

Company law: annual accounts and consolidated accounts of certain types of companies (amend. Directives 78/660/EEC, 83/349/EEC, 86/635/EEC, 91/674/EEC)

2004/0250(COD) - 27/10/2004 - Legislative proposal

PURPOSE : to further enhance confidence in the financial statements and annual reports published by European companies.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : recent corporate scandals have highlighted issues related to board members' misconduct and thereby underlined the need for the Commission to pursue its Action Plan and establish an EU-framework of collective responsibility for board members, including appropriate sanctions and liability. Hence the Commission proposes to ensure that Member States must guarantee that board members are collectively responsible at least towards the company. In this respect, shareholders and other stakeholders need reliable, complete and easily accessible information. This concern is shared by the European Parliament and the Council and should be addressed by amending the Accounting Directives 78/660/EEC and 83/349/EEC as follows:

- Establish collective responsibility of board members: Confidence in the financial statements is linked to who has responsibility for drawing up and publishing them. In line with what is currently prevailing in Member States the responsibility should rest collectively with all board members.
- Enhance transparency about related parties' transactions: Companies' transaction with their managers, the latter's family members or other so-called related parties are often not carried out under normal commercial conditions. While satisfactory transparency is required for all listed European companies, under International Accounting Standards (IAS) more transparency is necessary for unlisted companies.
- Enhance transparency about off-balance arrangements: The disclosure requirements in the Accounting Directives for off-balance sheet commitments are not precise enough. Special Purpose Entities (SPE) is a prominent example: They are captured in the balance sheet if they qualify as a subsidiary but in many cases SPE's may be organised in a different way. Instead of developing complex definitions of an SPE (bearing the immediate risk of circumvention), disclosure should instead be improved by imposing a specific requirement in the notes to the accounts for material off-balance sheet arrangements, including SPE's.
- Introduce a corporate governance statement: Investors on European capital markets have a major interest in listed EU-companies' corporate governance practices. Accordingly, each listed company should – in a specific section of its annual report - disclose information about its practices in a "corporate governance statement".