



**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
AMENDING DIRECTIVES 78/660/EEC AND 83/349/EEC  
AS REGARDS THE VALUATION RULES FOR THE ANNUAL AND CONSOLIDATED ACCOUNTS  
OF CERTAIN TYPES OF COMPANIES**

## UNICE COMMENTS

### 1. Scope of the proposal

- 1.1 UNICE does not agree with the option given to Member States (Article 42a, paragraph 1) to *require* fair value accounting in respect of any or all classes of company. In UNICE's view Member States should only be granted the possibility to *allow* fair value accounting. In any event, if the recent Commission Communication on the "*EU Financial Reporting Strategy*" is going to be approved by the European Parliament and the Council, then listed companies will probably be required to comply with IAS (and therefore also with IAS 39) in their consolidated statements.

Granting Member States the possibility to allow fair value accounting is more in line with the above-mentioned Communication which stipulates that Member States will be *allowed* to extend the application of IAS (including IAS 39) to non-listed companies and to individual accounts. It would not be consistent for Member States on the one hand to grant an option to comply with all IASs (including IAS 39), and on the other to issue a requirement to apply a specific section (fair value) within that same body of accounting rules.

- 1.2 UNICE does not understand the rationale behind the exclusion of banks and insurance undertakings, as it does not see what the problem would be in extending the amendments to the EC Directives relevant for companies of this type. After all, the trigger for these amendments (IAS 39) has to be applied by these companies (only insurance *contracts* are excluded from IAS 39). Moreover, listed banks and insurance undertakings should apply IAS in the near future anyway, assuming that the Communication is approved.
- 1.3 UNICE recommends a positive formulation for the balance sheet items to which fair value accounting should be applied (rather than in the form of a double negative), thereby restricting as much as possible the exclusion options of Article 42a, paragraph 4. These options will result in different fair value requirements in individual Member States and will hinder accounting harmonisation and the development of a level playing-field (see Communication, para. 28). UNICE would also refer to its last remark below.

### 2. Technical issues

- 2.1 Fully in line with the tradition of EC Directives, Member States are provided with several options to implement fair value accounting provisions. Notwithstanding UNICE's previous remark, this could result in Member States' laws complying with the Directives, though not with IAS 39. This is definitely not a situation UNICE would favour. The Directives should contain such detailed guidance that proper implementation nationally will lead to compliance with IAS 39.

As an example of such a potential conflict with IAS 39, UNICE would refer to Article 42a, paragraphs 4(a) and 4(b). If Member States do *not* implement this option, a conflict with IAS 39, paragraph 69 will arise.

- 2.2 UNICE does not agree with Article 42a, paragraph 4(c), as it cannot imagine from a logical perspective why *all* derivative financial instruments in this situation should be regarded as deemed to be held for trading purposes. This is not in line with IAS 39 where specific accounting requirements apply for derivatives held for hedging purposes. Derivatives in IAS 39 are held either for trading or for hedging purposes.
  - 2.3 UNICE also does not agree with the option given to Member States to exclude commodity-based contracts as mentioned in Article 42a, paragraph 4(d). In any case, such commodity-based contracts fall outside the scope of IAS 39 (see IAS 39, paragraph 6) and should not be included in the scope of the fair value sections of the Directives.
  - 2.4 The previous remark illustrates the need to formulate positively the definition and scope of financial instruments in order to ensure that Member States incorporate similar fair value requirements (*the level playing-field view*) in their national laws.
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