

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 9

### PROVISIONS CONCERNING EXEMPTIONS AND RESTRICTIONS ON EXEMPTIONS

#### *Article 36*

#### **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’. Where a Member State makes use of that option, it may permit those undertakings, only in respect of other charges as referred to in point (b)(vi) of paragraph 2 of this Article, to depart from point (d) of Article 6(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 (b) of this paragraph, at the foot of the balance sheet;
- b the obligation to draw up notes to the financial statements in accordance with Article 16, provided that the information required by points (d) and (e) of Article 16(1) of this Directive and by Article 24(2) of Directive 2012/30/EU is disclosed at the foot of the balance sheet;
- c the obligation to prepare a management report in accordance with Chapter 5, provided that the information required by Article 24(2) of Directive 2012/30/EU is disclosed in the notes to the financial statements or, in accordance with point (b) of this paragraph, at the foot of the balance sheet;
- d 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 Annexes III or IV, where applicable. In cases where point (a) of paragraph 1 of this Article applies, items E under ‘Assets’ and D under ‘Liabilities’ in Annex III or items E and K in Annex IV 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,

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- (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 8 to any micro-undertaking making use of any of the exemptions provided for in paragraphs 1 and 2 of this Article.

4 In respect of micro-undertakings, annual financial statements drawn up in accordance with paragraphs 1, 2 and 3 of this Article 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 of this Article 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 D under 'Assets' in Annex III or items A to D in Annex IV.

6 Without prejudice to this Article, Member States shall ensure that micro-undertakings are otherwise regarded as small undertakings.

7 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.

8 Member States which at 19 July 2013 have brought into force laws, regulations or administrative provisions in compliance with Directive 2012/6/EU of the European Parliament and of the Council of 14 March 2012 amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities<sup>(1)</sup>, may be exempted from the requirements set out in Article 3(9) with regard to the conversion into national currencies of thresholds set out in Article 3(1) when applying the first sentence of Article 53(1).

9 By 20 July 2018 the Commission shall submit to the European Parliament, to the Council and to 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 37*

### **Exemption for subsidiary undertakings**

Notwithstanding the provisions of Directives 2009/101/EC and 2012/30/EU, 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 point (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.

#### *Article 38*

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

1 Member States may require undertakings referred to in point (a) of Article 1(1) which are governed by their laws and which are members having unlimited liability of any undertaking referred to in point (b) of Article 1(1) ('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 this Directive; in such 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 laws 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 laws 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.

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### *Article 39*

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

### *Article 40*

#### **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.

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(1) [OJ L 81, 21.3.2012, p. 3.](#)