

Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (Text with EEA relevance)

CHAPTER 6

CONSOLIDATED FINANCIAL STATEMENTS AND REPORTS

Article 22

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

- d 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 preceding financial year and up to the time when the consolidated financial statements are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
 - (ii) controls alone, pursuant to an agreement with other shareholders in or members of 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.

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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.

2 In addition to the cases mentioned in paragraph 1, 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.

3 For the purposes of points (a), (b) and (d) 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.

4 For the purposes of points (a), (b) and (d) of paragraph 1, the rights mentioned in paragraph 3 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 undertaking; 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.

5 For the purposes of points (a) and (d) 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.

6 Without prejudice to Article 23(9), 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 21 and 23, 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 2, are managed on a unified basis in accordance with:
 - (i) a contract concluded with that undertaking, or
 - (ii) the memorandum or 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 2, 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 6 of this Article, Article 23(1), (2), (9) and (10) and Articles 24 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 24(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 financial statements shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 7 of this Article.