Transposition tables and their use for implementation of the EU Directives

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Objectives of the session

- Introduce participants to transposition of the EU *acquis communautaire*;

- Explain how transposition tables are used for transposing EU Directive requirements into local legislation;

- Provide participants with practical insights on how to transpose the Accounting directive;

- Q&A
Why is there a need?

- Effective implementation of Union law = prerequisite for achieving the policy objectives of the Union

- Transposition = Member States' responsibility

- Treaties entrust the Commission with the task of overseeing the application of Union law under the supervision of the Court of Justice

- Notification not enough: EU institutions agree that, in the frame of better regulation, there has to be more information provided to the Commission where justified
What information is needed?

The information….

- ‘must be clear and precise’

- ‘must indicate unequivocally the laws, regulations and administrative provisions’, or any other provisions of national law

- where relevant, the jurisprudence of national courts

- by means of which the Member States consider that they have satisfied the various requirements imposed on them by the directive.
Since 2011: Explanatory documents

- Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents (2011/C 369/02)

- Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents (2011/C 369/03)

- For the Commission services,
  Explanatory documents = Transposition tables

Note: Until 2011 – a binding article on correlation tables
The Accounting Directive requires explanatory documents to be prepared by each Member State – justified by complexity (with regard to Accounting Directive, the legislator considers the transmission of correlation tables to be justified, preamble to the directive, para 58).

Deadline for transmission: together with the notification of transposition (i.e. by - 2015)
Transposition of the *acquis* – the case of non-EU countries

- Association Agreement contains the **legal basis** and **timetable** for transposing of the *acquis*, including references to the company law, accounting and auditing and corporate governance

- Georgia, Republic of Moldova and Ukraine - recently signed Association Agreements

- Important – date of entering into force
Article 30 of the *Chapter 3. Company law, accounting and auditing and corporate governance*, states:

“The Republic of Moldova shall carry out approximation of its legislation to the EU acts and international instruments referred to in Annex II to this Agreement according to the provisions of that Annex”

Accounting and Auditing.


Timetable: these Directives' provisions shall be implemented within 3 years of the entry into force of this Agreement.

Note: Article 52 of the Directive 2013/34/EU: Directives 78/660/EEC and 83/349/EEC are repealed. References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.
Association agreement – case of Republic of Moldova (3)

  
  **Timetable:** this Regulation's provisions shall be implemented within 2 years of the entry into force of this Agreement

  
  **Timetable:** this Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.
Directives and/or Regulations are amended after entering into force of the Agreement – how to proceed?

Article 449. Dynamic approximation:

“In line with the goal of gradual approximation by the Republic of Moldova to EU law, and in particular as regards the commitments identified in Titles III, IV, V and VI of this Agreement, and according to the provisions of the Annexes, the Association Council shall periodically revise and update those Annexes, including to take into account the evolution of EU law as defined in this Agreement. This provision shall be without prejudice to any specific provisions under Title V (Trade and Trade-related Matters) of this Agreement”.
Transposition table - how should it look like?

- **Table > columns!**

- **Example of columns (in the case of non-EU countries):**
  - First column: EU directive (a – reference and a1 - text), article by article
  - Second column: country legislation (b – reference and b1 – text); can be several types of legislation / other types relate to implementation
  - Third column: assessment of the conformity (not aligned, partially, fully, not applicable)
  - Fourth column: Note / Comments, reasons for the partial conformity, the lack of conformity, or no applicability,
  - Fifth column (optional): amended text of the legislation and date of the intended alignment of this article, etc.
EU ACCOUNTING DIRECTIVE AND COUNTRY’S ACCOUNTING LEGISLATION
TRANSPOSITION TABLE

EU legislation:

National legislation:
1. Accounting Law
2. National Accounting Standards
   
   [List all relevant laws, by-laws, regulations and other administrative provisions by which the provisions of the directive are transposed, including the enacting bodies, the enactment dates and links to electronic official journal, if available]

Conventional signs:
C – full conformity; P – partial conformity; N – not in conformity; NA – not applicable;
TBC – to be clarified [for the working version]
**TRANSPOSITION TABLE**

**Introduction to DIRECTIVE 2013/34/EU**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,
Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, Having regard to the opinion of the European Economic and Social Committee, Acting in accordance with the ordinary legislative procedure

**Whereas:** [insert the text of the introductory part of the Directive]

<table>
<thead>
<tr>
<th>DIRECTIVE 2013/34/EU</th>
<th>National Legislation</th>
<th>Conformity</th>
<th>Comments</th>
<th>Proposed amendments to national legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert the text of the directive. Include each article, paragraph, letter etc. in a separate row!!</td>
<td>Insert relevant parts of national legislation. There can be several types of legislation transposing a single article of the Directive – identify each law, bylaw, etc. by including references to their name, article, paragraph, etc.</td>
<td>C</td>
<td>Mention the reasons for the partial conformity, non-conformity, or no applicability, etc.</td>
<td>This column can be added at the latter stage, when level of the conformity of all articles is clarified and agreed within relevant counterparts.</td>
</tr>
<tr>
<td></td>
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<td>P</td>
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<td>N</td>
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<td>NA</td>
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<td>TBC</td>
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</table>
### Assessment of the conformity: Full Conformity (C)

<table>
<thead>
<tr>
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<tr>
<td><strong>Article 4. General provisions</strong>&lt;br&gt;1. The annual financial statements shall constitute a composite whole and shall for all undertakings comprise, as a minimum, the balance sheet, the profit and loss account and the notes to the financial statements.</td>
<td>Companies Act. Art. 60 (Annual report). (1) The annual report of companies referred to in paragraph (1) of Article 57 of this Act shall comprise the following:&lt;br&gt;- the balance sheet;&lt;br&gt;- the statement of profit and loss;&lt;br&gt;- the cash flow statement;&lt;br&gt;- the statement of changes in equity;&lt;br&gt;- notes to the financial statements; and&lt;br&gt;- the business report referred to in Article 70 of this Act. The financial statements from indents one to four of this paragraph and notes to financial statements shall constitute the financial report.&lt;br&gt;(2) The annual report of small companies whose securities are not traded on a regulated market shall comprise at least the following:&lt;br&gt;- the balance sheet;&lt;br&gt;- the statement of profit and loss; and&lt;br&gt;- notes to the financial statements.</td>
<td>C</td>
<td></td>
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<tr>
<td>2. The annual financial statements shall be drawn up clearly and in accordance with the provisions of this Directive.</td>
<td>Companies Act. Art. 61 (The general rule). (1) The annual report shall be drawn up in a clear and transparent manner. It shall provide a true and fair presentation of the assets and liabilities of the company, its financial position and profit or loss.</td>
<td>C</td>
<td></td>
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<tr>
<td>3. The annual financial statements shall give a true and fair view of the undertaking’s assets, liabilities, financial position and profit or loss.</td>
<td>Companies Act. Art. 61 (The general rule). (1) The annual report shall be drawn up in a clear and transparent manner. It shall provide a true and fair presentation of the assets and liabilities of the company, its financial position and profit or loss.</td>
<td>C</td>
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</table>
## Assessment of the conformity: Full Conformity by implication (C)

<table>
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<tr>
<td>Article 2. Definitions</td>
<td>National Accounting Standard 25 Formats of Income Statement for External Business Reporting. 25.36. a) <strong>Net sales</strong> represent the selling value of goods sold, reduced by discounts given at the moment of sale or later (for example, cash discounts), and by the value of returns. <strong>National Accounting Standard 18 Revenue.</strong> 18.4. Sales revenue comprises revenue generated by sales of products or merchandise and of materials and services provided during the accounting period (other than financial revenue generated on this basis). Sales revenue shall be classified as revenue from the sale of entity's own products and services and revenue from the sale of merchandise and materials. Amounts collected on behalf of third parties, such as accrued value added taxes and other taxes, levies and charges are not part of sales revenue. Similarly, in an agency relationship, the amounts collected on behalf of the principal are not revenue. (Instead, revenue is the amount of commission.)</td>
<td>C</td>
<td>Implicitly. Although here is no specific definition of the 'net turnover', it could be assessed that the provisions of the domestic legislation in that respect cannot be incompatible with the Directive.</td>
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</table>
## Assessment of the conformity: Partial Conformity (P)

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<tr>
<td><strong>Article 20. Corporate governance statement</strong>&lt;br&gt;1. Undertakings referred to in point (1)(a) of Article 2 shall include a corporate governance statement in their management report. That statement shall be included as a specific section of the management report and shall contain at least the following information:&lt;br&gt;(c) a description of the main features of the undertaking’s internal control and risk management systems <strong>in relation to the financial reporting process</strong>;</td>
<td><strong>Accounting Law. Article 31. Management report</strong>&lt;br&gt;(2) The management report of public interest entities shall include a chapter on corporate governance, submitted as a separate document in the management report and shall contain information on:&lt;br&gt;c) internal control systems and risk management of the entity and group of entities;</td>
<td>P</td>
<td>Accounting Law does not explicitly provide that the description of the main features of the internal control and risk management must be in relation to the financial reporting process</td>
</tr>
<tr>
<td><strong>Article 32. Other publication requirements</strong>&lt;br&gt;1. Where the annual financial statements <strong>and the management report</strong> are published in full, they shall be reproduced in the form and text on the basis of which the statutory auditor or audit firm has drawn up his/her/its opinion. They shall be accompanied by the full text of the audit report.</td>
<td><strong>Accounting Law. Article 40. Auditing of financial statements</strong>&lt;br&gt;(1) Financial statements of entities subject to statutory audit (required by law ) will be posted in the official website of the entity and the body to which financial statements are submitted and made available to the general public.</td>
<td>P</td>
<td>Accounting Law does not explicitly regulate the fact that the Management Report should be published. Also, there is no requirement that the annual financial statements and the management report shall be accompanied by the full text of the audit report</td>
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</table>
### Assessment of the conformity: Not In Conformity (N)

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| **Article 3. Categories of undertakings and groups**<br>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:<br>(a) balance sheet total: **EUR 350 000**;  
(b) net turnover: **EUR 700 000**;  
(c) average number of employees during the financial year: 10.<br><br>**Companies Act. Art. 55 (Micro, small, medium-sized and large companies).** (2) A company that satisfies any two of the following criteria shall be deemed a **micro company:**<br>- it has less than an average of 10 employees in a financial year;  
- it has an annual turnover of less than **EUR 2 000 000**; and  
- the value of its assets is less than **EUR 2 000 000**.<br><br>The thresholds defined by Companies Act for micro entities are exceeding this Directive's requirements. | N | |
| **Article 12. Special provisions relating to certain balance sheet items**<br>11. [...] In exceptional cases where the useful life of goodwill and development costs **cannot be reliably estimated**, such assets **shall be written off within a maximum period set by the Member State.** That maximum period **shall not be shorter than five years and shall not exceed 10 years.** An explanation of the period over which goodwill is written off shall be provided within the notes to the financial statements.<br>**National Accounting Standard 2 Intangible Assets and Long-term Deferred Costs.**  
2.26. Goodwill and intangible assets with indefinite useful lives **shall not be amortized, but rather impaired.**<br><br>According to SAS 2 goodwill with indefinite useful live shall not be amortized, while the Directive requires that where the useful life cannot be reliably estimated, it shall be written off within a maximum period set by the MS (but no longer than 10 years). | N | |
| **Article 15. General provisions concerning the notes to the financial statements**<br>Where notes to the balance sheet and profit and loss account are presented in accordance with this Chapter, the notes shall be presented in the order in which items are presented in the balance sheet and in the profit and loss account. | | N | No similar provisions into the domestic legislation. |
### Transposition table - examples (5)

#### Assessment of the conformity: Non Applicable (NA)

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Article 3. Categories of undertakings and groups</td>
<td></td>
<td>NA</td>
<td>The country has adopted euro since 2007.</td>
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<tr>
<td>9. 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 7 shall be that obtained by applying the exchange rate published in the Official Journal of the European Union as at the date of the entry into force of any Directive setting those amounts. For the purposes of conversion into the national currencies of those Member States which have not adopted the euro, the amounts in euro specified in paragraphs 1, 3, 4, 6 and 7 may be increased or decreased by not more than 5 % in order to produce round sum amounts in the national currencies.</td>
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<td>Article 23. Exemptions from consolidation</td>
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<td>NA</td>
<td>Optional and not transposed.</td>
</tr>
<tr>
<td>2. Member States <strong>may exempt</strong> medium-sized groups from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public-interest entity.</td>
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<tr>
<td>Article 36 Exemptions for micro-undertakings</td>
<td></td>
<td>NA</td>
<td>No action is required by Member States</td>
</tr>
<tr>
<td>9. By 20 July 2018 <strong>the Commission shall submit to the European Parliament</strong>, 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.</td>
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Challenges in implementing the *acquis*

- Take decisions well in advance before introducing any changes;
- Attach particular care to capacity building and ensure the political support;
- Take into account the size and character of the economy (ambitious but realistic target);
- Consider how to implement the EU law (e.g. adjust to national legislation procedure and tradition) – Do not rewrite directives!
- Engage in the process of drafting EU law at the earliest possible stage;
- Prepare the transposition tables while drafting the law.
Transposition can be achieved using various legal instruments, such as laws, regulations and administrative provisions (e.g. national accounting standards). It is not necessary to transpose all requirements of the acquis into the Companies Act/Accounting Law;

Avoid duplication! For example, when the layouts of the Balance sheet and Income statement are prescribed by the National Accounting Standards, there is no need to include the layouts into the Companies Act/Accounting Law as well;

Other provisions of the laws, bylaws and regulations, which were not used/cited in the transposition table should be carefully analyzed, in order to avoid overregulation;
Development of the transposition tables should be done in a participative and transparent manner, where the process is led by the relevant institution, e.g. Ministry of Finance: all stakeholders need to be involved in the reform - accountants, auditors, regulators, preparers and users of the financial statements;

Addressing the transposition problem requires a focus on the whole life cycle of a policy – a piecemeal approach risks being ineffective;

Remember that it’s a never-ending process;

Do not hesitate to ask the CFRR team for assistance.
Thank you for your attention!

Any questions?
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