article 42b	Article 42b
1. The fair value referred to in Article 42a is determined by reference to:	1. The fair value referred to in Article 42a is determined by reference to:
(a) a market value, for those ***items*** for which a reliable market can readily be identified. Where a market value is not readily identifiable for an **item** but can be identified for its components, the market value ***of that item*** may be derived from that of its components; or	(a) a market value, for those ***financial instruments*** for which a reliable market can readily be identified. Where a market value is not readily identifiable for an ***instrument*** but can be identified for its components ***or for a similar instrument***, the market value may be derived from that of its components ***or of the similar instrument***; or
(b) ***the*** value resulting from ***established*** valuation models and techniques, for those ***items*** for which a reliable market cannot be readily identified. Such valuation models and techniques should ensure a reasonable approximation of the market value.	(b) ***a*** value resulting from ***generally accepted*** valuation models and techniques, for those ***instruments*** for which a reliable market cannot be readily identified. Such valuation models and techniques should ensure a reasonable approximation of the market value.
2. Those ***items,*** that cannot be measured reliably ***in a way that is free from material error and bias*** by the methods ***as*** described ***under either (a) or (b) of*** paragraph 1, ***may not be measured at fair value and should instead*** be measured in accordance with Articles 34 to 42.	2. Those ***financial instruments*** that cannot be measured reliably by ***any of*** the methods described ***in*** paragraph 1, ***shall*** be measured in accordance with Articles 34 to 42.

Justification:

This amendment seeks to improve the drafting. The term (financial) instruments brings this article in line with the modifications made to article 42a paragraph 1.

(Amendment 16)
ARTICLE 1 OF THE PROPOSAL

Section 7a Article 42c Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows: **1) The following Section 7a is inserted:**	Directive 78/660/EEC is hereby amended as follows: **1) The following Section is inserted:**
"SECTION 7a Valuation at fair value	"SECTION 7a Valuation at fair value
Article 42c	Article 42c
1. Notwithstanding Article 31(1)(c)***(aa)***, where a ***balance sheet item has been valued at fair value*** in accordance with Article 42***a(1)*** a change in the ***fair*** value ***of that item should*** be included in the profit and loss ***account in arriving at the profit or loss for the financial year.***	1. Notwithstanding Article 31(1)(c), where a ***financial instrument is valued*** in accordance with Article 42***b***, a change in the value ***shall*** be included in the profit and loss ***account. However***, ***such a change shall be included directly in equity, in a fair value reserve, where:***
	(a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account, or ***(b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity.***

2. Member States may permit or require ***the gain or loss on a*** financial asset ***that is not held for trading purposes*** to be ***recognised*** directly in equity, in ***a*** fair value reserve. ***To the extent that gains and losses on such items that have been recognised in equity are actually realised, they must be removed from the fair value reserve. The Member States may lay down rules governing the use of the fair value reserve.***	2. Member States may permit or require ***a change in the value on an available for sale*** financial asset***, other than a derivative financial instrument,*** to be ***included*** directly in equity, in ***the*** fair value reserve.
3. Notwithstanding paragraph 1, the change in the fair value of an item measured in accordance with Article 42b should not be included in the profit and loss account in arriving at the profit or loss for the financial year, but must be included directly in the fair value reserve where: ***(a) that item is accounted for as a hedging instrument under a system of hedge accounting that allows such changes in value not to be shown in the profit and loss account, or*** ***(b) such change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in an affiliated foreign undertaking.***	***Delete***
4. The fair value reserve ***referred to in paragraph 3 should*** be ***reduced to the extent that the*** amounts shown therein are no longer necessary for the implementation of ***the valuation methods under the circumstances referred to in sub-paragraphs (a) and (b) of paragraph 3. The Member States may lay down rules governing the use of the fair value reserve.***	*3*. The fair value reserve ***shall*** be ***adjusted when*** amounts shown therein are no longer necessary for the implementation of ***paragraphs 1 and 2.***

Justification:

This amendment provides a better and shorter drafting. It also ensures that all changes in the value are included in the profit and loss account without violating article 31(1)(c).

(Amendment 17)
ARTICLE 1 OF THE PROPOSAL

Article 42d Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:	Directive 78/660/EEC is hereby amended as follows:
2) The following Articles 43a, 43b and 43c are inserted:	***1) The following Section is inserted:***
"Article ***43a***	Article ***42d***
Where valuation at fair value has been applied ***under Article 42a***, the notes on the accounts ***must indicate at least the following information***:	Where valuation at fair value ***of financial instruments*** has been applied, the notes on the accounts ***shall disclose:***
(a) the items in the balance sheet that have been measured at fair value;	
(b) where fair values have been determined in accordance with Article 42b(1)(b), *the* significant assumptions underlying the valuation models and techniques***;***	***(a)*** the significant assumptions underlying the valuation models and techniques ***where fair values have been determined in accordance with Article 42b(1)(b);***
(c) per category of ***items measured at fair value***, the fair value, ***and the profits or losses recognised*** directly in the profit and loss account ***and*** in the fair value reserve ***referred to in Article 42c(3)***;	***(b)*** per category of ***financial instruments,*** the fair value, ***the changes in value included*** directly in the profit and loss account ***as well as changes included*** in the fair value reserve;

(d) for the fair value reserve referred to in Article 42c(2) and Article 42c(3) a table showing separately: ***(i) the amount of the reserve at the beginning of the financial year;*** ***(ii) the differences included in the reserve during the financial year;*** ***(iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;*** ***(iv) the amount of the reserve at the end of the financial year;***	
(e) for each class of derivative financial instruments, information about the extent and nature of the ***derivative financial*** instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows**.**	***(c)*** for each class of derivative financial instruments, information about the extent and ***the*** nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; ***and***
	(d) a table showing movements in the fair value reserve during the financial year."

Justification:

Article 43(a) was put as 42(d) in order to align disclosure requirements in the notes on the accounts with the valuation rules they are relating to. Valuation and disclosure rules fall now within the same section. Former paragraph 43a(e) is now 42d(c).

(Amendment 18)

ARTICLE 1 OF THE PROPOSAL

Article 43a Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:	Directive 78/660/EEC is hereby amended as follows:
2) ***The following Articles 43a, 43b and 43c are inserted:***	***2) In Article 43(1)***
	a) the reference in p. 10 to "Articles 31 and 34 to 42" is replaced by a reference to "Articles 31 and 34 to 42c", and
	b) the following point is added:
Article 43b ***When a company is permitted to use*** valuation at fair value in accordance with ***Article 42a (1), but decides not to do so, the following disclosures should be given*** for each class of derivative financial instruments:	***"(14) Where*** valuation at fair value ***of financial instruments has not been applied*** in accordance with ***Section 7a:*** ***(a)*** for each class of derivative financial instruments: ***(i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1);***
(a) information about the extent and nature of the ***derivative financial*** instruments***, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;*** ***(b) the fair value of the derivative financial instruments.***	***(ii)*** information about the extent and ***the*** nature of the instruments***; and***
Article 43c ***Where valuation at fair value has not been applied under*** Article 42a***(1), and where a company has not made use of the option to make a value adjustment in respect of a financial fixed asset in***	(b) ***for financial fixed assets referred to in*** Article 42a, ***carried*** at an amount in excess of its fair value ***and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa):***

accordance with Article 35(1)(c)(aa) and therefore carries that financial fixed asset at an amount in excess of its fair value, ***it should disclose:***

(a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; ***and***

(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.***"***

(i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;

(ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered."

Justification:

This amendment puts disclosure requirements into the existing Article 43.1 (point 14 a and b) instead of creating new Articles 43b and 43c. Also a reference is now made in Article 43.1 point 10. The amendment in 43.1 point 14 requires a less far reaching disclosure on derivative financial instruments for companies that do not apply fair value

(Amendment 19)
ARTICLE 1 OF THE PROPOSAL

Article 44(1) Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:

3) The text of Article 44 (1) is replaced by the following text:

"1. Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43(1)(5) to (12) and (14)(a). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned."

Justification:

This amendment gives member States the possibility to derogate small companies from additional disclosure on derivatives when fair value for financial instruments is not applied.

(Amendment 20)
ARTICLE 1 OF THE PROPOSAL

Article 46a Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:	Directive 78/660/EEC is hereby amended as follows:
3) The following Article 46a is inserted:	***4) In Article 46 (2) the following point is added:***
"Article 46a ***Whether or not use has been made of valuation at fair value referred to in Section 7a, the annual report shall give an indication of:***	***'(f) in relation to the company´s use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss,***
(a) the company's financial risk management objectives and ***strategies in relation to its use of financial instruments, and how these objectives are implemented; and***	- the company's financial risk management objectives and ***policies***, ***including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and***
(b) the company's exposure to price risk, credit risk, liquidity risk***, counter-party risk,*** cash flow risk ***and risk of future developments in relation to its use of financial instruments ."***	- the company´s exposure to price risk, credit risk, liquidity risk ***and*** cash flow risk."

Justification:

This amendment modifies the existing article 46 on the contents of the annual report instead of creating a new Article 46a. The modification makes it clear that the information does not *need to be provided if it is insignificant. Some modifications are related to the proposed new 42a paragraph 5 dealing with hedge accounting.*

(Amendment 21)
ARTICLE 1 OF THE PROPOSAL

Article 59 Directive 78/660/EEC

	Directive 78/660/EEC is hereby amended as follows:
	5) In Article 59 (2)(a) and (b) the reference to "Articles 31 to 42" is replaced by a reference to "Sections 7 or 7a".

Justification:

This amendment updates the reference to include the fair value section (7a).

(Amendment 22)
ARTICLE 1 OF THE PROPOSAL

Article 61a Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:	Directive 78/660/EEC is hereby amended as follows:
4) The following Article 52a is inserted:	***6) The following Article is inserted:***
"Article 52a	***"Article 61a***
The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty, acting on a proposal from the Commission and within three years of the adoption of this Directive, examine and, where necessary, amend Articles 42a, 42b,	***Not later than 1 January 2007, the Commission shall review the provisions in Articles 42a to 42d, 43(1)(10) and (14), 44(1), 46(2)(f) and 59(2)(a) and (b) in the light of the experience acquired in applying provisions on fair value accounting and taking account of***

42c, 43a, 43b, 43c and 46a of Directive 78/660/EEC in the light of the experience acquired in applying these Articles and taking account of international developments in the field of accounting."

international developments in the field of accounting and, if appropriate, submit a proposal to the European Parliament and the Council with a view to amend the above mentioned Articles."

Justification:

The review provision is reworded, stipulating the Commission's obligation to conduct the review. The review is now linked to the end of the implementation period.

(Amendment 23)
ARTICLE 2 OF THE PROPOSAL

Article 29 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:

1) The text of Article 29 (1) is replaced by the following text:

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

Justification:

This article is amended to include a reference to the new section 7a of Directive 78/660/EEC.

(Amendment 24)
ARTICLE 2 OF THE PROPOSAL

Article 34 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:

2) In Article 34

a) the reference in p. 10 to "Articles 31 and 34 to 42" is replaced by a reference to "Articles 31 and 34 to 42c", and

Justification:

This article is amended to include a reference to the new section 7a of Directive 78/660/EEC.

(Amendment 25)
ARTICLE 2 OF THE PROPOSAL

Article 34 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:	Directive 83/349/EEC is hereby amended as follows:
1) The following Articles 34a, 34b and 34c are inserted:	***2) In Article 34***
"Article 34a	**b) the following points are added:**
Where valuation at fair value has been applied in accordance with ***Article 42a(1)*** of Directive 78/660/EEC, ***the notes on the consolidated accounts must indicate at least the following information***:	***"14.*** Where valuation at fair value ***of financial instruments*** has been applied in accordance with ***Section 7a*** of Directive 78/660/EEC:
(a) the items in the consolidated balance sheet that have been measured at fair value;	
(b) where fair values have been determined in accordance with Article 42b(1)(b) of Directive 78/660/EEC, the significant assumptions underlying the valuation models and techniques***;***	***(a)*** the significant assumptions underlying the valuation models and techniques ***where fair values have been determined in accordance with Article 42b(1)(b) of that Directive;***
(c) per category of ***items measured at***	***(b)*** per category of ***financial***

fair value, the fair value***, and the profits or losses recognised*** directly in the ***consolidated*** profit and loss account ***and*** in the fair value reserve ***referred to in Article 42c(3) of Directive 78/660/EEC***;	***instruments,*** the fair value***, the changes in value included*** directly in the profit and loss account ***as well as, in accordance with Article 42c of that Directive, changes included*** in the fair value reserve***;***
(d) for the fair value reserve referred to in Article 42c(2) and Article 42c(3) of Directive 78/660/EEC a table showing separately: ***(i) the amount of the reserve at the beginning of the financial year;*** ***(ii) the differences included in the reserve during the financial year;*** ***(iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;*** ***(iv) the amount of the reserve at the end of the financial year;***	
(e) for each class of derivative financial instruments, information about the extent and nature of the ***derivative financial*** instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.	***(c)*** for each class of derivative financial instruments, information about the extent and ***the*** nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; ***and*** ***(d) a table showing movements in the fair value reserve during the financial year".***

Justification:

This amendment has the same justification as amendment 17 dealing with disclosures for companies applying fair value.

(Amendment 26)
ARTICLE 2 OF THE PROPOSAL

Article 34 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:	Directive 83/349/EEC is hereby amended as follows:
1) The following Articles 34a, 34b and 34c are inserted:	***2) In Article 34***
	b) the following points are added:
Article 34b	
When a company is permitted to use valuation at fair value in accordance ***with Article 42a(1)*** of Directive 78/660/EEC, ***but decides not to do so, the following disclosures should be given*** for each class of derivative ***financial*** instruments:	15. ***Where*** valuation at fair value ***of financial instruments has not been applied*** in accordance ***with Section 7a*** of Directive 78/660/EEC:
	(a) for each class of derivative instruments:
(a) information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;	
(b) the fair value of the ***derivative financial*** instruments***.***	***(i)*** the fair value of the instruments***, if such a value can be determined by any of the methods prescribed in Article 42b(1) of that Directive;***

	(ii) ***information about the extent and the nature of the instruments; and***
Article 34c ***Where an undertaking included in the consolidation has not applied valuation at fair value under Article 42a(1) of Directive 78/660/EEC and has not*** made a value adjustment ***in respect of a financial fixed asset*** in accordance with Article 35(1)(c)(aa) of Directive ***78/660/EEC***, ***and therefore carries that financial fixed asset at an amount in excess of its fair value the notes on the consolidated accounts must disclose:***	***(b)*** ***for financial fixed assets referred to in Article 42a, carried at an amount in excess of its fair value and without use being*** made ***of the option to make*** a value adjustment in accordance with Article 35(1)(c)(aa) of ***that*** Directive:
(a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; ***and***	***(i)*** the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered."	***(ii)*** the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered."

Justification:

This amendment has the same justification as amendment 18 dealing with disclosures for derivative financial instruments for companies not applying fair value.

(Amendment 27)
ARTICLE 2 OF THE PROPOSAL

Article 36 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:	Directive 83/349/EEC is hereby amended as follows:
2) The following Article 36a is inserted:	***3) In Article 36 (2) the following point is added:***
"Article 36a ***Whether or not use has been made of valuation at fair value referred to in Section 7a of Directive 78/660/EEC, the consolidated annual report shall give an indication of :***	***"e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,***
(a) the ***undertaking's*** financial risk management objectives, and ***how these objectives are met through its use of financial instruments***; and	- the financial risk management objectives and ***policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used,*** and
(b) ***information on*** the ***undertaking's*** exposure to price risk, credit risk, liquidity risk***, counter-party risk,*** cash flow risk ***and risk of future developments in relation to its use of financial instruments."***	- the exposure to price risk, credit risk, liquidity risk ***and*** cash flow risk."

Justification:

Same justification as amendment 20 to art 46a of Directive 78/660/EEC.

(Amendment 28)
ARTICLE 2 OF THE PROPOSAL

Article 48 Directive 83/349/EEC

Directive 83/349/EEC is hereby amended	***delete***

as follows:

3) The following Article 48 is inserted:

"Article 48

The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty on a proposal from the Commission and within three years of the adoption of this Directive, examine and, where necessary, amend Articles 34a, 34b, 34c and 36a of Directive 83/349/EEC in the light of the experience acquired in applying these Articles and taking account of international developments in the field of accounting."

Justification:

Same justification as amendment 22 to art 61a of Directive 78/660/EEC.

(Amendment 29)
ARTICLE 2 OF THE PROPOSAL

Article 50a Directive 83/349/EEC

Directive 83/349/EEC is hereby amended as follows:

4) The following Article 50a is inserted:

Article 50a

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

proposal to the European Parliament and the Council with a view to amend the above mentioned Articles."

Justification:

(Amendment 30)
ARTICLE 2 BIS NEW TO THE PROPOSAL

Article 1(1) Directive 86/635/EEC

Directive 86/635/EEC is hereby amended as follows:

The text of Article 1 (1) is replaced by the following text:

"1. Articles 2, 3, 4(1), (3) to (5), 6, 7, 13, 14, 15(3) and (4), 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 42a to 42d, 45(1), 46(1) and (2), 48 to 50, 50a, 51(1), 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise. However, Articles 35(3), 36, 37 and 39(1) to (4) of this Directive shall not apply in respect to assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC."

Justification:

This amendment introduces fair value for financial instruments for banks and other financial institutions. Banks are one of the most frequent users of (derivative) financial instruments Banks seek capital on the same capital market which requires publication of comparable financial information to take well informed investor decisions.
Application of fair value to banks will foster market transparency and market discipline as a

most valuable complement to prudential supervision.

(Amendment 31)
ARTICLE 3 OF THE PROPOSAL

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before**…….** They shall forthwith inform the Commission thereof.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before ***1 January 2004***. They shall forthwith inform the Commission thereof.
When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by Member States.	When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field governed by this Directive.	2. Member States shall communicate to the Commission the main provisions of domestic law**,** which they adopt in the field governed by this Directive.

Justification:

The deadline of 1 January 2004 is reasonable and seems to satisfy the Commission.

(Amendment 32)
ARTICLE 4 OF THE PROPOSAL

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Communities.	***Delete***

Justification:

This article is redundant due to art 254 of the TCE.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 86/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies (COM(2000) 80 – C5-0106/2000 – 2000/0043(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 80[1]),

– having regard to Article 251(2) and Articles 44.of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0106/2000),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0130000/2001),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 311, 31.10.2000, p. 1.