

Crowe EU Survey

Indebtedness in F/S (§ 225 UGB – Austria)
Survey of similar requirements in the EU

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Indebtedness in financial statements



In Austria there is a requirement to include, in the event of negative equity, as a note in Austrian GAAP financial statements whether there is indebtedness according to the Insolvency Act. This is not a requirement of the EU Accounting Directive and therefore an additional requirement in Austria.

The Survey



The Survey answers the question, whether there are similar requirements in other EU countries

Executive Summary



No other EU country has a similar requirement for notes in the financial statements, whether there is indebtedness according to the Insolvency Act.

There is a need for clarification of the going concern principle in case of material uncertainty.

Nevertheless there exist several thin capitalization rules which enforce management to disclose measurements in management reportings.

European Union



In the European Union there are 25 member firms of Crowe Global.

The survey in detail

Code	Country	Contact	Requirement similar to § 225 UGB in Austria
BE	Belgien	Jan Van Brabant	NO*
BG	Bulgarien	Gyulyay Rahman	NO
DK	Dänemark	Søren Jonassen	NO
DE	Deutschland	Michael Jetter	NO*
EE	Estland	Vadim Donchevski	NO*
FI	Finnland	Tapani Vuopala	NO
FR	Frankreich	Christian Laplane	NO
GR	Griechenland	Rodoula Roussou	NO
IE	Irland	Chris Magill	NO
IT	Italien	Giorgio Solbiati	NO*
HR	Kroatien	Sonja Hecker	NO
LV	Lettland	no Crowe partner	N/A
LT	Litauen	Jolanta Janusauskiene	NO*
LU	Luxemburg	Monika Tasi	NO
MT	Malta	John Abela	NO
NL	Niederlande	Gijs Veenenbos	NO
PL	Polen	Monika Byczynska	NO
PT	Portugal	Sonia Matos	NO
RO	Rumänien	Camillo Giovannini	NO
SE	Schweden	Christer Asplund	NO*
SK	Slowakei	Juraj Kmec	NO*
SI	Slowenien	no Crowe partner	N/A
ES	Spanien	Agusti Saubi	NO*
CZ	Tschechien	Helena Sulcova	NO*
HU	Ungarn	Anna Koszegi	NO
GB	England	Steve Gale	NO
CY	Zypern	Marios Agathangelou	NO

*detailed answers available

Detailed answers of the participants

Are there similar requirements to the Austrian in national reporting in other EU countries?

NO - your country does not have a similar disclosure requirement

YES - there is a similar requirement. In this case, please can you provide more details about the disclosure requirement.

BE: NO

Based on Belgian Company Law currently there is an obligation to provide an additional note in the annual report of the Board of Directors (not in the financial statements as such) to explain why, in the opinion of the Board of Directors, the valuation rules in going concern do not need to be adjusted and the going concern assumption is still valid. Arguments need to be brought forward in that case in the annual report. Such note is required in two situations:

1. When the company reports a net loss during two consecutive years
2. When the company reports retained losses at the balance sheet date (not necessarily, but in some cases the company has negative equity in that case)

The annual report however needs to be laid down at the National bank together with the financial statements and if the company is exempted to issue an annual report (small companies), in that case the justification that the going concern assumption is still valid, does need to be disclosed in the statutory financial statements (by lack of annual report).

Apart from that, not in the case of negative equity, but when equity is below 50% of the issued capital, a special report is to be prepared by the Board of Directors to report on the plan to restore equity, in case the Board is of the opinion the company does not need to be dissolved and within a period of two months time a shareholders meeting needs to be convened to decide whether to continue the company's activities, or not. The same needs to be done when the equity is reduced below 75% of the issued capital. This special report is not a public document and no disclosure of the plan is required in the financial statements.

DE: NO

Nein, das deutsche Handelsgesetzbuch sieht eine solche explizite Angabepflicht nicht vor. Sofern jedoch ein Unternehmen vom Grundsatz der Going Concern Bilanzierung abweicht (Bspw. Insolvenz), ist diese Abweichung vom Grundsatz der GC-Bilanzierung im Anhang anzugeben.

Gestützt auf herrschender Kommentarmeinungen (siehe unten) machen viele Unternehmen jedoch eine Anhangangabe, dass trotz bestehen einer bilanziellen Überschuldung von der Fortführung des Unternehmens ausgegangen wird (Positive Fortführungsprognose) und dementsprechend die Going Concern Bilanzierungs- und Bewertungsgrundsätze angewendet werden.

„...In Zweifelsfällen, zB bei nachhaltigen Jahresfehlbeträgen oder ständig steigenden Kreditaufnahmen, haben KapGes/KapCoGes im Anhang die weitere Anwendung der Fortführungsprämisse zu begründen, da der JA sonst kein den tatsächlichen Verhältnissen entspr Bild iSd § 264 Abs 2 S 1 vermittelt (aA ADS 6 § 264 Anm 118). Ferner sind Ausführungen im Lagebericht nach § 289 Abs 1 – insb S 4 – von Bedeutung. Die Prognose sowie ihr Ergebnis sind gem § 238 Abs 1 angemessen zu dokumentieren.“ (Beck Bil-Komm/Winkeljohann/Büssow HGB § 252 Rn. 14-16)

EE:NO

However, if equity negative, it rise significant doubts that entity is going concern and the following information should be disclosure in notes to annual report

Continuity of activity

16. In the event of uncertainty about the continuity of an entity's operations over a period of at least 12 months from the reporting date, the report shall disclose:

- (a) the main events and circumstances that may give rise to significant doubts as to the company's ability to continue to operate;
- (b) management plans for dealing with these events and circumstances.

Based on the disclosures, it must be understood that there is significant uncertainty about the continuity of the company's operations, which may not enable the company to realize its assets and perform its obligations in the normal course of business.

IT: NO

For Italy is NO, as under Italian law negative equity is not permitted. However, in few words, under certain circumstances, the equity at the closing date could be negative but before the shareholders meeting that approve the financial statements, shareholders should have brought the equity at the minimum level required by the law.

LT: NO

There is 50% authorized capital rule in Lithuania. It means that in accordance with Lithuanian law the company's equity shall be not less than ½ of authorized capital. In that cases if it went down, the companies shareholders shall make appropriate decisions within 6 months.

SE: NO

There are no specific regulation or standards. This is down to Swedish GAAP.

The board shall in plain text in the "Board of Directors Report" in the sector "Future development" disclose any concern regarding going concern among other things. Swedish GAAP has a tradition that if you have a situation where the company's equity is less than 50% of the registered share capital to board must produce and present to the General meeting a balance sheet for liquidation purpose.

If this is not done Swedish GAAS say that we must report this in the Auditors report.

SK: NO

According to the current version of Bankruptcy Act, such company is in a crisis (negative equity) and should declare bankruptcy. An direct obligation about presenting in Notes is not given, but this information is essential as it directly means threatens of going concern of the company and therefore should be mentioned in the Notes.

On the other hand, company with Statutory audit have to prepare also Annual report. One of obligatory point in Annual report is "Information about expected future activities of the company." Here is also necessary to present threatens of future activities of Company.

ES: NO

Our requirement do not relate exactly to negative equity. There is an article on the commercial law that require to the directors to apply for the liquidation if the equity is less than 50% of the capital. Company do not have the obligation to include a paragraph on their notes to the financial statements specifically, but this issue is always in relation to going concern issue. A note on the going concern is always required to be included in the Spanish financial statements. Then, directors will have to explain in that note what they are going to do in order to avoid the liquidation (they would have to convoke a shareholders' meeting to discuss the issue).

CZ: NO

Czech entities only standardly disclose in Notes to financial statements detail for bank and other loans presented in financial statements.



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