



EUROPEAN COMMISSION

Brussels, XXX  
COM(2011) 684/2

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the annual financial statements, consolidated financial statements and related reports  
of certain types of undertakings**

(Text with EEA relevance)

{SEC(2011) 1289}

{SEC(2011) 1290}

## EXPLANATORY MEMORANDUM

### 1. GENERAL COMMENTS

The Accounting Directives<sup>1</sup> (hereafter the "Directives") deal with the annual and consolidated financial statements of limited liability companies in Europe.

There are a number of key objectives in the current Review:

- (1) The reduction of administrative burden/simplification targeting mainly small companies.
- (2) To increase the clarity and comparability of financial statements targeting the company categories for which these considerations are important due to a more vigorous cross-border activity and a larger number of external stakeholders.
- (3) The protection of essential user needs aiming at retaining necessary accounting information for users.
- (4) The increased transparency on payments made to governments by the extractive industry and loggers of primary forests.

Consultations have shown that stakeholders are overall broadly content with the current framework which has generally functioned well over the years. Those stakeholders include *inter alia* preparers and users of financial statements, and public authorities. However they do see room for simplification, especially to benefit the smallest companies. During the past 30 years, amendments to the Directives have added many requirements, such as new disclosures and valuation rules, including detailed provisions on fair value accounting. Less attention has been paid to considering whether existing requirements could be simplified or removed. Whilst every amendment may have been justified in its own right, these additions have tended to disregard the comparability and usefulness of the financial statements, increased reporting requirements and the number of Member State options, and have ultimately led to increased complexity and regulatory burden for all companies. This increased burden bears down primarily on smaller companies.

Stakeholders have also pointed to the need to increase the clarity and comparability of financial statements, especially for larger companies which tend to undertake more extensive cross-border operations.

The *raison d'être* for the Directives is to establish the requirement for limited liability companies to prepare financial statements and set minimum requirements in order to improve the EU-wide comparability of financial statements. This, in turn, should lead to a better functioning of the Single Market and, more concretely, an increased access to finance, reductions in the cost of capital and increased levels of cross-border trade, merger and acquisition activity. Overall, the proposal contributes to improving Europe's competitiveness through establishing a regulatory environment conducive to job-rich growth.

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<sup>1</sup> Fourth Council Directive of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC). Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC).

The proposal complements the proposal for a Directive of 2009<sup>2</sup> on the financial statements of micro-entities, which is currently still being negotiated by the EU co-legislators. Given that the Council and the Parliament have now both agreed to the principle of a micro entity regime, the current proposal does not contain any new policy proposal regarding micro companies as assessed in the accompanying Impact Assessment. The European Commission is willing to consider, together with the EU co-legislators, how best to integrate into the current proposal the final inter-institutional agreement on the Directive of 2009.

This proposal supports the Commission's approach on companies outlined in a number of instances. The Europe 2020 Strategy<sup>3</sup> aims to make the EU a smarter, more sustainable and inclusive economy. The Single Market Act<sup>4</sup> aims to simplify life for SMEs, which make up more than 99% of Europe's businesses, and to improve these companies' access to finance. The Small Business Act (SBA) recognises the need to consider distinct needs for the SME group as well as to have segments within that group. It supports a "think small first" approach. The proposal also forms part of the Commission's simplification rolling programme and administrative burden reduction initiatives. As such, it delivers on the commitment made by the Commission to review its *acquis* to ensure the relevance, effectiveness and proportionality of the legislation in place, as well as to reduce administrative burdens by simplifying the regulatory environment<sup>5</sup>.

The proposal repeals the current Accounting Directives, replacing them and their subsequent amendments with a single new Directive.

## **2. CONSULTATIONS OF STAKEHOLDERS AND IMPACT ASSESSMENT**

### **2.1. Consultation of stakeholders and interested parties**

The Commission Services have maintained a regular dialogue with stakeholders throughout the Review. The objective was to gather views from all interested parties, including preparers, users, standard setters, public authorities, etc. Dialogue took place through:

- An informal ad hoc SME reflection group composed of 10 experts with diverse experience and backgrounds.
- Two public consultations, respectively on the Review of the Directives and on the International Financial Reporting Standard for Small and Medium-Sized Entities, both followed by stakeholders' meetings to consider and further discuss the results.

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<sup>2</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities (Text with EEA relevance) {SEC(2009) 206} {SEC(2009) 207} COM/2009/0083 final - COD 2009/0035, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009PC0083:EN:NOT>

<sup>3</sup> [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)

<sup>4</sup> The review of the Accounting Directives is flagged in section 2.11 of the Communication of April 2011 from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions: "*Single Market Act – Twelve levers to boost growth and strengthen confidence, 'Working together to create new growth'*", available at [http://ec.europa.eu/internal\\_market/smact/docs/20110413-communication\\_en.pdf#page=2](http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf#page=2)

<sup>5</sup> [http://ec.europa.eu/governance/better\\_regulation/key\\_docs\\_en.htm#\\_simplification](http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#_simplification)

- Several targeted meetings with national standard setters, representatives of small and medium-sized businesses, banks, investors and accountants across the EU.
- Consultations with the EFRAG (European Financial Reporting Advisory Group) Working Group on SMEs and the Accounting Regulatory Committee (ARC) ad hoc Working Group on SMEs.
- A study into the effects on administrative burden from changes to Directives conducted by the Centre for Strategy and Evaluation Services (CSES).

With respect to country-by-country reporting, the Commission Services have also maintained a regular dialogue with different categories of stakeholders (such as preparers, users, and public authorities). A public consultation was carried out in 2010/2011 and a series of bilateral consultations with stakeholders (especially users and preparers) took place in 2010 and 2011. Furthermore, the European Financial Reporting Advisory Group (EFRAG) provided input on the evaluation of the administrative costs associated with possibly requiring country-by-country financial reporting.

## **2.2. Impact assessment**

### *2.2.1. Financial Statements*

The preparation of financial statements has been identified as one of the most burdensome regulatory obligations for companies<sup>6</sup>. Small companies face proportionally higher administrative burdens in comparison to medium-sized / large companies.

The Impact Assessment analysed five broad policy options starting from the baseline scenario. The broad option of revising and modernising selected requirements currently in the Accounting Directives was finally retained as the preferred option.

After examining more detailed options, it appeared that a "mini-regime" specific to small companies would be the best policy choice. The potential for administrative burden reduction of this policy amounts to EUR 1.5 bn which arises from reduced reporting requirements in the notes, further relaxation of statutory audit and the exemption from preparing consolidated financial statements for small groups.

A second detailed option concerned the increase of the thresholds for small and medium-sized companies as defined by the Directive to reflect inflation in the period 2007 to 2011. The burden reduction potential of this proposal amounts to around EUR 0.2 bn.

The estimated potential for savings from the above is therefore estimated at EUR 1.7 bn overall. Micro-companies will in any event benefit from the simplified regime offered to small companies<sup>7</sup>. However, the impact on micro-entities of the above policy choices has been disregarded as the proposal for a Directive on micro-entities that is pending before the European Parliament and the Council specifically addresses these.

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<sup>6</sup> [http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/priority-areas/index\\_en.htm](http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/priority-areas/index_en.htm)

<sup>7</sup> The impact on savings for micro-companies have not been included within the impacts attaching to this proposal in order to avoid double counting with the assessment of the impacts of 2009 proposal for a Directive on micro-entities.

These policy choices will reduce the amount of information available to users of small and medium-sized company financial statements, including information which is publicly available. Creditor protection would however be strengthened due to the fact that two disclosures concerning guarantees and commitments and related party transactions would become mandatory. There would be a slightly positive impact on the information available in the case of medium-sized and large companies due to an improved clarity and comparability of their financial statements.

Statistical authorities might need to adjust their way of collecting some data from smaller companies although the maximum harmonisation of thresholds would allow them to collect data for companies that are objectively the same size across the EU, thereby improving comparability. However, harmonisation of the thresholds may have an adverse impact on the collection of statistical data especially in Member States where the proportion of small companies is high. In order to estimate national economic indicators these Member States may need to revise the way they collect statistical data from companies. The Commission proposal to interconnect the central, commercial and companies registers<sup>8</sup> should, as a mitigating factor, improve cross-border access to company information. Tax authorities will retain the power to decide how profits for tax purposes should be computed and what should be the associated reporting requirements.

In terms of the social impact of the proposal, simplified accounting requirements should foster a business climate that encourages company formation and entrepreneurship. The impact assessment considered that by freeing up resources available to companies, the initiative is expected to contribute, at least marginally, to the creation of jobs in the EU. Some of the savings at company level would stem from a reduction in fees paid to accountancy firms or external accountants. The impact on jobs due to this transfer of resources is expected to be neutral or only marginally negative in terms of overall employment levels. No measurable environmental impacts are expected. It is not expected that the introduction of simpler accounting regimes would create disincentives for small companies to grow as accounting is less burdensome than tax or social legislation in this regard. In addition, the "think small first" approach of this proposal allows for accounting regimes to fit different sizes of company.

### *2.2.2. Reporting of payments to governments*

The Commission has publicly expressed support for the international Extractive Industry Transparency Initiative (EITI), and envisaged willingness to present legislation mandating disclosure requirements for extractive industry companies.<sup>9</sup> A similar pledge was made in the concluding Declaration of the G8 Summit in Deauville of May 2011<sup>10</sup>, where the G8 governments committed "to setting in place transparency laws and regulations or to promoting voluntary standards that require or encourage oil, gas, and mining companies to disclose the payments they make to governments." Furthermore, the European Parliament has presented a Resolution<sup>11</sup> reiterating its support for country-by-country reporting requirements, in particular for the extractive industries.

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<sup>8</sup> Proposal for a Directive of the European Parliament and of the Council amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers, 24.2.2011, COM(2011) 79.

<sup>9</sup> <http://www.liberation.fr/monde/01012339133-lutter-contre-l-opacite-des-industries-extractives>

<sup>10</sup> [http://ec.europa.eu/commission\\_2010-2014/president/news/speeches-statements/pdf/deauville-g8-declaration\\_en.pdf](http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/deauville-g8-declaration_en.pdf)

<sup>11</sup> Resolution INI/2010/2102

EU legislation does not currently require companies to disclose, on a country basis, payments to government made in countries where they operate. Therefore such payments made to governments in a specific country are normally not disclosed, even though such payments by the extractive industry (oil, gas and mining) or loggers<sup>12</sup> of primary forests<sup>13</sup> can represent a significant proportion of a country's revenues, especially in third countries that are rich in natural resources. In order to make governments accountable for the use of these resources and promote good governance, it is proposed to require the disclosure of payments to governments at the individual or consolidated level of a company. This proposal is comparable to the US Dodd-Frank Act<sup>14</sup>, which was adopted in July 2010, and requires extractive industry companies (oil, gas and mining companies) registered with the Securities and Exchange Commission (SEC) to publicly report payments to governments<sup>15</sup> on a country- and project-specific basis. The SEC's implementing rules are scheduled to be adopted by the end of 2011.

The Impact Assessment<sup>16</sup> analysed five broad policy options starting from the baseline scenario (policy option 0), next examining possible schemes that would result in a global agreement for country-by-country reporting for EU and non-EU MNCs (policy option 1), and finally assessing several policy options that would oblige only EU companies to disclose country by country information (policy options 2 to 4). Whilst policy option 2 requires the disclosure of payments to governments on a country basis from the extractive industry and the loggers of primary forests, policy option 3 requires the disclosure of such information on a country- and project- basis. In addition to a report on payments to government, policy option 4 would require a complete set of country-by-country accounts to be prepared by companies active in the extractive industry and loggers of primary forests.

The option of requiring country-by-country reporting (CBCR) of payments to government on a country-and-project basis by EU Multinational Companies (MNCs) in the extractive industry and logging of primary forests (policy option 3) was retained. The extractive industry covers all companies with activities which involve the exploration, discovery, development and extraction of minerals, oil and natural gas deposits. The logging of primary forests covers all companies with activities which involve the clear-cutting, selective logging or thinning of primary forests. The disclosure of payments to government on a country-and, as the case may be, on a project- basis would better satisfy the demands of stakeholders calling for enhanced disclosures whilst the costs of such a policy option would remain acceptable, on condition that an appropriate materiality threshold is introduced. This approach would strike a balance between more transparency without overburdening companies, and without excessively

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<sup>12</sup> Whether clear-cutting, selective logging or thinning, on land classified as containing primary forest areas or other disturbance of such forest or forest land caused by mining, mineral, water, oil or gas exploration or extraction or other detrimental activities.

<sup>13</sup> Defined in Directive 2009/28/EC as "naturally regenerated forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed."

<sup>14</sup> <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

<sup>15</sup> Taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits.

<sup>16</sup> On 22 July 2011 the Impact Assessment Board gave its positive opinion on the impact assessment. The comments expressed by the Board were incorporated in the final version (website address), namely: The report needed to establish more clearly the scope and core objective of the initiative. Secondly, it needed to provide a fuller baseline scenario. Thirdly, options needed to be better presented. Fourthly, the report needed to better consider the costs and benefits of the policy options and strengthen the proportionality analysis of the proposed measures. Finally, the report needed to provide more information on stakeholders' views.

putting EU companies at a competitive disadvantage. This should not compromise future efforts by the EU to obtain international agreement, and to create via negotiations with international partners a worldwide level playing field with respect to CBCR.

The issue of a potential conflict between an EU disclosure requirement and a recipient country's national legislation prohibiting the publication of such information has been raised by some companies within the scope of the proposal. Calls have been made to create an exemption in such cases from reporting the relevant payments to government. Although the Commission has found very few examples of countries prohibiting disclosures, a strictly circumscribed exemption has been provided for situations in which a company complying with the disclosure obligations would find itself in clear contravention of the criminal law of the country concerned.

Energy security figures high on the EU's agenda for several reasons *inter alia* because energy generated in EU Member States does not cover current demand. Some argue that the EU extractive operators may find it harder to operate in third countries which could have a consequent effect on security of oil and gas supplies to Europe. While some companies already disclose payments to governments on a country basis without impediments to their activities, this might be different for others. Therefore a review should *inter alia* evaluate the issue of security of energy supply in Europe. The issue has been raised that such disclosure might result in a competitive disadvantage for EU industry. The Commission takes the view that in majority of cases the disclosure of payments to government on a country and project basis where those payments have been attributed to a specific project (with a materiality threshold) would not give direct insight into confidential company information such as levels of turnover, costs and profits. The strengthening of the EITI would also militate against any possible short-term loss of competitive position, as it may lead to a more global application and enhanced reputation of compliant companies.

### **2.3. Budgetary Implications**

The proposal has no implications for the Union budget.

## **3. ADDITIONAL INFORMATION**

### **3.1. Simplification**

The proposal introduces a specific regime for small companies that will considerably reduce the administrative burden currently borne by small companies when they prepare their financial statements. It will limit disclosures by way of notes to the accounts to (i) accounting policies; (ii) guarantees, commitments, contingencies and arrangements that are not recognised in the balance sheet; (iii) post-balance sheet events not recognised in the balance sheet; (iv) long-term and secured debts; and (v) related party transactions. It should be noted that mandating the disclosure of items (iii) and (v) will result in new obligations imposed for small companies, as a majority of Member States have provided for exemptions from these disclosures for such companies.

The proposal also seeks to harmonise thresholds to ensure that the administrative burden reduction actually reaches all small companies in the EU. Currently many companies that are small under EU definitions enter the medium-sized or large company category because the definitions foreseen in the Directives are lower when transposed at Member State level.

The table below provides a summarised overview of the main simplification effects of this proposal:

<b>Small Companies</b> ~ 1,1 million companies ~21 % of companies	–	Maximum harmonisation will ensure that companies of the same size benefit from a level playing field across the EU.
	–	Notes to the accounts will be limited to only five key areas.
	–	No requirement for a statutory audit.
	–	Small groups will be exempt from preparing consolidated financial statements.

### 3.2. Other measures

The proposal seeks to improve the comparability and clarity of financial statements prepared by medium-sized and large companies, and by small companies to a limited extent.

To this end, the proposal seeks to reduce the number of options currently available to Member States, insofar as these options are detrimental to the comparability of the financial statements. General principles such as "substance over form" will become mandatory so as to increase the clarity of financial statements.

As regards amendments to existing provisions, the table below provides a summarised overview of the main modifications:

<b>Medium-sized /Large Companies</b> ~ 0.3 million companies ~ 4% of companies	–	Introduction of general principles of "materiality" and "substance over form"
	–	Reduction in the number of Member State options.

### 3.3. IFRS for SMEs

Adopting the International Financial Reporting Standards for SMEs (IFRS for SMEs) for mandatory use within the EU was considered as an option. Stakeholders, notably public authorities, were, however, divided on this idea and the Impact Assessment also concluded that introducing this new standard would not serve the objectives of simplification and reduction of administrative burden. Moreover, considering that the IFRS for SMEs is a relatively new standard, experience with its implementation worldwide was still lacking.

Mandatory adoption of the IFRS for SMEs is not being pursued as a policy within this proposal, and differences between this proposed Directive and the IFRS for SMEs in the areas of presentation of unpaid subscribed share capital and the amortisation periods for goodwill whose expected useful life cannot be reliably estimated mean that explicit full adoption of the IFRS for SMEs will not be possible.

### **3.4. Reporting of payments to governments**

In order to promote governments' accountability and good governance, the proposal introduces new reporting requirements for companies active in the extractive industry or in the logging of primary forests. It is proposed that companies shall disclose the payments they make to governments in each country where they operate and for each project, where the payment has been attributed to a certain project and when material to the recipient government. In line with the overall objective and in order to limit the additional administrative burden, the new requirement is limited to large companies and public interest entities.

### **3.5. Proposed Directive and repeal of existing legislation**

The proposal takes the form of a new Directive repealing the 1978 and 1983 Directives and their subsequent amendments.

### **3.6. Legal basis, subsidiarity and proportionality**

The proposal is based on Article 50(1) of the Treaty, which is the legal basis for adopting Union measures aimed at achieving an Internal Market in company law.

The proposal provides that limited liability companies should prepare financial statements under a set of requirements devised to improve the EU-wide comparability of financial statements with the objective of contributing to a better functioning of the Single Market and to an increased level of cross-border trade. According to the principle of subsidiarity the EU should act only where it can provide better results than intervention at Member State level and action should be limited to what is necessary and proportionate in order to attain the objectives of the policy pursued. The objectives of this review are such that they cannot be fulfilled by unilateral action at the level of Member States.

Being subject only to a single set of basic EU level requirements would be advantageous for small companies under a "think small first" approach. Small companies should be treated equally across the EU in order for them to benefit from access to the single market on homogenous terms. Member States should not impose unnecessary additional requirements. This can be best achieved through coordinated EU law. As far as medium-sized and large companies are concerned, financial reporting needs to be made more comparable at EU level as the activities of these companies are often EU-wide and relevant to stakeholders throughout the internal market. Nevertheless, Member States should have a degree of leeway as far as additional reporting requirements for these types of companies are concerned. To this end, a Directive is the most appropriate legal instrument as it allows a certain margin of manoeuvre for Member States. A Directive also ensures that the content and form of the proposed EU action does not go beyond what is necessary and proportionate in order to achieve the regulatory objective of simplification and reduction of administrative burdens.

## **4. COMMENTS ON THE ARTICLES**

The following Articles remain the same in substance as corresponding Articles in the Fourth Council Directive 78/660/EEC and the Seventh Council Directive 83/349/EEC, although their numbering in most cases differs from the numbering originally used. These include Articles 1(1) (including Annexes I and II), 2(2) to 2(8), 3(6) to 3(9), 4, 5(2) to 5(3), 6(2) to 6(3), 7, 8(1) to 8(5), 10, 11(1) to 11(7) and 11(11), 12(2), 19(2), 20, 21, 22, 28(2), 29(2) and 29(3),

30, 32, 33(1) to 33(2), 34(1), 35 except 35(3), 44, 45, 47, and 51. A correlation table is provided in Annex III.

For the sake of conciseness and clarity, explanations are provided in this section only where this proposal brings about substantial modifications compared to the Directives that will be repealed.

A number of changes have been introduced throughout the text in order to bring terminology within the proposed Directive in line with modern accounting language, with no impact on the substance of the relevant articles. These include: replacing "*company*" with the term "*undertaking*", all references to "*accounts*" have been replaced by "*financial statements*", and all references to "*annual report*" have been replaced by "*management report*".

#### **4.1. Chapter 1 - Scope, definitions and categories of undertakings**

Article 2 groups together a number of definitions that were previously dispersed throughout the original Directives. Public interest entities are defined, taking the definition used in Directive 2006/43/EC on Statutory Audits. Definitions for parent, subsidiary and affiliated undertakings have been set out more clearly than in the Seventh Council Directive 83/349/EEC. However, there is no change in the underlying meaning. Similarly associated undertakings are defined more clearly than at present, and in presuming significant influence to exist where an investor holds 20% or more of the voting rights the definition follows the relevant international accounting standard – IAS 28.

Article 3 creates a legal basis for the expressions "small", "medium-sized" and "large" undertaking, and maintains the practice of determining an undertaking's size by reference to its net turnover, balance sheet total and number of employees. Depending on the purpose of EU policies, the Union may use definitions that differ to a certain extent from those in this Article<sup>17</sup>. The proposal is to fully harmonise size criteria, whereas previously the Member States could choose whether or not different sizes of undertaking should be recognised within their jurisdiction and, within limits, the relevant size criteria.

Small and medium-sized groups are defined in clearer terms than those used in the Seventh Council Directive 83/349/EEC. The net turnover and balance sheet total size criteria are increased in line with the level of inflation since they were last revised in 2006.

The definitions and exemptions for "financial holding companies" and "investment companies" have been removed, as industry specific accounting treatments act as a barrier to harmonisation. Furthermore these provisions have not been widely used across the EU.

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<sup>17</sup> For instance, the Commission promotes definitions of micro, small and medium-sized enterprises that are defined only for certain matters, such as State aid, implementation of the Structural Funds or Community programmes, particularly the Framework Programme on Research and Technological Development. These are given by the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [Official Journal L 124 of 20.05.2003]. Under this frame, a medium-sized enterprise is defined as an enterprise which employs fewer than 250 persons and whose annual turnover does not exceed EUR 50 million or whose annual balance-sheet total does not exceed EUR 43 million. A small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. And a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. See also [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm)

## **4.2. Chapter 2 - Main provisions and principles**

Article 4, together with Article 17 (see 4.4 below), create a fully harmonised regime for the preparation of small undertakings' financial statements consisting in the preparation of a profit and loss account, balance sheet and limited notes. The Member States should not require the presentation of further information.

A general principle of materiality is introduced in Article 5. It provides that recognition, measurement, presentation and disclosure in financial statements should be subject to materiality constraints. This will allow, for example, the combination of line items in the profit and loss account or balance sheet, or the omission of note disclosures where the relevant information is immaterial. Similarly non-material accruals, prepayments and provisions would not need to be recognised. Determining materiality will remain a company's primary responsibility, whether that company is subject to an audit or not.

A requirement to present the economic reality of a transaction in the financial statements, and not just its legal form is also introduced as a general principle within Article 5 to provide for common general principles, and hence harmonisation, across the EU. Previously, such a method of presentation was permitted within the Directives but the Member States were not required to adopt the principle into their national law.

In Article 6 the option for Member States to allow revaluation accounting for fixed assets, as an alternative to historic cost accounting is retained whilst, to ensure greater harmonisation of valuation bases, the Member State options that allowed replacement cost accounting and inflation methods of accounting methods have been removed.

## **4.3. Chapter 3 - Balance sheet and profit and loss account**

General provisions in Article 8 have been amended to express more clearly that the Member States may require or permit an associated undertaking to be accounted for in the annual financial statements using the equity method.

The proposed Directive proposes only one balance sheet layout (see Article 9), whereas previously the Member States could choose between two different layouts. This will ensure better comparability of the financial statements from one jurisdiction to another in the EU. In addition, formation expenses are removed as a category of asset, as their recognition was dependent upon their being defined in Member States' law. A consequential amendment is necessary to the distributable profits test set out in Article 11.

Article 11 also introduces a requirement that the amount recognised in respect of a provision should correspond to the undertaking's best estimate of the liability or future expenditure, and this Article also excludes the "last in, first out", (LIFO) method of valuation as a permitted valuation method for stocks and fungible items. These changes will ensure better comparability of financial statements.

Articles 12 to 15 provide for only two profit and loss account layouts – one on a "by nature" basis, one on a "by function" basis. Previously four layouts were permitted. The objective here is to bring more comparability whilst retaining a presentation which will be familiar to financial statements' users. The previous distinction between ordinary and extraordinary items within the profit and loss account is removed, thereby countering an inherent bias which favoured the presentation of "large" or "unusual" items of expense as extraordinary, so as not to distort the headline profit after tax figure. Conversely there was an inherent bias to present

"large" or "unusual" items of income as ordinary to bolster the headline profit figure. To ensure a neutral presentation of such items of income and expenditure there is a new requirement to disclose them separately within the profit and loss account, with an explanatory note. Therefore all such items will be recognised in arriving at profit after tax.

The abridged financial statements regime is subject to consequential amendments in Article 16, reflecting the reduced number of layouts.

#### **4.4. Chapter 4 - Notes to the financial statements**

Numerous Member State options existed around the note disclosures in the previous Directives. This approach has been replaced by a harmonised approach, which will mean that undertakings of the same size category throughout the EU will have the same or a comparable disclosure regime.

This chapter creates a "bottom-up" approach to the provision of information by way of notes to the financial statements. Article 17 sets out the note disclosures that all undertakings shall make. Small undertakings will, overall, have a more limited disclosure regime, when compared to the previous Directives, and consistent with the requirements of Article 4 (see 4.2 above), it is proposed that the Member States should not require these categories of undertaking to disclose further information, given that a wide range of consultees agreed that these were the key disclosures for small undertakings.

Medium-sized undertakings shall disclose the information required by Articles 17 and 18, whilst large undertakings and public interest entities shall disclose the information required by Articles 17, 18 and 19.

Article 17 introduces a requirement for all undertakings to disclose post-balance sheet events in the notes to the financial statements. This key information was previously disclosed only in the management report and Member States had the option of exempting its disclosure. To ensure a greater level of transparency, the disclosure of related party transactions also becomes mandatory for all sizes of undertaking, including those between wholly owned subsidiaries in their respective annual financial statements – previously the Member States could exempt their disclosure regardless of an undertakings' size.

#### **4.5. Chapter 5 – Management report**

There are no substantive changes to the provisions governing the content of this report compared to those currently provided by the Fourth Council Directive 78/660/EEC and the Seventh Council Directive 83/349/EEC.

#### **4.6. Chapter 6 - Consolidated financial statements**

This chapter incorporates the provisions of the Seventh Council Directive 83/349/EEC on consolidated accounts, thereby creating a single Directive on the form and content of annual and consolidated financial statements.

To simplify the text and avoid repetition, large parts of the text of Directive 83/349/EEC have been removed and replaced with a principle that in preparing consolidated financial statements the accounting treatment in annual financial statements should be followed taking account of the essential adjustments resulting from the particular characteristics of consolidated financial statements as compared with annual financial statements.

The changes of substance compared to the current provisions in the Fourth Council Directive 78/660/EEC and the Seventh Council Directive 83/349/EEC are:

To create a set of harmonised consolidation criteria, in Article 23 consolidation will be required in situations where one undertaking exerts dominant influence or control over another undertaking; or where undertakings are managed on a unified basis. Previously the Member States were able to choose whether to consolidate in these circumstances.

In Article 24 small groups are exempted from the requirement to prepare consolidated financial statements, whereas previously the Member States had the option of exempting such undertakings. This harmonises the exemption across the EU and reduces administrative burden in line with the approach taken for the annual financial statements of small company undertakings.

The options for Member States to permit merger accounting and to permit the immediate write-off of goodwill to reserves (respectively Articles 20 and 30 of Directive 83/349/EEC) have been removed as they were little used and their removal creates a more harmonised set of consolidation principles. Article 25 also creates a principles-based treatment for the recognition of negative goodwill in the consolidated profit and loss account.

#### **4.7. Chapter 7 – Publication**

There are no substantive changes to the publication provisions compared to those currently provided by the Fourth Council Directive 78/660/EEC and the Seventh Council Directive 83/349/EEC.

#### **4.8. Chapter 8 – Auditing**

General requirements laid down in Article 34 have been amended to reflect the "think small first" approach presiding the proposal. As a result, small companies will be totally exempt from an audit from an EU company law perspective. This Article also specifies that public interest entities shall be subject to a statutory audit, regardless of their size.

An addition in Article 35.3 brings clarification on how the audit requirements apply to groups of undertakings.

#### **4.9. Chapter 9 – Report on payments to governments**

New reporting requirements are introduced for large companies and public interest entities active in the extractive industry or in the logging of primary forests. For each country where they operate, they shall, where the amount is material to the recipient government, disclose on an annual basis the payments they make to governments in the financial year, and where payments have been attributed to a project, payments for each such project. Where appropriate, reports shall be prepared at a consolidated level. If a consolidated report is prepared, the subsidiaries and the parent company preparing the report are exempted. The report shall be published in accordance with the requirements of Chapter 2 of Directive 2009/101/EC.

#### **4.10. Chapter 10 - Final Provisions**

The Contact Committee created by the Fourth Council Directive 78/660/EEC has become obsolete and in this proposal is no longer provided for.

To take account of economic developments and inflation, Article 42 would empower the Commission to revise periodically the thresholds for determining the undertakings' size contained in Article 3. This is necessary to preserve the thresholds' real value over time.

The Commission should also be empowered to update the types of entity contained in Annexes I and II in order to ensure that they correspond to any changes in the Member States.

It is necessary to specify and develop further the concept of materiality of payments in order to ensure the relevant and appropriate level of disclosure of payments to governments by the extractive industry and loggers of primary forests. It is appropriate to use delegated acts, in order to ensure technically sound and effective rules, allowing the Commission to take into account all the available expertise.

The exact scope and modalities of such delegated powers are carefully circumscribed in Article 42.

Finally, Article 46 has been introduced to specify that as a general rule public interest entities shall, in principle, not be entitled to the exemptions within the Directive.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the annual financial statements, consolidated financial statements and related reports  
of certain types of undertakings**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Commission Communication "Smart Regulation in the European Union"<sup>18</sup> aims at designing and delivering regulation of the highest quality, in respect of the principles of subsidiarity and proportionality, while ensuring that the administrative burdens are proportionate to the benefits they bring. The Commission Communication "Think Small First" - "Small Business Act" for Europe (SBA)<sup>19</sup>, adopted in June 2008 and revised in February 2011<sup>20</sup>, recognises the central role played by small and medium-sized enterprises (SMEs) in the Union economy, and aims at improving the overall approach to entrepreneurship and to anchor the "think small first" principle in policy-making from regulation to public service. The European Council of 24 and 25 March 2011<sup>21</sup> welcomed the Commission's intention to present the Single Market Act with measures creating growth and jobs, bringing tangible results to citizens and

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<sup>18</sup> COM(2010)543

<sup>19</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" - A "Small Business Act" for Europe {SEC(2008) 2101} {SEC(2008) 2102}.

<sup>20</sup> Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee of the Regions - Review of the "Small Business Act" for Europe, COM(2011) 78 final.

<sup>21</sup> European Council of 24 and 25 March 2011 - Conclusions, Nr: EUCO 10/1/11, Brussels, 25/3/2011

businesses. The "Single Market Act"<sup>22</sup> adopted in April 2011 proposes to simplify the Accounting Directives as regards financial information obligations and to reduce administrative burden, particularly for SMEs. The Europe 2020 Strategy<sup>23</sup> for smart, sustainable and inclusive growth aims to reduce administrative burdens and improve the business environment, particularly for SMEs and to promote the internationalisation of SMEs. The above-mentioned European Council called for the overall regulatory burden, in particular for SMEs, to be reduced at both European and national levels and suggests measures to increase productivity such as by removing red tape and improving the regulatory framework for SMEs. This proposal takes into account the better regulation programme of the European Commission, and in particular the Communication on "Smart Regulation in the EU" of October 2010.<sup>24</sup>

- (2) On 18 December 2008, the European Parliament adopted a non-legislative Resolution on accounting requirements as regards small and medium-sized companies, particularly micro-entities<sup>25</sup>, stating that Directives 78/660/EEC and 83/349/EEC are often very burdensome for small and medium-sized companies, and in particular for micro-entities, and asking the Commission to continue its efforts to review those Directives.
- (3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than one Member State and, on the other hand, they offer no safeguards to third parties beyond the amounts of their net assets.
- (4) There is a substantial number of partnerships and limited partnerships of which all of the fully liable members are constituted either as public or as private limited liability companies, and therefore they should be subject to the coordination measures of this Directive.
- (5) It is necessary, moreover, to establish at a Union level minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by undertakings that are in competition with one another.
- (6) Annual financial statements should give a true and fair view of an undertaking's assets and liabilities, financial position and profit or loss. To this end a mandatory layout should be prescribed for the balance sheet and the profit and loss account and the minimum content of the notes to the financial statements and the management report

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<sup>22</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Single Market Act - Twelve levers to boost growth and strengthen confidence - "Working together to create new growth", COM(2011) 206.

<sup>23</sup> Communication from the Commission - EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020.

<sup>24</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Smart Regulation in the European Union, COM(2010) 543 final. Please also see: [http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm](http://ec.europa.eu/governance/better_regulation/index_en.htm)

<sup>25</sup> OJ 2010/C 45 E/10.

should be laid down. According to the "think-small-first" principle the mandatory requirements for small undertakings should be fully harmonised in legislation. In order to avoid disproportionate burdens on these entities, Member States should not be entitled to require the presentation of further information. Member States may however impose further requirements on medium-sized and large undertakings..

- (7) Small, medium-sized and large undertakings should be defined and distinguished by reference to total assets, turnover and the average number of employees, as these items typically provide objective evidence as to the size of an enterprise.
- (8) To ensure the disclosure of comparable and equivalent information, recognition and measurement principles should include the going concern, the prudence, and the accrual bases. Set-offs between asset and liability items and income and expenditure items should not be permitted, and components of assets and liabilities should be valued separately. The presentation of items in financial statements should have regard to the economic reality or commercial substance of the underlying transaction or arrangement. The principle of materiality should govern recognition, measurement, presentation and disclosure in the financial statements.
- (9) Items recognised in the annual financial statements should be measured on the basis of the principle of purchase price or production cost to ensure the reliability of information within financial statements. However, Member States should be authorised to permit or require undertakings to revalue fixed assets in order that more relevant information may be provided to the users of financial statements.
- (10) The need for comparability of financial information throughout the Union makes it necessary to require Member States to allow a system of fair value accounting for certain financial instruments. Furthermore systems of fair value accounting provide information that can be of more relevance to the users of financial statements than purchase price / production cost based information. Accordingly, the Member States should permit the adoption of a fair value system of accounting by all undertakings or any classes of undertaking in respect of both the annual and consolidated financial statements or in respect of consolidated financial statements only. Furthermore, Member States should be allowed to permit or require fair value accounting for assets, other than financial instruments.
- (11) A single layout for the balance sheet is necessary to allow users of financial statements to compare the financial position of undertakings within the Union. However, Member States should be able to permit or require undertakings to modify the layout and present a balance sheet distinguishing between current and non-current items. A profit and loss account layout showing the nature of expenses and a profit and loss account layout showing the function of expenses should be permitted. Member States should prescribe the use of one or both of those layouts. Member States should also be entitled to allow undertakings to present a statement of performance instead of a profit and loss account prepared in accordance with one of the permitted layouts. Simplifications from the required layouts should be made available for small and medium-sized undertakings.
- (12) For comparability reasons, a common framework for recognition, measurement and presentation of inter alia value adjustments, goodwill, provisions, stocks of goods and

fungible assets, and income and expenditure of exceptional size or incidence should be provided.

- (13) The information presented in the balance sheet and profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from small undertakings, and it can be costly to small undertakings to collate the supplementary information that needs to be disclosed. A limited disclosure regime for small undertakings is therefore justified. However where a small undertaking considers that it is beneficial to provide additional disclosures of the types required by medium-sized and large undertakings it shall not be prevented from doing so.
- (14) Users of financial statements prepared by medium-sized and large undertakings typically have more sophisticated needs. Therefore, further disclosures should be provided in certain areas. Exemption from certain of these disclosure obligations should be justified when they would be prejudicial to certain persons or to the undertaking.
- (15) The management report and the consolidated management report are important elements of financial reporting. A fair review of the development of the business and of its position should be provided, in a manner consistent with the size and complexity of the business. The information should not be restricted to the financial aspects of the undertaking's business, and there should be an analysis of environmental and social aspects of the business necessary for an understanding of the undertaking's development, performance or position. In the cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in the case of the management report of such undertakings.
- (16) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that they include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 22(2) of the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of 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 Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent<sup>26</sup>.
- (17) Given that public interest entities can have a prominent role in the economies in which they operate, the provisions of this Directive concerning the corporate governance statement should apply to all public interest entities.
- (18) Many undertakings are members of bodies of undertakings. Consolidated financial statements should be drawn up so that financial information concerning such bodies of

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<sup>26</sup> OJ L 26, 31.1.1977, p. 1.

undertakings may be conveyed to members and third parties. National law governing consolidated financial statements should therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which undertakings should publish within the Union.

- (19) Consolidated financial statements should, in principle, present the activities of a parent undertaking and its subsidiaries as a single economic entity (a group); undertakings controlled by the parent undertaking should be considered as subsidiary undertakings. Control should be based on holding a majority of voting rights, but control may also exist where there are agreements with fellow shareholders or members. In certain circumstances control may be effectively exercised where the parent holds a minority of shares in the subsidiary. Member States should be entitled to require that undertakings not subject to a controlling relationship, that are managed on a unified basis, or have a common administrative, managerial or supervisory body be included in consolidated financial statements.
- (20) A subsidiary undertaking which is itself a parent undertaking should draw up consolidated financial statements. Nevertheless, Member States should be entitled to exempt such a parent undertaking in certain circumstances from the obligation to draw up such consolidated financial statements, provided that its members and third parties are sufficiently protected.
- (21) Small groups should be exempt from the obligation to prepare consolidated financial statements as the users of small undertakings' financial statements do not have sophisticated information needs and it can be costly to prepare consolidated financial statements in addition to the annual financial statements of the parent and subsidiary undertakings. Member States should be entitled to exempt medium-sized groups from the obligation to prepare consolidated financial statements on the same cost/benefit grounds.
- (22) Consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the non controlling interests in the consolidated balance sheet within capital and reserves and the separate disclosure of the non-controlling interests in the profit or loss of the group in the consolidated profit and loss accounts. However, the necessary corrections should be made to eliminate the effects of the financial relations between the undertakings consolidated. In particular, debts and claims between the undertakings; income and expenditure relating to transactions between the undertakings; and profits and losses resulting from transactions between the undertakings, where they are included in the book values of assets, shall be eliminated from the consolidated financial statements.
- (23) Recognition and measurement principles applicable in the preparation of annual financial statements should apply also to the preparation of consolidated financial statements.
- (24) Associated undertakings should be included in consolidated accounts by means of the equity method. Member States should be entitled permit or require that a jointly managed undertaking be proportionately consolidated within consolidated financial statements.

- (25) The consolidated financial statements should include all the disclosures by way of notes to the financial statements for the undertakings included in the consolidation taken as a whole. The names, registered offices and group interest in the undertakings' capital should also be disclosed in respect of subsidiaries, associated undertakings, jointly managed undertakings and participating interests.
- (26) The annual financial statements of all undertakings to which this Directive applies should be published in accordance with Directive 2009/101/EC. It is however appropriate to provide that certain derogations may be granted also in this area for small and medium-sized undertakings.
- (27) The Member States are strongly encouraged to develop electronic publication systems that allow undertakings to file accounting data, including statutory financial statements, only once and in a form that allows multiple users to access and use the data easily. Such systems should, however, not be burdensome to small and medium-sized undertakings.
- (28) The Members of the administrative, management and supervisory bodies of an undertaking should, as a minimum requirement, be collectively responsible towards the undertaking for drawing up and publishing annual financial statements and management reports. The same approach should also apply to members of the administrative, management and supervisory bodies of undertakings drawing up consolidated financial statements. Those bodies act within the competences assigned to them by national law. This should not prevent Member States from going further and providing for direct responsibility towards shareholders or even other stakeholders.
- (29) Liability for drawing up and publishing annual financial statements and consolidated financial statements as well as management reports and consolidated management reports is based on national law. Appropriate liability rules, as laid down by each Member State under its national law, should be applicable to members of the administrative, management and supervisory bodies. Member States should be permitted to determine the extent of the liability.
- (30) In order to promote credible financial reporting processes across the Union, members of the undertaking body that is responsible for the preparation of the undertaking's financial reports should have the duty to ensure that the financial information included in an undertaking's annual financial statements and annual management reports should give a true and fair view.
- (31) The annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether the annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in which it is expressed. The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for this category of undertaking, whilst for many small undertakings the same persons are both shareholders and management and therefore have limited need for third party assurance on the financial statements.

- (32) In order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities which are active in the extractive industry or logging of primary forests<sup>27</sup> should disclose in a separate report on an annual basis material payments made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas as well as primary forests. The report should include types of payments comparable to those disclosed by an undertaking participating in the Extractive Industries Transparency Initiative (EITI). The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade)<sup>28</sup> and the Timber Regulation<sup>29</sup> which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market.
- (33) The reports should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria<sup>30</sup> and account to their citizens for payments such governments receive from undertakings active in the extractive industry or loggers of primary forests operating within their jurisdiction. The report should incorporate disclosures on a country and project basis, where a project is considered as the lowest level of operational reporting unit at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc and where payments have been attributed to such projects. In the light of the overall objective of promoting good governance in these countries, the materiality of payments to be reported should be assessed in relation to the recipient government. Various criteria on materiality could be envisaged such as payments of an absolute amount, or a percentage threshold (such as payments in excess of a percentage of a country's GDP) and these can be defined through a delegated act. The reporting regime should be subject to a review and a report by the Commission within five years of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details, such as bank account information.
- (34) In line with the conclusions of the G8 Summit in Deauville of May 2011 and in order to promote an international level-playing-field, the Commission should continue to encourage all the international partners to introduce similar requirements. The pursuit of the work on the relevant international accounting standard is particularly important in this context.
- (35) In order to take account of future changes to the laws of the Member States and in the legislation of the Union concerning company types, the Commission should be

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<sup>27</sup> Defined in Directive 2009/28/EC as "naturally regenerated forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed."

<sup>28</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:347:0001:0006:EN:PDF>

<sup>29</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010. Companies that import wood products under EU voluntary agreements will be exempt from this requirement.

<sup>30</sup> EITI(2005), Extractive Industries Transparency Initiative, Source book, available at: <http://eiti.org/document/sourcebook>.

empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of updating the lists of undertakings contained in Annexes I and II. The use of delegated acts is also necessary to adapt the undertaking size criteria, as with the passage of time inflation will erode their real value. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. In order to ensure a relevant and appropriate level of disclosure of payments to governments by the extractive industry and loggers of primary forests and to ensure uniform application of this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of the specification of the concept of materiality of payments.

- (36) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (37) Since the objectives of this Directive, namely facilitating cross-border investments and improving Union-wide comparability and public confidence in financial statements and reports through enhanced and consistent specific disclosures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (38) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I**

### **SCOPE, DEFINITIONS AND CATEGORIES OF UNDERTAKINGS**

#### *Article 1*

##### **Scope**

1. The coordination measures prescribed by this Directive shall apply to:
  - (a) the laws, regulations and administrative provisions of the Member States relating to the types of undertakings listed in Annex I;
  - (b) the laws, regulations and administrative provisions of the Member States relating to the types of undertaking listed in Annex II where all members having unlimited liability are undertakings of the types listed in Annex I or undertakings which are not governed by the laws of a Member State but which

have a legal form comparable to those listed in Article 1 of Directive 2009/101/EC;

- (c) the types of undertakings listed in Annex II where all members having unlimited liability are:
  - (i) undertakings of the types listed in Annex I or undertakings which are not governed by the laws of a Member State but which have a legal form comparable to those listed in Article 1 of Directive 2009/101/EC or
  - (ii) undertakings of the types listed in Annex II where all members having unlimited liability are themselves undertakings of the type set out in Annex I or undertakings which are not governed by the laws of a Member State but which have a legal form comparable to those listed in Article 1 of Directive 2009/101/EC.

2. The Commission shall be empowered to adapt, by means of delegated acts in accordance with Article 42, the lists of undertakings contained in Annexes I and II referred to in paragraph 1.

## *Article 2*

### **Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (1) 'Public interest entities' means entities governed by the law of a Member State as defined in point (13) of Article 2 of Directive 2006/43/EC<sup>31</sup>;
- (2) 'Participating interest' means rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds these rights; The holding of part of the capital of another undertaking is presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which is lower or equal to 20%;
- (3) 'Related party' shall have the same meaning as in international accounting standard 24 adopted by Regulation (EC) No 1126/2008;
- (4) 'Fixed assets' means those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities;
- (5) 'Net turnover' means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover;
- (6) 'Purchase price' means the price payable and any incidental expenses thereto.

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<sup>31</sup> OJ L 157, 9.6.2006, p. 87.

- (7) 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question may be included to the extent that they relate to the period of production. Distribution costs shall not be included;
- (8) 'Value adjustment' means the adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether the reduction is final or not;
- (9) 'Parent undertaking' means an undertaking which controls one or more subsidiary undertakings;
- (10) 'Subsidiary undertaking' means an undertaking which is controlled by a parent undertaking;
- (11) A group' means a parent undertaking and all its subsidiary undertakings included in a consolidation;
- (12) "Affiliated undertakings" means any two or more undertakings connected to one another within a group;
- (13) 'Associated undertaking' means an undertaking in which another undertaking has a participating interest and over whose operating and financial policies the other undertaking exercises significant influence. An undertaking is presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking;

### *Article 3*

#### **Categories of undertakings and groups**

- 1. Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:
  - (a) balance sheet total: EUR 5 000 000;
  - (b) net turnover: EUR 10 000 000;
  - (c) average number of employees during the financial year: 50
- 2. Medium-sized undertakings shall be undertakings which are not small undertakings and on their balance sheet dates do not exceed the limits of two of the three following criteria:
  - (a) balance sheet total: EUR 20 000 000;
  - (b) net turnover: EUR 40 000 000,;
  - (c) average number of employees during the financial year: 250.

3. Large undertakings shall be undertakings which on their balance sheet dates exceed two of the three following criteria:
  - (a) balance sheet total: EUR 20 000 000;
  - (b) net turnover: EUR 40 000 000;
  - (c) average number of employees during the financial year: 250.
4. Small groups shall be parent and subsidiary undertakings which on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:
  - (a) balance sheet total: EUR 5 000 000;
  - (b) net turnover: EUR 10 000 000;
  - (c) average number of employees during the financial year: 50.
5. Medium-sized groups shall be parent and subsidiary undertakings which are not small groups and on a consolidated basis do not exceed the limits of two of the three following criteria on the balance sheet date of the parent undertaking:
  - (a) balance sheet total: EUR 20 000 000;
  - (b) net turnover: EUR 40 000 000;
  - (c) average number of employees during the financial year: 250.
6. Member States shall permit that the set-off referred to in Article 25(3) first subparagraph and the elimination referred to in Article 25(7) not be effected when the limits in paragraphs 4 and 5 of this Article are calculated. In such cases, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.
7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 1 to 5 shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of any Directive setting those amounts.
8. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs 1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.
9. The balance sheet total referred to in paragraphs 1 to 5 of this Article shall consist of the assets in A to D under ‘Assets’ in the layout prescribed in Article 9.
10. In order to adjust for the effects of inflation, the Commission shall examine periodically and, where necessary, amend, by means of delegated acts in accordance with Article 42, the definitions referred to in paragraphs 1 to 5 of this Article, taking into account measures of inflation as published in the *Official Journal of the European Union*

## CHAPTER 2

### GENERAL PROVISIONS AND PRINCIPLES

#### *Article 4*

##### **General provisions**

1. The annual financial statements shall constitute a composite whole and shall for all undertakings comprise, as a minimum, the balance sheet, the profit and loss account and the notes to the financial statements.

Member States may require undertakings other than small undertakings to include other statements in the annual financial statements in addition to the documents referred to in the first subparagraph.

2. The annual financial statements shall be drawn up clearly and in accordance with the provisions of this Directive.
3. The annual financial statements shall give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss, additional information shall be given.
4. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be departed from in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.
5. Member States may require undertakings other than small undertakings to disclose information in their annual financial statements which is additional to that required to be disclosed in accordance with this Directive.

#### *Article 5*

##### **General Financial Reporting Principles**

1. Items presented in the annual financial statements shall be recognised and measured in accordance with the following general principles:
  - (a) the undertaking shall be presumed to be carrying on its business as a going concern

- (b) accounting policies and valuation bases shall be applied consistently from one financial year to another;
  - (c) recognition and measurement shall be on a prudent basis, and in particular:
    - (i) only profits made at the balance sheet date may be recognised,
    - (ii) all liabilities arising in the course of the financial year concerned or of a previous one shall be recognised, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up,
    - (iii) all depreciation shall be recognised, whether the result of the financial year is a loss or a profit;
  - (d) amounts recognised in the balance sheet and profit and loss account shall be computed on the accrual basis;
  - (e) the opening balance sheet for each financial year shall reconcile to the closing balance sheet for the preceding financial year;
  - (f) the components of asset and liability items shall be valued separately;
  - (g) any set-off between asset and liability items, or between income and expenditure items, shall be prohibited;
  - (h) items in the profit and loss account and balance sheet shall be presented having regard to the substance of the reported transaction or arrangement;
  - (i) items recognised in the financial statements shall be measured in accordance with the principle of purchase price or production cost;
  - (j) recognition, measurement, presentation, and disclosure in annual financial statements shall have regard to the materiality of the relevant items.
2. In addition to those amounts recognised pursuant to paragraph 1(c)(ii), Member States may permit or require recognition of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.
3. Departures from these general principles shall be permitted in exceptional cases in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departures shall be disclosed in the notes to the financial statements and the reasons for them shall be given together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

## Article 6

### **Alternative measurement basis of fixed assets at revalued amounts**

1. By way of derogation from Article 5(1)(i), Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of fixed assets at revalued amounts. Where national law provides for such measurement, it shall define its content and limits and the rules for its application.
2. Where paragraph 1 is applied, the amount of the difference between measurement on a purchase price or production cost basis and measurement on a revaluation basis shall be entered in the revaluation reserve under 'Capital and reserves'.

The revaluation reserve may be capitalized in whole or in part at any time.

The revaluation reserve shall be reduced where the amounts transferred thereto are no longer necessary for the implementation of the revaluation basis of accounting. The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only where the amounts transferred have been entered as an expense in the profit and loss account or reflect increases in value which have actually been realised. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents a gain actually realised.

Save as provided under the second and third sub-paragraphs of this paragraph the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the revalued amount. However, by way of derogation from Articles 8 and 12, Member States may permit or require that only the amount of the value adjustments arising as a result of the purchase price or production cost measurement basis be shown under the relevant items in the layouts prescribed in Articles 13 and 14 and that the difference arising as a result of the measurement on a revaluation basis under this Article be shown separately in the layouts.

## Article 7

### **Alternative measurement basis of fair value**

1. By way of derogation from Article 5(1)(i) and subject to the conditions set out in this Article:
  - (a) Member States shall permit or require in respect of all undertakings or any classes of undertaking measurement of financial instruments, including derivative financial instruments, at fair value.
  - (b) Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of specified categories of assets other than financial instruments at amounts determined by reference to fair value.

Such permission or requirement may be restricted to consolidated financial statements.

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 the following conditions are complied with:
  - (a) they were entered into and continue to meet the undertaking's expected purchase, sale or usage requirements;
  - (b) they were designated as commodity-based contracts at their inception;
  - (c) they are expected to be settled by delivery of the commodity.
3. Paragraph 1(a) shall apply only to the following liabilities:
  - (a) liabilities held as part of a trading portfolio;
  - (b) derivative financial instruments.
4. Measurement according to paragraph 1(a) shall not apply to the following:
  - (a) non-derivative financial instruments held to maturity;
  - (b) loans and receivables originated by the undertaking and not held for trading purposes;
  - (c) interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the undertaking, 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, shall be accounted for differently from other financial instruments.
5. By way of derogation from Article 5(1)(i), 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 measurement at the specific amount required under that system.
6. By way of derogation from paragraphs 3 and 4 of this Article, Member States may permit or require the recognition, measurement and disclosure of financial instruments in conformity with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.
7. The fair value within the meaning of this Article shall be determined by reference to one of the following values:
  - (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;

- (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 shall ensure a reasonable approximation of the market value.

Financial instruments that cannot be measured reliably by any of the methods described in points (a) and (b), shall be measured in accordance with the principle of purchase price or production cost.

- 8. Notwithstanding Article 5(1)(c), where a financial instrument is measured at fair value, a change in value shall be included in the profit and loss account. However, such a change shall be included directly 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 an undertaking's net investment in a foreign entity.

Member States may permit or require a change in the value of an available for sale financial asset, other than a derivative financial instrument, to be included directly in the fair value reserve. The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of points (a) and (b).

- 9. Notwithstanding Article 5(1)(c), Member States may permit or require in respect of all undertakings or any classes of undertaking that, where assets other than financial instruments are measured at fair value, a change in the value shall be included in the profit and loss account.

## **CHAPTER 3**

### **BALANCE SHEET AND PROFIT AND LOSS ACCOUNT**

#### *Article 8*

##### **General provisions concerning the balance sheet and the profit and loss account**

- 1. The layout of the balance sheet and of the profit and loss account, shall not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons therefor.
- 2. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 13 and 14 shall be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied

with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. The Member States may require such subdivision or new items.

3. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals shall be adapted where the special nature of an undertaking so requires. The Member States may require such adaptations for undertakings which form part of a particular economic sector.
4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year shall be shown. Any case of non-comparability or any adjustment of the figures shall be disclosed, with explanations, in the notes to the financial statements.
5. Member States may permit or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.
6. In respect of an associated undertaking:
  - (a) Member States may permit or require an associated undertaking to be accounted for in annual financial statements using the equity method as provided for in Article 27(2) to (8), taking account of the essential adjustments resulting from the particular characteristics of annual financial statements as compared to consolidated financial statements.
  - (b) Member States may permit or require that the proportion of the profit or loss attributable to the associated undertaking be recognised in the profit and loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.
  - (c) Where the profit or loss attributable to the associated undertaking recognised in the profit and loss account exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which cannot be distributed to shareholders.

#### *Article 9*

#### **Layout of the balance sheet**

For the presentation of the balance sheet the Member States shall prescribe the layout below:

#### *Assets*

#### **A. Subscribed capital unpaid**

of which there has been called

(unless national law provides that called-up capital be shown under ‘capital and reserves’. In that case, the part of the capital called but not yet paid shall appear as an asset either under A or under C (II) (5)).

## **B. Fixed assets**

### *I. Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
  - (a) acquired for valuable consideration and need not be shown under B (I) (3); or
  - (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

### *II. Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

### *III. Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the undertaking is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

## **C. Current assets**

### *I. Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

### *II. Debtors*

(Amounts becoming due and payable after more than one year shall be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the undertaking is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under D).

### *III. Investments*

1. Shares in affiliated undertakings.
2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
3. Other investments.

### *IV. Cash at bank and in hand*

#### **D. Prepayments and accrued income**

(unless national law provides for such items to be shown as an asset under C (II) (6)).

### *Capital, reserves and liabilities*

#### **A. Capital and reserves**

##### *I. Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital shall be shown separately).

*II. Share premium account*

*III. Revaluation reserve*

*IV. Reserves*

1. Legal reserve, in so far as national law requires such a reserve.
2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22(1)(b) of Directive 77/91/EEC.
3. Reserves provided for by the articles of association.
4. Other reserves, including the fair value reserve.

*V. Profit or loss brought forward*

*VI. Profit or loss for the financial year*

**B. Provisions**

1. Provisions for pensions and similar obligations.
2. Provisions for taxation.
3. Other provisions.

**C. Creditors**

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year shall be shown separately for each item and for the aggregate of these items.)

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the undertaking is linked by virtue of participating interests.
8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under D under ‘Accruals and deferred income’).

#### **D. Accruals and deferred income**

(unless national law provides for such items to be shown under C (9) under ‘Creditors’).

#### *Article 10*

#### **Alternative presentation of the balance sheet**

Member States may permit or require undertakings, or certain classes of undertaking, to present items on the basis of a distinction between current and non-current items in a different layout than that prescribed in Article 9, provided that the information given is at least equivalent to that otherwise required by Article 9.

#### *Article 11*

#### **Special provisions relating to certain balance sheet items**

1. Where an asset or liability relates to more than one layout item, its relationship to other items shall be disclosed either under the item where it appears or in the notes to the financial statements.
2. Own shares and shares in affiliated undertakings shall be shown only under the items prescribed for that purpose.
3. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.
4. Rights to immovables and other similar rights as defined by national law shall be shown under ‘Land and buildings’.
5. The purchase price or production cost of fixed assets with limited useful economic lives shall be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives, subject to the following:
  - (a) value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date;
  - (b) value adjustments shall be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent;
  - (c) the value adjustments referred to in points (a) and (b) shall be charged to the profit and loss account and disclosed separately in the notes to the financial statements if they have not been shown separately in the profit and loss account;

(d) valuation at the lower of the values provided for in points (a) and (b) may not be continued if the reasons for which the value adjustments were made have ceased to apply. This provision shall not apply to value adjustments made in respect of goodwill.

6. Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.

Valuation at the lower value provided for in the first subparagraph may not be continued if the reasons for which the value adjustments were made no longer apply.

7. Interest on capital borrowed to finance the production of fixed or current assets may be included within production costs to the extent that it relates to the period of production. Any application of this provision shall be disclosed in the notes to the financial statements.
8. Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the 'first in, first out' (FIFO) method, or a similar method.
9. Where national law authorizes the inclusion of costs of research and development under 'Assets', they shall be written off within a maximum period of five years. In so far as the costs of research and development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

In exceptional cases the Member States may permit derogations from the provisions of the preceding subparagraph. Such derogations and the reasons for them shall be disclosed in the notes to the financial statements.

10. Goodwill shall be written off systematically over its useful life. Where its useful life cannot be reliably estimated it shall be written off within a maximum period of 5 years. An explanation of the period(s) over which goodwill is written off shall be provided within the notes to the financial statements.
11. Provisions shall cover liabilities the nature of which is clearly defined and which at the balance sheet date are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

The Member States may also authorize the creation of provisions intended to cover expenses the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

A provision shall represent the best estimate of the expenses likely to be incurred, or in the case of a liability, the amount required to settle it at the balance sheet date.

## *Article 12*

### **Layout of the profit and loss account**

1. For the presentation of the profit and loss account, the Member States shall prescribe one or both of the layouts provided for in Articles 13 and 14. If a Member State prescribes both layouts, it may allow undertakings to choose the layout.
2. By way of derogation from Article 4(1), Member States may permit or require all undertakings, or any classes of undertaking, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Articles 13 and 14, provided that the information given is at least equivalent to that otherwise required by Articles 13 and 14.

## *Article 13*

### **Layout of the profit and loss account – by nature of expense**

1. Net turnover.
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. (a) Raw materials and consumables.  
(b) Other external expenses.
5. Staff costs:
  - (a) wages and salaries;
  - (b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of tangible and intangible fixed assets.  
(b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating expenses.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.

11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar expenses, with a separate indication of amounts payable to affiliated undertakings.
14. Tax on profit or loss.
15. Profit or loss after taxation.
16. Other taxes not shown under the items 1 to 15.
17. Profit or loss for the financial year.

#### *Article 14*

#### **Layout of the profit and loss account – by function of expense**

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar expenses, with a separate indication of amounts payable to affiliated undertakings.
12. Tax on profit or loss.
13. Profit or loss after taxation.

14. Other taxes not shown under the items 1 to 13.
15. Profit or loss for the financial year.

#### *Article 15*

#### **Special provision relating to the profit and loss account**

Where individual items of income or expense are of exceptional size or incidence, an undertaking shall disclose them separately in the profit and loss account and shall provide explanations of their amount and nature in the notes to the financial statements.

#### *Article 16*

#### **Simplifications for small and medium-sized undertakings**

1. Member States shall permit small undertakings to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Article 9, disclosing separately the information required in brackets in C (II) under ‘Assets’ and C under ‘Capital, reserves and liabilities’, but in total for each.
2. Member States shall permit small and medium-sized undertakings to draw up abridged profit and loss accounts within the following limits:
  - (a) in Article 13, items 1 to 5 may be combined under one item called ‘Gross profit or loss’;
  - (b) in Article 14, items 1, 2, 3 and 6 may be combined under one item called ‘Gross profit or loss’.

### **CHAPTER 4**

#### **NOTES TO THE FINANCIAL STATEMENTS**

#### *Article 17*

#### **Content of the notes to the financial statements relating to all undertakings**

1. In the notes to the financial statements all undertakings shall, in addition to any other information required under other provisions of this Directive, at least disclose information in respect of the following matters:
  - (a) accounting policies adopted, in particular the measurement basis applied to the various items in the annual financial statements;

- (b) where fixed assets are measured at revalued amounts a table showing movements in the revaluation reserve in the financial year, with an explanation of the tax treatment of items therein; the carrying amount in the balance sheet that would have been recognised had the fixed assets not been revalued.
- (c) Where financial instruments are measured at fair value, the following shall be disclosed:
  - (i) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 7(7)(b);
  - (ii) 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;
  - (iii) 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;
  - (iv) a table showing movements in the fair value reserve during the financial year.
- (d) the total amount of any financial commitments, guarantees or contingencies that are not included in the balance sheet, and an indication of the nature and form of any valuable security which has been provided; any commitments concerning pensions and affiliated or associated undertakings shall be disclosed separately;
- (e) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet and the financial impact on the undertaking of those arrangements;
- (f) the nature of material events arising after the end of the year which are not reflected in the profit and loss account or balance sheet, and the financial effect of those events.
- (g) amounts owed by the undertaking becoming due and payable after more than five years as well as the undertaking's entire debts covered by valuable security furnished by the undertaking with an indication of the nature and form of the security;
- (h) transactions which have been entered into with related parties by the undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.

2. Member States shall not require further disclosure for small undertakings beyond what is required by this Article.
3. Where notes to the balance sheet and profit and loss account are presented in accordance with this Chapter, the notes shall be presented following the order that items are presented in the balance sheet and profit and loss account.

### *Article 18*

#### **Additional disclosures for medium-sized and large undertakings and public interest entities**

1. In the notes to the financial statements medium-sized and large undertakings and public interest entities shall, in addition to the information required under Article 17 and any other provisions of this Directive, set out information in respect of the following matters:
  - (a) For the various fixed asset items:
    - (i) the purchase price or production cost, or where an alternative basis of measurement has been followed, the fair value or revalued amount at the beginning and end of the financial year;
    - (ii) additions, disposals and transfers during the financial year;
    - (iii) the accumulated value adjustments at the beginning and end of the financial year;
    - (iv) value adjustments charged during the financial year;
    - (v) Movements in accumulated value adjustments in respect of additions, disposals and transfers during the financial year.
    - (vi) Where interest is capitalised in accordance with Article 11(7), the amount capitalised during the year.
  - (b) if fixed or current assets are the subject of value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them;
  - (c) Where financial instruments are measured at purchase price or production cost:
    - (i) for each class of derivative financial instrument:
      - the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 7(7)(a);
      - information about the extent and the nature of the instruments;
    - (ii) for financial fixed assets carried at an amount in excess of their fair value:

- the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
  - the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the assumption that the book value will be recovered;
- (d) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category.

Member States may waive the requirement to provide that information where it makes it possible to identify the position of a specific member of such a body;

- (e) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid or written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category;
- (f) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down between wages and salaries, social security costs and pension costs;
- (g) the deferred tax balances at the end of the financial year, and the movement therein during the financial year;
- (h) the name and registered office of each of the undertakings in which the undertaking, either itself or through a person acting in his own name but on the undertaking's behalf, holds a participating interest, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which financial statements have been adopted; the information concerning capital and reserves and the profit or loss may be omitted where the undertaking concerned does not publish its balance sheet and it is not controlled by the undertaking.

Member States may allow the information required to be disclosed by the first subparagraph above to take the form of a statement deposited in accordance with Article 3(1) and (3) of Directive 2009/101/EC; the depositing of such a statement shall be disclosed in the notes to the financial statements. Member States may also allow that information to be omitted when its nature is such that it would be seriously prejudicial to any of the undertakings to which it relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission shall be disclosed in the notes to the financial statements;

- (i) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of

this capital is concerned to Article 2(1)(e) of Directive 2009/101/EC or to Article 2(c) of Directive 77/91/EEC;

- (j) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;
  - (k) the existence of any participation certificates, convertible debentures, warrants, options or similar securities or rights, with an indication of their number and the rights they confer;
  - (l) the name, the head or registered office and the legal form of each of the undertakings of which the undertaking or firm is a member having unlimited liability.
  - (m) the name and registered office of the undertaking which draws up the consolidated financial statements of the largest body of undertakings of which the undertaking forms part as a subsidiary undertaking;
  - (n) the name and registered office of the undertaking which draws up the consolidated financial statements of the smallest body of undertakings of which the undertaking forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in point (m);
  - (o) the place where copies of the consolidated financial statements referred to in points (m) and (n) may be obtained provided that they are available;
  - (p) the proposed appropriation of the profit or treatment of the loss;
  - (q) the appropriation of the profit or treatment of the loss.
2. Member States shall not be required to apply point (h) to an undertaking governed by their national laws which is a parent undertaking in the following cases:
- (a) where the undertaking concerned is included in consolidated financial statements drawn up by that parent undertaking, or in the consolidated financial statements of a larger body of undertakings as referred to in Article 24(5);
  - (b) where the holdings in the undertaking concerned have been dealt with by the parent undertaking in its annual financial statements in accordance with Article 8(6), or in the consolidated financial statements drawn up by that parent undertaking in accordance with Article 27(1) to (8).

#### *Article 19*

#### **Additional disclosures for large undertakings and public interest entities**

1. In the notes to the financial statements large undertakings and public interest entities shall, in addition to the information required under Articles 17 and 18 and any other provisions of this Directive, disclose information in respect of the following matters:

- (a) the net turnover broken down by categories of activity and into geographical markets in so far as these categories and markets differ substantially from one another, taking account of the manner in which the sale of products and the provision of services are organized;
  - (b) the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of the annual financial statements, and the total fees charged by the statutory auditor or audit firm for other assurance services, for tax advisory services and for other non-audit services.
2. Member States may allow the information referred to in paragraph 1(a) to be omitted where the disclosure of that information would be seriously prejudicial to the undertaking. Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission shall be disclosed in the notes to the financial statements.

## **CHAPTER 5**

### **MANAGEMENT REPORT**

#### *Article 20*

#### **Contents of the management report**

1. The management report shall include at least a fair review of the development and performance of the undertaking's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the undertaking's business and of its position, consistent with the size and complexity of the business.

To the extent necessary for an understanding of the undertaking's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing the analysis, the management report shall, where appropriate, include references to and additional explanations of amounts reported in the annual financial statements.

2. The management report shall also give an indication of:
  - (a) any important events that have occurred since the end of the financial year;
  - (b) the undertaking's likely future development;
  - (c) activities in the field of research and development;

- (d) the information concerning acquisitions of own shares prescribed by Article 22(2) of Directive 77/91/EEC;
  - (e) the existence of branches of the undertaking;
  - (f) in relation to the undertaking's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss:
    - (i) the undertaking's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used;
    - (ii) the undertaking's exposure to price risk, credit risk, liquidity risk and cash flow risk.
3. Member States may exempt small undertakings from the obligation to prepare management reports, provided that the information referred to in Article 22(2) of Directive 77/91/EEC concerning the acquisition by an undertaking of its own shares is given in the notes to the financial statements.
4. Member States may exempt medium-sized undertakings from the obligation set out in the third subparagraph of paragraph 1 in so far as it relates to non-financial information.

#### *Article 21*

#### **Corporate governance statement**

1. A public interest entity shall include a corporate governance statement in its management report. That statement shall be included as a specific section of the management report and shall contain at least the following information:
- (a) a reference to one or more of the following:
    - (i) the corporate governance code to which the undertaking is subject;
    - (ii) the corporate governance code which the undertaking may have voluntarily decided to apply;
    - (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.
- Where reference is made to a corporate governance code referred to in points (i) and (ii), the undertaking shall also indicate where the relevant texts are publicly available; where reference is made to the information referred to in point (iii), the undertaking shall make its corporate governance practices publicly available;
- (b) where an undertaking, in accordance with national law, departs from a corporate governance code referred to in points (a)(i) or (ii), an explanation by the undertaking as to which parts of the corporate governance code it departs

from and the reasons for doing so; where the undertaking has decided not to refer to any provisions of a corporate governance code referred to in points (a)(i) or (ii), it shall explain its reasons for doing so;

- (c) a description of the main features of the undertaking's internal control and risk management systems in relation to the financial reporting process;
  - (d) the information required by Article 10(1)(c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council<sup>32</sup>, where the undertaking is subject to that Directive;
  - (e) unless the information is already fully provided for in national law, the operation of the shareholder meeting and its key powers and a description of shareholders' rights and how they can be exercised;
  - (f) the composition and operation of the administrative, management and supervisory bodies and their committees.
2. Member States may permit the information required by paragraph 1 of this Article to be set out in a separate report published together with the management report or by means of a reference in the management report where such document is publicly available on the undertaking's website.

In the event of a separate report, the corporate governance statement may contain a reference to the management report where the information required in paragraph 1(d) of this Article is made available. Concerning the provisions of paragraph 1 (c) and (d) of this Article, the statutory auditor shall express an opinion in accordance with the second sub-paragraph of Article 34(1). For the information referred to in paragraph 1(a), (b), (e) and (f), Member States shall ensure that the statutory auditor checks that the corporate governance statement has been produced.

3. Without prejudice to Article 46, Member States may exempt public interest entities which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, from the application of paragraph 1(a), (b), (e) and (f), unless such public interest entities have issued shares which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.

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<sup>32</sup> OJ L 142, 30.4.2004, p. 12.

## CHAPTER 6

### CONSOLIDATED FINANCIAL STATEMENTS AND REPORTS

#### *Article 22*

##### **Scope**

For the purposes of this Chapter, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the types of undertaking listed in Annex I or Annex II.

#### *Article 23*

##### **The requirement to prepare consolidated financial statements**

1. A Member State shall require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if that undertaking (a parent undertaking) controls one or more other undertakings (subsidiary undertaking(s)) in any of the following situations:
  - (a) it has a majority of the shareholders' or members' voting rights in the other undertaking(s);
  - (b) it has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the other undertaking(s) and is at the same time a shareholder in or a member thereof;
  - (c) it has the right to exercise a dominant influence over the other undertaking(s) of which it is a shareholder or a member, pursuant to a contract entered into with the undertaking(s) or to a provision in its memorandum or articles of association, where the law governing the other undertaking(s) permits such contracts or provisions.
  - (d) it has the power to exercise, or actually exercises, dominant influence or control over the other undertaking(s);
  - (e) it and the other undertaking(s) are managed on a unified basis by the parent undertaking;
  - (f) it is a shareholder in or member of the other undertaking(s), and:
    - (i) a majority of the members of the administrative, management or supervisory bodies of the other undertaking(s) who have held office during the financial year, during the preceding financial year and up to

the time when the consolidated financial statements are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

- (ii) controls alone, pursuant to an agreement with other shareholders in or members of the other undertaking(s), a majority of shareholders' or members' voting rights.

However, point (i) shall not apply where a third party has the rights referred to in points (a), (b) or (c) with regard to the other undertaking(s).

2. For the purposes of paragraph 1(a), (b) and (f), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking shall be added to those of the parent undertaking.
3. For the purposes of paragraph 1(a), (b) and (f), the rights mentioned in paragraph 2 shall be reduced by the rights:
  - (a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or
  - (b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.
4. For the purposes of paragraph 1(a) and (f), the total of the shareholders' or members' voting rights in the subsidiary undertaking shall be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.
5. Without prejudice to Article 24(10) a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.
6. For the purposes of paragraph 5 any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertaking to be consolidated.
7. Without prejudice to this Article and Articles 22 and 24, a Member State may require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if:
  - (a) that undertaking and one or more other undertakings to which it is not related as described in paragraphs 1(a) to (f), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or
  - (b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings to which it is not related, as described in

paragraphs 1(a) to (f), consist for the major part of the same persons in office during the financial year and until the consolidated financial statements are drawn up.

Where the first sub-paragraph is applied, undertakings which are related as described in that sub-paragraph shall, together with all of their subsidiary undertakings, be consolidated where one or more of those undertakings is established as one of the types of undertaking listed in Annex I or Annex II.

Paragraphs 5 and 6 of this Article and Articles 24(1) to 24(3), 24(10) and 25 to 29 shall apply to the consolidated financial statements and the consolidated management report referred to in this paragraph. References to parent undertakings shall be understood to refer to all the undertakings specified in the first sub-paragraph above. Without prejudice to Article 25(3) second sub-paragraph, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in the first sub-paragraph of this paragraph.

#### *Article 24*

##### **Exemptions from consolidation**

1. Small groups shall be exempt from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public interest entity.
2. Member States may provide for an exemption for medium-sized groups from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public interest entity.
3. Member States may grant an exemption from the obligation to draw up consolidated financial statements and a consolidated management report where the parent undertaking is not constituted as one of the types of undertaking listed in Annex I or Annex II.
4. Notwithstanding paragraphs 1, 2 and 3 of this Article, a Member State shall exempt from the obligation to draw up consolidated financial statements and a consolidated management report any parent undertaking governed by its national law which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State in the following two cases:
  - (a) that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose;

- (b) that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.
5. Exemptions referred to in paragraph 4 shall be subject to the compliance with all of the following conditions:
- (a) the exempted undertaking and, without prejudice to paragraph 10, all of its subsidiary undertakings shall be consolidated in the financial statements of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;
  - (b) the consolidated financial statements referred to in point (a) and the consolidated management report of the larger body of undertakings shall be drawn up by the parent undertaking of that body, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;
  - (c) the consolidated financial statements referred to in point (a) and the consolidated management report referred to in point (b), the report by the person responsible for auditing those financial statements and, where appropriate, the appendix referred to in paragraph 7 below, shall be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 30; that Member State may require that those documents be published in its official language and that the translation be certified;
  - (d) the notes to the annual financial statements of the exempted undertaking shall disclose the following:
    - (i) the name and registered office of the parent undertaking that draws up the consolidated financial statements referred to in point (a);
    - (ii) the exemption from the obligation to draw up consolidated financial statements and a consolidated management report.
6. In cases not covered by paragraph 4, a Member State may, without prejudice to paragraphs 2 and 3 of this Article and Article 3(6), exempt from the obligation to draw up consolidated financial statements and a consolidated management report any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in paragraph 5 are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated financial statements at least six months before the end of the financial year. Member States may fix that proportion at not more than 10 % for public limited liability companies and for limited partnerships with share capital, and at not more than 20 % for undertakings of other types.

A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated financial statements described in paragraph 5(a) shall also be governed by its national law.

A Member State may not make this exemption subject to conditions concerning the preparation and auditing of the consolidated financial statements referred to in paragraph 5(a).

7. A Member State may make the exemptions provided for in paragraphs 4, 5 and 6 subject to the disclosure of additional information, in accordance with this Directive, in the consolidated financial statements referred to in paragraph 5(a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated financial statements and are in the same circumstances.
8. Paragraphs 4 to 7 shall not affect any Member State's legislation on the drawing up of consolidated financial statements or consolidated management reports in so far as those documents are required
  - (i) for the information of employees of their representatives; or
  - (ii) by an administrative or judicial authority for its own purposes.
9. Without prejudice to paragraphs 2 and 3 of this Article and Article 3(6), a Member State may exempt from the obligation to draw up consolidated financial statements and a consolidated management report any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:
  - (a) the exempted undertaking and, without prejudice to paragraph 10, all of its subsidiary undertakings are consolidated in the financial statements of a larger body of undertakings;
  - (b) the consolidated financial statements referred to in point (a) and, where appropriate, the consolidated management report are drawn up in accordance with this Directive or in a manner equivalent to consolidated financial statements and consolidated management reports drawn up in accordance with this Directive;
  - (c) the consolidated financial statements referred to in point (a) have been audited by one or more persons authorized to audit financial statements under the national law governing the undertaking which drew them up.

Paragraphs 5(c) and (d), and 6 to 8 shall apply.

Member States may provide for exemptions under this paragraph only if it provides for the same exemptions under paragraphs 4 to 8.

10. An undertaking need not be included in consolidated financial statements where at least one of the following conditions is complied with:
  - (a) severe long-term restrictions substantially hinder:
    - (i) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or

- (ii) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 23(7);
- (b) the information necessary for the preparation of consolidated financial statements in accordance with this Directive cannot be obtained without disproportionate expense or undue delay;
- (c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

This paragraph shall also apply to public interest entities.

#### *Article 25*

### **The preparation of consolidated financial statements**

1. Chapters 2 and 3 shall apply in respect of the consolidated financial statements, taking into account the essential adjustments resulting from the particular characteristics of consolidated financial statements as compared with annual financial statements.
2. The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.
3. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings in accordance with the following:
  - (a) that set-off shall be effected on the basis of book values as they stand on the date on which such undertakings are included in a consolidation for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values;
  - (b) a Member State may permit or require set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary;
  - (c) any difference remaining after the application of point (a) or resulting from the application of point (b) shall be shown as goodwill in the consolidated balance sheet. The methods used to calculate the goodwill and any significant changes in relation to the preceding financial year shall be explained in the notes to the financial statements. Where the offsetting of positive and negative goodwill is authorized by a Member State, an analysis of the goodwill shall also be given in the notes to the financial statements. Negative goodwill may be transferred to the consolidated profit and loss account where such a treatment is in accordance with the principles laid out in Chapter 2.

However, the first sub-paragraph shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated financial statements such shares shall be treated as own shares in accordance with Chapter 3.

4. The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as non-controlling interests.
5. The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit and loss account.
6. The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit and loss account as the profit or loss attributable to non-controlling interests.
7. Consolidated financial statements shall show the assets, liabilities, financial positions, profits or losses of the undertakings included in a consolidation as if there were a single undertaking.
8. Consolidated financial statements shall be drawn up as at the same date as the annual financial statements of the parent undertaking.

A Member State may, however, require or permit consolidated financial statements to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation, that fact shall be disclosed in the notes to the consolidated financial statements together with the reasons thereof. In addition, account shall be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.

Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim financial statements drawn up as at the consolidated balance sheet date.

9. If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated financial statements shall include information which makes the comparison of successive sets of consolidated financial statements meaningful. Where such a change is significant, this obligation may be fulfilled by the preparation of an adjusted comparative balance sheet and an adjusted comparative profit and loss account.
10. Assets and liabilities to be included in consolidated financial statements shall be measured on a uniform basis and in accordance with Chapter 2.
11. An undertaking which draws up consolidated financial statements shall apply the same measurement bases as in its annual financial statements. However, Member States may permit or require that other measurement bases in accordance with

Chapter 2 are used in consolidated financial statements. Where use is made of this derogation that fact shall be disclosed in the notes to the consolidated financial statements and the reasons therefore given.

12. Where assets and liabilities to be included in consolidated financial statements have been measured by undertakings included in the consolidation using bases differing from those used for the consolidation, those assets and liabilities shall be remeasured in accordance with the bases used for the consolidation. Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated financial statements and the reasons for them given.
13. Deferred tax balances shall be recognised on consolidation provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.
14. Where assets to be included in consolidated financial statements have been the subject of value adjustments solely for tax purposes, they shall be incorporated in the consolidated financial statements only after those adjustments have been eliminated.

#### *Article 26*

#### **Proportional consolidation**

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, Member States may permit or require the inclusion of that other undertaking in the consolidated financial statements in proportion to the rights in its capital held by the undertaking included in the consolidation.
2. Article 24(10) and Article 25 shall apply mutatis mutandis to the proportional consolidation referred to in paragraph 1 of this Article.

#### *Article 27*

#### **Equity accounting of associated undertakings**

1. Where an undertaking included in a consolidation has an associated undertaking, that associated undertaking shall be shown in the consolidated balance sheet as a separate item.
2. When this Article is applied for the first time, the associated undertaking shall be shown in the consolidated balance sheet at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance Chapters 2 and 3 shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements.

That difference shall be calculated as at the date as at which that method is used for the first time.

In addition, Member States may permit or require the calculation of the difference as at the date of acquisition of the shares or, where the shares were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 25(11), they may, for the purpose of calculating the difference referred to in paragraph 2 of this Article, be remeasured using the methods used for consolidation. Where such remeasurement has not been carried out, that fact shall be disclosed in the notes to the consolidated financial statements. Member States may require such remeasurement.
4. The amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by the participating interest. That amount shall be reduced by the amount of the dividends received from the associated undertaking.
5. Where the positive difference referred to in paragraph 2 of this Article cannot be related to any category of assets or liabilities, it shall be considered as goodwill in accordance with Article 9, 11(5)(d), 11(10) and 25(3)(c).
6. The proportion of the profit or loss of the associated undertakings attributable to the participating interests shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.
7. In so far as the facts are known or can be ascertained, profits and losses resulting from transactions between the associated undertakings and other undertakings included in the consolidation shall be eliminated from the consolidated financial statements, where they are included in the book values of assets.
8. Where an associated undertaking draws up consolidated financial statements, paragraphs 1 to 7 shall apply to the capital and reserves shown in such consolidated financial statements.

#### *Article 28*

#### **The notes to the consolidated financial statements**

1. The notes to the consolidated financial statements shall set out the information required by Articles 17, 18 and 19, in addition to any other information required under other provisions of this Directive, taking account of the essential adjustments resulting from the particular characteristics of consolidated financial statements as compared to annual financial statements, so that the information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole.

The following adjustments to the information required by Articles 17, 18 and 19 shall apply:

- (a) In disclosing transactions between related parties, transactions between related parties included in a consolidation that are eliminated on consolidation shall not be disclosed;
- (b) In disclosing the average number of employees employed during the financial year there shall be separate disclosure of the average number of employees employed by undertakings that are proportionately consolidated;
- (c) In disclosing the amounts of emoluments and advances and credits granted to members of the administrative, managerial and supervisory bodies, only amounts granted to members of the administrative, managerial and supervisory bodies of the parent undertaking shall be disclosed; the disclosure shall cover amounts granted by the parent undertaking and its subsidiary undertakings.

2. The notes to the consolidated financial statements shall, in addition to the information required in paragraph 1, set out the following information:

- (a) The names and registered offices of the undertakings included in the consolidation, the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings, and information as to which of the conditions referred to in Articles 23(1) and 23(7) following application of Article 23(2), (3) and (4) has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 23(1)(a) and where the proportion of the capital and the proportion of the voting rights held are the same.

The same information shall be given in respect of undertakings excluded from a consolidation pursuant to Article 5(1)(j) and an explanation shall be given for the exclusion of the undertakings referred to in Article 24(10).

- (b) The names and registered offices of associated undertakings included in the consolidation as described in Article 27(1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings;
- (c) The names and registered offices of undertakings proportionally consolidated pursuant to Article 26, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
- (d) The name and registered office of each of the undertakings, other than those referred to in points (a), (b) and (c), in which undertakings included in the consolidation, either themselves or through persons acting in their own names but on behalf of those undertakings, hold a participating interest. The proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for

which financial statements have been adopted shall also be disclosed. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet.

- (e) Member States may allow the information required by points (a) to (d) to take the form of a statement deposited in accordance with Article 3(3) of Directive 2009/101/EC. The depositing of such a statement shall be disclosed in the notes to the financial statements. Member States may also allow this information to be omitted when its nature is such that it would be seriously prejudicial to any of the undertakings to which it relates. Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission shall be disclosed in the notes to the financial statements.

### *Article 29*

#### **The consolidated management report**

1. The consolidated management report shall, in addition to any other information required under other provisions of this Directive, set out at least the information required by Articles 20 and 21, taking account of the essential adjustments resulting from the particular characteristics of a consolidated management report as compared to a management report so that the information is of assistance in assessing the undertakings included in the consolidation taken as a whole.
2. The following adjustments to the information required by Articles 20 and 21 shall apply:
  - (a) in reporting details of own shares acquired, the consolidated management report shall indicate the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may permit or require the disclosure of those particulars in the notes to the consolidated financial statements;
  - (b) in reporting on internal control and risk management systems, the corporate governance statement shall refer to the main features of the internal controls and risk management systems for the undertakings included in the consolidation taken as a whole.
3. Where a consolidated management report is required in addition to the management report, the two reports may be presented as a single report.

## CHAPTER 7

### PUBLICATION

#### *Article 30*

##### **General publication requirement**

1. Member States shall ensure that undertakings publish the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor referred to in Article 34, as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

Member States may, however, exempt undertakings from the obligation to publish the management report. In such a case it shall be possible to obtain a copy of all or part of any such report upon request. The price of such a copy shall not exceed its administrative cost.

2. The Member State of an undertaking referred to in Annex II may exempt that undertaking from publishing its financial statements in accordance with Article 3 of Directive 2009/101/EC, provided that those financial statements are available to the public at its head office, in the following cases:
  - (a) all the members having unlimited liability of the undertaking concerned are undertakings referred to in Annex I governed by the laws of Member States other than the Member State whose law governs that undertaking, and none of those undertakings publishes the financial statements of the undertaking concerned with its own financial statements;
  - (b) all the members having unlimited liability are undertakings which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 2009/101/EC.

Copies of the financial statements shall be obtainable upon request. The price of such a copy may not exceed its administrative cost.

3. Paragraph 1 shall apply with respect to consolidated financial statements and consolidated management reports.

Where the undertaking drawing up the consolidated financial statements is not established as one of the types of undertaking listed in Annex I and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive, 2009/101/EC, it shall at least make those documents available to the public at its head office. It shall be possible to obtain a copy of such documents upon request. The price of such a copy shall not exceed its administrative cost.

## *Article 31*

### **Simplifications for small and medium-sized undertakings**

1. Member States may exempt small undertakings from the obligation to publish their profit and loss accounts and management reports.
2. Member States may permit medium-sized undertakings to publish:
  - (a) abridged balance sheets showing only those items preceded by letters and roman numerals in Article 9 disclosing separately, either in the balance sheet or in the notes to the financial statements:
    - (i) B (I) (3), B (II) (1), (2), (3) and (4), B (III) (1), (2), (3), (4) and (7), C (II) (2), (3) and (6) and C (III) (1) and (2) under 'Assets' and C, (1), (2), (6), (7) and (9) under 'Capital, reserves and liabilities',
    - (ii) the information required in brackets in C (II) under 'Assets' and C under 'Capital, reserves and liabilities' in total for all the items concerned and separately for C (II) (2) and (3) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Capital, reserves and liabilities',
  - (b) abridged notes to their financial statements without the information required in Article 18 (1)(g) and (k).

This paragraph shall be without prejudice to Article 30(1) where it relates to the profit and loss account, the management report and the opinion of the statutory auditor.

## *Article 32*

### **Other publication requirements**

1. Where the annual financial statements and the management report are published in full, they shall be reproduced in the form and text on the basis of which the statutory auditor has drawn up his opinion. They shall be accompanied by the full text of the report of the statutory auditor.
2. If the annual financial statements are not published in full, it shall be indicated that the version published is abridged and reference shall be made to the register in which the financial statements have been filed in accordance with Article 3 of Directive 2009/101/EC . Where the financial statements have not yet been filed, the fact shall be disclosed. The report of the statutory auditor shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, or whether the statutory auditor were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditor included a reference to any matters to which the statutory auditor drew attention by way of emphasis without qualifying the audit opinion.

### *Article 33*

#### **Duty and liability for drawing up and publishing the financial statements and the management report**

1. Member States shall ensure that the members of the administrative, management and supervisory bodies of the undertaking collectively have the duty to ensure that the annual financial statements, the management report and, when provided separately, the corporate governance statement are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002. Such bodies shall act within the competences assigned to them by national law.
2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the undertaking collectively have the duty to ensure that the consolidated financial statements, consolidated management reports and, when provided separately, the consolidated corporate governance statement are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002. Such bodies shall act within the competences assigned to them by national law.
3. Member States shall ensure that their laws, regulations and administrative provisions on liability apply to the members of the administrative, management and supervisory bodies of the undertakings, at least towards the undertaking, for breach of the duties referred to in paragraphs 1 and 2.

## **CHAPTER 8**

### **AUDITING**

#### *Article 34*

##### **General requirement**

1. Member States shall ensure that the financial statements of public interest entities, medium-sized and large undertakings are audited by one or more persons approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC of the European Parliament and of the Council<sup>33</sup>.

The statutory auditor shall also express an opinion concerning the consistency of the management report with the financial statements for the same financial year.

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<sup>33</sup> OJ L 157, 9.6.2006, p. 87.

2. The first sub-paragraph of paragraph 1 shall apply with respect to consolidated financial statements. The second sub-paragraph of paragraph 1 shall apply with respect to consolidated financial statements and consolidated management reports.

### *Article 35*

#### **Content of the audit report**

1. The report of the statutory auditor shall include:
  - (a) an introduction which shall at least identify the financial statements that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
  - (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
  - (c) an audit opinion which shall state clearly the opinion of the statutory auditor as to whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual financial statements comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditor is unable to express an audit opinion, a disclaimer of opinion;
  - (d) a reference to any matters to which the statutory auditor draws attention by way of emphasis without qualifying the audit opinion;
  - (e) an opinion concerning the consistency of the management report with the annual financial statements for the same financial year.
2. The report shall be signed and dated by the statutory auditor.
3. The report of the statutory auditor on the consolidated financial statements shall comply with the requirements set out in of paragraphs 1 and 2. In reporting on the consistency of the management report and the financial statements as required by paragraph 1(e), the statutory auditor shall consider the consolidated financial statements and the consolidated management report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors required by this Article may be combined.

## CHAPTER 9

### Report on payments to governments

#### *Article 36*

#### **Definitions**

For the purpose of this chapter, the following definitions shall apply:

1. "Undertaking active in the extractive industry" means an undertaking with any activity involving the exploration, discovery, development, and extraction of minerals, oil and natural gas deposits, as referred to in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>34</sup>.
2. "Undertaking active in the logging of primary forests" means an undertaking with activities as referred to in Section A-Division 2.2 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>35</sup>, in primary forests.
3. "Government" means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Article 23 (1) to (6) of this Directive.
4. "Project" is equivalent to a specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared to monitor its business.

#### *Article 37*

#### **Undertakings required to report on payments to governments**

1. Member States shall require large undertakings and all public interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis.
2. This obligation shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled:
  - (a) the parent undertaking is subject to the laws of a Member State;

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<sup>34</sup> OJ L 393, 30.12.2006, p. 1.

<sup>35</sup> OJ L 393, 30.12.2006, p. 1.

- (b) the payments to governments of such an undertaking are included in the consolidated report on payment to governments drawn up by the parent undertaking in accordance with Article 39.

### *Article 38*

#### **Content of the report**

1. The report shall specify the following when material to the recipient government:
  - (a) the total amount of payments, including payments in kind, made to each government within a financial year;
  - (b) the total amount per type of payment, including payments in kind, made to each government within a financial year;
  - (c) where those payments have been attributed to a specific project the amount per type of payment, including payments in kind, made for each such project within a financial year, and the total amount of payments for each such project.
2. The following types of payments shall be reported:
  - (a) production entitlements;
  - (b) taxes on profits;
  - (c) royalties;
  - (d) dividends;
  - (e) signature, discovery and production bonuses;
  - (f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
  - (g) other direct benefits to the government concerned.
3. Where payments in kind are made to a government, they shall be reported in value or in volume. Where they are reported in terms of value, supporting notes shall be provided to explain how their value has been determined.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to specify the concept of materiality of payments.
5. The report shall exclude any type of payments made to a government in a country where the public disclosure of this type of payment is clearly prohibited by the criminal legislation of that country. In such cases the undertaking shall state that it has not reported payments in accordance with paragraphs 1 to 3, and shall disclose the name of the government concerned.

## *Article 39*

### **Consolidated report on payments to governments**

1. A Member State shall require any large undertaking or any public interest entity active in the extractive industry or the logging of primary forests and governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 37 and 38 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 23(1) to 23(6) of this Directive.
2. The obligation to draw up the consolidated report referred to in paragraph 1 shall not apply to:
  - (a) a parent undertaking of a small group as defined in Article 3(4) except where any affiliated undertaking is a public interest entity;
  - (b) a parent undertaking of a medium-sized group as defined in Article 3(5) except where any affiliated undertaking is a public interest entity;
  - (c) a parent undertaking governed by the law of a Member State which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a Member State.
3. An undertaking need not be included in a consolidated report on payments to government where at least one of the following conditions is fulfilled:
  - (a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;
  - (b) the information necessary for the preparation of the consolidated report on payments to government in accordance with this Directive cannot be obtained without disproportionate expense or undue delay.

## *Article 40*

### **Publication**

The report referred to in Article 37 and the consolidated report referred to in Article 39 on payments to governments shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

## *Article 41*

### **Review**

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of the reporting obligations and the modalities of

the reporting on a project basis. The review should also take into account international developments and consider the effects on competitiveness and security of energy supply. It should be completed at the latest five years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative proposal, if appropriate.

## **CHAPTER 10**

### **FINAL PROVISIONS**

#### *Article 42*

##### **Exercise of delegated powers**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 1(2), Article 3(10) and Article 38(4) shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.
3. The delegation of power referred to in Article 1(2), Article 3(10) and Article 38(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 1(2), Article 3(10) and Article 38(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### *Article 43*

##### **Exemption for subsidiary undertakings**

Notwithstanding the provisions of Directives 2009/101/EC and 77/91/EEC, a Member State shall not be required to apply the provisions of this Directive concerning the content, auditing and publication of the annual financial statements and the management report to undertakings

governed by their national laws which are subsidiary undertakings, where the following conditions are fulfilled:

- (1) the parent undertaking is subject to the laws of a Member State;
- (2) all shareholders or members of the subsidiary undertaking have declared their agreement to the exemption from such obligation; this declaration shall be made in respect of every financial year;
- (3) the parent undertaking has declared that it guarantees the commitments entered into by the subsidiary undertaking;
- (4) the declarations referred to in points (2) and (3) of this Article are published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Chapter 2 of Directive 2009/101/EC;
- (5) the subsidiary undertaking is included in the consolidated financial statements drawn up by the parent undertaking in accordance with this Directive;
- (6) the exemption is disclosed in the notes to the consolidated financial statements drawn up by the parent undertaking;
- (7) the consolidated financial statements referred to in point (5) of this Article, the consolidated management report, and the report by the statutory auditor are published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Chapter 2 of Directive 2009/101/EC.

#### *Article 44*

#### **Undertakings which are members having unlimited liability of other undertakings**

1. Member States may require undertakings referred to in Annex I which are governed by their law and which are members having unlimited liability of any undertaking referred to in Article 1(1)(b) and (c) ('entity concerned'), to draw up, have audited and publish, with their own financial statements, the financial statements of the entity concerned in conformity with the provisions of this Directive.

In this case, the requirements of this Directive shall not apply to the entity concerned.

2. Member States shall not be required to apply the requirements of this Directive to the entity concerned where:
  - (a) the financial statements of the entity concerned are drawn up, audited and published in conformity with the provisions of this Directive by an undertaking which is a member having unlimited liability of that entity and is governed by the law of another Member State;
  - (b) the entity concerned is included in consolidated financial statements drawn up, audited and published in accordance with this Directive by a member having unlimited liability or where the entity concerned is included in the consolidated financial statements of a larger body of undertakings drawn up, audited and

published in conformity with this Directive by a parent undertaking governed by the law of a Member State. This exemption shall be disclosed in the notes to the consolidated financial statements.

3. In cases referred to in paragraph 2, the entity concerned shall reveal the name of the entity publishing the financial statements upon request.

#### *Article 45*

### **Profit and loss account exemption for parent undertakings preparing consolidated financial statements**

A Member State shall not be required to apply the provisions of this Directive concerning the auditing and publication of the profit and loss account to undertakings governed by their national laws which are parent undertakings where the following conditions are fulfilled:

- (1) the parent undertaking draws up consolidated financial statements in accordance with this Directive and is included in the consolidated financial statements;
- (2) the exemption is disclosed in the notes to the annual financial statements of the parent undertaking;
- (3) the exemption is disclosed in the notes to the consolidated financial statements drawn up by the parent undertaking;
- (4) the profit or loss of the parent undertaking, determined in accordance with this Directive, is shown in the balance sheet of the parent undertaking.

#### *Article 46*

### **Restriction of exemptions for public interest entities**

Unless expressly provided for in this Directive, the Member States shall not make the simplifications and exemptions set out in this Directive available to public interest entities.

#### *Article 47*

### **Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

## *Article 48*

### **Repeal**

Directives 78/660/EEC and 83/349/EEC are repealed.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

## *Article 49*

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

## *Article 50*

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

## *Article 51*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX I

### **Types of undertaking referred to in the first subparagraph of Article 1(1)**

- *Belgium:*  
la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;
- *Bulgaria:*  
акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;
- *the Czech Republic:*  
společnost s ručením omezeným, akciová společnost;
- *Denmark:*  
aktieselskaber, kommanditaktieselskaber, anpartsselskaber;
- *Germany:*  
die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;
- *Estonia:*  
aktsiaselts, osäühing;
- *Ireland:*  
public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;
- *Greece:*  
η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;
- *Spain:*  
la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;
- *France:*  
la société anonyme, la société en commandite par actions, la société à responsabilité limitée;
- *Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

– *Cyprus:*

Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

– *Latvia:*

akciju sabiedrība, sabiedrība ar ierobežotu atbildību;

– *Lithuania:*

akcinės bendrovės, uždariosios akcinės bendrovės;

– *Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

– *Hungary:*

részvénytársaság, korlátolt felelősségű társaság;

– *Malta:*

kumpanija pubblika —public limited liability company, kumpanija privata —private limited liability company,

soċjeta in akkomandita bil-kapital maqsum f'azzjonijiet —partnership en commandite with the capital divided into shares;

– *the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

– *Austria:*

die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

– *Poland:*

spółka akcyjna, spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna;

– *Portugal:*

a sociedade anónima, de responsabilidade limitada, a sociedade em comandita por ações, a sociedade por quotas de responsabilidade limitada;

– *Romania:*

societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.

– *Slovenia:*

delniška družba, družba z omejeno odgovornostjo, komanditna delniška družba;

– *Slovakia:*

akciová spoločnosť, spoločnosť s ručením obmedzeným;

– *Finland:*

osakeyhtiö/aktiebolag;

– *Sweden:*

aktiebolag;

– *the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee

## ANNEX II

### **Types of undertaking referred to in the second subparagraph of Article 1(1)**

- *Belgium*  
la société en nom collectif/de vennootschap onder firma, la société en commandité simple/de gewone commanditaire vennootschap;
- *Bulgaria:*  
събирателно дружество, командитно дружество;
- *the Czech Republic:*  
veřejná obchodní společnost, komanditní společnost, družstvo;
- *Denmark:*  
interessentskaber, kommanditselskaber;
- *Germany:*  
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- *Estonia:*  
täisühing, usaldusühing;
- *Ireland:*  
partnerships, limited partnerships, unlimited companies;
- *Greece:*  
η ομόρρυθμος εταιρία, η ετερόρρυθμος εταιρία;
- *Spain:*  
sociedad colectiva, sociedad en comandita simple;
- *France:*  
la société en nom collectif, la société en commandite simple;
- *Italy:*  
la società in nome collettivo, la società in accomandita semplice;
- *Cyprus:*  
Ομόρρυθμες και ετερόρρυθμες εταιρείες (συνεταιρισμοί);

- *Latvia:*  
pilnsabiedrība, komanditsabiedrība;
- *Lithuania:*  
tikrosios ūkinės bendrijos, komanditinės ūkinės bendrijos;
- *Luxembourg:*  
la société en nom collectif, la société en commandite simple;
- *Hungary:*  
közkereseti társaság, betéti társaság, közös vállalat, egyesülés;
- *Malta:*  
Soċjeta fisem kollettiv jew soċjeta in akkomandita, bil-kapital li mhux maqsum f'azzjonijiet meta s-soċji kollha li għandhom responsabbilita' llimitata huma soċjetajiet in akkomandita bil-kapital maqsum f'azzjonijiet —Partnership en nom collectif or partnership en commandite with capital that is not divided into shares, when all the partners with unlimited liability are partnership en commandite with the capital divided into shares ;
- *the Netherlands:*  
de vennootschap onder firma, de commanditaire vennootschap;
- *Austria:*  
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- *Poland:*  
spółka jawna, spółka komandytowa;
- *Portugal:*  
sociedade em nome colectivo, sociedade em comandita simples;
- *Romania:*  
societate în nume colectiv, societate în comandită simplă;
- *Slovenia:*  
družba z neomejeno odgovornostjo, komanditna družba;
- *Slovakia:*  
verejná obchodná spoločnosť, komanditná spoločnosť;
- *Finland:*

avoin yhtiö/ öppet bolag, kommandiittiyhtiö/kommanditbolag;

– *Sweden:*

handelsbolag, kommanditbolag;

– *the United Kingdom:*

partnerships, limited partnerships, unlimited companies

## ANNEX III

### CORRELATION TABLE

Directive 78/660/EEC	-	Directive 83/349/EEC	-	This Directive
Article 1 (1), first subparagraph, introductory wording	-		-	Article 1(a)
Article 1(1), first subparagraph, first to twenty seventh indents	-		-	Annex I
Article 1(1), second subparagraph	-		-	Article 1(b)
Article 1(1), second subparagraph, points (a) to (aa)	-		-	Annex II
Article 1 (1), third subparagraph	-		-	Article 1(c)
Article 1(2)	-		-	-
Article 2(1)	-		-	Article 4(1)
Article 2(2)	-		-	Article 4(2)
Article 2(3)	-		-	Article 4(3)
Article 2(4)	-		-	Article 4(3)
Article 2(5)	-		-	Article 4(4)
Article 2(6)	-		-	Article 4(5)
Article 3	-		-	Article 8(1)
Article 4(1)	-		-	Article 8(2)
Article 4(2)	-		-	Article 8(3)
Article 4(3)	-		-	-
Article 4(4)	-		-	Article 8(4)
Article 4(5)	-		-	-
Article 4(6)	-		-	Article 5(1)(h)

Article 5	-	-
Article 6	-	Article 8(5)
Article 7	-	Article 5(g)
Article 8	-	-
Article 9(A)	-	Article 9(A)
Article 9(B)	-	-
Article 9(C)	-	Article 9(B)
Article 9(D)	-	Article 9(C)
Article 9(E)	-	Article 9(D)
Article 9(F)	-	-
<i>Liabilities</i>	-	<i>Capital, reserves and liabilities</i>
Article 9(A)		Article 9(A)
Article 9(B)	-	Article 9(B)
Article 9(C)	-	Article 9(C)
Article 9(D)	-	Article 9(D)
Article 9(E)	-	-
Article 10	-	-
Article 10a	-	Article 10
Article 11, first subparagraph	-	Article 3(1) and Article 16(1)
Article 11, second subparagraph	-	-
Article 11, third subparagraph	-	Article 3(7)
Article 12(1)	-	Article 3(8)
Article 12(2)	-	-
Article 12(3)	-	Article 3(9)

Article 13(1)	-	Article 11(1)
Article 13(2)	-	Article 11(2)
Article 14	-	Article 17(1), point (d)
Article 15(1)	-	Article 11(3)
Article 15(2)	-	Article 2(4)
Article 15(3), point (a)	-	Article 18(1), point (a)
Article 15(3), point (b)	-	-
Article 15(3), point (c)	-	Article 18(1), point (a)(i)
Article 15(4)	-	-
Article 16	-	Article 11(4)
Article 17	-	Article 2(2)
Article 18	-	-
Article 19	-	Article 2(8)
Article 20(1)	-	Article 11(11), first subparagraph
Article 20(2)	-	Article 11(11), second subparagraph
Article 20(3)	-	-
Article 21	-	-
Article 22, first subparagraph	-	Article 12(1)
Article 22, second subparagraph	-	Article 12(2)
Article 23, items 1 to 15	-	Article 13, items 1 to 15
Article 23, items 16 to 19	-	-
Article 23, items 20 and 21	-	Article 13, items 16 and 17
Article 24	-	-
Article 25, items 1 to 13	-	Article 14, items 1 to 13

Article 25, items 14 to 17	-	-
Article 25, items 18 and 19	-	Article 14, items 14 and 15
Article 26	-	-
Article 27, first subparagraph, introductory wording	-	Article 3(2)
Article 27, first subparagraph, points (a) and (c)	-	Article 16(2), points (a) and (b)
Article 27, first subparagraph, points (b) and (d)	-	-
Article 27, second subparagraph	-	Article 3(7)
Article 28	-	Article 2(5)
Article 29	-	-
Article 30	-	-
Article 31(1)	-	Article 5(1), introductory wording and points (a) to (f)
Article 31(1a)	-	Article 5(2)
Article 31(2)	-	Article 5(3)
Article 32	-	Article 5(1), point (i)
Article 33(1), introductory wording	-	Article 6(1)
Article 33 (1)(a) and (b), and the second and third subparagraphs	-	-
Article 33 (1)(c)	-	Article 6(1)
Article 33(2)(a), first subparagraph, and Article 33(2)(b), (c) and (d)	-	Article 6(2)

Article 33(2)(a), second subparagraph	-	Article 17(1), point (b)
Article 33(3)	-	Article 6(3)
Article 33(4)	-	Article 17(1), point (b), last sentence
Article 33(5)	-	-
Article 34	-	-
Article 35(1)(a)	-	Article 5(1), point (i)
Article 35(1)(b) and (c)	-	Article 11(5)
Article 35(1)(d)	-	Article 18(1), point (b)
Article 35(2)	-	Article 2(6)
Article 35(3)	-	Article 2(7)
Article 35(4)	-	Article 11(7) and Article 18(1), point (a)(vi)
Article 36	-	-
Article 37(1)	-	Article 11(9)
Article 37(2)	-	Article 11(10)
Article 38	-	-
Article 39(1)(a)	-	Article 5(1), point (i)
Article 39(1)(b)	-	Article 11(6)
Article 39(1)(c)	-	-
Article 39(1)(d)	-	Article 11(6)
Article 39(1)(e)	-	Article 18(1), point (b)
Article 39(2)	-	Article 2(6)
Article 40(1)	-	Article 11(8)
Article 40(2)	-	-
Article 41	-	-
Article 42, first subparagraph	-	Article 11(11), third subparagraph

Article 42, second subparagraph	-	-
Article 42a(1)	-	Article 7(1), point (a)
Article 42a(2)	-	Article 7(2)
Article 42a(3)	-	Article 7(3)
Article 42a(4)	-	Article 7(4)
Article 42a(5)	-	Article 7(5)
Article 42a(5a)	-	Article 7(6)
Article 42b	-	Article 7(7)
Article 42c	-	Article 7(8)
Article 42d	-	Article 17(1), point (c)
Article 42e	-	Article 7(1), point (b)
Article 42f	-	Article 7 (9)
Article 43(1), introductory wording	-	Article 17 (1), introductory wording
Article 43(1), point (1)	-	Article 17(1), point (a)
Article 43(1), point (2), first subparagraph	-	Article 18(1), point (h) first subparagraph
Article 43(1), point (2), second subparagraph	-	Article 18(1), point (l)
Article 43(1), point (3)	-	Article 18(1), point (h)
Article 43(1), point (4)	-	Article 18(1), point (j)
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Article 43(1), point (6)	-	Article 17(1), point (g)
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