



**COUNCIL OF  
THE EUROPEAN UNION**

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**STATEMENT OF THE COUNCIL'S REASONS**

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Subject: Position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities  
- Statement of the Council's reasons  
Adopted by the Council on 12 September 2011

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## **I. INTRODUCTION**

The Commission submitted to the Council and the European Parliament its proposal<sup>1</sup> for a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities on 19 March 2009.

The Economic and Social Committee adopted its opinion on the proposal on 15 July 2009.<sup>2</sup>

The European Parliament adopted its position at first reading on 10 March 2010<sup>3</sup>.

The Council adopted its position at first reading on 12 September 2011.

## **II. OBJECTIVE**

The aim of the proposal is to enable Member States to exclude very small enterprises (so-called "micro-entities") from the scope of the 4th Company Law Directive and thus exempt them from the accounting/financial reporting requirements of this Directive.

## **III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING**

### **1. General**

The European Parliament expressed broad support for the Commission proposal and adopted five amendments to it.

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<sup>1</sup> 7229/1/09 REV 1  
<sup>2</sup> OJ C 317, 23.12.2009, p. 67.  
<sup>3</sup> 7424/10

The Council broadly agrees with the spirit of these amendments and took extensive account of them when drawing up its position at first reading.

Furthermore, in order to specify the principles set out in the European Parliament's position, the Council included a number of detailed provisions in view of facilitating the transposition and applicability of the Directive in the Member States.

In addition to the changes of substance described in Section 3, there are drafting changes to clarify the text and to ensure the overall coherence of the proposed Directive.

The Commission has indicated that it can accept the Council's position at first reading.

## **2. EP amendments included in the Council's position at first reading**

### **a) Maintenance of the obligation to keep records showing the company's business transactions and financial situation (Amendments 1, 3 and 4)**

The European Parliament's position follows the Commission's proposal as regards the overall concept of the amendment of the 4th Company Law Directive. It establishes an option for Member States to exempt micro-entities from obligations under the 4<sup>th</sup> Company Law Directive.

However, the European Parliament's amendments 1, 3 and 4 address the concern that an exemption from accounting duties could reduce transparency and access to necessary information for credit. The European Parliament stressed the importance of keeping a certain level of transparency as regards micro-entities' financial and economic situation and of preserving trust of all the different actors in the market.

The Council fully supports the European Parliament's view that Member States should remain obliged to maintain a certain level of accounting obligations in order to help micro-entities to structure their finances and provide information for national authorities and, if necessary, for financial institutions.

The Council embraces the spirit of amendments 1, 3 and 4 and maintains a certain level of accounting obligations by modifying the concept of the Commission proposal. It introduces a variety of optional exemptions from parts of the 4<sup>th</sup> Company Law Directive instead of a complete exemption of micro-entities from the scope of the Directive. As a result Member States will be free to allow their micro-entities to draw up a very simplified balance sheet and profit and loss account with almost no disclosures. Member States will also have the option to replace the current publication regime by a simple obligation for micro-entities to file the balance sheet information with one competent authority designated by the Member State concerned. If the designated competent authority is not the business register, the information will have to be transmitted to that register by the competent authority.

The conceptual change introduced by the Council in Article 1 aims at making clear which are the specific obligations under the 4th Company Law Directive maintained for micro-entities. Accordingly Recitals 8 to 11 were introduced to give an explanation on changes in Article 1. Furthermore, the Council included the main ideas expressed in amendment 1 in a modified version of Recital 5.

**b) Member States' discretion in the implementation of the Directive (Amendments 2, 3 and 5)**

The European Parliament emphasised that as the size criteria laid down in Article 1a, paragraph 1 for the definition of micro-entities will lead to significant differences among Member States as regards the number of enterprises considered as micro-entities and as micro-entities usually have no cross-border activity and thus no impact on the functioning of the internal market, harmonisation by means of this Directive would not be justified.

Therefore, the European Parliament's position at first reading includes amendments making evident that Member States should take into account the specific conditions and needs of their own market and in particular the situation at national level regarding the number of enterprises falling under the micro-entity regime when transposing the Directive.

The Council fully agrees with the European Parliament that any harmonisation is excluded from the scope of this Directive and Member States should transpose it in the way that they consider most appropriate for their national situations.

The Council's position at first reading incorporates amendments 2, 3 and 5 in Recitals 6 and 7 and in Article 2, paragraph 1 of the Directive respectively.

### 3. **Additional changes included in the Council's position at first reading**

#### **a) Consequences of the Lisbon Treaty**

The Commission's proposal, adopted on 26 February 2009, refers to the legal basis and the legislative procedure applicable before the entry into force of the Lisbon Treaty.

The Council's position at first reading amends these provisions by referring to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof and to the ordinary legislative procedure.

#### **b) The definition of micro-entities (Article 1(1) - Article 1a (1))**

The European Parliament's position at first reading follows the Commission's proposal as regards the following definition of micro-entities:

*"companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:*

*(a) balance sheet total: EUR 500 000;*

*(b) net turnover: EUR 1 000 000;*

*(c) average number of employees during the financial year: 10.*

The Council's position at first reading lowered two of these size criteria (balance sheet total: EUR 250 000; net turnover: EUR 500 000) in order to avoid the situation where the vast majority of companies would be covered by the category of micro-entities.

#### **c) Transposition (Article 2(1))**

A reference to correlation tables has been included in Recital 12 and the one in Article 2, paragraph 1 has been deleted.

#### IV. CONCLUSION

The Council believes that its position at first reading, while taking into account the principles set out in the European Parliament's position, represents a well balanced compromise between reducing administrative burdens for very small enterprises and maintaining a level of accounting obligations necessary to ensure transparency on economic activities for national authorities, financial institutions and economic operators. The Council looks forward to constructive discussions with the European Parliament at second reading with a view to the early adoption of the Directive.

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