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EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2011/0308(COD)

21.3.2012

*****I**

DRAFT REPORT

on the 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
(COM(2011)0684 – C7-0393/2011 – 2011/0308(COD))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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
(COM(2011)0684 – C7-0393/2011 – 2011/0308(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0684),
 - having regard to Article 294(2) and Article 50(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0393/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on International Trade and the Committee on Economic and Monetary Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1
Proposal for a directive
Recital 3

Text proposed by the Commission

(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

Amendment

(3) The coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases, used therein and their publication in

respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than one Member State and, on the other hand, they offer no safeguards to third parties beyond the amounts of their net assets.

respect of certain undertakings with limited liability is of special importance for the protection of shareholders, members and third parties, ***in particular with regard to the rules on capital maintenance and limitations on profit distributions laid down in 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***¹. Simultaneous coordination is necessary in those fields for such forms of undertaking because, on the one hand, some undertakings operate in more than one Member State and, on the other hand, they offer no safeguards to third parties beyond the amounts of their net assets.

¹ *OJ L 26, 31.1.1977, p. 1.*

Or. en

Amendment 2
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) European accounting rules need to strike an appropriate balance between the interests of the addressees of financial statements and the interest of a company in not being unduly burdened with reporting requirements. Annual financial statements prepared on a prudent basis should give an account of the company's financial situation and not merely provide

information for capital markets.

Or. en

Amendment 3
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) **Small**, medium-sized and large undertakings should be defined and distinguished by reference to total assets, turnover and the average number of employees, as these items typically provide objective evidence as to the size of an enterprise.

Amendment

(7) **Micro, small**, medium-sized and large undertakings should be defined and distinguished by reference to total assets, turnover and the average number of employees, as these items typically provide objective evidence as to the size of an enterprise.

Or. en

Amendment 4
Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Micro-entities have limited resources with which to comply with demanding regulatory requirements. However, they are often subject to the same financial reporting rules as larger companies. Those rules place on them a burden which is not in proportion to their size and is therefore disproportionate for the smallest enterprises as compared to larger ones. Therefore, it should be possible to exempt micro-entities from certain obligations that may impose on them an unnecessarily onerous administrative burden. However, micro-entities should still be subject to any national obligation to keep records showing their business transactions and financial position.

Amendment 5
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) To ensure the disclosure of comparable and equivalent information, recognition and measurement principles should include the going concern, the prudence, and the accrual bases. Set-offs between asset and liability items and income and expenditure items should **not** be permitted, and components of assets and liabilities should be valued separately. The presentation of items in financial statements should have regard to the economic reality or commercial substance of the underlying transaction or arrangement. The principle of materiality should govern **recognition, measurement, presentation and disclosure** in the financial statements.

Amendment

(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 be permitted **only in exceptional and narrowly defined cases**, and components of assets and liabilities should be valued separately. The presentation of items in financial statements should have regard **not only** to the economic reality or commercial substance of the underlying transaction or arrangement **but also to the legal form**. The principle of materiality should govern presentation and disclosure in the financial statements.

Amendment 6
Proposal for a directive
Recital 10

Text proposed by the Commission

(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 /

Amendment

deleted

production cost based information. Accordingly, the Member States should permit the adoption of a fair value system of accounting by all undertakings or any classes of undertaking in respect of both the annual and consolidated financial statements or in respect of consolidated financial statements only. Furthermore, Member States should be allowed to permit or require fair value accounting for assets, other than financial instruments.

Or. en

Amendment 7
Proposal for a directive
Recital 11

Text proposed by the Commission

Amendment

(11) A single layout for the balance sheet is necessary to allow users of financial statements to compare the financial position of undertakings within the Union. However, Member States should be able to permit or require undertakings to modify the layout and present a balance sheet distinguishing between current and non-current items. A profit and loss account layout showing the nature of expenses and a profit and loss account layout showing the function of expenses should be permitted. Member States should prescribe the use of one or both of those layouts. Member States should also be entitled to allow undertakings to present a statement of performance instead of a profit and loss account prepared in accordance with one of the permitted layouts. Simplifications from the required layouts should be made available for small and medium-sized undertakings.

deleted

Or. en

Amendment 8
Proposal for a directive
Recital 13

Text proposed by the Commission

(13) The information presented in the balance sheet and profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from small undertakings, and it can be costly to small undertakings to collate the supplementary information that needs to be disclosed. A limited disclosure regime for small undertakings is therefore justified. However where a small undertaking considers that it is beneficial to provide additional disclosures of the types required by medium-sized and large undertakings it shall not be prevented from doing so.

Amendment

(13) The information presented in the balance sheet and profit and loss account should be supplemented by disclosures by way of notes to the financial statements. Users of financial statements typically have a limited need for supplementary information from **micro and** small undertakings, and it can be costly to **micro and** small undertakings to collate the supplementary information that needs to be disclosed. A limited disclosure regime for **micro and** small undertakings is therefore justified. However where a **micro and** small undertaking considers that it is beneficial to provide additional disclosures of the types required by medium-sized and large undertakings it shall not be prevented from doing so.

Or. en

Amendment 9
Proposal for a directive
Recital 15

Text proposed by the Commission

(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

Amendment

(15) The management report and the consolidated management report are important elements of financial reporting. A fair review of the development of the business and of its position should be provided, in a manner consistent with the size and complexity of the business. The information should not be restricted to the financial aspects of the undertaking's business, and there should be an analysis of environmental and social aspects of the

business necessary for an understanding of the undertaking's development, performance or position. In the cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on medium-sized undertakings, it is appropriate to provide that Member States may choose to waive the obligation to provide non-financial information in the case of the management report of such undertakings.

business necessary for an understanding of the undertaking's development, performance or position. In the cases where the consolidated management report and the parent undertaking management report are presented in a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole. However, having regard to the potential burden placed on **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 case of the management report of such undertakings.

Or. en

Amendment 10
Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that they include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 22(2) of the Second Council Directive 77/91/EEC **of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.**

Amendment

(16) Member States should have the possibility of exempting small undertakings from the obligation to draw up a management report provided that they include, in the notes to the financial statements, the data concerning the acquisition of own shares referred to in Article 22(2) of the Second Council Directive 77/91/EEC.

Amendment 11
Proposal for a directive
Recital 18

Text proposed by the Commission

(18) Many undertakings are members of bodies of undertakings. Consolidated financial statements should be drawn up so that financial information concerning such bodies of 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.

Amendment

(18) Many undertakings are members of bodies of 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 bodies of 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.

Amendment 12
Proposal for a directive
Recital 26

Text proposed by the Commission

(26) The annual financial statements of all undertakings to which this Directive applies should be published in accordance with Directive 2009/101/EC. It is however appropriate to provide that certain derogations may be granted also in this area for small and medium-sized undertakings.

Amendment

(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 equivalent¹. It is however appropriate to provide that certain derogations may be granted also in this area for small and medium-sized undertakings.

¹ *OJ L 259. 1.10.2009, p. 11.*

Or. en

Amendment 13
Proposal for a directive
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Publication of annual accounts can be burdensome. At the same time, Member States need to ensure compliance with this Directive. Accordingly, Member States should be permitted to exempt micro and small entities 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 this 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 would not apply.

Or. en

Amendment 14
Proposal for a directive
Recital 31

Text proposed by the Commission

(31) The annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether the annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in which it is expressed. The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for this category of undertaking, whilst for many small undertakings the same persons are both shareholders and management and therefore have limited need for third party assurance on the financial statements.

Amendment

(31) The annual financial statements and consolidated financial statements should be audited. The requirement that an audit opinion should state whether the annual or consolidated financial statements give a true and fair view in accordance with the relevant financial reporting framework does not represent a restriction of the scope of that opinion but clarifies the context in which it is expressed. The annual financial statements of **micro and** small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for this category of undertaking, whilst for many **micro and** small undertakings the same persons are both shareholders and management and therefore have limited need for third party assurance on the financial statements.

Or. en

Amendment 15
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) In order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities which are active in the extractive industry or logging of primary forests should disclose in a separate report on an annual basis **material** payments made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas as well as primary forests. The report should include types of payments comparable to those disclosed by

Amendment

(32) In order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities which are active in the extractive industry or logging of primary forests should disclose in a separate report on an annual basis payments made to governments in the countries in which they operate. Such undertakings are active in countries rich in natural resources, in particular minerals, oil, natural gas as well as primary forests. The report should include types of payments comparable to those disclosed by

an undertaking participating in the Extractive Industries Transparency Initiative (EITI). The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market.

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) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market.

Or. en

Amendment 16
Proposal for a directive
Recital 33

Text proposed by the Commission

(33) The reports should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria and account to their citizens for payments such governments receive from undertakings active in the extractive industry or loggers of primary forests operating within their jurisdiction. The report should incorporate disclosures on a country and project basis, where a project is considered as the lowest level of operational reporting unit at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc and where payments have been attributed to such projects. ***In the light of the overall objective of promoting good governance in these countries, the materiality of payments to be reported should be assessed in relation to the recipient government. Various criteria on materiality could be envisaged such as payments of an absolute amount, or a percentage threshold (such as payments in excess of a percentage of a country's GDP) and these can be defined through a***

Amendment

(33) The reports should serve to facilitate governments of resource-rich countries in implementing the EITI Principles and Criteria and account to their citizens for payments such governments receive from undertakings active in the extractive industry or loggers of primary forests operating within their jurisdiction. The report should incorporate disclosures on a country and project basis, where a project is considered as the lowest level of operational reporting unit at which the undertaking prepares regular internal management reports, such as a concession, geographical basin, etc and where payments have been attributed to such projects. ***It should not be necessary to prepare a report if equivalent reporting requirements are observed. Payments should not need to be disclosed if the total amount paid to a government does not exceed EUR 500 000 or if the total amount of payments for a project does not exceed EUR 100 000.*** The reporting regime should be subject to a review and a report by the Commission within five years of the entry into force of the Directive. The

delegated act. The reporting regime should be subject to a review and a report by the Commission within five years of the entry into force of the Directive. The review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details, such as bank account information.

review should consider the effectiveness of the regime and take into account international developments including issues of competitiveness and energy security. The review should also take into account the experience of preparers and users of the payments information and consider whether it would be appropriate to include additional payment information such as effective tax rates and recipient details, such as bank account information.

Or. en

Amendment 17
Proposal for a directive
Recital 35

Text proposed by the Commission

(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. In order to ensure ***a relevant and appropriate level of disclosure of payments to governments by the extractive industry and loggers of primary forests and to ensure uniform application of this Directive,*** the Commission should be empowered to

Amendment

(35) The use of delegated acts is necessary to adapt the undertaking size criteria, as with the passage of time inflation will erode their real value. ***The Commission should therefore be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in order to adjust the undertaking size criteria to the extent necessary to offset the effects of inflation.*** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. In order to ensure ***that payments to governments by the extractive industry and loggers of primary forests need not be reported if equivalent reporting requirements are observed,*** the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect of ***establishing which voluntary or mandatory reporting requirements should***

adopt delegated acts in accordance with Article 290 of the Treaty in respect of *the specification of the concept of materiality of payments*.

be considered equivalent to the reporting requirements laid down in this Directive. Such voluntary reporting should include EITI reporting.

Or. en

Amendment 18
Proposal for a directive
Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, 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 such documents to be justified.

Or. en

Amendment 19
Proposal for a directive
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 20
Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The provisions of Directive 91/674/EEC, Directive 2006/46/EC, Directive 2009/65/EC and Directive 2011/61/EC are not affected by this Directive.

Or. en

Amendment 21
Proposal for a directive
Article 2 – point 1

Text proposed by the Commission

Amendment

(1) ‘Public interest entities’ means entities **governed by the law of a Member State as defined in point (13) of Article 2 of Directive 2006/43/EC;**

(1) ‘Public interest entities’ means entities **within the scope of Article 1;**

Or. en

Amendment 22
Proposal for a directive
Article 2 – point 1 – point a (new)

Text proposed by the Commission

Amendment

(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 instruments¹,

¹ OJ L 145, 30.4.2004, p. 1.

Or. en

Amendment 23
Proposal for a directive
Article 2 – point 1 – point b (new)

Text proposed by the Commission

Amendment

(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 institutions¹ and insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings²,

¹ OJ L 177, 30.6.2006, p. 1.

² OJ L 374, 31.12.1991, p. 7.

Or. en

Amendment 24
Proposal for a directive
Article 2 – point 1 – point c (new)

Text proposed by the Commission

Amendment

(c) other entities designated by Member States as public-interest entities, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees.

Or. en

Amendment 25
Proposal for a directive
Article 2 – point 7

Text proposed by the Commission

(7) ‘Production cost’ means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question *may* be included to the extent that they relate to the period of production. Distribution costs shall not be included;

Amendment

(7) ‘Production cost’ means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. A reasonable proportion of other costs indirectly attributable to the item in question *shall* be included to the extent that they relate to the period of production. Distribution costs shall not be included;

Or. en

Amendment 26
Proposal for a directive
Article 2 – point 11

Text proposed by the Commission

(11) *A group* means a parent undertaking and all its subsidiary undertakings included in a consolidation;

Amendment

(11) **'Group'** means a parent undertaking and all its subsidiary undertakings included in a consolidation;

Or. en

Amendment 27
Proposal for a directive
Article 3 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Member States may provide for exemptions from certain obligations under this Directive in accordance with Article 42a in respect of undertakings which on their balance sheet dates do not exceed the limits of two of the three

following criteria (micro-entities):
(a) balance sheet total: EUR 350 000;
(b) net turnover: EUR 700 000;
(c) average number of employees during the financial year: 10.

Or. en

Amendment 28
Proposal for a directive
Article 3 – paragraph 2 – point c

Text proposed by the Commission

(c) average number of employees during the financial year: **250**.

Amendment

(c) average number of employees during the financial year: **500**.

Or. en

Amendment 29
Proposal for a directive
Article 3 – paragraph 3 – point c

Text proposed by the Commission

(c) average number of employees during the financial year: **250**.

Amendment

(c) average number of employees during the financial year: **500**.

Or. en

Amendment 30
Proposal for a directive
Article 3 – paragraph 5 – point c

Text proposed by the Commission

(c) average number of employees during the financial year: **250**.

Amendment

(c) average number of employees during the financial year: **500**.

Or. en

Amendment 31
Proposal for a directive
Article 3 – paragraph 7

Text proposed by the Commission

7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts set out in paragraphs 1 to 5 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union on the date of the entry into force of any Directive setting those amounts.

Amendment

7. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs -1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.

Or. en

Amendment 32
Proposal for a directive
Article 3 – paragraph 8

Text proposed by the Commission

8. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs 1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.

Amendment

8. Where on its balance sheet date, an undertaking exceeds or ceases to exceed the limits of two of the three criteria set out in paragraphs -1 to 5, that fact shall affect the application of the derogations provided for in this Directive only if it occurs in two consecutive financial years.

Or. en

Amendment 33
Proposal for a directive
Article 3 – paragraph 10

Text proposed by the Commission

10. In order to adjust for the effects of inflation, the Commission shall examine periodically and, where necessary, amend,

Amendment

10. In order to adjust for the effects of inflation, the Commission shall examine periodically and, where necessary, amend,

by means of delegated acts in accordance with Article 42, the definitions referred to in paragraphs 1 to 5 of this Article, taking into account measures of inflation as published in the Official Journal of the European Union.

by means of delegated acts in accordance with Article 42, the definitions referred to in paragraphs -1 to 5 of this Article, taking into account measures of inflation as published in the Official Journal of the European Union.

Or. en

Amendment 34
Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

4. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be departed from in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

Amendment

4. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be departed from in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. ***The Member States may define the exceptional cases in question and lay down the relevant special rules.***

Or. en

Amendment 35
Proposal for a directive
Article 5 – paragraph 1 – point g

Text proposed by the Commission

(g) any set-off between asset and liability items, or between income and expenditure items, shall be prohibited;

Amendment

(g) any set-off between asset and liability items, or between income and expenditure items, shall be prohibited ***unless a Member State acknowledges in specific cases the legal right to set off claims and debts by***

virtue of the law or of a contractual arrangement;

Or. en

Amendment 36
Proposal for a directive
Article 5 – paragraph 1 – point h

Text proposed by the Commission

(h) items in the profit and loss account and balance sheet shall be presented having regard to the substance of the reported transaction or arrangement;

Amendment

(h) items in the profit and loss account and balance sheet shall be ***recognised and*** presented having regard to ***not only the legal form but also*** the substance of the reported transaction or arrangement;

Or. en

Amendment 37
Proposal for a directive
Article 5 – paragraph 1 – point j

Text proposed by the Commission

(j) ***recognition, measurement,*** presentation, and disclosure in annual financial statements shall have regard to the materiality of the relevant items.

Amendment

(j) presentation and disclosure in annual financial statements shall have regard to the materiality of the relevant items.

Or. en

Amendment 38
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

3. Departures from these general principles shall be permitted in exceptional cases ***in order to give a true and fair view of the undertaking's assets, liabilities, financial***

Amendment

3. Departures from these general principles shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes to the financial statements and the

position and profit or loss. Any such departures shall be disclosed in the notes to the financial statements and the reasons for them shall be given together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

reasons for them shall be given together with an assessment of their effect on the assets, liabilities, financial position, and profit or loss.

Or. en

Amendment 39
Proposal for a directive
Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

Alternative measurement basis of fixed assets at revalued amounts

1. By way of derogation from Article 5(1)(i), Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of fixed assets at revalued amounts.

Where national law provides for such measurement, it shall define its content and limits and the rules for its application.

2. Where paragraph 1 is applied, the amount of the difference between measurement on a purchase price or production cost basis and measurement on a revaluation basis shall be entered in the revaluation reserve under 'Capital and reserves'.

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

The revaluation reserve shall be reduced where the amounts transferred thereto are no longer necessary for the implementation of the revaluation basis of accounting. The Member States may lay down rules governing the application of the revaluation reserve, provided that

transfers to the profit and loss account from the revaluation reserve may be made only where the amounts transferred have been entered as an expense in the profit and loss account or reflect increases in value which have actually been realised. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents a gain actually realised.

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

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

Or. en

Amendment 40
Proposal for a directive
Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Alternative measurement basis of fair value

1. By way of derogation from Article 5(1)(i) and subject to the conditions set

out in this Article:

(a) Member States shall permit or require in respect of all undertakings or any classes of undertaking measurement of financial instruments, including derivative financial instruments, at fair value.

(b) Member States may permit or require in respect of all undertakings or any classes of undertaking measurement of specified categories of assets other than financial instruments at amounts determined by reference to fair value.

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

2. For the purpose of this Directive, commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when the following conditions are complied with:

(a) they were entered into and continue to meet the undertaking's expected purchase, sale or usage requirements;

(b) they were designated as commodity-based contracts at their inception;

(c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1(a) shall apply only to the following liabilities:

(a) liabilities held as part of a trading portfolio;

(b) derivative financial instruments.

4. Measurement according to paragraph 1(a) shall not apply to the following:

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

(b) loans and receivables originated by the undertaking and not held for trading

purposes;

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

5. By way of derogation from Article 5(1)(i), Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit measurement at the specific amount required under that system.

6. By way of derogation from paragraphs 3 and 4 of this Article, Member States may permit or require the recognition, measurement and disclosure of financial instruments in conformity with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

7. The fair value within the meaning of this Article shall be determined by reference to one of the following values:

(a) a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument;

(b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable

approximation of the market value.

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

8. Notwithstanding Article 5(1)(c), where a financial instrument is measured at fair value, a change in value shall be included in the profit and loss account. However, such a change shall be included directly in a fair value reserve, where:

(a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of an undertaking's net investment in a foreign entity.

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

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

Or. en

Amendment 41
Proposal for a directive
Article 8 – paragraph 6 – introductory wording

Text proposed by the Commission

Amendment

6. In respect of ***an associated undertaking***:

6. In respect of ***a participating interest***:

Or. en

Amendment 42
Proposal for a directive
Article 8 – paragraph 6 – point a

Text proposed by the Commission

Amendment

(a) Member States may permit or require ***an associated undertaking*** to be accounted for in annual financial statements using the equity method as provided for in Article 27(2) to (8), taking account of the essential adjustments resulting from the particular characteristics of annual financial statements as compared to consolidated financial statements.

(a) Member States may permit or require ***a participating interest*** to be accounted for in annual financial statements using the equity method as provided for in Article 27(2) to (8), taking account of the essential adjustments resulting from the particular characteristics of annual financial statements as compared to consolidated financial statements.

Or. en

Amendment 43
Proposal for a directive
Article 8 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) Member States may permit or require that the proportion of the profit or loss attributable to the ***associated undertaking*** be recognised in the profit and loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

(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.

Or. en

Amendment 44
Proposal for a directive
Article 8 – paragraph 6 – point c

Text proposed by the Commission

(c) Where the profit or loss attributable to the **associated undertaking** recognised in the profit and loss account exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference shall be placed in a reserve which cannot be distributed to shareholders.

Amendment

(c) Where the profit or loss attributable to the **participating interest** 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.

Or. en

Amendment 45
Proposal for a directive
Article 9 – Assets – point B– point I– point 1

Text proposed by the Commission

1. Costs of **research and** development, in so far as national law permits their being shown as assets.

Amendment

1. Costs of development, in so far as national law permits their being shown as assets.

Or. en

Amendment 46
Proposal for a directive
Article 9 – Assets – point B – point III– point 7

Text proposed by the Commission

7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

Amendment

deleted

Amendment 47
Proposal for a directive
Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

Alternative presentation of the balance sheet

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

Or. en

Amendment 48
Proposal for a directive
Article 11 – paragraph 8

Text proposed by the Commission

Amendment

8. Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the ‘first in, first out’ (FIFO) method, or a similar method.

8. Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or on the basis of the ‘first in, first out’ (FIFO) method, ***or on the basis of the 'last in, first out' (LIFO) method,*** or a similar method.

Or. en

Amendment 49
Proposal for a directive
Article 11 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It shall be shown separately in the balance sheet or in the notes on the accounts. 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.

Or. en

Amendment 50
Proposal for a directive
Article 11 – paragraph 9 – subparagraph 1

Text proposed by the Commission

Amendment

Where national law authorizes the inclusion of costs of ***research and*** development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of ***research and*** development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

Where national law authorizes the inclusion of costs of development under ‘Assets’, they shall be written off within a maximum period of five years. In so far as the costs of development have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off.

Or. en

Amendment 51
Proposal for a directive
Article 11 – paragraph 11 – subparagraph 3

Text proposed by the Commission

Amendment

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

Provisions shall be measured at the reasonable amount calculated on an objective basis to settle the amount payable, or in the case of a liability, at the amount required to settle it at the balance sheet date.

Or. en

Amendment 52
Proposal for a directive
Article 11 – paragraph 11 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Provisions may not be used to adjust the values of assets.

Or. en

Amendment 53
Proposal for a directive
Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Special provision relating to the profit and loss account

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

Or. en

Amendment 54
Proposal for a directive
Article 17 – paragraph 1 – point d

Text proposed by the Commission

(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;

Amendment

(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 **or at the foot of the balance sheet;**

Or. en

Amendment 55
Proposal for a directive
Article 17 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(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 at the foot of the balance sheet;

Or. en

Amendment 56
Proposal for a directive
Article 17 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) the amount and nature of individual

items of income or expenditure which are of exceptional size or incidence;

Or. en

Amendment 57
Proposal for a directive
Article 17 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet and the financial impact on the undertaking of those arrangements; *deleted*

Or. en

Amendment 58
Proposal for a directive
Article 17 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) the nature of material events arising after the end of the year which are not reflected in the profit and loss account or balance sheet, and the financial effect of those events. *deleted*

Or. en

Amendment 59
Proposal for a directive
Article 17 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) transactions which have been entered into with related parties by the *deleted*

undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.

Or. en

Amendment 60
Proposal for a directive
Article 18 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet, 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;

Or. en

Amendment 61
Proposal for a directive
Article 18 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the amount of advances and credits granted to the members of the

deleted

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;

Or. en

Amendment 62
Proposal for a directive
Article 19 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) transactions which have been entered into with related parties by the undertaking, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the undertaking, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the undertaking.

Or. en

Amendment 63
Proposal for a directive
Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may provide that

paragraph 1(b) shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 23, provided that such information is given in the notes to the consolidated accounts.

Or. en

Amendment 64
Proposal for a directive
Article 19 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States may exempt transactions referred to in point (ba) of paragraph 1 entered into between two or more members of a group, provided that subsidiaries which are party to the transaction in question are wholly owned by such a member.

Or. en

Amendment 65
Proposal for a directive
Article 20 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States may exempt medium-sized undertakings from the obligation set out in the third subparagraph of paragraph 1 in so far as it relates to non-financial information.

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.

Or. en

Amendment 66
Proposal for a directive
Article 22

Text proposed by the Commission

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

Amendment

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 ***complies with the provisions laid down in Article 1(1).***

Or. en

Amendment 67
Proposal for a directive
Article 23 – paragraph 1 – point f – subparagraph 2

Text proposed by the Commission

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

Amendment

However, point (i) shall not apply where a third party has the rights referred to in points (a), (b) or (c) with regard to the other undertaking(s). ***Member States shall prescribe at least the arrangements referred to in point (ii).***

Or. en

Amendment 68
Proposal for a directive
Article 24 – paragraph 3

Text proposed by the Commission

3. Member States may grant an exemption from the obligation to draw up consolidated financial statements and a consolidated management report where the parent undertaking is not constituted as one of the types of undertaking listed in Annex I or Annex II.

Amendment

deleted

Or. en

Amendment 69
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

When this Article is applied for the first time, the associated undertaking shall be shown in the consolidated balance sheet **at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance Chapters 2 and 3 shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements. That difference shall be calculated as at the date as at which that method is used for the first time.**

Amendment

When this Article is applied for the first time, the associated undertaking shall be shown in the consolidated balance sheet **either:**

Or. en

Amendment 70
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1 – point a (new)

Text proposed by the Commission

(a) at its book value calculated in accordance with 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 shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date on which that method is used for the first time; or

Amendment

Or. en

Amendment 71
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance Chapters 2 and 3 shall be disclosed separately in the consolidated balance sheet or in the notes to the consolidated financial statements. That difference shall be calculated as at the date on which that method is used for the first time.

Or. en

Amendment 72
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may prescribe the application of one or other of points (a) and (b). The consolidated balance sheet or the notes on the accounts must indicate whether point (a) or point (b) has been used.

Or. en

Amendment 73
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

In addition, **when applying point (a) or point (b) above**, Member States may permit or require the calculation of the difference as at the date of acquisition of the shares or, where the shares were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

Or. en

Amendment 74
Proposal for a directive
Article 31 – paragraph 1

Text proposed by the Commission

1. Member States may exempt small undertakings from the obligation to publish their profit and loss accounts and management reports.

Amendment

1. Member States may exempt small undertakings from the obligation to publish their **notes**, profit and loss accounts and management reports.

Or. en

Amendment 75
Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

The statutory auditor shall also express an opinion **on:**

Or. en

Amendment 76
Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2 – point a (new)

Text proposed by the Commission

Amendment

(a) the consistency of the management report with the financial statements for the same financial year,

Or. en

Amendment 77
Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2 – point b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 78
Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2 – point c (new)

Text proposed by the Commission

Amendment

(c) whether prospective financial information included in the management report has been appropriately prepared on the basis of reasonable assumptions.

Or. en

Amendment 79
Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Points (b) and (c) shall not apply to medium-sized undertakings.

Or. en

Amendment 80
Proposal for a directive
Article 35 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) ***an opinion concerning the consistency of the management report with the annual financial statements for the same financial year.***

(e) ***the opinion referred to in the second subparagraph of Article 34(1).***

Or. en

Amendment 81
Proposal for a directive
Article 36 – point 3

Text proposed by the Commission

Amendment

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.

3. ‘Government’ means any national, regional or local authority 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.

Or. en

Amendment 82
Proposal for a directive
Article 36 – point 4

Text proposed by the Commission

4. 'Project' is equivalent to a specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared to monitor its business.

Amendment

4. 'Project' is equivalent to a specific operational reporting unit at the lowest level within the undertaking at which regular internal management reports are prepared **for the board of directors** to monitor its business.

Or. en

Amendment 83
Proposal for a directive
Article 36 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

4a. 'Payments' means all production entitlements, taxes on profits, royalties, dividends, signature, discovery and production bonuses, licence fees, rental fees, entry fees and other considerations for licences and/or concessions and other direct benefits .

Or. en

Amendment 84
Proposal for a directive
Article 37 – paragraph 1

Text proposed by the Commission

Amendment

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.

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, ***including payments in kind***, made to governments on an annual basis.

Or. en

Amendment 85
Proposal for a directive
Article 37 – paragraph 2 a (new) – subparagraph 1

Text proposed by the Commission

Amendment

2a. This obligation shall not apply to a public-interest entity active in the extractive industry or the logging of primary forests where it reports such payments to governments on the basis of a voluntary or mandatory reporting requirement and where that reporting requirement is equivalent to the reporting requirements laid down in this Directive.

Or. en

Amendment 86
Proposal for a directive
Article 37 – paragraph 2 a (new) – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to take the necessary decisions on the equivalence of a voluntary or mandatory reporting requirement.

Or. en

Amendment 87
Proposal for a directive
Article 37 – paragraph 2 a (new) – subparagraph 3

Text proposed by the Commission

Amendment

The report prepared on the basis of an equivalent reporting requirement shall be published in accordance with Article 40.

Amendment 88
Proposal for a directive
Article 38 – paragraph 1 – introductory wording

Text proposed by the Commission

1. The report shall specify the following
when material to the recipient
government.

Amendment

1. The report *referred to in Article 37* shall
specify the following:

Or. en

Amendment 89
Proposal for a directive
Article 38 – paragraph 1 – point a

Text proposed by the Commission

(a) the total amount of *payments,*
including payments *in kind,* made to each
government within a financial year;

Amendment

(a) the *amount per type and the* total
amount of payments made to each
government within a financial year;

Or. en

Amendment 90
Proposal for a directive
Article 38 – paragraph 1 – point b

Text proposed by the Commission

(b) the total amount per type of payment,
including payments in kind, made to each
government within a financial year;

Amendment

deleted

Or. en

Amendment 91
Proposal for a directive
Article 38 – paragraph 1 – point c

Text proposed by the Commission

(c) where those payments have been attributed to a specific project the amount per type of payment, ***including payments in kind***, made for each such project within a financial year, ***and the total amount of payments for each such project***.

Amendment

(c) where those payments have been attributed to a specific project the amount per type ***and the total amount*** of payment made for each such project within a financial year.

Or. en

Amendment 92
Proposal for a directive
Article 38 – paragraph 2

Text proposed by the Commission

2. The following types of payments shall be reported:

(a) production entitlements;

(b) taxes on profits;

(c) royalties;

(d) dividends;

(e) signature, discovery and production bonuses;

(f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions;

(g) other direct benefits to the government concerned.

Amendment

deleted

Or. en

Amendment 93
Proposal for a directive
Article 38 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 42 in order to specify the concept of materiality of payments.

deleted

Or. en

**Amendment 94
Proposal for a directive
Article 38 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Payments referred to in points (a) and (c) of paragraph 1 need not be disclosed if the total annual amount of payments to a government in a specific country does not exceed EUR 500 000.

Notwithstanding the first subparagraph of this paragraph, payments referred to in point (c) of paragraph 1 need not be disclosed if the total amount of payments for a project does not exceed EUR 100 000.

Or. en

**Amendment 95
Proposal for a directive
Article 40 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

As an alternative to the publication requirement laid down in the first paragraph, Member States may permit the report referred to in Article 37 to be made publicly available and easily accessible on the undertaking's website.

Amendment 96
Proposal for a directive
Article 41

Text proposed by the Commission

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

Amendment

The Commission shall review and report on the implementation and effectiveness of this Chapter, in particular as regards the scope of the reporting obligations, the modalities of the reporting on a project basis *and the impact of national criminal legislation prohibiting disclosure of payments*. The review should also take into account international developments and consider the effects on competitiveness and security of energy supply. It should be completed at the latest five years after the date of entry into force of this Directive. The report shall be submitted to the European Parliament and the Council, together with a legislative proposal, if appropriate.

Amendment 97
Proposal for a directive
Article 42 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in *Article 1(2)*, Article 3(10) and Article *38(4)* shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.

Amendment

2. The delegation of power referred to in Article 3(10) and Article *37(2a)* shall be conferred on the Commission for an indetermined period of time from the date referred to in Article 50.

Amendment 98
Proposal for a directive
Article 42 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in **Article 1(2)**, Article 3(10) and Article **38(4)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 3(10) and Article **37(2a)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 99
Proposal for a directive
Article 42 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Article 1(2)**, Article 3(10) and Article **38(4)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to Article 3(10) and Article **37(2a)** 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.

Or. en

Amendment 100
Proposal for a directive
Article 42 a (new)

Text proposed by the Commission

Amendment

Article 42a

Exemptions for micro undertakings

1. Member States may exempt undertakings referred to in Article 3(-1) 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 point (d) of Article 5(1) 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 point (d) of Article 17(1) of this Directive and Article 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, 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 undertakings referred to in Article 3(-1):

(a) to draw up only an abridged balance sheet showing separately at least those items preceded by letters in Article 9, where applicable. In cases where point (a) of paragraph 1 applies, items D under 'Assets' and D under 'Capital, reserves and liabilities' in Article 9 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 undertakings referred to in Article 3(-1), 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. The balance sheet total referred to in point (a) of Article 3(-1) shall consist of the assets referred to in items A to D under 'Assets' in Article 9. If point (a) of paragraph 1 applies, the balance sheet total referred to in point (a) of Article 3(-1) shall consist of the assets referred to in items A to C under 'Assets' in Article 9.

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.

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.*

8. Member States may apply point (e) of paragraph 1 to small undertakings.

** OJ: Please insert date: five years after the entry into force of this Directive.*

Or. en

Amendment 101
Proposal for a directive
Article 46

Text proposed by the Commission

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

Amendment

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

Or. en