

<p>Q&A CNC 15/004 (R)</p>	<p><u>QUESTIONS / ANSWERS:</u></p> <p>EXEMPTION FROM THE OBLIGATION TO DRAW UP CONSOLIDATED ACCOUNTS OF SUB-GROUPS: CONCEPTS OF CONFORMITY AND EQUIVALENCE (ART. 1711-7 POINT 2° LSC)</p>
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Question:

In order to benefit from the exemption from the obligation to draw up consolidated accounts provided for in article 1711-7 LSC, Luxembourg sub-groups that are consolidated within a larger group of undertakings must ensure – among other things – that the consolidated accounts and the consolidated management report of the larger group are drawn up in accordance with Title XVII LSC or in an equivalent manner.

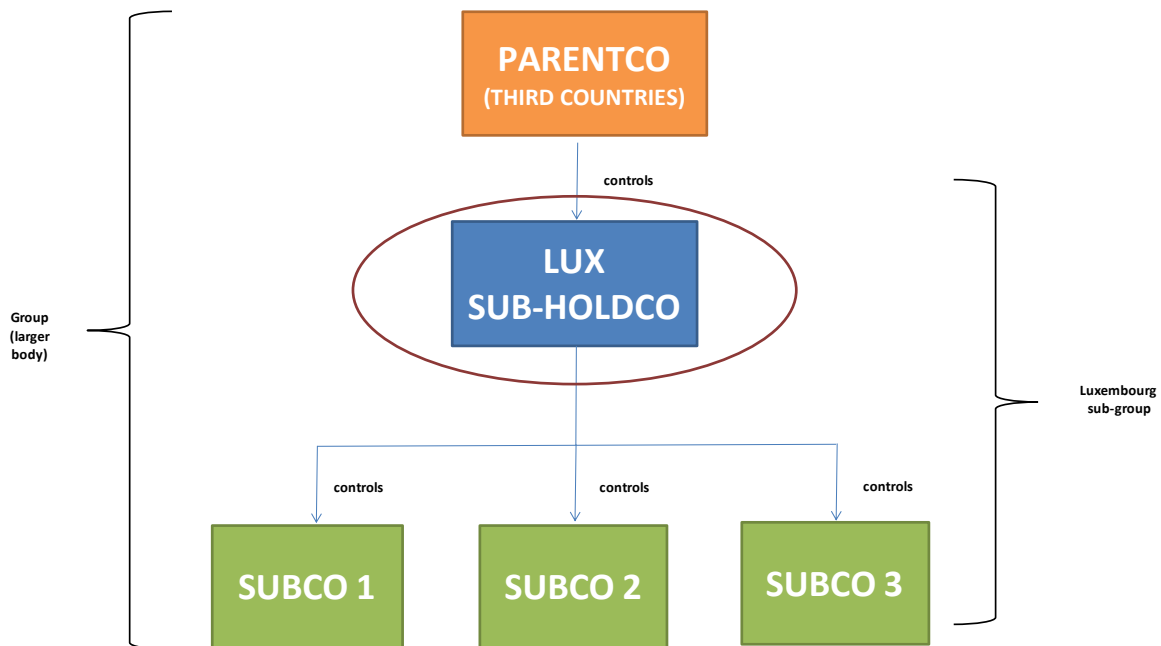
This raises the question of how to interpret the concepts of '**conformity**' and '**equivalence**'.

Key words: consolidated accounts, consolidated management report, sub-group exemption, title XVII LSC, article 1711-7 LSC, LUX GAAP, LUX GAAP – FV, IFRS – EU, IFRS – IASB, US GAAP, JP GAAP, CH GAAP, CA GAAP, KS GAAP, IN GAAP

Answer:

Pursuant to article 1711-7, point 2° LSC and in order to benefit from the consolidation exemption of the Luxembourg sub-group, the consolidated accounts and the consolidated management report of the larger group of undertakings must be drawn up:

1. in accordance with Title XVII LSC (“conformity”);
2. or in an equivalent manner.



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Without prejudice to the other cumulative conditions laid down in Article 1711-7 LSC as well as to other legal provisions (e.g. translation of the document) which the undertaking must satisfy in order to validly take advantage of the exemption, the concepts of "conformity" and "equivalence" within the meaning of Article 1711-7, point 2° LSC are examined below.

1. The concept of "conformity" in Title XVII LSC

The consolidated accounts and the consolidated management report are prepared in accordance with Title XVII LSC when they have been prepared in accordance with one of the three regimes provided for under Luxembourg accounting law (DCL)¹, namely:

- the LUX GAAP regime
- the LUX GAAP with fair value option regime (LUX GAAP – FV)
- the IFRS regime as adopted by the EU (IFRS – EU)

2. The concept of "equivalence" in Title XVII LSC

2.1. Instances of recognised equivalence

The consolidated accounts and the consolidated management report shall be drawn up in an equivalent manner to Title XVII LSC in the scenarios referred to in Article 23(8)(b) of the Accounting Directive 2013/34/EU, namely according to one of the assumptions referred to below:

Recognised equivalence	
Accounting principles equivalent to Title XVII LSC (pursuant to Art. 23(8)(b) of Directive 2013/34/EU)	Interpretative comments
a) in accordance with Directive 2013/34/EU;	Accounting standards / legal and regulatory accounting provisions of the 27 EU Member States (BE, BG, CZ, DK, DE, EE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE) and the three EEA countries (NO, IC, LS)
(b) in a manner equivalent to international accounting standards (IFRS - EU) determined in accordance with Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council;	IFRS - IASB (i), US GAAP (ii), Japanese accounting standards (iii), Chinese accounting standards (iv), Canadian accounting standards (v), Republic of Korea accounting standards (vi) and - on a transitional basis - Indian accounting standards (vii)

¹ See: Q&A CNC 14/001 "Luxembourg accounting law applicable to undertakings: three distincts regimes".

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2.2. Absence of explicit equivalence

In the absence of an explicit equivalence decision, it is up to the undertaking governed by Luxembourg law to determine the equivalence of the accounting principles used to draw up the consolidated accounts of the larger body within which it is included.

Equivalence not explicit	
Accounting principles equivalent to Title XVII LSC (pursuant to Art. 23 para. 8 point b) of Directive 2013/34/EU)	Interpretative comments
(c) in a manner equivalent to consolidated financial statements and consolidated management reports prepared in accordance with Directive 2013/34/EU;	<p>In the absence of an equivalence procedure provided for in Directive 2013/34/EU:</p> <p>(a) it is for the Member State to determine an equivalence procedure at national level</p> <p>- or, in the absence of measures in domestic law (viii) -</p> <p>(b) it is for the undertaking claiming the exemption to determine the equivalence of the standards used by its parent undertaking.</p>

For information purposes, it should be noted that accounting standards resulting from national *endorsement* of IFRS can generally be considered equivalent within the meaning of Article 1711-7 LSC. By way of illustration, countries such as Australia (AASB standards), Hong Kong (HKFRS standards) and Turkey (TFRS standards)² have adopted IFRS on a national basis. The same applies to the United Kingdom, which – since leaving the European Union – has *endorsed* IFRS via the UKEB at national level (*United Kingdom Endorsement Board*). **However, as the national versions of IFRS are not applicable to all companies in these jurisdictions, it is the responsibility of the administrative or management body of the Luxembourg undertaking to ensure that the parent company's consolidated accounts have been prepared in accordance with IFRS as adopted locally.**

² For a brief overview of the accounting framework applicable in a given country, stakeholders are invited to refer – for information purposes – to the section entitled "Use of IFRS Accounting Standards by Jurisdiction" available on the IFRS Foundation website at the following URL address:

<https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/#use-of-ifrs-accounting-standards-by-jurisdiction>

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3. Conclusion

On the basis of the foregoing analysis, it must be concluded that the consolidated accounts of a larger body of undertakings which includes a Luxembourg parent undertaking and its subsidiary undertakings are:

- **in conformity** with Title XVII LSC when they are prepared under one of the three regimes provided by DCL (LUX GAAP, LUX GAAP – FV and IFRS – EU);
- **equivalent** to title XVII LSC when they are established:
 - in accordance with the Accounting Directive 2013/34/EU (accounting standards / accounting provisions of the 27 EU Member States and the 3 EEA countries), or
 - in a manner recognised as equivalent to IFRS – EU (IFRS – IASB, US GAAP, JP GAAP, CH GAAP, CA GAAP, KS GAAP and – on a transitional basis – IN GAAP), or
 - in a manner equivalent to Directive 2013/34/EU as determined by the exempt undertaking on the understanding that accounting standards resulting from a process of national adoption of IFRS ("*endorsement*") may generally be considered equivalent (e.g. AASB from Australia, HKFRS from Hong Kong, TFRS from Turkey, IFRS adopted by UKEB from the United Kingdom).

The administrative or management bodies of undertakings remain responsible under general law for any decision taken on the basis of this document.

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- (i) International Financial Reporting Standards as published by the IASB (**IFRS – IASB**) are considered equivalent (European Commission decision no. 2008/961/EC of 12 December 2008).
- (ii) Generally Accepted Accounting Principles in the United States of America (**US GAAP**) are considered to be equivalent. (European Commission decision no. 2008/961/EC of 12 December 2008).
- (iii) Japanese Generally Accepted Accounting Principles (**JP GAAP**) are considered to be equivalent. (European Commission decision no. 2008/961/EC of 12 December 2008).
- (iv) the Generally Accepted Accounting Principles of the People's Republic of China (**CH GAAP**) are considered equivalent (European Commission implementing decision no. 2012/194/EU of 11 April 2012).
- (v) Canadian generally accepted accounting principles (**CA GAAP**) are considered equivalent (European Commission implementing decision no. 2012/194/EU of 11 April 2012).
- (vi) the Generally Accepted Accounting Principles of the Republic of Korea (**KS GAAP**) are considered equivalent (European Commission implementing decision no. 2012/194/EU of 11 April 2012).
- (vii) the Generally Accepted Accounting Principles of the Republic of India (**IN GAAP**) are considered equivalent for financial years starting before 1 January 2015 (European Commission implementing decision no. 2012/194/EU of 11 April 2012).
- (viii) in **Luxembourg**, it is up to – in the absence of national provisions determining the equivalence of foreign accounting principles – the undertaking claiming the exemption to determine the equivalence of the accounting standards used by its parent undertaking.

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Disclaimer

This document – provided as a courtesy – is an unofficial translation of the French original document entitled “*Exemption d’établissement des comptes consolidés de sous-groupes : notions de conformité et d’équivalence (Art. 1711-7, point 2° LSC)*”. In case of discrepancy in interpretation, the French version shall prevail.

The “questions and answers” published by the “Commission des normes comptables (CNC)” (Accounting Standards Board):

- are of a general nature and do not refer to the specific situation of any natural or legal person;
- are intended to contribute to the development of accounting doctrine in accordance with Article 73(b) of the amended Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings;
- only represent the opinion of the GIE CNC on a number of doctrinal and interpretative issues.

The administrative or management bodies of undertakings remain responsible under general law for any decision taken on the basis of this document.