



# Single Member Companies

- Directive 2009/102/EC
- The general case: a company created by just one member
  - At least private companies...
    - But not needed if there is a sole entrepreneur form with limited liability and rules equivalent to the ones of the Directive (art. 7); e.g.: Portugal, France
  - ...but if MS allow other company forms to have a single member, this directive's provisions apply (art. 6)
- The cornerstone of groups
- Problems with lifting the corporate veil
  - Close correlation between the sole member and the company
- Limitations under Art. 2.2: standstill policy

*2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or penalties for cases where:*

- (a) *a natural person is the sole member of several companies; or*
- (b) *a single-member company or any other legal person is the sole member of a company.*



## «special provisions»?

- E.g.: Just one limited company for a single shareholder...
- And specific «cases»

### Recitals 4 & 5(4<sup>th</sup> sentence) of the Preamble

*4. A legal instrument is required allowing the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States, which, in exceptional circumstances, require that entrepreneur to be liable for the obligations of his undertaking.*

*5. (...) Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly in order to ensure that the subscribed capital is paid.*



## Specific «cases»?

- E.g.: wilful undercapitalisation
- Abuse of right...(?)
  - Hard to define in general terms
- Group law (?)



## Accounts-related directive(s)

- Directive 2013/34/EU, replacing the old 4<sup>th</sup> & 7<sup>th</sup> Directives (Accounts Directive – AcD)
- Directive 2006/43/EC (amended by Directive 2014/56/EU) (Auditors Directive – AuD) & Regulation (EU) 537/2014 (Auditors Regulation – AuR)
- IAS/IFRS principles



# Accounts' types and purposes

- Annual accounts
- Consolidated (group) accounts
- Annual financial statements
- General basis of application: differential on the basis of dimensions (multi-level approach: definitions in Art. 3 – Micro, Small, Medium-sized, Large undertakings and Small, Medium-sized and Large groups; see below)
- Structure (Art. 4.1 AcD):
  - Balance sheet
  - Profit and loss account
  - Notes to the financial statements
  - Possible more statements if MS so dispose (not small undertakings)



# Accounts' types and purposes

- Information to investors
- Information to creditors and other third parties
- Give an account of past transactions
- Principles cf. Recital 16 of the Preamble to AcD:
  - Prudence
  - Fair view
  - Going concern
  - Accrual basis
    - Meaning that are to be considered revenues and costs relating to the company's activity in a certain year, with no relevance of the date of actual payment



# Definitions (Art. 2.1 AcD)

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

*(1) '**public-interest entities**' means undertakings within the scope of Article 1 which are:*

*(a) governed **by the law of a Member State** and whose transferable **securities are admitted to trading on a regulated market** of any Member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ( 1 );*

*(b) **credit institutions** as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ( 2 ), other than those referred to in Article 2 of that Directive;*

*(c) **insurance undertakings** within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings ( 3 ); or*

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



# Definitions (Art. 3 AcD)

**Balance sheet total:** total value of the company's assets

**Net turnover:** amount derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover

*1. In applying one or more of the options in Article 36, Member States shall define **micro-undertakings** as undertakings which on their balance sheet dates **do not exceed the limits of at least two of the three** following criteria:*

*(a) balance sheet total: EUR 350 000;*

*(b) net turnover: EUR 700 000;*

*(c) average number of employees during the financial year: 10.*



## Definitions (Art. 3 AcD)

*2. **Small undertakings** shall be undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:*

*(a) balance sheet total: EUR 4 000 000;*

*(b) net turnover: EUR 8 000 000;*

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

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



## Definitions (Art. 3 AcD)

3. **Medium-sized undertakings** shall be undertakings which are not micro-undertakings or small undertakings and which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

(a) balance sheet total: EUR 20 000 000;

(b) net turnover: EUR 40 000 000;

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

4. **Large undertakings** shall be undertakings which on their balance sheet dates exceed at least two of the three following criteria:

(a) balance sheet total: EUR 20 000 000;

(b) net turnover: EUR 40 000 000;

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



## Definitions (Art. 3 AcD)

5. **Small groups** shall be groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, do not exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:

(a) balance sheet total: EUR 4 000 000;

(b) net turnover: EUR 8 000 000;

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

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

## Definitions (Art. 3 AcD)

*6. **Medium-sized groups** shall be groups which are not small groups, which consist of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, do not exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:*

*(a) balance sheet total: EUR 20 000 000;*

*(b) net turnover: EUR 40 000 000;*

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

*7. **Large groups** shall be groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking:*

*(a) balance sheet total: EUR 20 000 000;*

*(b) net turnover: EUR 40 000 000;*

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



## Multi-level approach (Recitals 13-15 of the Preamble AcD)

(13) **Micro-undertakings have limited resources** with which to comply with demanding regulatory requirements. Where no specific rules are in place for micro-undertakings, the rules applying to small undertakings apply to them. Those rules **place on them administrative burdens which are disproportionate** to their size and are, therefore, relatively more onerous for micro-undertakings as compared to other small undertakings. Therefore, it should be **possible for Member States to exempt micro-undertakings from certain obligations** applying to small undertakings that would impose excessive administrative burdens on them. However, micro-undertakings should still be subject to any national obligation to keep records showing their business transactions and financial position. Moreover, investment undertakings and financial holding undertakings should be excluded from the benefits of simplifications applicable to micro-undertakings.

## Multi-level approach (Recitals 13-15 of the Preamble AcD)

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

*(15) **Publication of financial statements can be burdensome for micro- undertakings.** At the same time, Member States need to ensure compliance with this Directive. Accordingly, Member States making use of the exemptions for micro-undertakings provided for in this Directive should be allowed to exempt micro-undertakings from a general publication requirement, provided that balance sheet information is duly filed, in accordance with national law, with at least one designated competent authority and that the information is forwarded to the business register, so that a copy should be obtainable upon application. In such cases, the obligation laid down in this Directive to publish any accounting document in accordance with Article 3(5) of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, should not apply.*



# Annual accounts layouts

Two possible alternative layouts for both balance sheet and profits and loss accounts:

- Art. 10 AcD

*For the presentation of the balance sheet, **Member States shall prescribe one or both of the layouts** set out in Annexes III and IV. If a Member State prescribes both layouts, it shall permit undertakings to choose which of the prescribed layouts to adopt.*

- Art. 13 AcD

*1. For the presentation of the profit and loss account, **Member States shall prescribe one or both of the layouts** set out in Annexes V and VI. If a Member State prescribes both layouts, it may permit undertakings to choose which of the prescribed layouts to adopt.*

*2. By way of derogation from Article 4(1), Member States may permit or require all undertakings, or any classes of undertaking, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Annexes V and VI, provided that the information given is at least equivalent to that otherwise required by Annexes V and VI.*



# The differences

- Annex 3 AcD: horizontal layout of the balance sheet
  - Annex 4 AcD: vertical layout of the balance sheet
  - Annex 5 AcD: Profit and loss account: by nature of expense
  - Annex 6 AcD: Profit and loss account: by function of expense
- 
- Art. 14 AcD: simplification for medium, small and micro enterprises





## Principles (Art. 9 AcD)

- Going concern (continuity) also as for the choice of the layouts to be used
- In the directive: minimum content: MS are free to establish a more detailed subdivision. However, the order is mandatory
- Amendments/derogations only where authorised by MS (specific sectors)
- Direct comparison with the previous year



# Notes to the financial statements

- General rules: Art. 16 AcD
- Specific rules for medium, large and public interest enterprises: Arts 17 & 18 AcD
- In addition: management report (fair review of development and performance). For **public interest entities** comprises a corporate governance statement



# Disclosure

- Arts 30 & 31 AcD: general rule is disclosure under the late 1<sup>st</sup> directive (now to be intended Chapter III, CodDir), within 12 months after the balance sheet date
- MS may exempt small undertakings from publishing, and allow medium to publish abridged balance sheets and notes



# Accounting principles

- 1) True and fair view
- 2) Going concern
- 3) Prudence
- 4) Accrual basis



## True and fair view (Art. 4 AcD)

- Additional information is required where the application of the directive is not sufficient to give True and Fair view (explanation in the financial statements)
- **True**: factually correct and prepared according to applicable standards (no material misstatements which could mislead the reader)
- **Fair**: a faithful report, without bias and reflecting the actual economic substance



# Too much information...

- ...is comparable to no information!
- Yes, can be dangerous as well: immaterial information can be omitted (case by case decision) (cf. Recital 17 of the Preamble AcD; Art. 9.3 AcD)

# Article 6 AcD – General principles

1. *Items presented in the annual and consolidated financial statements shall be recognised and measured in accordance with the following general principles:*
  - (a) *the undertaking shall be presumed to be carrying on its business as a **going concern**;*
  - (b) **accounting policies and measurement bases shall be applied consistently from one financial year to the next;**
  - (c) *recognition and measurement shall be on a **prudent basis**, and in particular:*
    - (i) *only profits made at the balance sheet date may be recognised,*
    - (ii) *all liabilities arising in the course of the financial year concerned or in the course of a previous financial year shall be recognised, even if such liabilities become apparent only between the balance sheet date and the date on which the balance sheet is drawn up, and*
    - (iii) *all negative value adjustments shall be recognised, whether the result of the financial year is a profit or a loss;*
  - (d) *amounts recognised in the balance sheet and profit and loss account shall be computed on the **accrual basis**;*
  - (e) **the opening balance sheet for each financial year shall correspond to the closing balance sheet for the preceding financial year;**

# Article 6 AcD – General principles

*(f) the components of asset and liability items shall be valued separately;*

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

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

***(i) items recognised in the financial statements shall be measured in accordance with the principle of purchase price or production cost;** and*

*(j) the requirements set out in this Directive regarding recognition, measurement, presentation, disclosure and consolidation need not be complied with when the effect of complying with them is immaterial.*

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

*3. Member States may exempt undertakings from the requirements of point (h) of paragraph 1.*

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

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



# Specific cases: the meaning of prudence

- Prudence:
  - Purchase price
  - Production cost

## Art. 2.6 & .7

*(6) 'purchase price' means the price payable and any incidental expenses minus any incidental reductions in the cost of acquisition;*

*(7) 'production cost' means the purchase price of raw materials, consumables and other costs directly attributable to the item in question. Member States shall permit or require the inclusion of a reasonable proportion of fixed or variable overhead costs indirectly attributable to the item in question, to the extent that they relate to the period of production. Distribution costs shall not be included*

**Financial instruments** are allowed to be accounted for at **fair value** according to IAS/IFRS principles  
(**derogation** to **purchase price**)



# Consolidated accounts

- Activities of a parent company and its subsidiaries *as a single economic entity*
- A subsidiary is a controlled company, so it is fundamental to have a clear idea of what *control* is
- In addition, groups see many different phenomena, along with the subsidiaries (e.g.: associated undertakings...)



## Definitions: Art. 2(2) & (9)-(13)

(2) **'participating interest'** means rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a **durable link** with those undertakings, are intended to contribute to the activities of the undertaking which holds those rights. **The holding of part of the capital of another undertaking is presumed to constitute a participating interest where it exceeds a percentage threshold fixed by the Member States which is lower than or equal to 20 %;**

(9) **'parent undertaking'** means an undertaking which **controls** one or more subsidiary undertakings;

(10) **'subsidiary undertaking'** means an undertaking controlled by a parent undertaking, **including any subsidiary undertaking of an ultimate parent undertaking;**



## Definitions: Art. 2(2) & (9)-(13)

(11) **'group'** means a parent undertaking and all its subsidiary undertakings;

(12) **'affiliated undertakings'** means any two or more undertakings within a group;

(13) **'associated undertaking'** means an undertaking in which **another undertaking has a participating interest**, and over whose operating and financial policies that other undertaking exercises **significant influence**. An undertaking is **presumed** to exercise a significant influence over another undertaking where it **has 20 % or more** of the shareholders' or members' voting rights in that other undertaking



# Different forms of control

- Majority of voting rights
- Agreements
- Contractual relations



# Article 22 AcD

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.



# Article 22 AcD

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

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

*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**.*



# Article 22 AcD

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.



## Article 22 AcD

*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.*



## Article 22 AcD

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.**



## As for the preparation...

- ... the same rules of annual accounts apply (principles and recognition) (Art. 24 AcD)
- Management report
- Disclosure
- Only deviation: associated undertakings are included in the financial statements via equity method (equity investment as an asset: Art. 27 AcD)



# IAS/IFRS

- Standards prepared by a third party (International Accounting Standards Boards), and endorsed by EU (Regulation (EC) 1606/2002 + Regulation (EC) 1126/2008, amended by Regulation (EU) 2019/2075)
- IAS (International Accounting Standards) + IFRS (International Financial Reporting Standards)
- High degree of transparency and comparability



## Scope of application

- In general: all listed companies for their *consolidated* accounts
- MS decide on *annual* accounts for both listed and non listed companies

(Arts 4 & 5, Regulation (EC) 1606/2002)

Adopted standards come along with *interpretations* presented by the International Financial Reporting Interpretations Committee



# A complete set

- The IAS/IFRS cover almost all the areas of accountings; there are more than 40 standards, plus 30 interpretations
- We are going to have a look to IAS 1 (*Presentation of financial statements*) and IFRS 13 (*Fair value measurement*), the most significant issues are:

## IAS 1

- Ensures comparability (with the company's previous results, and with other companies' ones)
- Sets minimum requirements for the content
- Provides for information regarding: assets; liabilities, equity, income and expenses; other changes in equity; cash flows
- Predicts (together with notes) the entity's future cash flows



# A complete set

- Structure:
  - Balance sheet
  - Income statement
  - Changes in equity
  - Cash flow statement
  - Notes
- Besides that, *financial review by the management*, with specifications regarding factors and influences determining financial performance, sources of funding, resources not stated in the balance sheet



# Fair value

- One of the basic principles for IAS/IFRS (IFRS 13)
- Fair value = net realisable value in case of selling
- Different than the historical cost
- «expected net selling price in the ordinary course of business»: *market-based measurement* (problems are likely to occur when there is not an available market)





# Fair value

## IFRS 13(3)

*When a price for an identical asset or liability is not observable, an entity measures fair value using another valuation technique that maximises the use of relevant observable inputs and minimises the use of unobservable inputs (...) an entity's intention to hold an asset or to settle or otherwise fulfil a liability is not relevant when measuring fair value*



# Fair value

- Reflects more closely the *actual* value of a company's assets
- Problems with the determination of losses and distributable profits, and in general with the role of share capital



# Audit report – statutory audit

- Directives 2013/34/EU (Art. 34) & 2006/43/EC (AuD)
- Scope of application:
  - Public interest entities (see above)
  - Large & medium sized enterprises
- For both annual and consolidated accounts
- Structure: one or more auditors or audit firms, approved by MS



# Purposes

- To express an opinion on management report (consistency with financial statements & accord with applicable legal requirements)
- To check material misstatements in the management report



# Structure (Art. 28 AuD)

1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit in an **audit report**. The report shall be prepared in accordance with the **requirements of auditing standards adopted by the Union or Member State concerned**, as referred to in Article 26.

2. The audit report shall be **in writing** and shall:

(a) **identify the entity** whose annual or consolidated financial statements are the subject of the statutory audit; **specify the annual or consolidated financial statements and the date and period they cover**; and identify the **financial reporting framework** that has been applied in their preparation;

(b) include a **description of the scope** of the statutory audit which shall, as a **minimum, identify the auditing standards** in accordance with which the statutory audit was conducted;

(c) include an **audit opinion**, which shall be either **unqualified, qualified** or an **adverse** opinion and shall state clearly the opinion of the statutory auditor(s) or the audit firm(s) as to:

(i) whether the annual financial statements **give a true and fair view** in accordance with the relevant financial reporting framework; and,

(ii) where appropriate, whether the annual financial statements comply with **statutory requirements**.

If the statutory auditor(s) or the audit firm(s) are **unable to express an audit opinion**, the report shall contain a **disclaimer of opinion**;

## Structure (Art. 28 AuD)

(d) refer to **any other matters** to which the statutory auditor(s) or the audit firm(s) draw(s) attention by way of emphasis without qualifying the audit opinion;

(e) include an **opinion and statement**, both of which shall be based on the work undertaken in the course of the audit, referred to in the second subparagraph of Article 34(1) of Directive 2013/34/EU;

(f) provide a **statement on any material uncertainty relating to events or conditions that may cast significant doubt** about the **entity's ability to continue as a going concern**;

(g) identify the place of establishment of the statutory auditor(s) or the audit firm(s).

**Member States** may lay down **additional requirements** in relation to the content of the audit report.

3. Where the statutory audit was carried out by **more than one statutory auditor or audit firm**, the statutory auditor(s) or the audit firm(s) shall agree on the results of the statutory audit and submit a **joint report and opinion**. In the case of **disagreement**, each statutory auditor or audit firm shall submit his, her or its opinion in a **separate paragraph** of the audit report and shall state the reason for the disagreement.



## Structure (Art. 28 AuD)

4. The audit report shall be **signed and dated by the statutory auditor**. Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged, the audit report shall be signed by all statutory auditors or at least by the statutory auditors carrying out the statutory audit on behalf of every audit firm. In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any event, the **name(s) of the person(s) involved shall be known to the relevant competent authorities**.



## Structure (Art. 28 AuD)

5. The report of the statutory auditor or the audit firm on the consolidated financial statements shall comply with the requirements set out in paragraphs 1 to 4. **In reporting on the consistency of the management report and the financial statements** as required by point (e) of paragraph 2, the **statutory auditor or the audit firm shall consider the consolidated financial statements and the consolidated management report.** Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors or the audit firms required by this Article may be combined.





## Auditors: key issues

- Qualified professionals with expertise in company law, tax law and social law
- Independent professionals, subject to professional ethics, and keeping strict confidentiality
- Appointed by general meeting; dismissal possible only where proper grounds



# Multi-level approach

- Stricter rules for public interest entities
- Higher standards of auditing
- Rotation over time



## Principles in 2014 reform

- Enhance public oversight on auditors and audit firms, with meaningful powers to fulfil their tasks in an effective manner, including to bring a claim before a national court for the dismissal of the auditor + administrative pecuniary sanctions
- To the end of increasing credibility of audited financial statements
- For audit in public-interest entities, Regulation 537/2014/EU



# Auditors' civil liability

- Recommendation of EU Commission June 5, 2008
- Proposed a liability limitation (apart from breach of duties), in order to encourage the firms to audit the companies
- Many different means in order to get the goal of liability limitation

# Non-Financial Reporting Directive

- Directive 2014/95/EU, amending Directive 2013/34/EU (AcD)
  - Need to improve **undertakings' disclosure** of social and environmental information (Commission's Communication 2011)
  - Importance of **businesses divulging information on sustainability** such as **social** and **environmental** factors, with a view to **identifying sustainability risks** and increasing investor and consumer trust (EU Parliament Resolutions 2013)
  - **Disclosure of non-financial information** helps the measuring, monitoring and managing of undertakings' performance and their impact on society (Recital 3)
  - Importance of corporate sustainability reporting and **encourages undertakings, where appropriate, to consider integrating sustainability information** into their reporting cycle (also with a view to development of best practices) (Paragraph 47 of the outcome document of the United Nations Rio+20 conference, entitled 'The Future We Want', Recital 11)
  - Provides for amendments to Directive 2013/34/EU on accounts
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## Basic principles (i)

- **Coordination of national provisions**
  - Coordination limited to **large enterprises** (default rule) ["This should not lead to undue additional administrative burdens for small and medium-sized undertakings": Recital 8 + Recital 13: "think small first" to reduce overall regulatory burden for SMEs]
  - **Minimum legal requirements** for the extent of the information
  - Large undertakings **must** prepare non-financial statements regarding, at least:
    - **Environmental** matters
    - **Social** and **employee-related** matters
    - Respect for **human rights**
    - **Anti-corruption and bribery** matters
-



## Basic principles (ii)

- Information on the **due diligence** adopted
  - **Supply** and **subcontracting chain** approach
  - **Comply or explain** if Member States allow this
-



# Environmental issues

- **details** of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, on health and safety;
  - the use of renewable and/or non-renewable energy;
  - greenhouse gas emissions;
  - water use;
  - and air pollution.
-





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# Social and employee-related matters

- **actions** taken to ensure gender equality;
  - implementation of fundamental conventions of the International Labour Organisation;
  - working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights;
  - health and safety at work;
  - and the **dialogue** with local communities, and/or the **actions** taken to ensure the **protection** and the **development** of those communities
-



## Other issues

- Human rights and anti corruption and bribery
    - **information** on the prevention of human rights abuses
    - and/or on **instruments** in place to fight corruption and bribery
-

## Information to be disclosed (i)

Matters that stand out as being **most likely** to bring about the **materialisation of principal risks of severe impacts**, along with those that have **already materialised**. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the **undertaking's own activities** or may be linked to its **operations**, and, where relevant and proportionate, its **products**, services and business relationships, including its **supply** and **subcontracting chains** (Recital 8)

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## Information to be disclosed (ii)

- According to **national, European, or international standards** (Recital 9)
  - **MS** shall ensure **adequate and effective disclosure** (compliance and enforcement)
-

# Scope of application

- Defined by reference to the **average number of employees, balance sheet total and net turnover**. [T]he obligation to disclose a non-financial statement should apply only to those **large undertakings** which are **public-interest entities** and to those **public-interest entities** which are **parent undertakings of a large group**, in each case having an average number of employees in excess of 500, in the case of a group on a consolidated basis. (Recital 14)
    - Art. 19a(1):  
“Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year”
  - Just a **default rule**: “This should not prevent Member States from requiring disclosure of non-financial information from undertakings and groups other than undertakings which are subject to this Directive.”
  - **Consolidated management reports** in the case of groups of companies (harmonization needed)
-



# Reliability of the information

- Statutory auditors and audit firms **only check** that the non-financial statement or the separate report **has been provided**.
  - MS **may** “require that the information included in the non-financial statement or in the separate report [is] **verified** by an **independent assurance services provider**”. (Recital 16 + Art. 19a.5 and .6)
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# The statement

Art. 19a.1

- In the Management Report
- “Containing information to the **extent necessary for an understanding** of the undertaking's **development, performance, position and impact of its activity**, relating to, as a minimum, **environmental, social and employee matters**, respect for **human rights, anti-corruption and bribery** matters, including:
  - (a) a brief description of the undertaking's business model;
  - (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;
  - (c) the outcome of those policies;
  - (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;
  - (e) non-financial key performance indicators relevant to the particular business.

Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a **clear and reasoned explanation** for not doing so.”

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# Minimum European requirements

- Environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters
- Description of policies (but not obligation to establish policies)
- Non-financial key performance indicators relevant to the particular business (who decides if they are relevant?)
- **Comply or explain policy**
- Links to the **financial** statements (“The non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements”)
- Subsidiary undertakings exempted from the reporting obligation if included in consolidated management report (Art. 19.3)





# Exceptions

- (MS) **information omitted** in **exceptional cases**, where “the disclosure ... would be **seriously prejudicial to the commercial position** of the undertaking” (Art. 19a.1)
  - **If a separate report corresponding to the same financial year** is prepared, **Member States may exempt** that undertaking from the obligation to prepare the non-financial statement, if such a report is duly disclosed. (art. 19a.4)
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# Consolidated statements

- Public-interest entities which are **parent undertakings of a large group** exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year
  - **Same information as the single-entity statement**, and equally linked to the financial statements
  - Always **comply or explain**
  - **Same rules for exceptions and reliability/assessment** (Art. 29a)
-



# Liability for compliance

- **MS: members of the administrative, management and supervisory** bodies of an undertaking, with **collective responsibility** for
    - Preparation
    - Disclosure
-

# Further Commission's Interventions

- **June 2017: Guidelines** to help companies disclose **environmental and social information**
    - Non binding, but representatives of the best practices
    - Extended scope
    - Provide balanced and flexible guidance on reporting, ensuring comparability across companies and sectors as far as possible
    - Avoids a one-size-fits-all approach
    - Introduces principles:
      - Materiality of information and factors to be taken into account (Business model, strategy and main risks; main sectoral issues; interests and expectations of relevant stakeholders; impact of the activities: Companies are expected to consider the actual and potential severity and frequency of impacts; public policy and regulatory drivers);
      - Fair, balanced and understandable information (effective stakeholder engagement; independent external assurance...);
      - Comprehensive but concise information;
      - Strategic and forward-looking;
      - Stakeholder orientated;
      - Consistent and coherent (also over time).
-

# Further Commission's Interventions

- Explain the structure:
    - Business model (environment, structure, governance, market, objectives, trends);
    - Policies and due diligence (also with a view to the risk management and outcomes);
    - Outcome (for instance: relationship between financial and non-financial);
    - Principal risks and their management;
    - Key performance indicators;
    - Thematic aspects
      - Environmental
      - Social and employees
      - Human rights
      - Anti-corruption and bribery
      - Others (among them supply chain, conflict minerals)
  - Gives accounts of the reporting frameworks
  - Provides for a specific guidance regarding the board diversity disclosure (diversity aspects, goals, implementation and results)
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# Further Commission's Interventions

- **June 2019: Guidelines** on reporting **climate-related** information
  - Follow-up of 2015 Paris Agreement on Climate Change;
  - EU Commission Action Plan on Financing Sustainable Growth (March 2018)
  - Non-binding; best practice; flexible approach; **integrated** with other non-financial information
  - Principle of materiality reaffirmed
  - Risks to be considered:
    - Climate-related
      - Negative impact on the climate
      - Negative impact on the company
  - Structure
    - Business model
    - Policies and due diligence, outcome policies
    - Principal risks and risk management
    - Key performance indicators
  - Consistent with recognised reporting frameworks and standards
  - Explains the structure (the same as the 2017 guidelines, with more detailed key performance indicators, and a look to green finance)
- Ongoing (since December 2019): **Review of Directive 2014/95/EU**



# Further Commission's Interventions

- **Financial issues:**
    - Action plan on **sustainable finance** (May 2018)
      - «Reorienting capital flows towards a more sustainable economy»
      - Mainstreaming sustainability in risk management
      - Fostering transparency and long-termism
      - Establishing a EU classification system
      - Standards and labels
      - Fostering investments in sustainable projects
      - Credit rating
      - Institutional investors' and asset managers' sustainability duties
      - Prudential requirements for banks and insurance companies
    - **Technical expert group on Sustainable Finance** (since July 2018)
      - Advise to the Commission notably in the development of a unified classification system for sustainable economic activities, an EU green bond standard, methodologies for low-carbon indices, and metrics for climate-related disclosure
    - **International platform on Sustainable Finance** (October 2019)
      - The ultimate objective of the IPSF is to scale up the mobilisation of private capital towards environmentally sustainable investments. The IPSF is a forum to strengthen international cooperation and, where appropriate, coordination on approaches and initiatives for the capital markets
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