



COMMISSION OF THE EUROPEAN COMMUNITIES

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Commission report to the Council on Member States' experience in applying the provisions listed in Article 50 of Council Directive 83/349/EEC on consolidated accounts

I. Introduction and background

Article 50 of the Seventh Council Directive of 13 June 1993 on consolidated accounts (83/349/EEC, OJ No L 193 of 18 July 1983) requires the Commission to report to the Council on Member States' experience of applying the provisions referred to in that Article. The Council is to examine those provisions in the light of the experience acquired, the aims of the Directive and the economic and monetary situation at the time and is to amend them if necessary. Austria, Finland and Sweden are not covered by this report because they have either not yet transposed the provisions in question into domestic law or have not yet acquired experience in applying them).

Article 50 of the Seventh Directive

"1. Five years after the date referred to in Article 49(2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1(1)(d) (second subparagraph), 4(2), 5, 6, 7(1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.

2. Paragraph 1 above shall not affect Article 53(2) of Directive 78/660/EEC."

The provisions in question are as follows:

- Article 1(1)(d), second subparagraph: agreement between shareholders regarding the transfer of voting rights, which can lead to a consolidation requirement;
- Article 4(2): exemption from the consolidation requirement where the parent undertaking does not have certain legal forms;
- Article 5: exemption of financial holding companies from the consolidation requirement;
- Article 6: exemption of small and medium-sized enterprises from the consolidation requirement;
- Article 7(1): exemption of intermediate groups from the consolidation requirement;
- Article 12: exemption of horizontal groups from the consolidation requirement;
- Article 43: exemption of subsidiary undertakings from requirements arising from the Fourth Directive;
- Article 44: exemption of parent undertakings from requirements arising from the Fourth Directive.

Article 50 provides for the Council to carry out the examination five years after companies first apply the provisions. According to Article 49(2), the provisions of

the Seventh Directive are to be applied for the first time to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990. In fact, the provisions of the Seventh Directive were first applied in the various Member States as follows:

- Belgium: for the financial year beginning after 31 December 1990;
- Denmark: for the financial year beginning on or after 1 April 1991;
- Germany: for the financial year beginning after 31 December 1989;
- Greece: for the financial year beginning on or after 1 July 1990;
- Spain: for the financial year beginning on or after 31 December 1991;

- France: for the financial year beginning after 31 December 1985 (companies eligible for stock-exchange listing) or after 31 December 1989 (companies not eligible for stock-exchange listing);
- Ireland: for the financial year beginning on or after 1 September 1992;
- Italy: for the financial year beginning on or after 1 January 1994;
- Luxembourg: for the financial year beginning on or after 1 January 1990;
- Netherlands: for the financial year beginning on or after 1 January 1990;
- Portugal: for the financial year beginning on or after 1 January 1991;
- United Kingdom: for the financial year beginning on or after 23 December 1989.

The Commission wrote to the Member States on 4 August 1994 asking them to report to it on their experience in applying the provisions in question. At its meeting on 6 and 7 December 1994, the Contact Committee for Accounting Directives discussed Member States' experience in applying those provisions.

II. Detailed description of the provisions of the Seventh Directive in question and the outcome of the discussions

- Article 1(1)(d), second subparagraph

According to this provision, a parent undertaking must draw up consolidated accounts where, on the basis of an agreement with other shareholders, it alone controls a majority of the voting rights in a given subsidiary. Member States are permitted to adopt more detailed provisions governing the form and content of such agreements (Member States' option).

Comments

France is the only Member State to have made use of this option. Such agreements concluded in France may not be directed against the company's interests.

None of the Member States is experiencing problems in connection with the abovementioned provision.

- Article 4(2)

A consolidation requirement exists in principle where at least one undertaking in a group has the legal form of a company limited by shares. According to the abovementioned provision, however, Member States have the option of waiving the consolidation requirement where the parent undertaking does not have the legal form of a company limited by shares.

Comments

This option has been used without qualification by Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom.

In France the list of undertakings not exempt from the consolidation requirement comprises, in addition to companies limited by shares, those with the form of a "société commerciale". In Germany very large enterprises (turnover of at least DM 250 million, balance-sheet total of at least DM 125 million and workforce of at least 5 000) are subject to the consolidation requirement irrespective of their legal form. Belgium, Denmark and Spain have not made use of this option.

None of the Member States is experiencing problems in connection with the abovementioned provision.

- Article 5

This (extensive) Article gives Member States the option of exempting financial holding companies from the consolidation requirement where they satisfy certain conditions (e.g. they do not intervene in the management of subsidiary undertakings, they do not exercise certain voting rights attaching to participating interests).

Comments

This option has been used only by Luxembourg and Greece.

None of the Member States is experiencing problems in connection with the abovementioned Article.

- Article 6

This Article gives Member States the option of exempting groups of undertakings from the consolidation requirement where they do not exceed two of the three size criteria referred

to in Article 27 of Directive 78/660/EEC (medium-sized enterprises). For a limited period, furthermore, the size criteria laid down in Article 27 may be exceeded (Article 6(5)).

Comments

All the Member States have made use of this option. With the exception of Denmark, Ireland, the Netherlands, Portugal and the United Kingdom, all the Member States are permitting the size criteria to be exceeded temporarily under Article 6(5). In the Netherlands only those groups of undertakings are exempt from the consolidation requirement that do not exceed two of the three size criteria referred to in Article 11 of Directive 78/660/EEC (small enterprises).

None of the Member States is experiencing problems in connection with the abovementioned Article.

- Article 7(1)

Subject to certain conditions, this paragraph exempts parent undertakings which are also subsidiary undertakings (intermediate groups) from the consolidation requirement where the parent undertaking:

- holds all of the shares in the exempted undertaking, or
- holds 90% or more of the shares in the exempted undertaking and the remaining shareholders have approved the exemption.

In so far as the laws of a Member State prescribe consolidation in this case at the time of the adoption of the Directive, that Member State need not apply this provision for ten years as from 1990.

Comments

None of the Member States has experienced problems in transposing the abovementioned exemption provision. No Member State has used the option of deferring the exemption for ten years.

- Article 12

This Article permits Member States to impose a consolidation requirement on an undertaking where

- (a) that undertaking and one or more other undertakings with which it is not connected are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings,

or

- (b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected consist for the major part of the same persons.

The circumstances referred to here are those of a horizontal group.

Comments

Only Belgium, Greece and the Netherlands have made use of this option. In Italy a consolidation requirement is imposed in such a case where banks are involved. Consolidation is required in France in such cases in the insurance sphere. In the view of the Belgian delegation, problems may arise where, in addition to horizontal consolidation, vertical consolidation comes into consideration.

None of the Member States has so far experienced problems in connection with the abovementioned Article.

- Article 43

This Article gives Member States the option of not applying to subsidiary undertakings governed by its laws the provisions of Directive 78/660/EEC (balance-sheet Directive) concerning the content, auditing and publication of annual accounts where the parent undertaking is subject to the law of a Member State and various conditions set out in the Article are met. In particular, the subsidiary undertaking must be included in the consolidated accounts and the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking.

Comments

Only Ireland, Luxembourg and the Netherlands have made use of this option. None of the Member States is experiencing problems in connection with the abovementioned Article.

- Article 44

This Article gives Member States the option of not applying to parent undertakings governed by their laws the provisions of Directive 78/660/EEC concerning the auditing and publication of the profit-and-loss account where certain conditions set out in the Article are met. In particular, the parent undertaking's individual accounts must have been included in the consolidated accounts to be drawn up by it.

Comments

Use may be made of this exemption in Ireland, Luxembourg, the Netherlands and the United Kingdom.

None of the Member States is experiencing problems in connection with the abovementioned Article.

III. Conclusions

The negotiations leading to the adoption of Directive 83/349/EEC could not have been successful if the Council had not undertaken to review the Member State options referred to in Article 50 after five years and to amend them if necessary. It was feared that those options might materially undermine some of the Directive's objectives, notably regarding the equivalence and comparability of consolidated accounts, and so give rise to practical problems.

In the Commission's view, those fears have not been realized.

The Commission has examined the application or non-application of the options in individual countries in close cooperation with the Member States. It has concluded that these options have not given rise to problems in any Member State. In particular, there are no indications that they are impairing the equivalence and comparability of consolidated accounts.

The Commission therefore proposes that the Council should not amend the provisions in question on the basis of Article 50 of Directive 83/349/EEC.

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