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Subject: 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 (Accounting Directive) (First reading)
- Approval of the final compromise text

I. INTRODUCTION

1. On 27 October 2011, the Commission submitted a proposal for a general reform of the Accounting Directives to the Council and the European Parliament. The proposal aims at reducing the administrative burden on small companies in particular, increasing the clarity and comparability of financial statements and enhancing the transparency of payments to governments by the extractive industry and loggers of primary forest. As one of the key actions in the Single Market Act, the proposal's overall aim is to generate growth and bring tangible benefits to businesses and citizens.

2. The European Council also identified the simplification of the accounting requirements as one of the proposals with the greatest growth potential and called, on several occasions, for its rapid adoption.
3. Under the Polish, Danish, Cyprus and Irish Presidencies, the Accounting Directive has been discussed at numerous meetings by the Council and its preparatory bodies and at seven informal trilogues with the European Parliament.

II. THE COMPROMISE

4. At the seventh trilogue on 9 April 2013, a preliminary agreement was reached with the European Parliament who accepted the equivalence mechanism in the form of delegated and implementing acts with one modification compared to the mandate by Coreper: the report has to be published in Europe. In addition, errors of alignment were corrected in Article 42 (Exercise of delegated powers) and in Article 35(1)(e) (alignment with subparagraph 2 of Article 34(1)).
5. The Permanent Representatives Committee was debriefed on the outcome of the trilogue on 10 April 2013.
6. Delegations will find in the Annex the text of the final compromise on the Accounting Directive.

II. CONCLUSION

The Permanent Representatives Committee is therefore invited to

- agree to the compromise text on the Accounting Directive as set out in the Annex to this note; and
- give to the Chairman of the Permanent Representatives Committee the mandate to inform the Chair of the European Parliament's JURI Committee that, should the European Parliament adopt the amendments to the Commission proposal in the exact form as set out in the Annex to this note, subject to legal-linguistic verification of all the language versions by Legal-linguists of both Institutions, the Council would adopt the Directive in the form of the Commission proposal as thus amended by the Parliament.

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

of

**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"¹ 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"², adopted in June 2008 and revised in February 2011³ ■ recognises the central role played by small and medium-sized enterprises (SMEs) in the Union economy ■ and aims *to improve* 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 2011⁴ welcomed the Commission's intention to present the "Single Market Act" with measures creating growth and jobs, bringing tangible results to citizens and businesses.

¹ COM(2010)543

² 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}.

³ 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.

⁴ European Council of 24 and 25 March 2011 - Conclusions, Nr: EUCO 10/1/11, Brussels, 25/3/2011.

The "Single Market Act"⁵ adopted in April 2011 proposes to simplify the Accounting Directives as regards financial information obligations and to reduce *the* administrative burden, particularly for SMEs. "The Europe 2020 Strategy"⁶ 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 European Council *of 24 and 25 March 2011 also* called for the overall regulatory burden, in particular for SMEs, to be reduced at both European and national levels and *suggested* measures to increase productivity, such as *the removal of* red tape and *the improvement of* 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 *European Union*" of October 2010.⁷

⁵ 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.

⁶ Communication from the Commission - EUROPE 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020.

⁷ 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.

- (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-entities⁸, 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 *could affect* third parties beyond the amounts of their net assets.

⁸ OJ 2010/C 45 E/10.

- (3a) *Annual financial statements prepared on a prudent basis should give a true and fair view of the undertaking's financial situation. Annual financial statements pursue different objectives and do not merely provide information for investors in capital markets but give an account of former transactions and enhance corporate governance. Union accounting legislation needs to strike an appropriate balance between the interests of the addressees of financial statements and the interest of an undertaking in not being unduly burdened with reporting requirements.*
- (4) *The scope of this Directive includes certain undertakings having limited liability such as public and private limited liability companies. Additionally, there are a substantial number of partnerships and limited partnerships of which all ■ the fully liable members are constituted either as public or as private limited liability companies, and, therefore, partnerships should be subject to the coordination measures of this Directive. This Directive should also ensure that such partnerships are within the scope of this Directive if members of the partnership not constituted as private or public limited companies in fact have limited liability for the partnership's obligations because that liability is limited by other undertakings within the scope of this Directive.*

The exclusion of not-for-profit undertakings from the scope of this Directive is consistent with its purpose, in line with Article 50 (2)(g) of the Treaty.

- (4a) The scope of this Directive should be based on principles and should ensure that it is not possible for an undertaking to exclude itself from that scope by creating a group structure containing multiple layers of undertakings established within or outside the Union.*
- (4b) The provisions of this Directive should apply only to the extent that those provisions are not inconsistent with, or contradicted by provisions specified for the financial reporting of certain types of undertakings or provisions regarding the distribution of an undertaking's capital in other legislative acts in force adopted by one or more Union institutions.*

- (5) It is necessary, moreover, to establish at *the* 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. *In exceptional cases a financial statement may not give a true and fair view of an undertakings' assets and liabilities, financial position or profit or loss when provisions of this Directive are applied. In such situations the undertaking should depart from such provisions if the effect of applying them conflicts with the true and fair view. The Member States should be allowed to define such exceptional cases and lay down the relevant special rules which apply in those cases. Exceptional cases should be understood to be only very unusual transactions and unusual situations and should for instance not be related to entire specific sectors.*

- (6a) *This Directive should ensure that the requirements for small undertakings are to a large extent harmonised throughout the Union. This Directive is based on the "think-small-first" principle ■ . In order to avoid disproportionate burdens on those undertakings, Member States should only be allowed to require a few disclosures by way of notes that are additional to the mandatory notes. In the case of a single filing system however, Member States may in certain cases require a limited number of additional disclosures where these are explicitly required by the domestic tax legislation and are strictly necessary for the purposes of tax collection. Member States may for medium-sized and large undertakings impose requirements that go further than the minimum requirements of this Directive.*
- (6b) *Where this Directive allows Member States to place additional requirements on, for instance, small undertakings, this means that Member States can make use of this option in full or in part by requiring less than what the option allows for. In the same way, where this Directive provides for Member States to make use of an exemption for, for instance, small undertakings, this means that Member States can exempt these undertakings in full or in part.*

- (7) Small, medium-sized and large undertakings should be defined and distinguished by reference to *balance sheet* total, *net* turnover and the average number of employees *during the financial year*, as these *criteria* typically provide objective evidence as to the size of an *undertaking*.

However, where a parent undertaking is not preparing consolidated financial statements for the group, Member States should be allowed to take steps deemed necessary by them to require that such an undertaking be classified as a larger undertaking by determining its size and resulting category on a consolidated or aggregated basis.

If a Member State applies some or all of the optional exemptions for micro undertakings, micro undertakings should be defined based on the same size criteria. Member States should not be obliged to define separate categories for medium-sized and large undertakings in their national legislation if medium-sized undertakings are subject to the same requirements as large undertakings.

(7a) *Micro undertakings have limited resources with which to comply with demanding regulatory requirements. Where no specific rules are in place for micro undertakings, the rules applying to small undertakings apply to them. Those rules place on them a burden, which is not in proportion to their size and is therefore disproportionate for the smallest undertakings as compared to larger ones.*

Therefore, it should be possible to exempt micro undertakings from certain obligations applying to small undertakings that may impose on them an unnecessarily onerous administrative burden. However, micro undertakings should still be subject to any national obligation to keep records showing their business transactions and financial position. Moreover, investment undertakings and financial holding undertakings should be excluded from the benefits of simplifications applicable to micro undertakings.

(7b) *Member States should take into account the specific conditions and needs of their own markets when making a decision about whether or how to implement a regime for micro undertakings within the context of this Directive.*

- (7c) *Publication of financial statements can be burdensome for micro undertakings. At the same time, Member States need to ensure compliance with this Directive. Accordingly, Member States making use of the exemptions provided for in Article 42a(1) and (2) should be permitted to exempt micro undertakings from a general publication requirement, provided that balance sheet information is duly filed, in accordance with national law, with at least one designated competent authority and that the information is transmitted to the business register, so that a copy should be obtainable upon application. In such cases the obligation laid down in Article 30 of this Directive to publish any accounting document in accordance with Article 3(5) of Directive 2009/101/EC, should not apply.*
- (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. *Member States should, however, in specific cases be allowed to permit or require undertakings to perform set-offs between asset and liability items and income and expenditure.* The presentation of items in financial statements should have regard to the economic reality or commercial substance of the underlying transaction or arrangement. *Member States should, however, be allowed to exempt undertakings from applying this principle.*

- (8a) *The principle of materiality should govern recognition, measurement, presentation, disclosure and consolidation in the financial statements. According to the principle of materiality, information that is considered immaterial may for instance be aggregated in the financial statements. However even if a single item might be considered to be immaterial, immaterial items of a similar nature might be considered altogether material. Member States should be allowed to limit the mandatory application of the principle of materiality to presentation and disclosure. The principle of materiality should not affect any national obligation to keep complete records showing the business transactions and financial position.*
- (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, *other than micro undertakings making use of the exemptions provided for in Article 42a(1) and (2) of this Directive*, in respect of both the annual and consolidated financial statements or, *if the Member State so chooses*, 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 *limited number of layouts* for the balance sheet is necessary to allow users of financial statements to *better* 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. *Member States should require the use of one and may prescribe the use of both of those layouts for the balance sheet.*

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 **require the use of one and may** prescribe the use of **■** both of those layouts. Member States should also be **able** 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 **of** the required layouts **may** be made available for small and medium-sized undertakings. **However, the Member States should be allowed to restrict layouts of the balance sheet and profit and loss account if necessary for electronic filing of financial statements.**

- (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.

(12a) The recognition and measurement of some items in the financial statements are based on estimates, judgements and models rather than exact depictions. As a result of the uncertainties inherent in business activities, certain items in financial statements cannot be measured precisely but can only be estimated. Estimation involves judgements based on the latest available, reliable information.

The use of estimates is an essential part of the preparation of financial statements. This is especially true in the case of provisions, which by their nature are more uncertain than most other items in the balance sheet.

The estimates should be based on a prudent judgement of the management of the undertaking, and calculated on an objective basis, supplemented by experience of similar transactions and, in some cases, even reports from independent experts. The evidence considered includes any additional evidence provided by events after the reporting period.

(13) The information presented in the balance sheet and *in the* 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 *for* small undertakings to collate *that* supplementary information ■ . A limited disclosure regime for small undertakings is, therefore, justified. However, where a *micro or* small undertaking considers that it is beneficial to provide additional disclosures of the types required *of* medium-sized and large undertakings, *or other disclosures not provided for in this Directive, it should* not be prevented from doing so.

(13a) Disclosure on accounting policies is one of the key elements of the notes to the financial statements. Such disclosures should include in particular the measurement basis applied to various items, a statement on the conformity of those accounting policies with the going concern concept and any significant changes to the accounting policies adopted.

- (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 █ 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 *small and* medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in 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 ***such undertakings*** 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.⁹
- (17) Given that ***listed undertakings*** 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 ***undertakings whose transferable securities are admitted to trading on a regulated market***.

⁹ OJ L 26, 31.1.1977, p. 1.

- (18) Many undertakings are *owners of other undertakings and the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with a share capital*. Consolidated financial statements should be drawn up so that financial information concerning such ■ 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. *However, it is appropriate, given the lack of an arm's length transaction price, to entitle the Member States to allow intra-group transfers of participating interests, so-called common control transactions, to be accounted for using the pooling of interests method of accounting in which the book value of shares held in an undertaking included in a consolidation should be set off against the corresponding percentage of capital only.*

- (18a) *In the Seventh Council Directive 83/349/EEC on consolidated accounts there was a requirement to prepare consolidated financial statements for groups in cases where either the parent undertaking or one or more of the subsidiary undertakings was established as one of the types of undertakings listed in Annex I or Annex II. It was a Member State option to exempt parent undertakings from the requirement to draw up consolidated accounts in cases where the parent undertaking was not of the type listed in Annex I or Annex II. This Directive requires only parent undertakings of the type listed in Annex I or Annex II to draw up consolidated financial statements but Member States still have the option to extend the scope of this Directive to cover those situations as well. In substance there is therefore no change, as it was previously, and remains up to the Member States to decide whether undertakings not within the scope of this Directive must prepare consolidated financial statements.*
- (19) Consolidated financial statements should 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 *or none* of *the* shares in the subsidiary. Member States should be entitled to require that undertakings not subject to *control, but which* 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 *able* to exempt medium-sized groups from the obligation to prepare consolidated financial statements on the same cost/benefit grounds *unless any of the affiliated undertakings is a public-interest entity*.
- (22) Consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of *group* undertakings ■, 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 *and* 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. ■

- (23) Recognition and measurement principles applicable in the preparation of annual financial statements should *also* apply ■ to the preparation of consolidated financial statements. *However, Member States may permit principles stated in Chapter 2 of this Directive to be applied differently in annual financial statements compared to consolidated financial statements.*
- (24) Associated undertakings should be included in consolidated *financial statements* by means of the equity method. *The provisions on measurement of associated undertakings should in substance remain unchanged from the Seventh Council Directive 83/349/EEC, and the methods allowed under that current Directive can still be applied. Member States should also be able to* 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 *of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent. It is, however,* appropriate to provide that certain derogations may be granted ■ 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.

With regard to reporting financial statements the Commission is encouraged to explore means for a harmonised electronic format. 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 *statements* should have the duty to ensure that the financial information included in an undertaking's annual financial *statement and a group's consolidated financial statement gives* 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 *should not be understood as representing* a restriction of the scope of that opinion but *as clarifying* 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, *while* for many small undertakings the same persons are both shareholders and *managers* and, therefore, have limited need for third party assurance on the financial statements. *However, this Directive should not prevent Member States from imposing an audit on their small undertakings, taking into account the specific conditions and needs of small undertakings and the users of their 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 forests¹⁰ 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.

¹⁰ 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."

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)¹¹ and the Timber Regulation¹² 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 Criteria¹³ 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.

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:347:0001:0006:EN:PDF>
¹² 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.

¹³ EITI(2005), Extractive Industries Transparency Initiative, Source book, available at: <http://eiti.org/document/sourcebook>.

The report should incorporate disclosures on a country and project basis. *A project means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project. ‘Substantially interconnected’ legal agreements should be understood as a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the Government, which gives rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.*

- (33a) *Any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below 100,000 EUR within a financial year. This means that in the case of any arrangement providing for periodic payments or instalments (e.g. rental fees), the undertaking must consider the aggregate amount of the related periodic payments or instalments of the related payments in determining whether the threshold has been met for that series of payments, and accordingly, whether disclosure is required.*

(33b) Undertakings active in the extractive industry or the logging of primary forests should not disaggregate and allocate payments to projects for payments that are made for obligations levied on the undertakings at the entity level rather than the project level.

For instance, if an undertaking has more than one project in a host country, and that country's government levies corporate income taxes on the undertaking with respect to the undertaking's income in the country as a whole, and not with respect to a particular project or operation within the country, the undertaking would be permitted to disclose the resulting income tax payment or payments without specifying a particular project associated with the payment.

(33c) An undertaking active in the extractive industry or in the logging of primary forests generally need not disclose dividends paid to a government as a common or ordinary shareholder of that undertaking as long as the dividend is paid to the government under the same terms as to other shareholders; however, the undertaking will be required to disclose any dividends paid in lieu of production entitlements or royalties.

- (33d) In order to address the potential for circumvention of the disclosure requirements, Chapter 9 specifies that payments must be disclosed with respect to the substance of the activity or payment. Therefore, the undertaking cannot avoid disclosure, for example, by re-characterising an activity that would otherwise be covered by this Directive. In addition, payments or activities shall not be artificially split or aggregated with a view of evading such disclosure requirements.*
- (33e) In order to ascertain the circumstances in which undertakings should be exempted from Chapter 9 reporting requirements, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the identification of the criteria to be applied, when assessing whether third country reporting requirements are equivalent to the requirements of that Chapter. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. 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 the Council.*

- (33f) *In order to ensure uniform conditions for the implementation of Article 40a (3), implementing powers should be conferred upon the Commission. Those powers should be exercised in accordance with Regulation 182/2011 of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers.*
- (33g) The reporting regime should be subject to a review and a report by the Commission within *three years after the expiration of the deadline for transposition of this Directive by the Member States.*

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 *consider the extension of reporting requirements to additional industry sectors and whether the report should be audited.*

In addition, the review should 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 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 ■ .

- (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.

(39) *In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of correlation tables to be justified,*

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1
SCOPE, DEFINITIONS AND CATEGORIES OF UNDERTAKINGS

Article 1

Scope

1. The coordination measures prescribed by this Directive shall apply to ■ the laws, regulations and administrative provisions of the Member States relating to the types of undertakings listed:
 - (a) in Annex I;
 - (b) *in Annex II, of the direct or indirect members of the undertaking having otherwise unlimited liability, in fact, have limited liability, because that liability is limited by those members being of the type: ■*
 - (i) *listed in Annex I or*
 - (ii) *which are not governed by the law of a Member State but which have a legal form comparable to those listed in Annex I.*

2. *Member States shall inform the Commission within a reasonable period of time of changes in the types of undertakings in their national law that may affect the accuracy of Annex I or Annex II. In this case, 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 *undertakings within the scope of Article 1 which are*
- (a) *governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,*¹⁴

¹⁴ OJ L 145, 30.4.2004, p. 1.

- (b) *credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions other than those referred to in Article 2 of that Directive,*
- (c) *insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings, or*
- (d) *designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;*

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 *those* rights; The holding of part of the capital of another undertaking is presumed to constitute a participating interest, where it exceeds a percentage *threshold* fixed by the Member States which is lower *than* or equal to 20%;

3. 'Related party' *has* the same meaning as in *the* international accounting *standards* adopted *in accordance with* Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;
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 *minus any incidental reductions in the cost of acquisition*;
7. 'Production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. *Member States shall permit or require the inclusion of a* reasonable proportion of other *fixed or variable overhead* costs indirectly attributable to the item in question ■ 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 *changes* in the values of individual assets established at the balance sheet date, whether the *change* is final or not;
9. 'Parent undertaking' means an undertaking which controls one or more subsidiary undertakings;
10. 'Subsidiary undertaking' means an undertaking ■ controlled by a parent undertaking, *including any subsidiary undertaking of an ultimate parent undertaking*;
11. '*Group*' means a parent undertaking and all its subsidiary undertakings ■ ;
12. 'Affiliated undertakings' means any two or more undertakings ■ within a group;
13. 'Associated undertaking' means an undertaking in which another undertaking has a participating interest, and over whose operating and financial policies *that* 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;

14. *'Investment undertakings' means:*

- (a) *undertakings, the sole object of which is to invest their funds in various securities, real property and other assets, with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets,*
- (b) *undertakings associated with investment undertakings with fixed capital, if the sole object of those associated undertakings is to acquire fully paid shares issued by those investment undertakings without prejudice to the provisions of Article 20(1)(h) of Directive 77/91/EEC;*

15. *'Financial holding undertakings' means undertakings, the sole object of which is to acquire holdings in other undertakings and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, without prejudice to their rights as shareholders;*

16. *'Material' means the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items.*

Article 3

Categories of undertakings and groups

- 1. *In applying the option in Article 42a, Member States shall define micro undertakings as undertakings which on their balance sheet dates do not exceed the limits of two of the three following criteria:*
- (a) balance sheet total:
EUR 350 000;*
 - (b) net turnover: EUR 700 000;*
 - (c) average number of employees during the financial year: 10.*

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 4 000 000;

(b) net turnover: EUR 8 000 000;

(c) average number of employees during the financial year: 50.

Member States may define thresholds exceeding the thresholds in (a) and (b) of this paragraph. However, the thresholds shall not exceed EUR 6 000 000 for the balance sheet total and EUR 12 000 000 for the net turnover.

2. Medium-sized undertakings shall be undertakings which are not *micro undertakings or* small undertakings and *which* 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 ***groups consisting of*** parent and subsidiary undertakings ***to be included in a consolidation and*** 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 4 000 000;
 - (b) net turnover:
EUR 8 000 000;
 - (c) average number of employees during the financial year: 50.

Member States may define thresholds exceeding the thresholds in (a) and (b) of this paragraph. However, the thresholds shall not exceed EUR 6 000 000 for the balance sheet total and EUR 12 000 000 for the net turnover.

5. Medium-sized groups shall be *groups which are not small groups, which consist of* parent and subsidiary undertakings *to be included in a consolidation and 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 20 000 000;
 - (b) net turnover:
EUR 40 000 000;
 - (c) average number of employees during the financial year: 250.

- 5a. Large groups shall be groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, 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 ■ the set-off referred to in *the first subparagraph of* Article 25(3) ■ and *any* elimination *as a consequence of* Article 25(7) not *to* be effected, when the limits in paragraphs 4 *to* 5a 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 5a shall be that obtained by applying the exchange rate published in the Official Journal of the European Union *as at* the date of the entry into force of *any* Directive setting those amounts.

For the purposes of translation into the national currencies of those Member States which have not adopted the Euro, the amounts in Euro specified in paragraphs -1, 2, 3, 5 and 5a of this Article may be increased or decreased by not more than 5% in order to produce round sum amounts in the national currencies

8. Where on its balance sheet date, an undertaking *or a group* exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs -1 to 5a, 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 5a of this Article shall consist of the *total value of the* assets in A to D under ‘Assets’ in the layout prescribed in Article 9 *or of the assets in A to E in the layout prescribed in article 9a.*
- 9a. *When calculating the thresholds in paragraphs -1 to 5a, Member States may require the inclusion of income from other sources for undertakings for which "net turnover" is not relevant. Member States may require parent undertakings to calculate their thresholds on a consolidated basis rather than on an individual basis. Member States may also require affiliated undertakings to calculate their thresholds on a consolidated or aggregated basis where such undertakings have been established for the sole purpose of avoiding the reporting of certain information.*

10. In order to adjust for the effects of inflation, the Commission shall *at least every five years review* and, where *appropriate*, amend, by means of delegated acts in accordance with Article 42, the *thresholds* referred to in paragraphs *-1* to *5a* 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, ***such*** additional information ***as is necessary to comply with that requirement*** shall be given ***in the notes to the financial statements***.

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 ***disapplied*** in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. ***The disapplication of any*** such ***provision*** shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and **■** of its effect on the ***undertaking's*** assets, liabilities, financial position and profit or loss.

The Member States may define the exceptional cases in question and lay down the relevant special rules, which shall apply in those cases.

5. Member States may require undertakings other than small undertakings to disclose information in their annual financial statements which is additional to that required *in accordance with this Directive*.
6. *By way of derogation from paragraph 5 of this Article, Member States may require the preparation and publication of disclosures in the financial statements which go beyond the requirements of this Directive, provided that any such information is gathered under a single filing system and the disclosure requirement is contained in the national tax legislation for the strict purposes of tax collection.*
7. *The information required in accordance with paragraph 6 shall be included in the relevant part of the financial statements. Member States shall communicate to the Commission any additional information required in accordance with paragraph 6 upon the transposition of this Directive and when new requirements in accordance with paragraph 6 are introduced in national law.*

8. *Member States using electronic solutions for filing and publishing annual financial statements shall ensure that small undertakings are not required to publish in accordance with chapter 7, the additional disclosures required by national tax legislation, as referred to in paragraph 6.*

Article 4a

General disclosure

The document containing the financial statements should state the name of the undertaking and the information as prescribed under Article 5(a) and (b) of Directive 2009/101/EC.

Article 5

General Financial Reporting Principles

1. Items presented in the annual *and consolidated* 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 *measurement* 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 *in the course* of a previous *financial year* shall be recognised, even if such liabilities become apparent only between the *balance sheet date* and the date on which *the balance sheet* is drawn up, *and*
 - (iii) *all negative value adjustments* 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 *correspond* 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 *accounted for and* 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; *and*
- (j) *the requirements set out in this Directive regarding* recognition, measurement, presentation, *disclosure and consolidation need not be complied with when the effect of complying with them is immaterial.*

1a. Notwithstanding paragraph 1(g) Member States may in specific cases permit or require undertakings to perform set-off between asset and liability items, or between income and expenditure items provided that the amounts which are set-off are specified as gross amounts in the notes to the financial statement.

1b. Member States may exempt undertakings from the requirements of paragraph 1(h).

1c. Member States may limit the scope of paragraph 1 (j) to presentation and disclosures.

2. In addition to those amounts recognised *in accordance with* paragraph 1(c)(ii), Member States may permit or require *the* recognition of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or *in the course* of a previous *financial year*, even if such liabilities or losses become apparent only between *balance sheet date* and the date on which *the balance sheet* is drawn up.

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 *the* measurement of fixed assets at revalued amounts. Where national law provides for *the revaluation basis of* 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 *to that reserve* 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 *the* measurement of financial instruments, including derivative financial instruments, at fair value; *and*
 - (b) Member States may permit or require in respect of all undertakings or any classes of undertaking *the* 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 *such contracts*:
 - (a) **■** were entered into and continue to meet the undertaking's expected purchase, sale or usage requirements *at the time they were entered into and subsequently*;

(b) ■ were designated as commodity-based contracts at their inception; *and*

(c) ■ 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; *and*

(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; *and*

(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, *are* 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) *in the case of* financial instruments for which a reliable market can readily be identified, *the market value*. Where *the* 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) *in the case of* those instruments for which a reliable market cannot be readily identified, *a value resulting from generally accepted valuation models and techniques, provided that such* valuation models and techniques ■ 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 *in so far as measurement on that basis is possible*.

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, *except in the following cases, where* such a change shall be included directly in a fair value reserve ■ :
- (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 *a* fair value reserve. *That* 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 *that* principle shall, *however*, 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 *and the reasons for it* shall be disclosed in the notes to the financial statements **█** .

2. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, **9a**, 13 and 14 shall be shown separately in the order indicated. A more detailed subdivision of *those* items shall be authorized, ***subject to adherence to the prescribed layouts***. New items may be added provided that their contents are not covered by any of the items ***in the prescribed layouts***. The Member States may require such subdivision or new items ***or subtotals***.
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.

The Member States may permit that balance sheet and profit and loss account items that are preceded by Arabic numerals be combined where they are immaterial in amount for the purposes of the first sentence of Article 4(3) or where such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes to the financial statements. Such combination may be required by the Member States.

- 3a. *By way of derogation from article 8 paragraphs (2) and (3) Member States may limit the undertaking's possibilities to depart from the standard layouts provided for under Articles 9, 9a, 13 and 14 to the extent that this is necessary for the financial statements to be filed electronically.*
4. In respect of each balance sheet and profit and loss account item the figure *for the financial year to which the balance sheet and the profit and loss account relate and the figure* relating to the corresponding item for the preceding financial year shall be shown. *Where those figures are not comparable, the Member States may require the figure for the preceding financial year to be adjusted.* 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 *the treatment of participating interests in annual financial statements*:
- (a) Member States may permit or require *participating interests* to be accounted for ■ using the equity method as provided for in *Articles 27 and 27a*, 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 *participating interest* 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; *and*
 - (c) *where* the profit ■ attributable to the *participating interest and* 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 8a
Layout of the balance sheet

For the presentation of the balance sheet Member States shall require one and may prescribe both of the layouts set out in Articles 9 and 9a. If a Member State prescribes both layouts, it shall allow undertakings to choose which of the prescribed layouts to adopt.

Article 9
Layout of the balance sheet

I

Assets

A. Subscribed capital unpaid

of which there has been called

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

A1. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

B. Fixed assets

I. Intangible assets

1. Costs of **■** 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.

■

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 which 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 *point (b) of* Article 22(1 **■**) 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 *authorities*.
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 9a
Layout of the balance sheet

A. Subscribed capital unpaid

of which there has been called (unless national law provides for called-up capital to be shown under L, in which case the part of the capital called but not yet paid must appear either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under ‘Intangible assets’.

C. Fixed assets

I. Intangible assets

- 1. Costs of 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 C (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 company is linked by virtue of participating interests.*

5. *Investments held as fixed assets.*

6. *Other loans.*

D. 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 must be shown separately for each item.)

- 1. Trade debtors.*
- 2. Amounts owed by affiliated undertakings.*
- 3. Amounts owed by undertakings with which the company 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 under A).*
- 6. Prepayments and accrued income (unless national law provides that such items be shown under E).*

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

E. Prepayments and accrued income

(unless national law provides for such items to be shown under D(II) (6)).

F. Creditors: amounts becoming due and payable within one year

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 company is linked by virtue of participating interests.*
8. *Other creditors including tax and social security authorities.*
9. *Accruals and deferred income (unless national law provides for such items to be shown under K).*

G. Net current assets/liabilities

(taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).

H. Total assets less current liabilities

I. Creditors: amounts becoming due and payable after more than one year

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 company is linked by virtue of participating interests.*
8. *Other creditors including tax and social security authorities.*
9. *Accruals and deferred income (unless national law provides for such items to be shown under K)*

J. Provisions

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

K. Accruals and deferred income

(unless national law provides for such items to be shown under F (9) or I (9) or both).

L. Capital and reserves

I. Subscribed capital

(unless national law provides for called-up capital to be shown under this item, in which case the amounts of subscribed capital and paid-up capital must 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*

V. Profit or loss brought forward

VI. Profit or loss for the financial year

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 *from* that prescribed in Article 9 *and Article 9a*, provided that the information given is at least equivalent to that otherwise required by Article 9 *and Article 9a*.

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 *or revalued amount, where Article 6(1) applies*, 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 ■.

5a. *Value adjustments to fixed assets shall be* subject to the following:

- (a) *Member States may permit or require* value adjustments *to* 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) **measurement** at the lower of the values provided for in points (a) and (b) may not **continue** if the reasons for which the value adjustments were made have ceased to apply, **provided that 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.

Measurement at the lower value provided for in the first subparagraph may not **continue** if the reasons for which the value adjustments were made no longer apply.

7. *Member States may permit or require that interest* on capital borrowed to finance the production of fixed or current assets *are* 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, on the basis of the 'first in, first out' (FIFO) method, *the 'last in, first out' (LIFO) method, or a method reflecting generally accepted best practice.*
- 8a. *Where the amount repayable on account of any debt is greater than the amount received, Member States may permit or require that the difference be shown as an asset. It shall be shown separately in the balance sheet or in the notes to the financial statements. The amount of that difference shall be written off by a reasonable amount each year and completely written off no later than at the time of repayment of the debt.*

9.

- 1. *Intangible assets shall be written off over the useful economic life of the intangible asset.*

In exceptional cases where the useful life of goodwill and development costs cannot be reliably estimated such assets shall be written off within a maximum period set by the Member State. This maximum period cannot be shorter than 5 years and cannot exceed 10 years. An explanation of the period over which goodwill is written off shall be provided within the notes to the financial statements.

1. *Where national law authorizes the inclusion of costs of development under 'Assets' and the costs of development have not been completely written off, Member States shall require that 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.*

2. *Where national law authorizes the inclusion of formation expenses under ‘Assets’, they shall be written off within a period of five years. In that case, Member States shall require the provisions in the subparagraph 1 of Article 11(9) to apply to formation expenses.*
3. In exceptional cases the Member States may permit derogations from the provisions of the preceding *subparagraphs*. Such derogations and the reasons for them shall be disclosed in 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 *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.

At the balance sheet date, a provision shall represent the best estimate of the expenses likely to be incurred, or, in the case of a liability, of the amount required to meet that liability. Provisions shall not be used to adjust the values of assets.

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.
6. 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 formation expenses and* 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.*** Profit or loss for the financial year.



Article 16

Simplifications for small and medium-sized undertakings

1. Member States **may** permit small undertakings to draw up abridged balance sheets showing only those items **in Articles 9 and 9a** preceded by letters and roman numerals **I**, disclosing separately :
 - (a) the information required **in article 9** in brackets in C (II) under ‘Assets’ and C under ‘Capital, reserves and liabilities’, but in **aggregate** for each; **or**
 - (b) **the information required in article 9a in brackets in D (II).**

2. Member States **may** 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 16a

General provisions concerning the notes to the financial statements

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 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 █ disclose information in respect of the following matters:
 - (a) accounting policies adopted █ ;
 - (b) where fixed assets are measured at revalued amounts, a table showing:
 - (i) movements in the revaluation reserve in the financial year, with an explanation of the tax treatment of items therein, *and*
 - (ii) the carrying amount in the balance sheet that would have been recognised had the fixed assets not been revalued █ ;

- (c) *where financial instruments or assets other than* financial instruments are measured at fair value ■ :
- (i) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with *point (b) of* Article 7(7) ■ ,
 - (ii) *for each* category of financial *instrument or asset other than financial* instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in ■ fair value *reserves*,
 - (iii) for each class of derivative financial *instrument*, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows, *and*
 - (iv) a table showing movements in ■ fair value *reserves* 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;

(da) 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;

(db) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence;

■

(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; **and**

■

(ha) the average number of employees during the financial year.

1a. *Member States may require mutatis mutandis that small undertakings shall disclose information as required in points (a), (n), (r), (s) and (t) of Article 18 (1).*

When applying the preceding subparagraph, the information required in point (r) of Article 18 shall be limited to the nature and business purpose of such arrangements.

When applying the first subparagraph, the disclosure of the information required in point (t) of Article 18 shall be limited to transactions entered into with the parties listed in subparagraph 4 of that point.

2. Member States shall not require further disclosure for small undertakings beyond what is required *or permitted* by this Article.

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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, **disclose** 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; **and**
 - (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), *and*
 - 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, *and*
 - 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 administrative, managerial and supervisory bodies by reason of their responsibilities and any commitments arising or entered into in respect of retirement pensions of former members of those bodies, with an indication of the total for each category of body.

Member States may waive the requirement to *disclose such* information where *its disclosure would make* it possible to identify the *financial* position of a specific member of such a body;

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- (f) the average number of *employees* 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) *where a provision for deferred tax is recognised in the balance sheet*, the deferred tax balances at the end of the financial year, and the movement *in those balances* 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 *the* authorized capital, without prejudice as far as the amount of *that* capital is concerned to *point (e) of* Article 2(1) ■ of Directive 2009/101/EC or to *point (c) of Article 2 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 █ profit or treatment of █ loss, *or where applicable*, the appropriation of the profit or treatment of the loss;

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- (r) *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 provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for the purposes of assessing the financial position of the undertaking;*
- (s) *the nature of material events arising after the balance sheet date which are not reflected in the profit and loss account or balance sheet, and the financial effect of those events; and*

- (t) *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. 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.*

Member States may permit or require that only transactions with related parties that have not been concluded under normal market conditions are disclosed.

Member States may permit that transactions entered into between one or more members of a group are not disclosed, provided that subsidiaries which are party to the transaction are wholly owned by such a member.

Member States may permit that a medium-sized undertaking limits the disclosure of transactions with related parties to transactions entered into with:

- (i) owners holding a participating interest in the undertaking;*
- (ii) undertakings in which the undertaking itself has a participating interest; and*
- (iii) members of the administrative, management or supervisory bodies of the undertaking.*

2. Member States shall not be required to apply point (h) *of paragraph 1* to an undertaking *which is a parent undertaking governed by their national laws* in the following cases:

- (a) where the undertaking *in which that parent undertaking holds a participating interest for the purposes of point (h) of paragraph 1* 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 *that participating interest has* been dealt with by *that* 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 *those* 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; *and*
 - (b) the total fees for the financial year charged by *each* statutory auditor or audit firm for the statutory audit of the annual financial statements, and the total fees charged by *each* 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 *point (a) of* paragraph 1 **■** 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.

- 2a. *Member States may provide that paragraph 1(b) shall not apply to the annual financial statements of an undertaking where that undertaking is included within the consolidated financial statements required to be drawn up under Article 23, provided that such information is given in the notes to the consolidated financial statements.*

CHAPTER 5 MANAGEMENT REPORT

Article 20

Contents of the management report

1. The management report shall include ■ 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:

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- (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; *and*

- (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; *and*
 - (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 *they require* the information referred to in Article 22(2) of Directive 77/91/EEC concerning the acquisition by an undertaking of its own shares *be* given in the notes to the financial statements.
- 4. Member States may exempt *small and* 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. *Undertakings within the meaning of article 2, paragraph 1(a)* 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 ■ the following, *where applicable*:
 - (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 *over and above* the requirements *of* 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 *details of* 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 *points* (c), (d), (f), (h) and (i) of *Article 10(1) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids*¹⁵, where the undertaking is subject to that Directive;
- (e) unless the information is already fully provided for in national law, *a description of the operation of the shareholder meeting and its key powers and a description of shareholders' rights and how they can be exercised; and*
- (f) the composition and operation of the administrative, management and supervisory bodies and their committees.

¹⁵ OJ L 142, 30.4.2004, p. 12.

2. Member States may permit the information required by paragraph 1 of this Article to be set out in :

- (a) a separate report published together with the management report *in the manner set out in Article 30; or*
- (b) a document publicly available on the undertaking's website, *to which reference is made in the management report.*

That separate report or that document referred to in paragraph (a) and (b) may cross-refer to the management report, where the information required by point (d) of paragraph 1 of this Article is made available in that management report.

2a. *The statutory auditor or audit firm shall express an opinion in accordance with the second subparagraph of Article 34(1) regarding information prepared under points (c) and (d) of paragraph 1 of this Article and shall check that the information referred to in points (a), (b), (e) and (f) of paragraph 1 of this Article has been produced.*

3. ■ Member States may exempt *undertakings referred to in paragraph 1* 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 *points (a), (b), (e) and (f) of paragraph 1 of this Article*, unless such *undertakings* 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.

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 *the parent undertaking is an undertaking to which the co-ordination measures prescribed by this Directive apply by virtue of Article 1(1)*.

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) ■ :
 - (a) ■ has a majority of the shareholders' or members' voting rights in *another* undertaking (*a subsidiary undertaking*);
 - (b) ■ has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of *another* undertaking (*a subsidiary undertaking*) and is at the same time a shareholder in or ■ member *of that undertaking*;
 - (c) ■ has the right to exercise a dominant influence over *an* undertaking (*a subsidiary undertaking*), of which it is a shareholder or ■ member, pursuant to a contract entered into with *that* undertaking ■ or to a provision in its memorandum or articles of association, where the law governing *that subsidiary* undertaking ■ permits *its being subject to* such contracts or provisions.

■

A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or

■

- (f) ■ is a shareholder in or member of *an undertaking*, and:
- (i) a majority of the members of the administrative, management or supervisory bodies of *that* undertaking (*a subsidiary undertaking*) who have held office during the financial year, during the *preceeding* 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 *that* undertaking (*a subsidiary undertaking*), a majority of shareholders ■ ' or members ■ ' voting rights *in that undertaking*. *The Member States may introduce more detailed provisions concerning the form and contents of such agreements.*

Member States shall prescribe at least the arrangements referred to in point (ii). They may subject the application of point (i) to the requirement that the voting rights represent at least 20% of the total.

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

1a. *Apart from the cases mentioned in paragraph 1 the Member States may require any undertaking governed by their national law to draw up consolidated financial statements and a consolidated management report if:*

(a) that undertaking (a parent undertaking) has the power to exercise, or actually exercises, dominant influence or control over another undertaking (the subsidiary undertaking); or

(b) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.

2. For the purposes of *points* (a), (b) and *(f) of paragraph 1*, 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 *points* (a), (b) and *(f) of paragraph 1*, 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 *of that parent*; or
 - (b) attaching to shares
 - (i) held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or
 - (ii) 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 *point (a) and (f) of paragraph 1*, 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.

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 *or 1a*, are managed on a unified basis *in accordance with*:
 - (i) a contract concluded with that undertaking or provisions in the memorandum, or
 - (ii) articles of association of those *other* 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 *or 1a*, consist *in the majority* of the same persons in office during the financial year and until the consolidated financial statements are drawn up.
8. Where the *Member State option referred to in* paragraph 7 is *exercised, the* undertakings described in that paragraph *and* all of their subsidiary undertakings *shall* 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.

9. **Paragraph 5** of this Article and Articles 24(1), 24(2), 24(10), **24(11 new)** and 25 to 29 shall apply to the consolidated financial statements and the consolidated management report referred to in **paragraph 7 of this Article, subject to the following modifications:**

- (a) **references** to parent undertakings shall be understood to refer to all of the undertakings specified in **paragraph 7 of this Article; and**
- (b) **without** prejudice to Article 25(3), 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 **paragraph 7 of this Article.**

Article 24

Exemptions from consolidation

1. Small groups shall be **exempted** 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 **exempt** 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.

4. Notwithstanding paragraphs *1* and *2* of this Article, a Member State shall, *in the following cases*, exempt from the obligation to draw up consolidated financial statements and a consolidated management report any parent undertaking (*the exempted undertaking*) governed by its national law which is also a subsidiary undertaking, *including a public interest entity unless this public interest entity falls under Article 2 paragraph 1(a)*, if its own parent undertaking is governed by the law of a Member State *and*:
- (a) *the parent undertaking of the exempted* undertaking holds all of the shares in the exempted undertaking. The shares in *the exempted* undertaking held by members of its administrative, management or supervisory bodies pursuant to *a legal obligation* *or* an obligation in *its* memorandum or articles of association shall be ignored for this purpose; *or*
 - (b) *the parent undertaking of the exempted* undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of *the exempted* undertaking have approved the exemption.
5. *The exemptions* referred to in paragraph 4 shall *comply* 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, ***in accordance with*** the law of the Member State by which ***that*** parent undertaking is governed, in accordance with this Directive ***or international accounting standards adopted in accordance with Regulation (EC) No 1606/2002***;
- (c) ***in relation to the exempted undertaking the following items shall be published in the manner prescribed by the law of the Member State by which that exempted undertaking is governed in accordance with Article 30:***
- (i) the consolidated financial statements referred to in point (a) and the consolidated management report referred to in point (b),
 - (ii) ***the audit report, and***
 - (iii) where appropriate, the appendix referred to in paragraph 7.
- That*** Member State may require that ***the*** documents ***referred to in points (i), (ii) and (iii)*** 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);

and

- (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 1, 2 and 4 of this Article █, 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, *including a public interest entity unless this public interest entity falls under Article 2 paragraph 1(a)* 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 *provided further:*

(a) 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 █ ;

(b) that *the minimum* proportion *referred to in point (a)* *does not exceed the following limits:*

- (i) *10% of the subscribed capital in the case of* public limited liability companies and █ limited partnerships with share capital █ ; *and*

(ii) *20% of the subscribed capital in the case of* undertakings of other types.

(c) *that the* Member State *does* not make *the exemption subject to:*

(i) *the* condition ■ that the parent undertaking, which prepared the consolidated financial statements *referred to* in paragraph 5(a)■ , *is* governed by *the* national law *of the* Member State *granting the* exemption■ , *or*

(ii) conditions *relating to* the preparation and auditing of *those* financial statements■ .

7. A Member State may make the exemptions provided for in paragraphs 4 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 *apply without prejudice to* Member State■ 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 *or* their representatives; or

(ii) by an administrative or judicial authority for its own purposes.

9. Without prejudice to paragraphs **1, 2, 4 and 6** of this Article , a Member State **which provides for exemptions under paragraphs 4 and 6 of this Article, may also** 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, **including public interest entity unless this public interest entity falls under Article 2 paragraph 1(a)**, if all of the following conditions are **satisfied**:

- (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:
 - (i) in accordance with this Directive; or
 - (ii) **in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002; or**

- (c) 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) .

11. Without prejudice to Article 5(1)(b), Article 22, Article 24(1) and Article 24(2), any parent undertaking, including a public-interest entity, shall be exempted from the obligation imposed in Article 23 if:

- (a) *it only has subsidiary undertakings, which are immaterial, both individually and collectively; or*
- (b) *all its subsidiary undertakings can be excluded from consolidation according to paragraph 10.*

Article 25

The preparation of consolidated financial statements

1. Chapters 2 and 3 shall apply in respect of 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) *except in the case of shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation, which must be treated as own shares in accordance with Chapter 3*, that set-off shall be effected on the basis of book values as they stand on the date on which *those* undertakings are included in a consolidation for the first time. Differences arising from *that* set-off 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;
 - (d) *the* methods used to calculate the *value of* goodwill and any significant changes in *value in* relation to the preceding financial year shall be explained in the notes to the financial statements;
 - (e) *where* the offsetting of positive and negative goodwill is authorized by a Member State, **■** the notes to the financial statements *shall include an analysis of the goodwill*;
 - (f) *negative* goodwill may be transferred to the consolidated profit and loss account where such a treatment is in accordance with the principles *set* out in Chapter 2.
4. *Where* shares in subsidiary undertakings included in the consolidation *are* held by persons other than *those* undertakings, *the amount attributable to those shares* shall be shown *separately* 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 *the* shares *referred to in paragraph 4* shall be shown *separately* 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 *they* were a single undertaking. *In particular, the following shall be eliminated from the consolidated financial statements:*
- (a) *debts and claims between the undertakings;*
 - (b) *income and expenditure relating to transactions between the undertakings; and*
 - (c) *profits and losses resulting from transactions between the undertakings, where they are included in the book values of assets.*
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, *permit or* require ■ 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, *provided that:*

- (a) that fact shall be disclosed in the notes to the consolidated financial statements *and* reasons *given;*

- (b) account shall be taken or disclosure made of important events concerning the assets and liabilities, the financial position **and** 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; **and**
- (c) **where** an undertaking's balance sheet date precedes **or follows** 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. **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 ■ 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 **are applied** 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 ■ reasons ■ given.

12. Where assets and liabilities included in consolidated financial statements have been measured by undertakings included in the consolidation using bases differing from those used for the *purpose of the* consolidation, those assets and liabilities shall be remeasured in accordance with the bases used for the consolidation. Departures from this *requirement* shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the consolidated financial statements and reasons given.
13. Deferred tax balances shall be recognised on consolidation provided that it is probable that a charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.
14. Where assets 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 25a

Business combinations within a group

1. *A Member State may permit or require the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that the undertakings in the business combination are ultimately controlled by the same party both before and after the business combination, and that control is not transitory.*
2. *Any difference arising under paragraph (1) shall be added to or deducted from consolidated reserves, as appropriate.*
3. *The application of the method described in paragraph (1), the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the consolidated financial statements.*

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 **(11) 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 ***with an appropriate heading***.
2. When this Article is applied for the first time ***to an associated undertaking, that*** associated undertaking shall be shown in the consolidated balance sheet ***either:***
 - (a) ***at its book value calculated in accordance with the valuation rules laid down in Chapters 2 and 3. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest in that associated undertaking 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; or***
 - (b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by the participating interest ***in that associated undertaking***. The difference between that amount and the book value calculated in accordance ***with the valuation rules laid down in*** 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.

(c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes to the consolidated financial statements must indicate whether (a) or (b) has been used.

(d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they 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 *(a) or (b) above*, be *revalued by* the methods used for consolidation. Where such *revaluation* has not been carried out that fact *must* be disclosed in the notes to the consolidated financial statements. A Member *State* may require such *revaluation*.

4. The *book value referred to in paragraph 2 (a) above, or the* amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 *(b) above*, 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 *that* participating interest; *it* shall be reduced by the amount of the dividends *relating to that participating interest*.

5. ***In so far as*** the positive difference referred to in paragraph 2 ***(a) or (b) above*** cannot be related to any category of assets or liabilities it shall be ***dealt with*** in accordance with ***Articles 9, 11(5)(d), 11(9) subparagraph -1*** and 25(3)(c).
6. The proportion of the profit or loss of the associated undertakings attributable to the participating interests ***in such associated undertakings*** shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.
7. ***The eliminations referred to in Article 25(7) shall be effected in*** so far as the facts are known or can be ascertained.
8. Where an associated undertaking draws up consolidated financial statements, ***the foregoing provisions*** shall apply to the capital and reserves shown in such consolidated financial statements.
9. ***This Article need not be applied where the participating interest in the capital of the associated undertaking is not material.***

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 ***in a way which facilitates the assessment of the financial position of the undertakings included in the consolidation taken as a whole***, taking account of the essential adjustments resulting from the particular characteristics of consolidated financial statements as compared to annual financial statements, ***including the*** following :

- (a) *in* disclosing transactions between related parties, transactions between related ***parties included in a consolidation that are eliminated on consolidation shall not be included***;
- (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; ***and***
- (c) *in* disclosing the amounts of emoluments and advances and credits granted to members of the administrative, managerial and supervisory bodies, only amounts granted ***by the parent undertaking and its subsidiary undertakings*** to members of the administrative, managerial and supervisory bodies of the parent undertaking shall be disclosed **█** .

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

- (a) ***in relation to undertakings included in the consolidation:***
 - (i) ***the names*** and registered offices of ***those*** undertakings **█** ,

- (ii) the proportion of the capital held in *those* undertakings , 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
- (iii) *information* as to which of the conditions referred to in Articles 23(1), (1a) and (7) following *the* application of Article 23(2), (3) and (4), has formed the basis on which the consolidation has been carried out. *That* 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 *on the grounds of immateriality* pursuant to Article 5(1)(j) and *Article 24(11) 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 *under* Article 26, the factors on which joint management *of those undertakings* 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; *and*
- (d) *in relation to* 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:
- (i) *the name and registered office of those undertakings,*
 - (ii) *the* proportion of the capital held,
 - (iii) 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 .

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.

3. Member States may allow the information required by points (a) to (d) *of paragraph 2* 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 *consolidated* financial statements. Member States may also allow *that* information to be omitted when its nature is such that *its disclosure* 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 *consolidated* financial statements.

Article 29

The consolidated management report

1. The consolidated management report shall, *as a minimum*, in addition to any other information required under other provisions of this Directive, set out **■** 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 *in a way which facilitates the assessment of the position of* 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 *parent* undertaking, by subsidiary undertakings of that *parent* undertaking or by a person acting in his own name but on behalf *of any* 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 *within a reasonable period of time which shall not exceed 12 months after the end of the financial year* 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, *where* a copy of all or part of any such report *can be easily obtained* upon request *at a price* ■ *not exceeding* its administrative cost.

2. ■ Member *States may exempt* an undertaking referred to in Annex II *to which the coordination measures prescribed by this Directive apply by virtue of Article 1(1)(b)* 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 established as one of the types of undertaking listed in Annex **II** 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, **as a minimum**, make those documents available to the public at its head office **and a copy** shall be **provided** upon request, **the** price of **which** 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 **Articles 9 and 9a and** 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) and (4), 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' **in Article 9,**

- (ia) C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3) and (4), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 9a,*
- (ii) the information required in brackets in C (II) under ‘Assets’ and C under ‘Capital, reserves and liabilities’ *in Article 9* 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’,
- (iii) the information required in brackets in D (II) in Article 9a, in total for all the items concerned, and separately for D (II) (2) and (3);*
- (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), *in so far as that Article* relates to the profit and loss account, the management report and the opinion of the statutory auditor *or audit firm*.

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 *or audit firm* has drawn up his opinion. They shall be accompanied by the full text of the *audit report* .
2. If the annual financial statements are not published in full, *the abridged version of those financial statements, which shall not be accompanied by the audit report, shall:*
 - (a) *indicate* that the version published is abridged ;
 - (b) *refer* to the register in which the financial statements have been filed in accordance with Article 3 of Directive 2009/101/EC *or, where* the financial statements have not yet been filed, *disclose that fact;*

- (c) *disclose* whether an unqualified, qualified or adverse audit opinion was expressed *by the statutory auditor or audit firm*, or whether the statutory auditor *or audit firm* *was* unable to express an audit opinion;
- (d) *disclose* whether the *audit* report included a reference to any matters, to which the statutory auditor *or audit firm* 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 *an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that:*
 - (a) the annual financial statements, the management report and, when provided separately, the corporate governance statement ; *and*
 - (b) *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, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

2. Member States shall ensure that their laws, regulations and administrative provisions on liability, *at least towards the undertaking*, apply to the members of the administrative, management and supervisory bodies of the undertakings for breach of the duties referred to in *paragraph 1*.

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 *statutory auditors or audit firms* approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC of the European Parliament and of the Council¹⁶.

The statutory auditor(s) *or audit firm(s)* shall also

- (a) express an opinion *on*:

¹⁶ OJ L 157, 9.6.2006, p. 87.

(i) *whether* the management report *is consistent* with the financial statements for the same financial year,

(ii) *whether the management report has been prepared in accordance with the applicable legal requirements, and*

(b) *shall state whether, in the light of the knowledge and understanding of the undertaking and its environment obtained in the course of the audit, he, she or it has identified material misstatements in the management report and shall give an indication of the nature of any such misstatements.*

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

Article 35

Content of the audit report

Article 28 of Directive 2006/43/EC of the European Parliament and of the Council is hereby amended as follows:

Paragraphs (1) and (2) are replaced by the following:

"1. The *audit* report shall include:

- (a) an introduction which shall, at ***a minimum***, 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 ***a minimum***, identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion, ***which shall be either unqualified, qualified or an adverse opinion and*** shall state clearly the opinion of the statutory auditor as to :
 - (i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework, and,
 - (ii) where appropriate, whether the annual financial statements comply with statutory requirements

If the statutory auditor is unable to express an audit opinion, ***the report shall contain*** 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) the opinion and statement referred to in the second subparagraph of Article 34 (1) of Directive XXXX¹⁷.

2. The report shall be signed and dated by the statutory auditor. *Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm. In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any case the name(s) of the person(s) involved shall be known to the relevant competent authorities.*
3. The report of the statutory auditor *or audit firm* 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 *or audit firm* 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 *or audit firms* required by this Article may be combined."

¹⁷ *The number of this Directive (Accounting Directive) to be added.*

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, *prospection*, discovery, development, and extraction of minerals, oil, natural gas deposits *or other materials, within the economic activities listed* in Section B-Divisions 05 to 08 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council¹⁸.
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 Council¹⁹, 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.

¹⁸ OJ L 393, 30.12.2006, p. 1.

¹⁹ OJ L 393, 30.12.2006, p. 1.

4. *"Project" means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project.*
5. *"Payment" means an amount paid, whether in money or in kind, for activities as described in paragraphs 1 and 2, of the following types:*
- (a) production entitlements;*
 - (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;*
 - (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; and*
 - (g) payments for infrastructure improvements.*

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. ***That*** 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; ***and***
 - (b) the payments to governments ***made by the*** undertaking are included in the consolidated report on payment to governments drawn up by ***that*** parent undertaking in accordance with Article 39.

Article 38

Content of the report

1. ***Any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below EUR 100,000 within a financial year.***

I

2. *The report shall disclose the following information in relation to activities as described in paragraphs 1 and 2 of Article 36 in respect of the relevant financial year:*

- (a) *the total amount of payments made to each government;*
- (b) *the total amount per type of payment as specified in points (a) to (g) of Article 36(5) made to each government;*
- (c) *where those payments have been attributed to a specific project the total amount per type of payment as specified in points (a) to (g) of Article 36(5), made for each such project and the total amount of payments for each such project.*

Payments made by the undertaking for obligations levied at entity level may be disclosed at the entity level rather than at project level.

3. Where payments in kind are made to a government, they shall be reported in value *and, where applicable*, in volume. *Supporting* notes shall be provided to explain how their value has been determined.

4. *The disclosure of the payments referred to in this article shall reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities may not be artificially split or aggregated to avoid the application of this Directive.*

5. *In the case of those Member States which have not adopted the Euro, the Euro threshold identified in paragraph 4 shall be converted into national currency by*
- (a) applying the exchange rate published in the Official Journal of the European Union as at the date of the entry into force of any Directive fixing that threshold; and*
 - (b) rounding to the nearest hundred.*

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.

A parent undertaking is considered to be active in the extractive industry or the logging of primary forests if any of its subsidiary undertakings are active in the extractive industry or the logging of primary forests.

The consolidated report shall only include payments resulting from extractive and/or logging operations.

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; *and*
 - (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, *including a public-interest entity*, 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) *extremely rare cases where* 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;
- (c) *the shares of that undertaking are held exclusively with a view to their subsequent resale.*

The above exemptions shall apply only if they are also used for the purposes of the consolidated financial statements.

Article 40

Publication

1. 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.
2. *Member States shall ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is drawn up and published in accordance with the requirements of this Directive.*

Article 40a
Equivalence Criteria

1. *The Commission shall be empowered to adopt delegated acts in accordance with Article 42 identifying the criteria to be applied when assessing, for the purpose of paragraph 3, the equivalence of third country reporting requirements and the requirements of this Chapter.*

2. *The criteria identified by the Commission in accordance with paragraph 1 must:*
 - (a) *include the following:*
 - (i) *target undertakings;*
 - (ii) *target recipients of payments;*
 - (iii) *payments captured;*
 - (iv) *attribution of payments captured;*
 - (v) *breakdown of payments captured;*
 - (vi) *triggers for reporting on a consolidated basis*

(vii) reporting medium;

(viii) frequency of reporting; and

(ix) anti-evasion measures; and

(b) otherwise be limited to criteria which facilitate a direct comparison of third country reporting requirements with the requirements of this Chapter.

3. Undertakings referred to in Articles 37 and 39 that prepare and make public a report complying with third country reporting requirements assessed, in accordance with Article 40b, as equivalent to the requirements of this Chapter are exempt from the requirements of this Chapter except for the obligation to publish this report as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC.

Article 40b

Application of equivalence criteria

The Commission shall be empowered to adopt implementing acts identifying those third country reporting requirements which, after applying the equivalence criteria identified in accordance with Article 40a, it considers equivalent to the requirements of this Chapter. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42aa(2).

Article 41

Review

The Commission shall review and report on the implementation and *effectiveness* of this Chapter, in particular as regards the scope of, *and compliance with* the reporting obligations and the modalities of the reporting on a project basis.

The review should take into account international developments, *in particular with regard to enhancing transparency of payments to governments, assess the impacts of other international regimes* and consider the effects on competitiveness and security of energy supply. It should be completed at the latest *three* years after the *expiration of the deadline for transposition* of this Directive *by the Member States as set out in Article 49*.

The report shall be submitted to the European Parliament and the Council, together with a legislative proposal, if appropriate. *The report shall consider the extension of the reporting requirements to additional industry sectors and whether the report should be audited. The report shall also consider the disclosure of additional information on the average number of employees, the use of subcontractors and any pecuniary sanctions administered by country.*

In addition, the report shall analyse the feasibility of the introduction of an obligation for all EU issuers to carry out due diligence when sourcing minerals to ensure that supply chains have no connection to conflict parties and respect the EITI and OECD recommendations on responsible supply chain management.

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 **40a(1)** shall be conferred on the Commission for an *indefinite* 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 **40a(1)** 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 *that* 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 ***under*** Article 1(2), Article 3(10) ***or*** Article ***40a(1)*** 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 42aa

Committee Procedure

1. ***The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***
2. ***Where reference is made to this paragraph, Article 5 (examination procedure) of Regulation (EU) No 182/2011 shall apply.***

Article 42a

Exemptions for micro undertakings

1. ***Member States may exempt micro undertakings from any or all of the following obligations:***
 - (a) ***the obligation to present 'Prepayments and accrued income' and 'Accruals and deferred income';***

- (b) where a Member State makes use of the option in point (a) of this paragraph, it may permit those undertakings, only in respect of other charges as referred to in point (b)(vi) of paragraph 2, to depart from Article 5(1)(d) with regard to the recognition of 'Prepayments and accrued income' and 'Accruals and deferred income', provided that this fact is disclosed in the notes to the financial statements or, in accordance with point (c) of this paragraph, at the foot of the balance sheet;*
- (c) the obligation to draw up notes to the financial statements in accordance with Article 17, provided that the information required by Article 17(1)(d) and (d1) of this Directive and by 22(2) of Directive 77/91/EEC is disclosed at the foot of the balance sheet;*
- (d) the obligation to prepare a management report in accordance with Chapter 5, provided that the information required by Article 22(2) of Directive 77/91/EEC is disclosed in the notes to the financial statements or, in accordance with point (c) of this paragraph, at the foot of the balance sheet;*
- (e) the obligation to publish annual financial statements in accordance with Chapter 7 of this Directive, provided that the balance sheet information contained therein is duly filed, in accordance with national law, with at least one competent authority designated by the Member State concerned. Whenever the competent authority is not the central register, commercial register or companies register, as referred to in Article 3(1) of Directive 2009/101/EC, the competent authority is required to provide the register with the information filed.*

2. *Member States may permit micro undertakings:*

- (a) to draw up only an abridged balance sheet showing separately at least those items preceded by letters in Article 9 or 9a, where applicable. In cases where point (a) of paragraph 1 applies, items D under 'Assets' and D under 'Liabilities' in Article 9 or items E and K in article 9a shall be excluded from the balance sheet;*
- (b) to draw up only an abridged profit and loss account showing separately at least the following items, where applicable:*
 - (i) net turnover;*
 - (ii) other income;*
 - (iii) cost of raw materials and consumables;*
 - (iv) staff costs;*
 - (v) value adjustments;*
 - (vi) other charges;*
 - (vii) tax;*
 - (viii) profit or loss.*

3. *Member States shall not permit or require the application of Article 7 to any micro undertaking making use of any of the exemptions provided for in paragraphs 1 and 2.*
4. *In respect of micro undertakings, annual financial statements drawn up in accordance with paragraphs 1, 2 and 3 shall be regarded as giving the true and fair view required by Article 4(3), and consequently Article 4(4) shall not apply to such financial statements.*
5. *If point (a) of paragraph 1 applies, the balance sheet total referred to in Article 3(-1)(a) shall consist of the assets referred to in items A to C under 'Assets' in Article 9 or items A to D in Article 9a.*
- 5a. *Without prejudice to the provisions of this Article, Member States shall ensure that micro undertakings are otherwise regarded as small undertakings.*
6. *Member States shall not make available the derogations provided for in paragraphs 1, 2 and 3 in respect of investment undertakings or financial holding undertakings.*

- 6a. *Member States, which at the date of entry into force of this Directive, have brought into force laws, regulations or administrative provisions in compliance with Directive 2012/6/EU, may be exempted from the requirements set out in Article 3(7) with regards to the transposition in national currencies of thresholds set out in Article 3(-1) when applying the first sentence of Article 49(1).*
7. *Not later than ...* the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation of micro undertakings taking account in particular of the situation at national level regarding the number of undertakings covered by the size criteria and the reduction of administrative burdens resulting from the exemption from the publication requirement.*

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, *in respect of each financial year in which the exemption is applied*, declared their agreement to the exemption from such obligation;■

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; *and*
7. the consolidated financial statements referred to in *paragraph* (5) of this Article, the consolidated management report, and the *audit* report 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.

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

1. Member States may require undertakings referred to in *Article 1(1)(a)* which are governed by their law and which are members having unlimited liability of any undertaking referred to in Article 1(1)(b) ("*the undertaking* concerned"), to draw up, have audited and publish, with their own financial statements, the financial statements of the *undertaking* concerned in *accordance* with the provisions of this Directive, *in which* case, the requirements of this Directive shall not apply to the *undertaking* concerned.
2. Member States shall not be required to apply the requirements of this Directive to the *undertaking* concerned where:
 - (a) the financial statements of the *undertaking* concerned are drawn up, audited and published in *accordance* with the provisions of this Directive by an undertaking which :
 - (i) is a member having unlimited liability of that *undertaking concerned*, and
 - (ii) is governed by the law of another Member State;

(b) the **undertaking** concerned is included in consolidated financial statements drawn up, audited and published in accordance with this Directive by :

(i) a member having unlimited liability, or

(ii) where the **undertaking** concerned is included in the consolidated financial statements of a larger body of undertakings drawn up, audited and published in conformity with this Directive, 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 *the* cases referred to in paragraph 2, the **undertaking** concerned shall, *upon request*, reveal the name of the **undertaking** publishing the financial statements .

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 *its* national laws which are parent undertakings, *provided that* the following conditions are fulfilled:

1. the parent undertaking draws up consolidated financial statements in accordance with this Directive and is included in *those*

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; *and*
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, ■ Member States shall not make the simplifications and exemptions set out in this Directive available to public -interest entities. *A public-interest entity shall be treated as a large undertaking regardless of its net turnover, balance sheet total or average number of employees during the financial year.*

Article 47

Penalties

Member States shall *provide for* penalties applicable to infringements of the national provisions adopted *in accordance with* 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 [...] ²⁰ at the latest. They shall forthwith communicate to the Commission the text of those provisions [] .

Member States may provide that the provisions referred to in the first subparagraph shall first apply to financial statements for financial years beginning on 1 January 201__ ²¹ or during calendar year 201__.

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.

²⁰ *Two years after entry into force*

²¹ *Please insert the year which is the next one after the transposition deadline.*

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

For the Council

The President

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, ***cooperative company with limited liability (CVBA)***;

- *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, *société par actions simplifiée*;

- *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 acções, a sociedade por quotas de responsabilidade limitada;

- *Romania:*

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

- *Slovenia:*

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

- *Slovakia:*
akciová spoločnosť, spoločnosť s ručením obmedzeným;
 - *Finland:*
yksityinen osakeyhtiö/***privat aktiebolag, julkinen***
osakeyhtiö/publikt 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, ***cooperative company with unlimited liability (CVOA)***;

- *Bulgaria:*

събирателно дружество, командитно дружество;

- *the Czech Republic:*

veřejná obchodní společnost, komanditní společnost ;

- *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,
egyéni cég;
- *Malta:*

Soċjeta f'isem 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 **Gesellschaft**, 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 TABLE²²

| 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) |
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²² *The correlation table is to be updated by the Commission.*

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