COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT**

***accompanying the***

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies**

***and the***

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts**

# ***Impact Assessment***

{COM(2008) 194}
{COM(2008) 195}
{SEC(2008) 467}

## 1. INTRODUCTION

### 1.1. The EU acquis in company law, accounting and auditing

The EU company law directives establish disclosure requirements for limited-liability companies and for the branches of these companies that are established in another Member State (First and Eleventh Directive), set minimum requirements concerning the capital of public limited-liability companies (Second Directive) and concerning the procedures for domestic mergers and divisions (Third and Sixth Directives) and for cross-border mergers (Tenth Directive). Furthermore, the Twelfth Company law Directive introduced the possibility to found limited-liability companies with a single member and more recent directives dealt with the procedure to follow in the case of a takeover bid (Takeover bid Directive) and with shareholder voting (Shareholders' rights Directive).

In the fields of accounting and auditing one directive establishes minimum requirements for the annual accounts of mainly limited-liability companies (Fourth Directive) and a second one deals with group accounts (Seventh Directive). The Eighth Directive sets up requirements for the audit of the annual accounts.

Those directives that were adopted between the 1960s and the 1980s have been updated several times in order to adapt them to new developments[1]. However, with the exception of the 2006 revision of the Eighth Directive[2] none of these amendments touched on the scope or the basic content of the directives concerned. They have remained fundamentally unchanged since their adoption.

### 1.2. Fast track simplification actions 2007

In 2007, the Commission adopted a number of proposals in the context of its Action programme for the reduction of administrative burdens[3] that were submitted to the European Parliament and the Council for consideration by way of a fast track procedure in order to achieve rapid progress on administrative burden reduction in areas where this was possible through relatively minor, technical changes.

European company law, accounting and auditing had been identified as priority areas within the administrative burden initiative. First analyses carried out by a number of Member States

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1 In the context of the fourth phase of the Simplification of the Legislation on the Internal Market Process (SLIM), the First and Second Company law Directives were modernised; furthermore, the Fourth and the Seventh Directives were updated, the Tenth Company law Directive on cross border mergers and the Directive on the exercise of shareholders' voting rights were adopted. In the field of accounting and auditing, the level of international harmonisation achieved has contributed to the acceptance of new standards which allow for transparency and increase the credibility of annual financial statements. For listed companies, Regulation 1606/2002 on the application of international accounting standards (IAS) therefore requires the use of International Financial Reporting Standards (IFRS) for consolidated accounts. In addition, a new directive on statutory audit was adopted in 2006.

2 The original Eighth Directive was replaced, in 2006**,** by the new Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L157, 9.6.2006, p. 87).

3 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on "Action programme for reducing administrative burdens in the EU" - COM(2007) 23, not yet published in the Official Journal.

had shown that administrative costs caused by EU rules in these areas are particularly high[4]. Part of the first fast track package was therefore a proposal for a directive in the area of company law that aimed at repealing the requirement for an expert report in the context of a merger or a division of public limited companies where all shareholders of the companies concerned renounce to such report. The directive was adopted by the European Parliament and the Council on 13 November 2007[5].

### 1.3. Commission initiative to simplify company law

In parallel to the fast-track action described above, the Commission launched an initiative for a broad simplification exercise in the areas of company law, accounting and auditing. On 10 July 2007, it adopted a communication ("the Communication") setting out its ideas[6].

The Communication outlined two options for the simplification of the company law *acquis*:

Option 1 considered keeping only the directives that cover cross-border issues. It proposed, therefore, the repeal of the directives on companies' capital (Second Directive), domestic mergers and divisions (Third and Sixth Directive), and single member companies (Twelfth Directive).

Option 2 limited the exercise to some key simplification measures related to specific provisions of the directives. This limited approach would also give possibility to review e.g. the rules on the documentation of a merger or a division (management reports, expert reports, etc.) or the creditor protection rules of the directives.

Both options were complemented by some other measures (in particular the proposals to abolish certain publication obligations in the national gazettes and to facilitate the registration of branches).

In the areas of accounting and auditing, the communication focused on the possibilities of reducing costs for SMEs. While it was clarified that it was the intention to maintain the overall goal of keeping and improving accounting and auditing quality in the EU, it was also acknowledged that the existing requirements under those directives entail administrative work for companies, particularly SMEs.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The content of the July Communication was submitted to the debate by the European Parliament, the Council and stakeholders.

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4 See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "A strategic review of Better Regulation in the European Union" - COM(2006) 689, OJ C 78, 11.4.2007, p. 9.

5 Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies (OJ L300, 17.11.2007, p. 47).

6 Communication from the Commission on a simplified business environment for companies in the areas of company law accounting and auditing - COM(2007) 394, not yet published in the Official Journal; available on DG MARKT's website at http://ec.europa.eu/internal_market/company/simplification/index_en.htm

On 22 November 2007, the Competitiveness Council adopted conclusions welcoming the simplification initiative in broad terms and stressing the importance of reducing administrative burdens in order to improve the competitiveness of companies. The Council called on the Commission to expedite consideration of responses to its communication and, where appropriate and preferably before the end of 2008, bring forward proposals, accompanied by impact assessments[7].

On 27 March 2007, a report was adopted by the committee in the lead in the European Parliament, the Legal Affairs Committee, which expresses broad support for the simplification exercise but also a clear preference, on the side of the Parliament, for option 2 (limited simplification) of the communication and resistance to the idea of a (partial) repeal of the EU company law acquis[8]. The opinion adopted by the Economic Affairs Committee on the same subject on 26 February followed the same line[9]. The adoption of the final EP report is expected for May 2008.

In addition, eighteen Member States' governments, the government of one EEA country and 110 stakeholders reacted to the invitation, in the communication, to submit comments on the proposals in writing, by mid-October 2007. These contributions from governments and stakeholders originated from 23 countries in total, including 22 Member States. A number of contributions were also submitted by European bodies and associations. A report on the reactions received from Member States and stakeholders between July and December 2007 is available on the website of the Directorate-General for Internal Market and Services (DG MARKT) at http://ec.europa.eu/internal_market/company/simplification/index_en.htm[10].

Also among those who reacted to the Communication, option 2 (limited simplification) was clearly preferred to option 1 (repeal/partial repeal). The main argument put forward was that these directives provide legal certainty and that their repeal would rather cause additional costs than lead to savings for companies. However, about three quarters of those who took a position on the question whether individual simplification measures should be proposed supported the idea. They considered that the Company Law Directives are in some parts overly descriptive and restrict the flexibility of Member States and companies beyond what is really necessarily.

Concerning the proposals in the areas of accounting and auditing, apart from the idea of exempting micro-entities from the scope of the accounting directives, in particular the proposals for more minor simplification measures for all companies were supported (introduction of audit exemptions under specific circumstances, a clarification of the Regulation (EC) 1606/2002 on the application of international accounting standards (IAS) as well as the deletion of certain disclosure requirements).

In July 2007, furthermore, a measurement exercise was launched in order to determine the costs created by the information obligations (IOs) contained in the EU company law acquis (for details see below section 3.1.). The consortium carrying out the measurement started its work in early August 2007 and is expected to finalize it, in the area of company law, accounting and auditing in April 2008.

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7 Council document 15222/07 DRS 48.

8 Documents PE398.420v01-00 and PE400.664v01.

9 Document PE400.482v02-00.

10 See also Annex 3 to this Impact Assessment.

The proposals that should follow-up the results of the communication and of the measurement were entered into the agenda planning of DG Internal Market and Services under reference no. 2006/MARKT/044.

## 3. CONTEXT AND PROBLEM DEFINITION

### 3.1. Reduction of administrative burdens

In the EU's approach to better regulation, the preparation of new legislation and simplification of existing legislation take into account the overall benefits and costs. Therefore, regulatory costs, of which administrative costs are only one element, must be analysed in a broader context, encompassing in an integrated way the economic, social and environmental costs and benefits of regulation[11].

Administrative costs, i.e. costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their activities or production[12], are inherent in the business of companies. They do not always entail administrative burdens but only in the cases where the information would not be collected by the business without a corresponding legal obligation.

Unnecessary and disproportionate administrative costs severely hamper economic activity. In 2005, the Commission therefore launched a programme for measuring administrative costs and reducing administrative burdens in order to improve the business environment for EU companies and to make the EU economies fit to meet the challenges of a more competitive global business environment in which they have to operate.

The Commission outlined the way for achieving this by adopting, on 14 November 2006, an updated simplification programme[13] and the main elements for measuring administrative costs and reducing administrative burdens[14]. Both programmes emphasised the need to generate tangible economic benefits. They were complemented by the Action Programme adopted on 24 January 2007[15] which fixed the aim of reducing administrative burdens on businesses in the EU by 25% until the year 2012 and launched the first package of fast-track proposals.

The Action Programme was endorsed by the Spring European Council in March 2007[16]. The European Council underlined that reducing administrative burdens is important with a view to boosting Europe's economy, especially given the potential benefits this can bring for small and medium-sized enterprises (SMEs). It stressed that a strong joint effort of the European Union and the Member States is necessary to reduce administrative burdens within the EU.

A key part of the Action Programme consisted of a large-scale measurement of administrative costs incurred by businesses in meeting legal obligations to provide information. This baseline measurement is carried out by the consortium Deloitte/Capgemini/Ramboll on behalf of the Commission and covers obligations stemming from EU legislation and from national

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11 Commission staff working document "Minimising administrative costs imposed by legislation" - SEC(2005) 175.

12 Commission working document "Measuring administrative costs and reducing administrative burdens in the European Union" - COM(2006) 691.

13 COM(2006) 689, see footnote 4.

14 COM(2006) 691, see footnote 12.

15 COM(2007) 23, see footnote 3..

16 Presidency Conclusions of the Brussels European Council - doc. 7224/07 Concl 1.

measures transposing that legislation. The methodology used is based on the 'EU Standard Cost Model', inspired by different variants of the Standard Cost Model (SCM) currently used for measurements at national level by a number of Member States. The EU measurement focuses on the areas with the most burdensome information obligations, which included, among others, the area of company law/auditing. The results of the entire measurement exercise will be delivered by the end of 2008.

In order to ensure that the concrete experience of stakeholders would be fully taken into account, outside expertise was made available for the implementation of the Action Programme. Stakeholder involvement was structured on the basis of (1) an online consultation in 22 EU official languages; (2) local workshops with businesses in Member States; and (3) the High Level Group of Independent Stakeholders on Administrative Burdens[17].

### 3.2. Administrative burdens in company law, accounting and auditing

The national measurements carried out in the years until 2006 and the results of the stakeholder consultation identified company law, including the fields of accounting and auditing, as one of the most burdensome areas of the EU acquis. Consequently, these areas were designated as one of the priority areas for the administrative burdens reduction programme[18].

As set out already in the Commission Communication of 10 July 2007, one reason for these findings has to be seen in the directives' age. In the last twenty to thirty years, the business environment of European companies has changed at high speed, with globalisation of economies and radical developments in technology. The EU has grown from nine or twelve Member States at the time of the adoption of the directives in question to 27 Member States as of today. In the light of these recent, and deep, changes some of the administrative requirements of the EU directives in the field of company law have become obsolete, excessive or duplicative.

In the areas of accounting and auditing, a further factor needs to be taken into account. Here, the emphasis, during the last years, has been on raising the quality of accounts of limited-liability companies and on increasing transparency. While these objectives continue to be of paramount importance the increase in obligations on companies has to be counterbalanced by a specific sensitivity for the needs and the special situation of small businesses for which these obligations often are particularly burdensome ("think small first"). In the line of this thinking, the Commission has launched, on 6 February 2008, an online-consultation on a Small Business Act designed at providing specific tools to unlock the full business potential of SMEs[19]. However, looking at the indications obtained from the national measurements it seems appropriate to explore the potential for reducing administrative costs in the accounting area in the short term.

In view of this situation, it was decided to accelerate the measurement in the areas of company law, accounting and auditing in order to achieve quickly important reduction results,

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17 See Commission working document "Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook" - COM(2008)35;
for details on the High Level Group of Independent Stakeholders see the website of DG ENTR at http://ec.europa.eu/enterprise/regulation/better_regulation/high_level_group_is_en_version.htm

18 See Commission working document COM(2008) 35, footnote 17.

19 http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm

in the interest of EU businesses. The final results of the measurement exercise in those fields are therefore already expected for spring 2008.

## 4. SUBSIDIARITY

Action at EU level is necessary to the extent that the obligations that impose administrative burdens derive from EU directives. Under those conditions, the reduction of administrative burden requires the modification of the EU rules. Action at EU level is therefore justified.

## 5. OBJECTIVES

The objective of the initiative is to contribute to enhancing the competitiveness of EU companies in the short term by reducing administrative burdens where this can be done without major negative impact. Therefore, information obligations in the area of company law, accounting and auditing that do not provide a significant added value for the users of the information have been identified.

## 6. SCOPE FOR RAPID ACTION

Whereas certain measures envisaged in the Communication of 10 July 2007 necessitate a thorough examination and discussion, it appeared already from that Communication that others might allow achieving improvements for European companies rapidly, both in the areas of company law and of accounting and auditing. This assumption was confirmed by the reactions received to the Communication.

On 30 January 2008, the Commission adopted its "Second strategic review of Better Regulation"[20], which was accompanied by the Commission working document "Reducing administrative burdens in the European Union"[21] and announced a second package of fast track measures for 2008.

### 6.1. Possible fast track measures in the fields of company law and accounting in 2008

In the area of *company law*, the measures that were spotted as possible fast track actions for 2008 were proposals contained in the Communication concerning the First and the Eleventh Company law Directives.

In relation to the First Company law Directive, the Communication highlighted the obligation for companies to publish, in the national gazettes, certain information that has to be entered into the Member States' commercial register. This concerns information linked to the company's setting up, to its capital and its financial information. In most cases, this publication entails additional costs for the companies that in particular in the case of the yearly produced annual accounts can be significant. At the same time, the publication in a national gazette does nowadays not provide real added value any more given that company registries, since beginning of 2007, have to make their information available online. A few

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[20] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Second strategic review of Better Regulation in the European Union" - COM(2008) 32.

[21] COM(2008) 35, footnote 17.

Member States even require that the information is published, in addition to the national gazette, also in one or more newspapers which leads to a further increase of company's costs.

The proposal concerning the Eleventh Company law Directive addressed the translation requirements, in national law, for documents to be filed to the branch's register. When registering a branch, companies need to file certain information contained in the companies register file also with the register of the branch. This often leads to a double cost for companies as they not only have to ensure the translation of certain documents into the language of the Member State where the branch is situated but also have to comply with sometimes excessive requirements for certification and/or notarisation of that translation.

In the area of *accounting and auditing* most measures addressed in the Communication require an in-depth analysis and are already for that reason not suited for a fast track procedure. However, rapid progress seems possible with a view to some minor measures set out in the communication. These measures concern the proposals to abolish, in the Fourth Company Law Directive, the requirement, for medium-sized companies, to provide the explanation on formation expenses and the breakdown of turnover into activity and geographical markets. Whereas there is already a possibility to exempt small companies from these requirements - and most Member States have made use of them - medium-sized companies still need to disclose these costs. Another proposal identified concerns the need to clarify the relationship between the International Financial Reporting Standards (IFRS) and the Seventh Directive, with a view to immaterial subsidiaries. The current state of EU law imposes the obligation to prepare consolidated financial statements in accordance with IFRS on companies where the only subsidiary or all subsidiaries as a whole are not material. This is regarded as burdensome and should therefore be amended accordingly.

### 6.2. Results of the consultation process on the possible fast track measures

The reactions from stakeholders to the Communication confirmed that it should be possible to agree in the short term on the measures set out above. Thus, support for the proposals concerning the First and the Eleventh Company law Directives arrived at between 80 and 90% of those that took a position on these issues and also in the area of accounting and auditing certain proposals were supported by a similar share of respondents.

The proposal to process these measures in the fast track procedure was therefore submitted to the High Level Group of National Regulatory Experts[22] where a majority of Member States that commented on the proposals supported the idea. While *France* and *Germany* were not in favour of dealing with the company law issues in a fast track procedure, *Denmark, the Netherlands, Estonia, Sweden* and *Latvia* expressed their support in principle. The *Czech Republic, Poland* and *Austria* supported the proposal concerning the First Directive but did not take a position on the Eleventh Directive (*CZ*) or considered that more work needs to be done in that area (*PL* and *AT*). On the accounting proposals, *Germany, Poland, Latvia, Estonia* and, partially, *Austria* expressed their support while *Denmark* and *the Netherlands* only supported a fast track procedure with a view to the Seventh Directive.

The High Level Group of Independent Stakeholders welcomed all the proposals in its opinion adopted on 26 February 2008.

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[22] For details on the High Level Group of National Regulatory Experts see DG ENTR's website at http://ec.europa.eu/enterprise/regulation/better_regulation/high_level_group_en_version.htm

This impact assessment has been prepared by the Commission staff. A draft of the impact assessment was submitted to the Commission's Impact Assessment Board, which provided its opinion on 19 March 2008[23]. The recommendations of the board led to changes in the draft impact assessment, in particular regarding the link with the measurement carried out by the consortium (section 5 below), the available options concerning the First Directive (section 1.4 of Annex 1), the problem definition and the available options concerning the Eleventh Directive (section 2.1 of Annex 1), the results of the stakeholder consultation in the field of accounting (section 1 of Annex 2) and the expected level of administrative burdens reduction in that area (section 5 of Annex 2).

## 7. EXPECTED IMPACT OF THE POSSIBLE FAST TRACK MEASURES

In view of the overall support for these measures, the proposals and their likely impacts are examined in the annexes 1 and 2 to this document.

The examination is based on data collected by DG MARKT with the help of the Member States. The results of the large-scale measurement of administrative costs, which was launched in July 2007, will only be available at a later stage so that they could not be taken into account in this impact assessment. However, the company law provisions addressed in this impact assessment are not measured as a priority in the measurement which focuses mainly on the Second, the Third, the Fourth and the Sixth Company law Directives, and the provisions addressed in the area of accounting constitute only a part of one data requirement of the Fourth Directive or – in the case of the question of the relationship with the IAS regulation – are not even included in the measurement at all. However, any additional information that might nevertheless result from the measurement will be used to quantify the potential savings more precisely and fed into the future discussion with the Council and the European Parliament.

The results of the examination in the annexes 1 and 2 can be summarised as follows:

### 7.1. Company law (Annex 1)

#### *7.1.1. Publication requirements for limited-liability companies*

The total minimum cost of the current rule in the First Directive on the publication in national gazettes is estimated at around 410 Mio €/year with a view to the publication of annual accounts and about 200 Mio €/year for publications of changes in the registers. To these costs have to be added the internal costs of companies for preparing the information for the publication, and in certain Member States costs of publishing the information in addition in newspapers. On these latter elements, however, no reliable figures are available.

The impact assessment presents four options with a view to the publication requirement:

- No policy change (option 1): This means that national requirements regarding publication in a national gazette and in newspapers remain in place.
- Abolition of all publication requirements at EU and at national level - full harmonisation (option 2): This means that companies, in future, would only be

[23] This opinion is available at: ….

obliged to file the information required with the register, without any additional publication.

– Making the current alternative disclosure regime mandatory (option 3): This would mean relying exclusively on an electronic platform (which could also be an electronic national gazette) that gives chronological access to changes in the register.

– Obliging Member States to ensure that no specific fee can be charged for any mandatory publication (option 4): Under this option Member States would have to ensure that companies are not charged a specific fee for the publication. In order to ensure a cost effective and easily accessible publication, access to the information would be granted in first place via a central electronic platform. However, as long as Member States respect the restriction on fees that they have imposed, they would be free to provide for additional publication obligations.

Annex 1 concludes that option 1 will not change the current costs weighing on companies or are at least not likely to do so. Under option 2, there is a risk that valuable information will not be available to users any more. Whereas from the users' point of view, there is no significant difference between option 3 and option 4, from the companies' point of view, option 4 is preferable. The wording leaves Member States more flexibility to provide for additional publication duties provided there is no additional specific fee imposed on companies in connection with such duties.

The conclusions can be summarised as follows:

| ***Comparison of options*** | | | | |
|---|---|---|---|---|
| | Reduction of companies' internal costs | Reduction of companies' external costs (fees) | Accessibility for users | Impact on publishers (national gazette/newspapers) |
| Option 1: No policy change | O | O | O | O |
| Option 2: Abolish publication requirement | + | ++ | - | - |
| Option 3: make current alternative system mandatory | O | + | O | - |
| Option 4: publication free of charge | O | ++ | O | - |

"O": No change "+": Positive impact "-": Negative impact

The conclusion in Annex 1 is that option 4 should be preferred.

*7.1.2. Translation obligations of branches of limited-liability companies*

The external costs of the current regime concerning translation obligations of branches is estimated, in Annex 1, on the basis of the information available, at 3.05 Mio € for the translation of articles of association and of the attestation on the existence of the company and at (yearly) 15.25 Mio € for the annual accounts. For the certification alone the respective figures are estimated to lie at 272,000 € and (yearly) 1.36 Mio €. To these external costs, the internal costs for ensuring that a translation/certification is obtained have to be added. On the level of these costs, no information is available at this stage.

In Annex 1, four options are presented on this issue:

- No-Policy Change (option 1): Under this option, Member States would continue to be able to require, in each case, certified translations of e.g. the instrument of incorporation, the articles of association, the accounting documents and the attestation on the company's existence, carried out by a translator sworn and appointed by their own public authorities and/or a notary;

- Complete abolition of the translation requirement at EU level (option 2): This option entails that Member States would not be able to request any more any (simple or certified) translations relating to the documents listed above;

- Mutual recognition of translations (option 3): This option entails ensuring that certified or approved translations produced in any EU Member State are considered sufficient for the purposes of the registration of a branch in another Member State.

The conclusion drawn in the annex is that option 1 would not lead to any savings of costs whereas option 2 fails to provide any specific mechanism to guarantee the accuracy of the documents disclosed in the Member State of the branch. Option 3 achieves a certain reduction in costs while ensuring the reliability of the translations.

The impacts of the different options can be summarised as follows:

| ***Comparison of options*** | | | | |
|---|---|---|---|---|
| | Reduction of translation costs | Reduction of certification costs | Reliability | Accessibility for users |
| Option 1: No policy change | ○ | ○ | ○ | ○ |
| Option 2: Abolish translation requirement | ++ | ++ | -- | -- |
| Option 3: mutual recognition of certified translations | ○/+* | + | ○ | ○ |

"○": No change "+": Positive impact "-": Negative impact

* The impact would be positive in the cases in which the registries of the Member State where the company has its registered office is able to issue the relevant original certificates in an EU official language of the Member State of the branch.

The conclusion in Annex 1 is that option 3 should be preferred.

### 7.2. Accounting

In Annex 2, the emphasis is put on the burden that the accounting requirements of the Fourth and Seventh Company law Directives put in particular on the SMEs that fall within the scope of the directives.

The options that are presented are:

- No legislative action (option 1): This option would leave the current situation unchanged;
- Targeted, technical changes in order to achieve simplification in the short term (option 2): Under this option the Commission would limit itself to proposing a number of targeted changes in order to improve the situation of SMEs in the short term without causing a significant loss of information to the users of this information;
- General revision of the Accounting Directives (option 3): Under this option specific rules for SMEs would be adopted in the context of a general overhaul of the Accounting Directives, aiming at adapting them to the changes in the economic environment that have taken place during the last three decades.

Annex 2 concludes that while option 1 does not lead to any cost reduction, option 3 is not likely to deliver any improvements in the short term. The result of the assessment is that only option 2 is likely to provide improvements for SMEs in the short term.

The impacts of the different options can be summarised as follows:

***Comparison of options***

| | Fulfilment of objectives | Effectiveness | Efficiency | Consistency | Information value of accounts |
|---|---|---|---|---|---|
| Option 1 - No legislative action | ○ | ○ | ○ | ○ | ○ |
| Option 2 - Targeted, technical changes in order to achieve simplification in the short term | + | + | + | + | ○ |
| Option 3 - General revision of the Accounting Directives | ○ | + | ○ | + | ○ |

Source: Commission Services analysis

"○": No change "+": Positive impact "-": Negative impact

The conclusion in Annex 2 is that option 2 should be preferred and that the following measures should be proposed:

(1) to remove the disclosure requirement for formation expenses for medium-sized companies;

(2) to remove the disclosure requirement for breakdown of turnover into activity and geographical markets for medium-sized companies; and

(3) to amend the Seventh Directive in order to clarify the relationship with the consolidation rules in IFRS.

About 240,000 medium-sized companies could benefit from the measures (1) and (2) that would reduce the reporting burden weighing on them and allow them to structure their internal reporting according to management needs. The expected savings from these measures are therefore estimated at between 2.5 and 5 Mio € for the first and between 5 and 10 Mio € for the second measure. The third measure would make sure that groups with non-material subsidiaries do not need to prepare IFRS accounts and could therefore save potentially significant amounts for these groups without users losing any relevant information. This potential is estimated to lie between 2 and 5 Mio € so that the overall savings from the three recommended measures lie between 11 and 21 Mio €.

## 8. MONITORING AND EVALUATION

The specific references to monitoring and evaluation are included in the relevant annexes.

# ***ANNEX 1***

**Table of content**

The proposal that this impact assessment accompanies is part of the second fast track package for the reduction of administrative burden[24]. It proposes modifications to the First and the Eleventh Company Law Directives in order to reduce the number and extent of information obligations contained in these directives.

The two directives apply to the types of private and public limited-liability companies established in the EU that have been notified, by the Member States, as falling within the scope of the directives (Article 1 of the First Company law Directive[25]).

[24] See (on the second package of fast-track actions in general) Commission working document COM(2008) 35, footnote 17.

[25] First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.3.1968, p. 8).

## 1. PUBLICATION OBLIGATIONS OF LIMITED-LIABILITY COMPANIES

### 1.1. Problem Definition

The limited-liability companies listed in Article 1 of the First Directive have to disclose certain documents by way of publication in the national gazette of the Member State.

This information concerns in particular:

- The instrument of constitution and/or the statutes of the company as well as any amendments to them;
- The appointment, the termination of office and the particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings and to take part in the administration, supervision or control of the company;
- The amount of the capital subscribed;
- The balance sheet and the profit and loss account for each financial year;
- Any transfer of the seat of the company, the winding up of the company and any declaration of nullity of the company by the courts, as well as the appointment of liquidators and the termination of the liquidation.

The requirement for publication of this information (or a reference to it) in the national gazette is imposed on these companies in addition to their general obligation to file these documents with the companies register[26].

#### *1.1.1. Purpose of the publication in the national gazette and recent developments*

In its original form, Article 3 of the First Directive provided for a registration of company information in the – paper-based and, in some Member States, decentralised – companies registers and for its additional publication in the (paper-based) national gazettes. This publication requirement was intended to make the information contained in the registers more accessible for stakeholders (i.e. investors, owners, creditors, public authorities and employees) and to draw their attention to the changes in the companies registers.

A modification of the First Directive in 2003[27] adapted these rules to the new technological possibilities. Thus the Member States, since January 2007, have to give companies the possibility to file their documents and particulars by electronic means. Also the national gazette can now be kept in electronic form, and Member States even have the possibility to replace the gazette by "equally effective means". Equally effective are means that give at least the possibility to access the information in chronological order via an electronic platform[28].

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[26] Article 3(2) and (4) First Directive.

[27] Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (OJ L 221 of 4.9.2003, p. 13).

[28] Article 3(4) First Directive.

Only after the publication in one of these forms has taken place, can the information be relied on by the company against third parties[29].

The introduction of electronic registers has facilitated the access to the data contained therein. Furthermore, initiatives in the market have developed tools in order to make the information contained in the electronic registers accessible also to companies and third parties in other Member States.

- In particular the European Business Register (EBR) facilitates the access to national registers. The EBR is a European Economic Interest Grouping (EEIG) that was established under Council Regulation (EEC) No 2137/85[30] in 1993 and has since then been enlarged to connect today 21 information providers and allow to search for more than 20 million companies in 15 EU Member States and a number of other European countries, such as the Republic of Macedonia[31].

- Furthermore, the EBR runs the so-called BRITE project (Business Register Interoperability Throughout Europe), which was launched on 1 March 2006 as an Integrated Project (IP) funded by the Commission. This 36 month project, involving a consortium of 19 organisations including European business registers, Chambers of Commerce, IT companies, universities and SMEs, aims at developing an interoperability model, ICT service platform and management instrument for business registers in order to adapt the registers to recent developments in European law, such as the Cross-border Mergers Directive[32] and the Transparency Directive[33], and in order to prepare possible future simplification measures e.g. in the area of the registration of branches. The EBR and the BRITE project are also currently under discussion in the context of the "e-justice" project of the Council of the European Union[34].

This electronic availability of information has removed the added value that the publication in the national gazette brought about in times of paper based, local company registers, all the more so as the gazettes often do not reproduce the full information but only contain a reference to the register.

This fact was already recognised in the framework of the 2003 revision of the First Directive. The reason why the requirement of a national gazette was nevertheless maintained at the moment is reflected in the explanatory memorandum of the 2002 Commission proposal for the amendment to the Directive[35]. There it reads as follows:

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29 Article 3(5) First Directive.

30 Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ L199, 31.7.1985, p. 1).

31 http://www.ebr.org/

32 Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

33 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 184, 6.7.2001, p. 1).

34 Council documents 10509/07 (Conclusions of the Council on E-Justice) and 12046/1/07 (Mandate on E-Justice).

35 COM(2002) 279, OJ C 227E , 24.9.2002, p. 377.

"The reference to a publication in the national gazette has not been removed from the Directive, because several Member States observed that their national provisions linked the legal value of company information to such a publication.

However, because this problem is not present in all Member States, a second subparagraph is added to paragraph 4 to allow Member States to replace the publication in the national gazette with equally effective means. This is subject to the provision of a central and chronological access to company information, which is the main function performed by a national gazette."

In the reactions to the Commission Communication of 10 July 2007, no comments were put forward giving reasons to assume that the argument put forward in 2002 today is still valid. Instead, a clear majority of those stakeholders that reacted to the Communication expressed themselves in favour of abolishing the current requirement of publishing in the national gazette to the extent that it creates additional costs for companies. Thus, 63 respondents (out of a total of 129) took a position on this question and 56 of them (89%) supported this proposal.

*1.1.2. Costs caused by the requirement to publish in the national gazette*

*1.1.2.1. Frequency of mandatory publications in the national gazettes*

Despite the possibility offered by the First Directive, to make recourse to "equally effective means", the national gazette is still used for the purposes of the First Directive in many Member States. This situation is problematic to the extent that this publication entails additional costs for the companies, which is the case in most of these Member States.

These publication costs do not only arise at the moment where the company is incorporated. Instead, these fees are, at least partially, charged to the company each time there is a change to one of the documents or particulars set out above under point 1.1. In particular, the annual accounts have to be published in regular intervals. Finally, the publication requirement does not only apply to the information deriving from the First Directive itself. Instead, many other EU provisions make reference to the disclosure rules of that directive. The occasions on which information has to be disclosed by filing to the register and publishing it, in addition, in the gazette are therefore numerous.

Examples for disclosure duties arising from provisions outside the First Directive are articles contained in the Second Company law Directive requiring that information on the capital of public limited companies and on changes to this capital are published and provisions in the Third, the Sixth and the Tenth Directives obliging public limited companies to publish draft terms of merger and division. Furthermore, the general disclosure system of the First Directive has been extended to the European legal forms such as the European Company (SE) and the European Cooperative Society (SCE)[36]. Table 1 attached to this annex contains a list of the relevant provisions in EU legal acts.

[36] Art. 39 of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) contains a separate rule on the disclosure of information on EEIGs.

*1.1.2.2. Fees for publications in the national gazettes*

Information on the fees for the publication in the national gazette or on an electronic platform in those Member States that provided data at the request of DG MARKT is contained in table 2.

As can be concluded from this second table, in most Member States, registration and/or publication costs are charged in the form of flat rates. Thus, in *Belgium* a company is charged an amount of 251.81 € for the publication of its initial registration in the gazette, in addition to the registration costs of 71 € for public limited-liability companies. The fee for the publication of changes in the statutes is set at 131.16 €. In *Greece*, the costs of the initial registration depends on the subscribed capital of the company whereas 544 € are charged for the publication of the registration in the national gazette and 289 € for the publication of changes in the statutes. In *Germany*, while only 1€ is charged for the publication, on an electronic platform, of the initial registration, a flat rate depending on the size of the company is applied for the publication of the annual accounts of small and medium-sized companies (50€/70€) in the national gazette. For large companies, publication fees depend on the number of letters but can, on average, be assessed at 1000 €.

In other countries, publication costs depend on the length of the information to be published. Thus, the basic fee for publication in the national gazette in *Austria* is set at 40€, with an additional 6€ to be paid for each line beyond the first 5 lines.

In *Cyprus, Ireland, Lithuania, Malta, the Netherlands, Finland, Slovakia* and *Sweden*, the publication costs are covered by the registration fees so no additional fees are charged to the company in that context. In *Denmark*, both registration and publication are free of charge.

In order to give an idea of the total costs that are caused by the publication requirement, figure 1 below shows an estimation of the costs for the publication of the registration of two smaller private-limited companies[37], one with three members and a capital of 20,000 € (company 1), and the other one with one member and the minimum capital required in that Member State (company 2). Costs have been estimated for those Member States that have provided information at the Commission's request. The minimum capital requirements that the Member States impose on private limited companies established on their territory are contained in table 5.

Furthermore, costs of such companies for changes in their articles of association filed with the register are provided and for the yearly publication of their annual accounts (30 pages for company 1 and eight pages for company 2). In order to give the possibility to compare costs in particular with a view to those Member States where the publication is already covered by the registration fee, also an estimate of the registration costs is contained in the table.

Whereas the publication of annual accounts and also changes to the articles of association or details of the company (such as directors' names etc) occur regularly, most of the other procedures referred to in table 1 concern operations that only take place occasionally and not necessarily in all companies. For the purpose of the calculations they are therefore left out in the following.

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[37] In the EU, 99% of the total of companies are SMEs, http://ec.europa.eu/enterprise/entrepreneurship/facts_figures.htm

| *Fig. 1 Assessment of external publication costs* | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Country** | Registration costs | Publication costs company 1 (national gazette/el. platform) | | | Publication costs company 2 (national gazette/el. platform) | | |
| | Initial registration | Initial registration | Changes | Annual accounts | Initial registration | Changes | Annual accounts |
| Austria | 343 € | 40€ min | 40€ min | 40 € min | 40€ min | 40€ min | 40 € min |
| Belgium | 71€ | 209,81€ | 131,16€ | | 209,81€ | 131,16€ | |
| Bulgaria | 113€ | 15,33€ | | | 15,33€ | | |
| Cyprus | 222€/106€ | 0 | 0 | | 0 | 0 | |
| Czech Republic | 190€ | 95€ min. | 95€ min | 277€ | 95€ min. | 95€ min | 277€ |
| Denmark | 0 | 0 | 0 | | 0 | 0 | |
| Finland | 330€ | 0 | 0 | | 0 | 0 | |
| France | 116,19€ | 100€ min | | | 100€ min | | |
| Germany | 100€ | 1 € | 1€ | 50€ | 1 € | 1€ | 70€ |
| Greece | 840€/252€ | 544€ | 289€ | 544€ | 544€ | 289€ | 544€ |
| Hungary | 390€ | 98€ | 59€ | | 98€ | 59€ | |
| Ireland | 100€ | 0 | 0 | 0 | 0 | 0 | 0 |
| Lithuania | 57,42€ | 0 | 0 | | 0 | 0 | |
| Malta | 350€ min. | 0 | 0 | | 0 | 0 | |
| Netherlands | 54,05€ | 0 | 0 | | 0 | 0 | |
| Poland | 277€ | 139€ | 69€ | | 139€ | 69€ | |
| Romania | 160€ min. | 35,48 min | 27€ min | | 35,48 min | 27€ min | |
| Slovakia | 282€ (141€ if el. reg.) | 0 | 0 | | 0 | 0 | |
| Sweden | 212€ | 0 | 0 | | 0 | 0 | |

Blank fields indicate that no information was provided on this point.

The figures show that

- in most Member States the costs are about the same for these two companies;
- the costs for a publication of the initial registration of such companies lie around 100€ in those Member States that charge specific fees for the publication (with *Bulgaria* and *Germany* lying significantly below that amount and at least *Greece* and *Belgium* significantly above);
- about the same amount seems to apply with a view to the publication of the annual accounts;
- for changes to the articles of associations, the fees in those countries that charge them in form of a lump sum lie at around 50% of the costs of the initial publication.

ESTAT provides some data on the number of limited-liability companies in the EU (table 6). In the 17 countries covered, there were 4.8 Mio (private and public) limited-liability companies in 2005[38]. However, for *Germany, France* and *Poland* no figures are available, and the same goes for smaller countries like *Austria, Belgium, Denmark, Greece, Ireland, Lithuania* and *Slovenia*, so that the exact number is obviously above that figure. Those countries where currently the publication of information in the national gazette or on an electronic platform is not charged or at least not charged separately host about 660,000 of these companies. Even without taking account of the missing ten Member States just mentioned, at least 4.14 Mio companies in the EU are potentially concerned by the publication costs.

A rough estimate would therefore lead to setting the total publication costs for the annual accounts at about 410 Mio €/year. About half that sum per year could be estimated for the publication of changes to the register.

It is not clear why many Member States still prefer maintaining the information obligation in the national gazette to the alternative of an electronic platform, such as the register's website, although table 2 and figure 1 show that the latter means of publication is much less costly for companies. Where a paper-based national gazette still exists, one reason may have been to allow users time for a smooth transition from the paper based medium to the electronic format. The modification to the First Company law Directive that introduced the electronic registers was adopted in 2003. According to Internetworldstats[39], the number of internet users has grown in the EU by 189% between the year 2000 and 2007 (to about 55% in 2008). Therefore, in 2004 when most Member States started to work on the transposition of the 2003 directive having access to the internet was less common than it is today.

However, as far as the national gazette is concerned there are no signs that Member States have the intention to adapt their rules in the near future in order to take account of the nowadays broad acceptance of electronic means by the information users. Furthermore, the national gazettes normally are legally entities that are independent from the registers so that changing the publication requirement would lead to a shift in revenue from the gazette to the

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38 This seems to be a rather conservative estimate. Other sources suggest that the real numbers might even lie significantly above these figures.

39 www.internetworldstats.com/stats9.htm#eu

register which might be a further reason for Member States' hesitance in the past to give up the publication obligations in the national gazettes.

*1.1.2.3. Internal costs of the companies*

To the external costs, internal costs for the preparation of the information have to be added. Given that the same information already has to be provided to the companies' register and therefore only has to be reformatted (if at all) and sent off, these costs can be expected to be limited. For the time being, however, no precise information on the level of the amounts involved is available.

The draft final report on the measurement of administrative costs in the areas of company law, accounting and auditing carried out by the consortium Deloitte/Capgemini/Ramboll which is due for the beginning of April 2008, might deliver some more precise information on this point. It might also provide some additional information on the population of companies concerned by the publication costs. Any such additional information that will be received will be used in order to quantify the total potential savings more precisely, in particular with a view to reaching the 25% reduction target.

*1.1.3. Other national publication requirements*

The First Directive only establishes minimum publication requirements. Member States are free to set up, at national level, additional publication requirements.

Some Member States therefore require in particular that the information entered into the register or a reference to it is published not only in the national gazette but also in national and/or regional newspapers, in order to ensure a broad distribution of the information.

One example can be found in German law where information has, in addition, to be published in a newspaper under Article 61(4) of the Einführungsgesetz zum HGB. This provision, however, has transitional character and the obligation will cease to exist on 31 December 2008. Also in France, certain information to be published in the national gazette (e.g. registration of a new company, transfer of the company's seat, change of a director etc.) has, in addition, to be published in newspapers.

Such requirements, again, obviously cause considerable costs to companies. Their exact amount, however, cannot be quantified as only few Member States have provided information on this question. Furthermore, the costs depend on the tariffs of the newspaper chosen. However, it can be noted that, in principle, the administrative costs for companies linked to these requirements corresponds to the revenue generated by the newspapers so that reducing these costs could lead to a loss of income on the side of the newspapers.

## 1.2. Objectives

In order to enhance the competitiveness of EU companies, administrative burdens have to be reduced to a minimum. Information obligations also in the area of company law therefore need to be reduced where this can be done without any significant negative impact on the users of the information.

The obligation to file certain information in the companies' register and to publish it in addition in the national gazette (and, possibly, also in national and/or regional newspapers) causes considerable costs to companies. These costs should be eliminated to the extent possible.

## 1.3. Policy Options

As the requirement stems from EU Directives, any changes have to involve the EU-level to modify the relevant directives.

### *1.3.1. Option 1: No-Policy Change*

This option means that the First Directive is not changed. The requirements regarding publication in a national gazette and any additional requirements for publication in newspapers remain in place.

### *1.3.2. Option 2: Abolition of all publication requirements at EU and at national level (full harmonisation)*

This option entails a prohibition for Member States to require any publication of information entered into the companies register, be it in (paper-based or electronic) national gazettes or in national or regional newspapers and in paper-based national gazettes. Companies would therefore only be obliged to file the information required with the register, without any additional publication.

### *1.3.3. Option 3: Making the current alternative disclosure regime mandatory*

The second option consists in relying entirely on the disclosure system that so far is offered to Member States as an alternative to the gazette ("[equally effective] means, which shall entail at least the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform").

This means that Member States would be prevented from requiring publication of information in national or regional newspapers and in paper-based gazettes. The use of an electronic national gazette would remain possible as such an electronic gazette can be qualified as electronic platform.

### *1.3.4. Option 4: Oblige Member States to ensure that no specific fee can be charged for any mandatory publication*

This option consists in providing that Member States have to ensure that companies are not charged a specific fee for the publication. In order to ensure a cost effective and easily accessible publication, access to the information would have to be granted via a central electronic platform. However, Member States would be free to continue to provide for additional publication obligations as long as they respect the restriction on fees.

## 1.4. Analysis of Options

### *1.4.1. Option 1: No-Policy Change*

There is no additional negative impact to be expected if the current rule concerning publication in the national gazette is not changed.

However, there are also hardly any indications that give reason to assume that even if the status quo is maintained other factors will, in the longer run, lead to a reduction of the current costs.

Electronic registers have been introduced more than a year ago and one can expect the systems that have been established by the Member States to remain in place for the foreseeable future. On the basis of the information available, Germany seems to be the only case where already the current system provides for a change; there, the current obligation to publish information in addition in newspapers will cease to exist by the end of the year. With a view to the other Member States, nothing in the information made available by the Member States indicates that more of them will in future make use of the alternative offered by the second subparagraph of Article 3(4) than is currently the case, that more Member States will ensure that the publication in the national gazette does not entail any costs for the company or that other Member States also will repeal the requirement for additional information in newspapers.

This option therefore means that the current costs, as set out above in point 1.1.2 will remain largely unchanged.

*1.4.2. Option 2: Abolition of all publication requirements at EU and at national level (full harmonisation)*

In the second scenario, no fees at all can be charged to companies as there will be no publication requirement. This scenario will therefore reduce the publication costs for companies to 0 which, on the basis of the calculations set out under point 1.1.2.2. would lead to savings of about 600 Mio € per year.

From the users' point of view, however, this scenario will create in all Member States the risk that the possibility to follow the latest changes to the register is removed entirely.

This seems problematic as the publication, in addition to the filing with the register, fulfils an important function for third parties. This is first and foremost the case with a view to the information referred to in the First Directive – the attention of the public should be drawn to the fact that e.g. a legal representative of the company has changed or that the company has moved its seat. This information can be important for everyone who wants to enter into contact with it and in particular for persons that intend to conclude contracts with the company or are already in a business relationship with it. To force third parties to carry out, on a regular basis, a preventive check of the register in order to ensure that this information has not changed does not seem appropriate. The information of the public is even more important where insolvency proceedings have been opened against a company.

But also with a view to the information listed in table 1 publication continues to fulfil an important function. Changes to the capital of the company are of interest to third parties, as e.g. creditors, in a similar way as it is the case with a view to a forthcoming merger or division. In all cases the applicable directives provide the creditors with certain rights that these can only exercise where they are informed in time about the planned operations

The publication of all these changes to information contained in the register seems therefore indispensable. Under this option, however, publication would only continue to take place where the companies registers, by their own or at the Member State's initiative, decided to provide a service informing about the latest changes, without imposing any obligation on the companies in this context.

In addition, this option would have an impact on the newspapers in those Member States that require the publication of information there, in addition to the national gazette. As explained above (point 1.1.3), even if it is not possible to calculate the loss of revenue of the newspapers

it can be noted that it would in principle correspond to the savings made by the company in this context.

*1.4.3. Option 3: Making the current alternative disclosure regime mandatory*

Under this option, companies will, firstly, be released from the costs that are caused by the publication in national or regional newspapers where such a requirement exists under national law. Secondly, they will be released also from fees they currently have to pay for the publication in paper-based national gazettes.

Instead, fees can be charged to them either for publication in an electronic gazette or for the publication on the electronic platform.

There is no information available that allows assessing the difference between costs of publication in a paper-based gazette and those for publication in an electronic format. However, table 2 shows that publication in countries where the national gazette is held exclusively in electronic format is not necessarily less expensive than where the national gazette exists in paper or both in electronic and paper format. There are therefore doubts that choosing the electronic national gazette for publication instead of a paper-based one will reduce the costs for companies in any significant way.

The difference in costs between publication in an electronic national gazette and on an electronic platform, if any, depends on the solution chosen for the electronic platform. Where the service is provided by the register, as it seems to be the case for most Member States that have chosen this alternative, the additional costs created can be assumed to be very limited.

This means that, under this option, the potential savings for companies will probably largely depend on the solution that is chosen by the Member State: where the Member State decides to maintain the current solution using an electronic gazette, savings can be expected to be relatively low, whereas they could go up to the amount referred to under option 2 where the Member State decides in favour of using the register's website.

From the users' point of view, the effect will be that users in Member States where, so far, additional publication in newspapers is required will normally not be able to find information in these newspapers any more. Many users can be expected to buy the newspapers at the moment not only with a view to the information from the registers but also for other reasons. For these users, the access to the information from the registers currently is therefore provided for "free" in the sense that they obtain the information for expenses they would make anyway. If the newspaper stop publishing the information, this "free" access to the information will cease to exist. However, it needs to be noted that in most cases newspapers only provide a reference to the publication in the register. Also in the present situation they therefore do normally not provide a substitute for accessing the register but function only as a pointer to the publication.

As far as the access to the electronic information is concerned, it can be expected that costs for users will remain unchanged. Currently there is no Member State that provides free access to information via the national gazette if fees need to be paid for downloading the same information from the companies' register. Instead, in Member States where fees are charged for the use of the gazette and for downloads from the register these fees seem to be aligned (see table 3). As to the level of these costs, it should be recalled that according to the rules of the First Directive fees to be paid for copies from the content of the register cannot exceed the administrative costs linked to this service[40].

[40] Article 3(3), third subparagraph, First Directive.

While the impact of this option on the users therefore would be limited, it would be more significant with a view to newspapers in those Member States that require the publication of information there, in addition to the national gazette. Here, the situation would be the same as under option 2.

#### *1.4.4. Option 4: Oblige Member States to ensure that no specific fee can be charged for any mandatory publication*

It would not be possible to ensure a publication in a national or regional newspaper free of charge for the companies. With a view to the printing costs, the same will probably apply with a view to paper-based national gazettes. Member States, for this reason, would in practice normally not choose to prescribe these two ways of publication under this option. Option 4 is therefore likely to have de facto a similar effect as option 3, i.e. that Member States could either require disclosure via an electronic national gazette or another electronic platform or through both. The differences compared with option 3 is that Member States would be free to maintain more far reaching requirements but that in any case they would not be allowed to require additional fees being charged to companies.

The prohibition to charge additional fees for the publication will normally mean that the (relatively minor) publication costs should be considered as being covered by the registration fee. Instead of reducing the total fees on companies, this solution could be seen as encouraging Member States simply to raise the current amount of the registration fee by the amount of the current fee for the publication. However, table 2 shows that, in Member States where the registration fees include the costs of publication, registration fees are not necessarily higher than in Member States where an extra fee is charged for the publication. It should, therefore, be difficult for Member States to justify an increase in registration fees against this background.

This means that under this option, all external costs of companies for the publication (fees) should, in principle, be reduced to 0. As in option 2, the potential for savings could then be estimated at about 600 Mio € per year. Possible costs for the preparation of the information to be published will however remain, as well as costs of publication to be charged by newspapers, in Member States where such publication obligation is maintained, which are however difficult to measure.

From the users' point of view the impact will be similar to that under option 3.

This option could therefore mainly have an impact on these additional means of publication such as the national gazette or the newspapers. Where the national gazette is maintained, the gazette might have to provide its services for free in future. However, given that information entered into the register after 1 January 2007 is available, in its entirety, in electronic form (according to the third subparagraph of Article 3(2) of the First Directive also information filed in paper form has to be converted into electronic format) the provision of these services does not imply huge costs for a gazette that itself is issued in electronic form. The impact on newspapers, who would still be able to provide any additional publication imposed by the State on behalf of companies on a contractual basis, would be more limited, although it could be negative.

### 1.5. Comparing the options

Option 1 set out above will not change the current costs weighing on companies or are at least not likely to do so. Under option 2, there is a risk that valuable information will not be

available to users any more. Therefore, none of these options seems to provide an appropriate solution for companies.

For the newspapers, all options apart from option 1 have negative impact, although option 4 might have a more limited impact than option 2 and option 3 depending on what Member States choose in relation to additional means of publication.

From the users' point of view, there is potentially no difference between option 3 and option 4. Both these options also have the advantage of blending in with the general trend to use less and less paper-based media, also with a view to the environmental aspects.

From the companies' point of view, however, option 4 is preferable as it should guarantee that the possibility of the Member States to choose the appropriate medium of publication and any additional publication requirement Member States may want to impose do not involve additional specific fees for them.

The impacts of the different options can therefore be summarised as follows:

***Figure 2: Comparison of options***

| | Reduction of companies' internal costs | Reduction of companies' external costs (fees) | Accessibility for users | Impact on publishers (national gazette/newspapers) |
|---|---|---|---|---|
| Option 1: No policy change | ○ | ○ | ○ | ○ |
| Option 2: Abolish publication requirement | + | ++ | - | - |
| Option 3: make current alternative system mandatory | ○ | + | ○ | - |
| Option 4: electronic publication without charging a specific fee | ○ | ++ | ○ | ○ |

"○": No change "+": Positive impact "-": Negative impact

Option 4, therefore, is the preferred option.

## 2. TRANSLATION OBLIGATIONS OF BRANCHES OF LIMITED-LIABILITY COMPANIES

### 2.1. Problem definition

For branches of companies that are set up in a Member State other than that where the company has its registered office itself, the Eleventh Company law Directive[41] lays down special disclosure requirements.

Branches of (public and private) limited-liability companies need to have certain information about the branch itself and the company registered in the register of the host state[42]. This information concerns:

[41] Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).

– the registration details of the company;

– its name and legal form;

– the names of the persons authorized to represent the company;

– information on winding-up and insolvency procedures; and

– the accounting documents.

In addition, the Member State where the branch is opened may require that additional information is published, in particular the company's instrument of incorporation and its articles of association. This Member State can, furthermore, require that the instrument of incorporation, the articles of association and the accounting documents be translated in another official language of the EU and that this translation is certified[43].

The same rule on translations and certification applies also to branches of companies established in a country outside the EU[44].

*2.1.1. Translations to be delivered by branches of companies*

The instrument of incorporation, the articles of association and the accounting documents of the limited-liability company normally are established in the official language of the Member State where the company has its registered office.

The Eleventh Directive recognises that persons who are located in the Member State where the branch has been opened have a legitimate interest in accessing these documents before entering in business relations with the branch. It therefore seems appropriate to provide that Member States can require these documents to be translated in their official language or in one of their official languages (where there are several official languages within one Member State). The reason is that the objective of the filing requirement, i.e. to allow interested parties in the branch's Member State to access certain information concerning the company, arguably can only be met where the information is available in a language that the third party in that Member State can reasonably be expected to understand.

Also the possibility for Member States to require a certified translation serves a legitimate purpose as it aims at ensuring the necessary reliability of the translation. Certified or approved translations are formally verified to provide solid guarantees of accuracy for their use as official documents. For this reason, Member States in general have mechanisms for verification and certification of translations in place.

The current rules, however, leave scope for requirements that go beyond those which are needed in order to ensure a reasonably reliable translation. The effects of this provision, in practice, are much more far reaching, in particular due to the differences in the certification procedures of the Member States.

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42 Articles 1 and 2(1) Eleventh Directive.

43 Article 4 Eleventh Directive.

44 Article 9(2) Eleventh Directive.

*2.1.1.1. Certification requirements for documents to be provided by the branch that have been translated and certified in another Member State*

Currently Member States have the possibility to require an (additional) certified translation where there is already a certified translation that, however, has been established in the country where the company is established or in another EU Member State.

As already mentioned above, the reason for this lies in the differences between the mechanisms that are used by Member States. In some Member States certified translations have to be carried out by sworn translators (i.e. specifically qualified to that end) who translates the document and signs a certificate. In others, a translation has to be certified by a public notary, in the presence of a translator. But even where two Member States provide e.g. for sworn translators to certify a translation, they can still require that this sworn translator is admitted to their own public authorities, and to reject certifications carried out by a sworn translator from another Member State. Finally, some Member States seem to impose additional requirements on top of the certified translation (i.e. notarisation of an already certified translation).

This can create additional costs to companies where these companies are unaware of the different legal requirements in the Member State where the branch is to be opened. In these cases, they might have translations carried out in their own country and realise only then what additional procedures precisely they have to go through in the Member State of the branch. Furthermore, additional costs are also created where the translation plus certification can be obtained at a lower price in the Member State where the company has its registered office or in any other Member State. This will in particular be the case where the certification procedure is particularly burdensome in the Member State of the branch. Finally, translations into certain languages (e.g. French, English, Dutch) in principle could be used to register branches in different Member States (like France/Belgium, UK/Ireland, the Netherlands/Belgium) without any additional costs. Under the current system, the Member States concerned can however force companies to have the translation certified twice, under two different procedures.

This situation creates excessive costs for companies. Even if the certification mechanisms in Member States are different, each of them seems to offer sufficient guarantees for the correctness of the translations in question. It therefore is questionable whether requirements for additional certification of a translation or even notarisation of a certified translation can be justified with the need to ensure a reliable translation.

*2.1.1.2. Translation of other information to be provided by the branch*

Member States can require that an attestation concerning the existence of the company is submitted with the request for registration of the branch. This certificate has to be issued by the register of the Member State where the company has its registered office[45].

Given that the Eleventh Directive is silent on the language in which an application to the branch's register has to be made, in principle the general rule applies that the Member State is free to determine the language for procedures before its authorities. This does not create any problems for the company as far as information like the address and activities of the branch or

[45] Article 2(2)(c) Eleventh Directive.

the name of the company is concerned, given that this information by nature does not necessitate any translation.

The situation, however, is different with a view to the attestation on the existence of the company. A look at the transposition measures of the Member States (table 4) shows that most Member States interpret the directive as allowing for a translation requirement also in the case of the attestation. An explanation for this interpretation could be that the attestation is to be issued specifically in view of the establishment of the branch (and, contrary to the articles of association and the accounting documents, is not a document that is already included in the company's file).

On the basis of the information made available by the Member States, it seems that at least fourteen Member States at the moment require that the attestation is translated into their official language and ten Member States, that this translation is certified (see table 4).

The first question is whether the current legal situation allows Member States to set up such a requirement.

The original Commission proposal (COM(86) 397)[46] and the amended Commission proposal (COM(88) 153)[47] do not provide any assistance in this respect as in both proposals translation requirements were limited to the accounting documents of the company. This proposed requirement was extended to the instrument of incorporation and the articles of associations in the course of the negotiation process which also led to introducing the requirement for submitting the attestation of the company's existence.

Also the case law of the European Court of Justice does not deal explicitly with this question. However, it should be noted that the Court, in case C-167/01 ("Inspire Art"), ruled that it "*is contrary to Article 2 of the Eleventh Council Directive [...] to impose on a branch of a company formed in accordance with the laws of another Member State disclosure obligations not provided for in that directive*"[48].

The second question is whether there is any objective justification for such requirement.

Taking into account the case law of the European Court of Justice quoted above, at least this question should be answered in the negative. It is true that, traditionally, public authorities only issued documents in the official language of their Member State which was not understood by the authorities of other Member States. However, with today's technological possibilities it is relatively easy to enable company registers to issue original certificates and other documents in foreign languages. The standard text of the attestation on the existence of the company has to be translated only once and then fed into the register's database so that all attestations can be issued on the basis of that translation. When issuing a specific certificate, only the details of the company – name, number of the file etc. - have to be filled in that do not necessitate any further translation.

At the moment, examples for countries where attestations can be obtained also in other languages are Sweden where the attestation can also be issued in English, and Latvia where it can be issued also in English and in German. The Finnish register, finally, is not only able to

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46 OJ C 203, 12.8.1986, p. 12.
47 OJ C 105, 21.4.1988, p. 6.
48 Judgment of 30.9.2003 (OJ C 275, 15.11.2003, p. 10).

issue the attestation in Finnish and Swedish but also in English, French and German. These documents can be deemed reliable since they are produced by an official source on the basis of electronic templates. Therefore, a need for a (certified) "translation" in this case can hardly be justified.

In the light of what has just been said it seems that, independently from how the current rule of the Eleventh Directive has to be interpreted, it is in any case not necessary to ask the branch of a company to provide a certified translation of an attestation which has been issued in the language of the Member State of the branch.

*2.1.2. Costs caused by national translation requirements to companies*

The articles of association of limited-liability companies often have a size of only between 10 and 20 pages but in some cases the document can reach up to almost 100 pages (see e.g. the articles of association of Shell and Vodafone). They have to be filed once, afterwards only the modifications made have to be filed and therefore translated.

A yearly translation and, in most Member States, certification of that translation is needed with a view to the annual accounts. Whereas for smaller companies also these annual accounts often are limited to a couple of pages (see point 1.1.2.2.) for bigger companies (that are in general more likely to set up branches than small ones) they often have a size of between 200 and 300 pages.

Table 2 contains an overview of the information received from the Member States on the costs of translation and certification. In only few cases the information for certification alone has been made available. However, the average cost of translation seems to lie around 12€ per page with around 2€ on average to be added for the certification.

On the basis of this information figure 3 below sets out, by way of example, the translation costs for a company with articles of association of 10 pages and annual accounts of 50 pages that wants to register a branch in another Member State.

| *Figure 3: Assessment of translation costs* | | | | |
|---|---|---|---|---|
| **Country** | Translation of | | Certification | |
| | Articles of association | Annual accounts | Articles of association | Annual accounts |
| Austria | 152€ | 760€ | Included | included |
| Estonia | | | 9,60€ | 48€ |
| Greece | 140€ | | Included | included |
| Hungary | 130€ | | Included | included |
| Lithuania | 100€ | 500€ | 14.50€ | 72.50€ |
| Slovakia | 169,29 | 846€ | Included - ca. 42€ for certification of already translated document | Included - ca. 212€ for certification of already translated document |

Blank fields indicate that no information was provided on this point.

To these costs the internal costs of the companies have to be added (i.e. the costs for ensuring that a translation and/or certification is received from an outside translator).

According to the 2006 Survey of the European Commerce Registers Forum[49] there are currently about 28,000 branches of limited liability companies in the Member States where data were available (see table 7). No data are provided for *Austria, Belgium, France, Greece, the Netherlands* and *Romania,* so that the total number in reality obviously is above that figure.

On the basis of the information contained in table 4, all Member States, in principle seem to require translations, even if there are some differences concerning the documents that need to be translated. Regarding the certification, it seems that *Finland, Hungary* and *Sweden* are countries where normally no certification is required. In some others (e.g. *Belgium*) no legal requirement exists but the decision whether to ask for a certifications seems to be left to the register. Of the total of at least 28,000 branches therefore all but the 2,580 branches located in *Finland, Hungary* and *Sweden* are potentially concerned by the certification requirement.

On the basis of the information available, the external costs of translations can roughly be estimated at 3.05 Mio € for the articles of association and the attestation and (yearly) 15.25 Mio € for the annual accounts. For the certification alone the respective figures would be 272,000 € and (yearly) 1.36 Mio €.

Concerning the internal costs to companies, no information is available at this stage. Again, the draft final report on the measurement carried out by the consortium might deliver some indications on these costs even if provisions establishing Member States' options are not

[49] http://www.ecrforum.org/member/Documentation/ECRF_Survey_2006.pdf

measured as a priority in that exercise. Any such additional information costs will be used for quantifying the potential savings more precisely, also with a view to reaching the 25% reduction target.

With a view to these costs, a clear majority of those stakeholders that reacted to the Commission Communication of 10 July 2007 expressed themselves in favour of abolishing any translation and certification requirement in national laws, at least where there is already a certified translation accepted or issued by the public authorities of a Member State. 46 respondents (out of a total of 129) took a position on this issue and 43 of them (93%) supported this idea.

## 2.2. Objectives

In order to enhance the competitiveness of EU companies, administrative burdens have to be reduced to a minimum. Information obligations also in the area of company law therefore need to be reduced where this can be done without any significant negative impact on the users of the information.

It should therefore be ensured that the costs for translation and certification caused at the occasion of the registration of a branch are limited to what is necessary to achieve the objective pursued. Third parties' interest in having access to a reliable translation of the information referred to in Article 4 of the Eleventh Directive should not be jeopardised.

## 2.3. Policy options

### *2.3.1. Option 1: No-Policy Change*

Under the "no-policy change" option, the current situation would not be modified. Member States would still be able to require certified translations made by one of their own sworn translators even where there is already a certified translation established by a sworn translator of the country where the company has its registered office or of any other Member State. Member States would also be able not to accept attestations which have been issued directly in the required EU official language of the Member State of the branch.

This would apply to the following documents:

- the instruments of constitution, the memorandum and articles of association (if they are contained in a separate document), as well as the amendments to these documents for those documents; and

- the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed;

- the attestations from the register in which the company is registered relating to the existence of the company.

Notarisation and other formalities imposed alongside the obligation to submit certified translations would stay in place in those Member States that provide for such requirements.

*2.3.2. Option 2: Complete abolition of the translation requirement at EU level*

The abolition of the possibility for Member States to require certified translations as referred to in Article 4 of the Eleventh Directive entails that Member States would not be able to request any more any simple or certified translations of the documents listed above.

Moreover, the additional formalities imposed alongside the requirement of certified translations would also be abolished.

Under this option, attestations on the existence of the company in the required EU official languages of the Member State of the branch would have to be accepted by the authorities of that Member State, without need of any translation.

*2.3.3. Option 3: Mutual recognition of translations*

This option entails ensuring that certified translations produced in any EU Member State are considered sufficient for the purposes of the registration of a branch in another Member State. Moreover, the certification could be obtained through different means, depending on the particularities of each national system. It could therefore be a translation made by a sworn translator, but also one certified by a public notary or by a national competent authority. Member States would have to recognise certified translations if they would be accepted as certified translations by the administrative or judicial authorities of the relevant Member State. Under this option, also the possibility to issue attestations relating to the existence of the company in EU languages other than that of the Member State where the company's register is situated would be taken into account. This kind of document would have to be considered as sufficient by the Member State of the branch, without need of any further linguistic verification.

This option is therefore similar to the current UK system where a translation that was made outside the United Kingdom is accepted if it was certified either by (i) a notary public, (ii) a person authorised in the place where the translation was made to administer an oath, (iii) any of the British officials mentioned in section 6 of the Commissioners of Oaths Act 1889; or *(iv) a person certified by a person mentioned above known to him to be competent to translate the document into English* (see table 4).

Member States would not be allowed to impose any additional requirement or formality (as notarisation) with a view to recognising the certified translations, or the originals produced in an EU official language of the Member State of the branch.

**2.4. Analysis of options**

*2.4.1. Option 1: No policy change*

This option would mean that the current requirements would not be changed and that the relevant administrative burdens would remain in place.

There is no direct negative impact to be expected if the current requirement is not changed other than the opportunity cost of foregoing the better use of mainly financial resources.

However, the "no policy change option" would entail that companies continue to be confronted with duplicative costs for certifications. Also the costs derived from the additional formalities (as e.g. notarisation) could continue to be imposed.

*2.4.2. Option 2: Complete abolition of the translation requirement at EU level*

This scenario entails that the current requirements for the certification of a translation and even the translation requirement itself would be abolished.

If only the certification requirement was abolished, this option would reduce the costs of translations, in particular where documents would be translated in-house by the company, and even eliminate them in the cases in which the original of the document can be obtained directly in an official language of the Member State of the branch. Abolition of the certification requirement would lead to yearly savings of about 1.36 Mio € (see point 2.1.2.). Where all translation requirements were to be repealed, translation costs would be reduced to zero. This could lead to annual savings of around 16 Mio €. To both figures, savings with a view to the companies' internal costs and, potentially, notarisation fees would have to be added which, however, cannot be quantified on the basis of the information available.

However, with a view to the legitimate objective pursued with the translations, a complete repeal of all translation requirements seems problematic. Also the complete repeal of certification requirements could have an important negative impact in the cases in which the original documents have been established in a language other than that of the Member State of the branch. In those cases, the savings obtained for the companies would be accompanied by a loss of legal guarantees as to the accuracy of the information contained in the translated documents that are disclosed. The objective of the disclosure requirements would only be achieved partially since the accuracy of the relevant information could not be formally guaranteed.

*2.4.3. Option 3: Mutual recognition of translations*

The mutual recognition of certified or approved translations, as well as of the original documents issued in an EU official language of the Member State of the branch would save costs linked to certifications in the cases in which certified or approved translations have already been produced in an EU Member State or where originals are produced in an official language of the Member State of the branch. These savings will be below the 1.36 Mio € of the estimated total annual costs of certification. However, also in this case any existing additional requirements (i.e. notarisation) would have to be abolished. This limitation would lead to further savings and at the same time, it would simplify the underlying administrative procedures.

## 2.5. Comparing the options

Option 1 does not have any negative effect and guarantees the accuracy of the documents disclosed in the Member State of the branch. However, it does not entail any savings of costs. For its part, option 2 offers the possibility to eliminate or at least reduce the costs linked to certified translation. However, it does not provide any specific mechanism to guarantee the accuracy of the documents disclosed in the Member State of the branch.

The choice of option 3 will reduce the costs linked to the need of disclosing some documents in an EU official language of the Member State of the branch. At the same time, option 3 guarantees, to a satisfactory degree, the accuracy of the documents disclosed. The overall objectives of limiting the administrative burdens by keeping costs to an acceptable level and guaranteeing the accuracy of the information contained in the relevant documents are fully attained with this option.

The impacts of the different options can therefore be summarised as follows:

| ***Figure 4: Comparison of options*** | | | | |
|---|---|---|---|---|
| | Reduction of translation costs | Reduction of certification costs | Reliability | Accessibility for users |
| Option 1: No policy change | ○ | ○ | ○ | ○ |
| Option 2: Abolish translation requirement | ++ | ++ | -- | -- |
| Option 3: mutual recognition of certified translations | ○/+* | + | ○ | ○ |

"○": No change "+": Positive impact "-": Negative impact

* The impact would be positive in the cases in which the registries of the Member State where the company has its registered office issue the relevant original certificates in an EU official language of another Member State.

Option 3 therefore is the preferred option.

## 3. MONITORING AND EVALUATION

Two years after the transposition of the amendments, the effect of the measures should be evaluated.

This evaluation should look, in particular at the following questions:

- Whether the overall costs for companies for registration and publication related to the First Directive have been reduced and, in particular, whether any savings from the abolition of publication fees have been reduced or even compensated by increases in registration fees;
- Whether users' access to the information is provided easily and at a reasonable cost;
- Whether progress in the area of interoperability of business registers allows a revision of the publication requirements for branches, in particular by providing that companies can choose where to file the information related to the branch.

# Tables

## TABLE 1: REFERENCES TO ARTICLE 3 OF DIRECTIVE 68/151/EEC

| *LEGAL ACT* | *RELEVANT ARTICLE* | *TEXT OF ARTICLE* |
|---|---|---|
| ***SECOND COUNCIL DIRECTIVE 77/91/EEC** OF 13 DECEMBER 1976 ON COORDINATION OF SAFEGUARDS WHICH, FOR THE PROTECTION OF THE INTERESTS OF MEMBERS AND OTHERS, ARE REQUIRED BY MEMBER STATES OF COMPANIES WITHIN THE MEANING OF THE SECOND PARAGRAPH OF ARTICLE 58 OF THE TREATY, IN RESPECT OF THE FORMATION OF PUBLIC LIMITED LIABILITY COMPANIES AND THE MAINTENANCE AND ALTERATION OF THEIR CAPITAL, WITH A VIEW TO MAKING SUCH SAFEGUARDS EQUIVALENT* | *ARTICLE 3* | *THE FOLLOWING INFORMATION AT LEAST MUST APPEAR IN EITHER THE STATUTES OR THE INSTRUMENT OF INCORPORATION OR A SEPARATE DOCUMENT **PUBLISHED IN ACCORDANCE WITH THE PROCEDURE LAID DOWN IN THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC** […]* |
| | *ARTICLE 10* | ***3. THE EXPERT'S REPORT SHALL BE PUBLISHED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE, IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.***<br>*4. MEMBER STATES MAY DECIDE NOT TO APPLY THIS ARTICLE WHERE 90 % OF THE NOMINAL VALUE, OR WHERE THERE IS NO NOMINAL VALUE, OF THE ACCOUNTABLE PAR, OF ALL THE SHARES IS ISSUED TO ONE OR MORE COMPANIES FOR A CONSIDERATION OTHER THAN IN CASH, AND WHERE THE FOLLOWING REQUIREMENTS ARE MET: […] (B) **SUCH AGREEMENT HAS BEEN PUBLISHED AS PROVIDED FOR IN PARAGRAPH 3;** […]*<br>*(E) **THE GUARANTEE REFERRED TO IN (D) HAS BEEN PUBLISHED AS PROVIDED FOR IN PARAGRAPH 3** […];* |
| | *ARTICLE 11* | *1. IF, BEFORE THE EXPIRY OF A TIME LIMIT LAID DOWN BY NATIONAL LAW OF AT LEAST TWO YEARS FROM THE TIME THE COMPANY IS INCORPORATED OR IS AUTHORIZED TO COMMENCE BUSINESS, THE COMPANY ACQUIRES ANY ASSET BELONGING TO A PERSON OR COMPANY OR FIRM REFERRED TO IN ARTICLE 3 (I) FOR A CONSIDERATION OF NOT LESS THAN ONE-TENTH OF THE SUBSCRIBED CAPITAL, THE ACQUISITION SHALL BE EXAMINED **AND DETAILS OF IT PUBLISHED IN THE MANNER PROVIDED FOR IN ARTICLE 10** AND IT SHALL BE SUBMITTED FOR THE APPROVAL OF THE GENERAL MEETING.*<br>*MEMBER STATES MAY ALSO REQUIRE THESE PROVISIONS TO BE APPLIED WHEN THE ASSETS BELONG TO A SHAREHOLDER OR TO ANY OTHER PERSON.*<br>*2. PARAGRAPH 1 SHALL NOT APPLY TO ACQUISITIONS EFFECTED IN THE NORMAL COURSE OF THE COMPANY'S BUSINESS, TO ACQUISITIONS EFFECTED AT THE INSTANCE OR UNDER THE SUPERVISION OF AN ADMINISTRATIVE OR JUDICIAL AUTHORITY, OR TO STOCK EXCHANGE* |

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| | | *ACQUISITIONS.* |
| | *ARTICLE 25* | *1. ANY INCREASE IN CAPITAL MUST BE DECIDED UPON BY THE GENERAL MEETING.* ***BOTH THIS DECISION AND THE INCREASE IN THE SUBSCRIBED CAPITAL SHALL BE PUBLISHED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE, IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.***<br>*2. NEVERTHELESS, THE STATUTES OR INSTRUMENT OF INCORPORATION OR THE GENERAL MEETING,* ***THE DECISION OF WHICH MUST BE PUBLISHED IN ACCORDANCE WITH THE RULES REFERRED TO IN PARAGRAPH 1****, MAY AUTHORIZE AN INCREASE IN THE SUBSCRIBED CAPITAL UP TO A MAXIMUM AMOUNT WHICH THEY SHALL FIX WITH DUE REGARD FOR ANY MAXIMUM AMOUNT PROVIDED FOR BY LAW. WHERE APPROPRIATE, THE INCREASE IN THE SUBSCRIBED CAPITAL SHALL BE DECIDED ON WITHIN THE LIMITS OF THE AMOUNT FIXED, BY THE COMPANY BODY EMPOWERED TO DO SO. THE POWER OF SUCH BODY IN THIS RESPECT SHALL BE FOR A MAXIMUM PERIOD OF FIVE YEARS AND MAY BE RENEWED ONE OR MORE TIMES BY THE GENERAL MEETING, EACH TIME FOR A PERIOD NOT EXCEEDING FIVE YEARS.* |
| | *ARTICLE 29* | ***3. ANY OFFER OF SUBSCRIPTION ON A PRE-EMPTIVE BASIS AND THE PERIOD WITHIN WHICH THIS RIGHT MUST BE EXERCISED SHALL BE PUBLISHED IN THE NATIONAL GAZETTE APPOINTED IN ACCORDANCE WITH DIRECTIVE 68/151/EEC.*** *HOWEVER, THE LAWS OF A MEMBER STATE NEED NOT PROVIDE FOR SUCH PUBLICATION WHERE ALL A COMPANY'S SHARES ARE REGISTERED. IN SUCH CASE, ALL THE COMPANY'S SHAREHOLDERS MUST BE INFORMED IN WRITING. THE RIGHT OF PRE-EMPTION MUST BE EXERCISED WITHIN A PERIOD WHICH SHALL NOT BE LESS THAN 14 DAYS FROM THE DATE OF PUBLICATION OF THE OFFER OR FROM THE DATE OF DISPATCH OF THE LETTERS TO THE SHAREHOLDERS.*<br>*4. THE RIGHT OF PRE-EMPTION MAY NOT BE RESTRICTED OR WITHDRAWN BY THE STATUTES OR INSTRUMENT OF INCORPORATION. THIS MAY, HOWEVER, BE DONE BY DECISION OF THE GENERAL MEETING. THE ADMINISTRATIVE OR MANAGEMENT BODY SHALL BE REQUIRED TO PRESENT TO SUCH A MEETING A WRITTEN REPORT INDICATING THE REASONS FOR RESTRICTION OR WITHDRAWAL OF THE RIGHT OF PRE-EMPTION, AND JUSTIFYING THE PROPOSED ISSUE PRICE. THE GENERAL MEETING SHALL ACT IN ACCORDANCE WITH THE RULES FOR A QUORUM AND A MAJORITY LAID DOWN IN ARTICLE 40.* ***ITS DECISION SHALL BE PUBLISHED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE, IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.*** |
| | *ARTICLE 30* | *ANY REDUCTION IN THE SUBSCRIBED CAPITAL, EXCEPT UNDER A COURT ORDER, MUST BE SUBJECT AT LEAST TO A DECISION OF THE GENERAL MEETING ACTING IN ACCORDANCE WITH THE RULES FOR A QUORUM AND A MAJORITY LAID DOWN IN ARTICLE 40 WITHOUT PREJUDICE TO ARTICLES 36 AND 37.* ***SUCH DECISION SHALL BE PUBLISHED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.*** |
| | *ARTICLE 35* | *WHERE THE LAWS OF A MEMBER STATE AUTHORIZE TOTAL OR PARTIAL REDEMPTION OF THE SUBSCRIBED CAPITAL WITHOUT REDUCTION OF THE LATTER, THEY SHALL AT LEAST REQUIRE THAT THE FOLLOWING CONDITIONS ARE OBSERVED: (A) WHERE THE STATUTES OR INSTRUMENT* |

| | | |
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| | | *OF INCORPORATION PROVIDE FOR REDEMPTION, THE LATTER SHALL BE DECIDED ON BY THE GENERAL MEETING VOTING AT LEAST UNDER THE USUAL CONDITIONS OF QUORUM AND MAJORITY. WHERE THE STATUTES OR INSTRUMENT OF INCORPORATION DO NOT PROVIDE FOR REDEMPTION, THE LATTER SHALL BE DECIDED UPON BY THE GENERAL MEETING ACTING AT LEAST UNDER THE CONDITIONS OF QUORUM AND MAJORITY LAID DOWN IN ARTICLE 40.* ***THE DECISION MUST BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE, IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC;*** |
| | *ARTICLE 36* | *1. WHERE THE LAWS OF A MEMBER STATE MAY ALLOW COMPANIES TO REDUCE THEIR SUBSCRIBED CAPITAL BY COMPULSORY WITHDRAWAL OF SHARES, THEY SHALL REQUIRE THAT AT LEAST THE FOLLOWING CONDITIONS ARE OBSERVED:*<br>*....*<br>*(E)* ***THE DECISION ON COMPULSORY WITHDRAWAL SHALL BE PUBLISHED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.*** |
| ***THIRD COUNCIL DIRECTIVE 78/855/EEC*** *OF 9 OCTOBER 1978 BASED ON ARTICLE 54 (3) (G) OF THE TREATY CONCERNING MERGERS OF PUBLIC LIMITED LIABILITY COMPANIES* | *ARTICLE 6* | *DRAFT TERMS OF MERGER MUST BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC, FOR EACH OF THE MERGING COMPANIES, AT LEAST ONE MONTH BEFORE THE DATE FIXED FOR THE GENERAL MEETING WHICH IS TO DECIDE THEREON.* |
| | *ARTICLE 18* | *1. A MERGER MUST BE PUBLICIZED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE, IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC, IN RESPECT OF EACH OF THE MERGING COMPANIES.*<br>*2. THE ACQUIRING COMPANY MAY ITSELF CARRY OUT THE PUBLICATION FORMALITIES RELATING TO THE COMPANY OR COMPANIES BEING ACQUIRED.* |
| | *ARTICLE 22* | *1. THE LAWS OF THE MEMBER STATES MAY LAY DOWN NULLITY RULES FOR MERGERS IN ACCORDANCE WITH THE FOLLOWING CONDITIONS ONLY:*<br>*...*<br>***(E) A JUDGMENT DECLARING A MERGER VOID SHALL BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC*** |
| ***SIXTH COUNCIL DIRECTIVE 82/891/EEC*** *OF 17 DECEMBER 1982 BASED ON ARTICLE 54 (3) (G) OF THE TREATY, CONCERNING THE DIVISION OF PUBLIC LIMITED LIABILITY COMPANIES* | *ARTICLE 4* | *DRAFT TERMS OF DIVISION MUST BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC (1) FOR EACH OF THE COMPANIES INVOLVED IN A DIVISION, AT LEAST ONE MONTH BEFORE THE DATE OF THE GENERAL MEETING WHICH IS TO DECIDE THEREON.* |
| | *ARTICLE 16* | *1. A DIVISION MUST BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC IN RESPECT OF EACH OF THE COMPANIES INVOLVED IN A DIVISION.*<br>*2. ANY RECIPIENT COMPANY MAY ITSELF CARRY OUT THE PUBLICATION FORMALITIES RELATING* |

| | | |
|---|---|---|
| | | *TO THE COMPANY BEING DIVIDED.* |
| | *ARTICLE 19* | *1. THE LAWS OF MEMBER STATES MAY LAY DOWN NULLITY RULES FOR DIVISIONS IN ACCORDANCE WITH THE FOLLOWING CONDITIONS ONLY:*<br>*...*<br>***(E) A JUDGMENT DECLARING A DIVISION VOID SHALL BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC;*** |
| | *ARTICLE 22* | *1.* ***ARTICLES*** *3,* ***4****, 5 AND 7, 8 (1) AND (2)* ***AND 9 TO 19 OF THIS DIRECTIVE SHALL APPLY, WITHOUT PREJUDICE TO ARTICLES 11 AND 12 OF DIRECTIVE 68/151/EEC, TO DIVISION BY THE FORMATION OF NEW COMPANIES****. FOR THIS PURPOSE, THE EXPRESSION "COMPANIES INVOLVED IN A DIVISION" SHALL REFER TO THE COMPANY BEING DIVIDED AND THE EXPRESSION "RECIPIENT COMPANIES" SHALL REFER TO EACH OF THE NEW COMPANIES.* |
| ***FOURTH COUNCIL DIRECTIVE 78/660/EEC*** *OF 25 JULY 1978 BASED ON ARTICLE 54 (3) (G) OF THE TREATY ON THE ANNUAL ACCOUNTS OF CERTAIN TYPES OF COMPANIES* | *ARTICLE 47* | *1. THE ANNUAL ACCOUNTS, DULY APPROVED, AND THE ANNUAL REPORT, TOGETHER WITH THE OPINION SUBMITTED BY THE PERSON RESPONSIBLE FOR AUDITING THE ACCOUNTS, SHALL BE PUBLISHED AS LAID DOWN BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.* |
| ***SEVENTH COUNCIL DIRECTIVE 83/349/EEC*** *OF 13 JUNE 1983 BASED ON THE ARTICLE 54 (3) (G) OF THE TREATY ON CONSOLIDATED ACCOUNTS* | *ARTICLE 38* | *1. CONSOLIDATED ACCOUNTS, DULY APPROVED, AND THE CONSOLIDATED ANNUAL REPORT, TOGETHER WITH THE OPINION SUBMITTED BY THE PERSON RESPONSIBLE FOR AUDITING THE CONSOLIDATED ACCOUNTS, SHALL BE PUBLISHED FOR THE UNDERTAKING WHICH DREW UP THE CONSOLIDATED ACCOUNTS AS LAID DOWN BY THE LAWS OF THE MEMBER STATE WHICH GOVERN IT IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.* |
| | *ARTICLE 43* | *THE FOLLOWING SHALL BE SUBSTITUTED FOR ARTICLE 57 OF DIRECTIVE 78/660/EEC:*<br>*"ARTICLE 57*<br>*NOTWITHSTANDING THE PROVISIONS OF DIRECTIVES 68/151/EEC AND 77/91/EEC, A MEMBER STATE NEED NOT APPLY THE PROVISIONS OF THIS DIRECTIVE CONCERNING THE CONTENT, AUDITING AND PUBLICATION OF ANNUAL ACCOUNTS TO COMPANIES GOVERNED BY THEIR NATIONAL LAWS WHICH ARE SUBSIDIARY UNDERTAKINGS, AS DEFINED IN DIRECTIVE 83/349/EEC, WHERE THE FOLLOWING CONDITIONS ARE FULFILLED: [...]*<br>***(D) THE DECLARATIONS REFERRED TO IN (B) AND (C) MUST BE PUBLISHED BY THE SUBSIDIARY UNDERTAKING AS LAID DOWN BY THE LAWS OF THE MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC; [...]***<br>***(G) THE CONSOLIDATED ACCOUNTS REFERRED TO IN (E), THE CONSOLIDATED ANNUAL REPORT, AND THE REPORT BY THE PERSON RESPONSIBLE FOR AUDITING THOSE ACCOUNTS MUST BE PUBLISHED FOR THE SUBSIDIARY UNDERTAKING AS LAID DOWN BY THE LAWS OF THE MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC."*** |

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| ***COUNCIL DIRECTIVE 86/635/EEC*** *OF 8 DECEMBER 1986 ON THE ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS OF BANKS AND OTHER FINANCIAL INSTITUTIONS* | *ARTICLE 44* | *1.* ***THE DULY APPROVED ANNUAL ACCOUNTS OF CREDIT INSTITUTIONS TOGETHER WITH THE ANNUAL REPORTS AND THE REPORTS BY THE PERSONS RESPONSIBLE FOR AUDITING THE ACCOUNTS SHALL BE PUBLISHED AS LAID DOWN BY NATIONAL LAW IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC (1).***<br>*NATIONAL LAW MAY, HOWEVER, PERMIT THE ANNUAL REPORT NOT TO BE PUBLISHED AS STIPULATED ABOVE. IN THAT CASE, IT SHALL BE MADE AVAILABLE TO THE PUBLIC AT THE COMPANY'S REGISTERED OFFICE IN THE MEMBER STATE CONCERNED. IT MUST BE POSSIBLE TO OBTAIN A COPY OF ALL OR PART OF ANY SUCH REPORT ON REQUEST. THE PRICE OF SUCH A COPY MUST NOT EXCEED ITS ADMINISTRATIVE COST.*<br>*2. PARAGRAPH 1 SHALL ALSO APPLY TO THE DULY APPROVED CONSOLIDATED ACCOUNTS, THE CONSOLIDATED ANNUAL REPORTS AND THE REPORTS BY THE PERSONS RESPONSIBLE FOR AUDITING THE ACCOUNTS.*<br>*3. HOWEVER, WHERE A CREDIT INSTITUTION WHICH HAS DRAWN UP ANNUAL ACCOUNTS OR CONSOLIDATED ACCOUNTS IS NOT ESTABLISHED AS ONE OF THE TYPES OF COMPANY LISTED IN ARTICLE 1 (1) OF DIRECTIVE 78/660/EEC AND IS NOT REQUIRED BY ITS NATIONAL LAW TO PUBLISH THE DOCUMENTS REFERRED TO IN PARAGRAPHS 1 AND 2 OF THIS ARTICLE AS PRESCRIBED IN ARTICLE 3 OF DIRECTIVE 68/151/EEC, IT MUST AT LEAST MAKE THEM AVAILABLE TO THE PUBLIC AT ITS REGISTERED OFFICE OR, IN THE ABSENCE OF A REGISTERED OFFICE, AT ITS PRINCIPAL PLACE OF BUSINESS. IT MUST BE POSSIBLE TO OBTAIN COPIES OF SUCH DOCUMENTS ON REQUEST. THE PRICES OF SUCH COPIES MUST NOT EXCEED THEIR ADMINISTRATIVE COST.*<br>*4. THE ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS OF A CREDIT INSTITUTION MUST BE PUBLISHED IN EVERY MEMBER STATE IN WHICH THAT CREDIT INSTITUTION HAS BRANCHES WITHIN THE MEANING OF THE THIRD INDENT OF ARTICLE 1 OF DIRECTIVE 77/780/EEC. SUCH MEMBER STATES MAY REQUIRE THAT THOSE DOCUMENTS BE PUBLISHED IN THEIR OFFICIAL LANGUAGES.* |
| ***COUNCIL REGULATION (EC) NO 2157/2001*** *OF 8 OCTOBER 2001 ON THE STATUTE FOR A EUROPEAN COMPANY (SE)* | *ARTICLE 8* | *2. THE MANAGEMENT OR ADMINISTRATIVE ORGAN SHALL DRAW UP A TRANSFER PROPOSAL AND PUBLICIZE IT IN ACCORDANCE WITH ARTICLE 13, WITHOUT PREJUDICE TO ANY ADDITIONAL FORMS OF PUBLICATION PROVIDED FOR BY THE MEMBER STATE OF THE REGISTERED OFFICE. THAT PROPOSAL SHALL STATE THE CURRENT NAME, REGISTERED OFFICE AND NUMBER OF THE SE AND SHALL COVER[…]*<br>*12. THE NEW REGISTRATION AND THE DELETION OF THE OLD REGISTRATION SHALL BE PUBLICIZED IN THE MEMBER STATES CONCERNED IN ACCORDANCE WITH ARTICLE 13.* |
| | *ARTICLE 13* | ***PUBLICATION OF THE DOCUMENTS AND PARTICULARS CONCERNING AN SE WHICH MUST BE PUBLICIZED UNDER THIS REGULATION SHALL BE EFFECTED IN THE MANNER LAID DOWN IN THE LAWS OF THE MEMBER STATE IN WHICH THE SE HAS ITS REGISTERED OFFICE IN ACCORDANCE WITH DIRECTIVE 68/151/EEC.*** |
| | *ARTICLE 14* | *1. NOTICE OF AN SE'S REGISTRATION AND OF THE DELETION OF SUCH A REGISTRATION SHALL BE PUBLISHED FOR INFORMATION PURPOSES IN THE OFFICIAL JOURNAL OF THE EUROPEAN* |

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| | | *COMMUNITIES AFTER PUBLICATION IN ACCORDANCE WITH ARTICLE 13. THAT NOTICE SHALL STATE THE NAME, NUMBER, DATE AND PLACE OF REGISTRATION OF THE SE, THE DATE AND PLACE OF PUBLICATION AND THE TITLE OF PUBLICATION, THE REGISTERED OFFICE OF THE SE AND ITS SECTOR OF ACTIVITY.*<br><br>*2. WHERE THE REGISTERED OFFICE OF AN SE IS TRANSFERRED IN ACCORDANCE WITH ARTICLE 8, NOTICE SHALL BE PUBLISHED GIVING THE INFORMATION PROVIDED FOR IN PARAGRAPH 1, TOGETHER WITH THAT RELATING TO THE NEW REGISTRATION.*<br><br>*3. THE PARTICULARS REFERRED TO IN PARAGRAPH 1 SHALL BE FORWARDED TO THE OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES WITHIN ONE MONTH OF THE PUBLICATION REFERRED TO IN ARTICLE 13.* |
| | *ARTICLE 15* | *....*<br><br>*2. THE REGISTRATION OF AN SE SHALL BE PUBLICIZED IN ACCORDANCE WITH ARTICLE 13.* |
| | *ARTICLE 28* | *FOR EACH OF THE MERGING COMPANIES THE COMPLETION OF THE MERGER SHALL BE PUBLICIZED AS LAID DOWN BY THE LAW OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.* |
| | *ARTICLE 32* | *3. FOR EACH OF THE COMPANIES PROMOTING THE OPERATION, THE DRAFT TERMS FOR THE FORMATION OF THE HOLDING SE SHALL BE PUBLICIZED IN THE MANNER LAID DOWN IN EACH MEMBER STATE'S NATIONAL LAW IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC AT LEAST ONE MONTH BEFORE THE DATE OF THE GENERAL MEETING CALLED TO DECIDE THEREON.* |
| | *ARTICLE 33* | *3. IF THE CONDITIONS FOR THE FORMATION OF THE HOLDING SE ARE ALL FULFILLED IN ACCORDANCE WITH PARAGRAPH 2, THAT FACT SHALL, IN RESPECT OF EACH OF THE PROMOTING COMPANIES, BE PUBLICIZED IN THE MANNER LAID DOWN IN THE NATIONAL LAW GOVERNING EACH OF THOSE COMPANIES ADOPTED IN IMPLEMENTATION OF ARTICLE 3 OF DIRECTIVE 68/151/EEC.* |
| | *ARTICLE 37* | *5. THE DRAFT TERMS OF CONVERSION SHALL BE PUBLICIZED IN THE MANNER LAID DOWN IN EACH MEMBER STATE'S LAW IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC AT LEAST ONE MONTH BEFORE THE GENERAL MEETING CALLED UPON TO DECIDE THEREON.* |
| | *ARTICLE 59* | *3. AMENDMENTS TO AN SE'S STATUTES SHALL BE PUBLICIZED IN ACCORDANCE WITH ARTICLE 13.* |
| | *ARTICLE 65* | *WITHOUT PREJUDICE TO PROVISIONS OF NATIONAL LAW REQUIRING ADDITIONAL PUBLICATION, THE INITIATION AND TERMINATION OF WINDING UP, LIQUIDATION, INSOLVENCY OR CESSATION OF PAYMENT PROCEDURES AND ANY DECISION TO CONTINUE OPERATING SHALL BE PUBLICIZED IN ACCORDANCE WITH ARTICLE 13.* |
| | *ARTICLE 66* | *4. THE DRAFT TERMS OF CONVERSION SHALL BE PUBLICIZED IN THE MANNER LAID DOWN IN EACH MEMBER STATE'S LAW IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC AT* |

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| | | *LEAST ONE MONTH BEFORE THE GENERAL MEETING CALLED TO DECIDE THEREON.* |
| *DIRECTIVE 2006/68/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 6 SEPTEMBER 2006 AMENDING COUNCIL DIRECTIVE 77/91/EEC AS REGARDS THE FORMATION OF PUBLIC LIMITED LIABILITY COMPANIES AND THE MAINTENANCE AND ALTERATION OF THEIR CAPITAL (TEXT WITH EEA RELEVANCE)* | *ARTICLE 10B* | *1. WHERE CONSIDERATION OTHER THAN IN CASH AS REFERRED TO IN ARTICLE 10A OCCURS WITHOUT AN EXPERT'S REPORT AS REFERRED TO IN ARTICLE 10(1), (2) AND (3), IN ADDITION TO THE REQUIREMENTS SET OUT IN POINT (H) OF ARTICLE 3 AND WITHIN ONE MONTH AFTER THE EFFECTIVE DATE OF THE ASSET CONTRIBUTION, A DECLARATION CONTAINING THE FOLLOWING SHALL BE PUBLISHED.*<br><br>***THAT PUBLICATION SHALL BE EFFECTED IN THE MANNER LAID DOWN BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC.*** |
| *DIRECTIVE 2005/56/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON CROSS-BORDER MERGERS OF LIMITED LIABILITY COMPANIES (TEXT WITH EEA RELEVANCE)* | *ARTICLE 6* | *1. THE COMMON DRAFT TERMS OF THE CROSS-BORDER MERGER SHALL BE PUBLISHED IN THE MANNER PRESCRIBED BY THE LAWS OF EACH MEMBER STATE IN ACCORDANCE WITH ARTICLE 3 OF DIRECTIVE 68/151/EEC FOR EACH OF THE MERGING COMPANIES AT LEAST ONE MONTH BEFORE THE DATE OF THE GENERAL MEETING WHICH IS TO DECIDE THEREON.*<br><br>*....* |
| *COUNCIL REGULATION (EC) NO 1435/2003 OF 22 JULY 2003 ON THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY (SCE)* | *ARTICLE 68* | *PREPARATION OF ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS*<br><br>*2. WHERE AN SCE IS NOT SUBJECT, UNDER THE LAW OF THE MEMBER STATE IN WHICH THE SCE HAS ITS REGISTERED OFFICE, TO A PUBLICATION REQUIREMENT SUCH AS PROVIDED FOR IN ARTICLE 3 OF DIRECTIVE 68/151/EEC, THE SCE MUST AT LEAST MAKE THE DOCUMENTS RELATING TO ANNUAL ACCOUNTS AVAILABLE TO THE PUBLIC AT ITS REGISTERED OFFICE. COPIES OF THOSE DOCUMENTS MUST BE OBTAINABLE ON REQUEST. THE PRICE CHARGED FOR SUCH COPIES SHALL NOT EXCEED THEIR ADMINISTRATIVE COST.* |

## TABLE 2: COSTS OF PUBLICATION IN NATIONAL GAZETTES

| Costs of company registration and publication | | | |
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| **COUNTRY** | **Registration of companies** | **Publication in national gazette/on electronic platform** | **Publication in other media (e.g. newspapers)** |
| **Austria** | costs depend on the information to be registered:<br>* basic fee 34€,<br>* name of the company 8€, address 8€, capital 131€, articles of association 87€, names of directors 25€/each, members 17€/each, member of the supervisory board 43€/each | * flatrate of 40€ for the first 5 lines,<br>* plus 6€ for each additional line (§10UGB) | |
| **Belgium** | * civil companies: none;<br>* commercial company: 71 EUR (plus 71 EUR for each accessory branch). This cost is linked to the 'entreprise counters' | * national gazette is held in electronic format<br>* companies will have the choice whether to submit information in paper or in electronic format; the form in which information is submitted does not influence the level of the fees<br>* creation of a company: 209,81 EUR (incl. VAT / value-added tax) ;<br>* for mere changes to the statutes: 131,16 EUR (incl. VAT / value-added tax). | Need to publish in newspapers for:<br>* Conversion of shares without voting rights (in 1 national & 1 regional newspaper)<br>* Convocation to General Meeting (in 1 national newspaper)<br>* Issue of shares with preferential rights (in 1 national & 1 regional newspaper) |
| **Bulgaria** | * Checking availability of company name and obtaining certificate for the registered name: BGN 100 (EUR 51) or 102 BGN (EUR 52) (by phone);<br>* Court fee at the to the bank account of Sofia City Court: state fee for court registration and certified copy of the court decision is BGN 121.50 (EUR 62) (it may be BGN 122.50 (EUR 62.3) if the court decision is longer than 1 standard typing page) | * creation of a company: BGN 30 (EUR 15.33) - state fee for standard procedure | |
| **Cyprus** | £CY60 (EUR 102) plus 0.6% on the nominal capital | Free of charge | |
| **Czech Republic** | Registration in the Commercial Register: 5000 CZK (EUR 190);<br>Deletion: 3000 CZK (EUR 114);<br>Changes: 1000 CZK (EUR 38)<br>(according to the Act No. 549 of 1991 Coll., on court fees) | * the national gazette is kept both in paper and in electronic form<br>* costs for submission of documents in electronic form:<br>winding up: 900 CZK (EUR 34);<br>capital decrease: up to 1 page of word format: 1500 CZK (EUR 57), 2 and more pages 3000 CZK (EUR 114);<br>other submissions: up to 1 page: 2500 CZK (EUR 95), 2 and more: 4900 CZK (EUR 186);<br>annual account: 7300 CZK (EUR 277);<br>* costs for submission of documents in paper form:<br>winding up: 1000 CZK (EUR 38);<br>capital decrease: up to 1 page: 1600 CZK (EUR 60), 2 and more: 3100 CZK (EUR 117);<br>other submissions: up to 1 page: 2600 CZK (EUR 99), 2 and more: 5000 CZK (EUR 190);<br>annual account: 7800 CZK (EUR 296)<br>(costs without 19% VAT) | Not required |
| **Denmark** | Register the company with the Danish Commercial and Companies Agency over Webreg system: no charge | | |
| **Estonia** | Dependent on type of legal person:<br>- sole trader: 200 EEK (13€), via internet: 200 EEK (13€);<br>- general partnership, limited partnership: 200 EEK (13€), via internet: 200 EEK (13€);<br>- commercial association: 2200 EEK (141€), via internet: not possible;<br>- branch of foreign company: 2200 EEK (141€), via internet: not possible;<br>- private limited company: 2200 EEK (141€), via internet: 2900 EEK (185€);<br>- public limied company: 2200EEK (141€), via internet: not possible | * with a view to entries in the register, in 2003 publication in the national gazette was replaced by a reference on the website of the Centre of Registers and Information Systems<br>* publication in the (electronic) national gazette is necessary only with a view to<br>- a notice of reduction of share capital;<br>- a notice of the liquidation proceeding (notification of creditors);<br>- a merger notice and a notice concerning entry into the merger agreement;<br>- a division notice and a notice concerning entry into the division agreement;<br>- a transformation notice.<br>The fee for such publications is 100 EEK (6€). | Not required |
| **Finland** | * registration of new limited company or branch 330 €, partnership 155 €, sole trader 60 €;<br>* registration of changes 57 €, change of articles of association 330 € | * Reference to the information entered into the company register is only published electronically ex officio by the National Board of Patents and Registration (NBPN, http://kuulutus.prh.fi) immediately after the registration.<br>* Costs are included in the registration fee | Not required |
| **France** | *check company name availability with the Institut National de la Propriété Industrielle: no charge (unless deeper research is made, for example, by field of activity);<br>* request for a company's registration with the Centre de Formalités des Entreprises (CFE): €40 paid to the CFE and €76.19 paid to the trade register in the Commercial court | * Notice of incorporation of the company: publication amounts to 4,86 euros per line for 40 signs (the cost varies from €100-€200) | |

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| **Germany** | * First registration<br>- private limited company: 100€ (no 2100 of the Gebührenverzeichnis der HRegGebV)<br>- public limited company or KGaA: 240€ (no 2102 of the Gebührenverzeichnis der HRegGebV), in the case of a formation against contributions in kind: 290€ (no 2103 of the Gebührenverzeichnis der HRegGebV)<br>* Registration of a branch: 90€ (no 2200 of the Gebührenverzeichnis der HRegGebV)<br>* if the parent company has its seat in another MS: as new registration (100€ or 240 €) | * in principle only publication on electronic platform necessary, costs 1€ (§137(1) Nr.5(a) KostO)<br>* publication of annual accounts in electronic national gazette:<br>- 50€ for small companies,<br>- 70€ for medium-sized companies, and<br>- (on average) 1000€ for big companies (depending on number of letters);<br>* the national gazette forwards the information to the register, for the publication in the register the company is charged 5€ (under §326 HGB) or 10 € (in all other cases) (No 500 and 501 of the Gebührenverzeichnis zur JVKostO) | * during a transition period until 31/12/2008 additional publication in a newspaper needed (Art. 61(4) EGHGB) - costs according to the tariffs of the newspaper chosen |
| **Greece** | * Costs for incorporation are dependent on the capital of a company.<br>Example: S.A. with a capital of 60000 Euro the costs are: 60000*1/100 (tax of capital concentration) + 60000*1/1000 (tax of competition) + 60000*3/1000 (approximately for notary's fee), + 544 Euro (publication fee);<br>* publication fee for a branch of a S.A. is 544 Euro. | * 544 Euro (publication of accounting statements, codification of statute),<br>* 289 Euro (publication of a change of an article of statute, change of management board, increase of capital)<br>* national gazette available both in paper from and in electronic form (for subscribers) | * For the registered companies, the financial statement and the convocation with the agenda of the general meeting should be published to an economic and political newspaper and also to a regional newspaper if the seat of the company is outside Athens or Thessaloniki.<br>* For the not registered companies there is an option for the statute of the company to determine that publication only is needed in one newspaper |
| **Hungary** | The duty on company registration is:<br>• 600,000 HUF (EUR 2,340) for public limited companies and European public limited-liability companies,<br>• 100,000 HUF (EUR 390) for private limited companies and limited liability companies,<br>• 50,000 HUF(EUR 195) for unincorporated business associations<br>• 30,000 HUF (EUR 117) for sole proprietorships<br>• 250,000 HUF (EUR 975) for the Hungarian branch offices of foreign-registered companies<br>• 150,000 HUF (EUR 590) for direct commercial representations of foreign companies.<br>The duty payable for the registration of companies under simplified proceedings is 15,000 HUF (EUR 59). | * Companies have the choice whether they want to publish the information in the national gazette or on their website. In the latter case they have to provide the address of the website.<br>* As of 1 January, the official national gazette is electronic (http://e-cegkozlony.gov.hu/)<br>* Information can be sent by companies either in paper or in electronic form (no difference in costs)<br>* The cost of publication of company registration:<br>• 14,000 HUF (EUR 55) for unincorporated business associations,<br>• 25,000 HUF (EUR 98) for entities having legal personality.<br>The cost of publication of amendments of data in the company registry:<br>• 7,000 HUF (EUR 27) for unincorporated business associations,<br>• 15,000 HUF (EUR 59) for entities having legal personality.<br>The cost of publication of company registration and amendments when the data is provided for the Court of Company Registration via e-mail:<br>• 5,000 HUF ( EUR 20) for company registration,<br>• 3,000 HUF (EUR 12) for the registration of amendments.<br>The publication of company registration under simplified proceedings is free of charge. | Not required |
| **Ireland** | * The standard fee for registering a company is €100.<br>* The 'CRODisk' scheme incurrs costs of €50 but this scheme is generally limited to frequent presenters of documents.<br>* The standard fee for registering a business name is €40, or €20 if filed electronically. | * national gazette is kept in electronic format<br>* companies have the choice whether to submit information in paper or in electronic form<br>* Publication in the online CRO (Companies Registration Office) Gazette does not incur a charge, this includes lists of: New companies, change of name, annual returns received and registered, liquidations, foreign companies, other registered documents, strike off, restorations.<br>* Other issues must be publicised in a national gazette (including the appointment of liquidator, receivership or examinership issues). For Iris Oifigiuil the costs are €20.00 per 10 lines or less and €11.00 for each additional 5 lines or less. Price for half page notices is €160.00 and full page notices is €305.00. | * In general not required<br>* Companies who wish to begin a voluntary strike off procedure, they must publish a notice in one daily newspaper published and circulated nationwide in the Republic of Ireland. |
| **Italy** | Government grant tax to the post office current account: € 309.87<br>Register with the Register of Enterprises (Registro delle Imprese) at the local Chamber of Commerce: € 168 (registration tax) + € 156.81 (registration with Chamber of Commerce) + € 373.00 (membership fees) | | |
| **Latvia** | Register at the Ministry of Justice, Register of Enterprises: LVL 125 (176 (EUR)) (+/- fee for verifying the signature in case of a sole founder on the company's registration application and the sample signatures of the members of the Management Boardthis service: LVL 5.5 (EUR 8) | * gazette available both in paper format and in electronic format<br>* information is sent to the gazette by the register in paper form | Not required |
| **Lithuania** | The costs depend on the type of company to be registered:<br>- Private limited liability company: 198 Litas (57,42 €);<br>- Public limited liability company: 198 Litas (57,42 €),<br>- European company: 198 Litas (57,42 €);<br>- Branch of company: 99 Litas (28,71 €)<br>- Branch of foreign company: 200 Litas (58 €) | * Changes in the register are made public on the register's website<br>* Costs are included in the fees for registration. | Not required |

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| **Luxembourg** | * Fee dependent on form of company (21 different forms).<br>* Costs for Registration of a new company range from 13,70 € to 132,39 €;<br>Examples: SE 132,39 €, limited liability company (société responsabilité limitée) 132,39 €.<br>* Changes to the register are devided between<br>- statutory changes (13,70 € to 68,48 €) and<br>- other changes (9,13 € to 13,70 €).<br>* Deletion: from 13,70 € to 132,39 € | | |
| **Malta** | From 350 € to 1,725 €, according to the share capital | free of charge, on website of Registrar of Companies | |
| **Netherlands** | dependent on the size of company:<br>- small companies (capital less than 2.5 million € and less than 50 employees): 54,05 €;<br>- medium sized companies (capital in between 2.5 million - 10 million € and 50 - 250 employees): 108,10€;<br>- big companies (capital more than 10 million €, more than 250 employees): 313,49€ | publication of a registration takes place via the website of the Chamber of Commerce and is free of charge | |
| **Norway** | The fee is NOK 6000 (which is approximately EUR 750) for registration of private limited companies public limited companies, limited partnerships and cooperatives.<br>For other companies and branches the registration fee is NOK 2500 (EUR 310).<br>The registration fee basically covers the lifetime cost for registration in The Register of Business Enterprises. | The registration fee, NOK 6000 (EUR 750) or NOK 2500 (EUR 310), include the costs of publication in electronic form on Brønnøysund Register Centre's website. Electronic publication has replaced publication in the national gazette.<br>It costs NOK 2500 (EUR 310) to file changes in the registered information regarding company name and participants in partnerships. It also costs NOK 2500 (EUR 310) to register decisions that require a notification to the creditors, except the decision to wind up. | |
| **Poland** | * The registration of an incorporation of a company as well as a branch costs in total 1000 Zloty (EUR 277). Exception: a partnership costs 750 Zloty (EUR 208).<br>* Changes in the companies register cost 400 Zloty (EUR 111). | * For the first publication in total 500 Zloty (EUR 139).<br>* Following publications cost 250 Zloty (EUR 69).<br>* Publications for documents cost 0.7 Zloty (EUR 0.19) per letter. | |
| **Portugal** | €360 or €300 (depending on whether the company's object is IT or IT related or not), including mandatory publications but excluding a 0.4% Stamp Tax rate, levied on the amount of the company's share capital subscriptions | | |
| **Romania** | Approximately: 350 RON (EUR 94)<br>RON 50 (EUR 13) (verification and registration of company's name/emblem) + RON 10 (EUR 3) (verification uniqueness of headquarters) + RON 30 (EUR 9) (Certificate issued by the trade register office) + 20% of the registration tax: 24 RON (EUR 6) (Dissolution Fund) + 10,00 RON (EUR 3) (Obtaining Unique Registration Code) + 5% of the registration tax: EUR 6 (EUR 1) (Fund for the Bulletin of judicial reorganization and insolvency procedures) + RON 39 (EUR 10) (stamp duty) + RON 120 (EUR 32) (registration fee) + publication taxes<br>Subsequent ammendments: RON 30 (EUR 9) for each mandatory element of the basic information of the company to be registered. | * Publication of judicial decisions authorizing the incorporation and registration (integral/in excerpt): 31.5 RON (EUR 8.48)<br>* Other publications (merger/division plans, addenda to the articles of association etc.): 100 RON/page (EUR 27)<br>* Publications including tables: RON 5 (EUR 1)/row | |
| **Slovakia** | Item No 17 of the Act No 71/1992 stipulates the actual fees in the matters of the Commercial Register as follows:<br>a) from the application for the registration<br>1. Joint Stock Company<br>SKK 25 000 (EUR 705) (e-registration = 12500 (EUR 352))<br>2. Other legal entities<br>SKK 10 000 (EUR 282) (e-registration = 5000 (EUR 141))<br>3. Individual entrepreneur<br>SKK 5 000 (EUR 141) (e-registration = 2500 (EUR 71))<br>4. Branch of a legal entity<br>SKK 10 000 (EUR 282) (e-registration = 5000 (EUR 141))<br>5. Branch of individual entrepreneur<br>SKK 1 000 (EUR 28) (e-registration = 500 (EUR 14))<br>b) from the application for the change of legal form of a company (or cooperative society)<br>SKK 10 000 (EUR 282) (e-registration = 5000 (EUR 141))<br>etc.<br>If a whole application is submitted via electronic means, the fee is only 50% of the sum stipulated. | * Commercial Gazette of the Slovak Republic is published both in paper-based and electronic form<br>* submission of documents have to be in paper form<br>* costs are included in the registration fee | Not required |

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| **Slovenia** | * no court taxes for any entry into court register | * no need, with entry into register automatic free disclosure on AJPES (Agency of the Republic of Slovenia for Public Legal Records and Related Services) | |
| **Spain** | * Certification of uniqueness of proposed company name: EUR 7 to 14<br>* Public deed of incorporation of the company for its registration with the Mercantile Registry: EUR 159 | | |
| **Sweden** | 2000 SEK (EUR 212) for registration of a new company or a new branch | * national gazette is kept in electronic format<br>* companies have the choice whetehr to submit information in paper or in electronic form<br>* publication costs are included in the registration fee | Not required |
| **United Kingdom** | Company: £20 (EUR 26)<br>Branch: £20 (EUR 26)<br>Both can request a same day service for £50 (EUR 66).<br>In addition, companies and branches pay an annual fee of £30 (EUR 40) (this fee applies when a company files its annual return and a branch files its annual accounts). | * figures for the costs of publication of individual items in the (electronic) gazette are not available; it is the registrar that is charged by the Gazette.<br>The total annual cost for the registrar is between £50,000 (EUR 6,.308) and £60,000 (EUR 79,560). | Not required |

Blank fields indicate that no information was provided on this point.

## TABLE 3: COSTS OF ACCESS TO INFORMATION

| Costs of access to information | | |
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| **COUNTRY** | **Access to electronic register** | **Access to annual accounts** |
| **Austria** | * extract from the register: 9 €/850 lines;<br>* download via Internet between 0.70 and 4.30 € | extract from register: 9€<br>download: ca. 2 € |
| **Belgium** | * Public search 'Crossing bank entreprises': None, access by way of webinterface http://kbo-bce-ps.mineco.fgov.be/ps/kbo_ps/kbo_search.jsp?lang=nl&dest=ST<br>* Documents outside the public search area are not free (art. 17 Crossing bank entreprises law - inside the public search area are among other things all data to be made public by the company code).<br>' Public search electronic national gazette (extracts from the memorandum of association, appointment of the board members, etc.): None, access by way of webinterface http://www.ejustice.just.fgov.be/cgi_tsv/tsv.pl | Annual accounts : National Bank of Belgium = remunerated<br>* With subscription:<br>- an annual lump sum of 605 euro, including VAT gives a free and unlimited access to the images of the annual accounts, provided the<br>rules of good conduct laid down in detail in the terms of delivery are complied with<br>- an annual lump sum of 121 euro, including VAT, gives you access to the images of the annual accounts you are charged with a lump sum of 2.42 euro, including VAT, per image file.<br>* Without subscription: by using the on line order form, by fax or by post, or at the counters of one of their branches. The charge for copies is 0.25 euro per page, excluding VAT and postage, if applicable. The copies required will be delivered: by e-mail, subject to some technical conditions; by fax or by post; in one of their branches.<br>* Search operation through webinterface http://www.bnb.be/PR/Exe/BA/BASrcN.asp |
| **Bulgaria** | | |
| **Cyprus** | Only as to the company registration which is free of charge. Not yet available for the company file. | £CY5 for inspecting the company file. Uncertified copies of the annual Accounts are available for the price £0.20 per page. There are also certified copies at the cost of £CY10 and £CY20 if accelerated procedure is preferred (per annual account) |
| **Czech Republic** | free of charge | free of charge |
| **Denmark** | | |
| **Estonia** | * information about non-profit associations and foundations are available for free;<br>* information about other companies is dependent on the documents: articles of association: 25 EEK (1.60€), inquiry by the name of company director: 20 EEK (1.30€) | Cost of annual report: 25 EEK (1.60€) |
| **Finland** | Basic data at www.ytj.fi and www.prh.fi/kuulutus free of charge, online services through different service providers, prices vary, for example search at KATKA-online 0.27-0.54 €, person search 2.07 €, full report on paper 10 € | Annual accounts are available online through several providers, prices vary depending on service provider |
| **France** | * Key elements (html documents): €1.50 (financial elements, identity overview etc.) to €3 (annual accounts)<br>* Registration certificate: €2.5<br>* Copy of official documents: from €3 (management report etc.) to €11 (complete annual accounts)<br>* Immovable assets: €0.25/ file | Complete annual accounts: €11 |
| **Germany** | * search is free of charge, also download of particulars of the company (seat, registration no., legal form, capital, address etc) and of publications in the register;<br>* download of other information (articles of association, list of members etc): 4,50€ per download (No 400 of the Gebührenverzeichnis zur JVKostO) | free of charge accessible via electronic national gazette and the company register |
| **Greece** | not yet specified | |
| **Hungary** | Free of charge as of January 1st, 2008.<br>www. e-cegjegyzek.hu | Free of charge |
| **Ireland** | * Copies / images of documents filed with the Registrar are available for a fee of €2.50 (paper or electronic). A printout of basic company details is available for €3.50 (paper or electronic again). Certified copies cost an additional €12. A search on company paper files (mostly older files) is available for €3.50.<br>* Documents can be e-mailed to the customer when ordered over the internet, purchased in the CRO office or posted to the customer (an additional €1 postage payable per order).<br>* Also provided, under licence, data in bulk format for high volume users of data. | * A copy / image of annual accounts is available for €2.50.<br>* Also provided, under licence, data in bulk format for high volume users of data. |
| **Italy** | | |
| **Latvia** | Ranging from 2 LVL (EUR 3) to 7 LVL (EUR 10) | |
| **Lithuania** | Direct search in the electronic data base:<br>- by company or branch name or code of registration: 2 Litas (0.58 €);<br>- by name of a person related to a company or branch: 4 Litas (1.16 €);<br>- by date of data, documents or information registration or modifications of such registration: 3 Litas (0.87 €);<br>Anual fee for an extract (includes all objects of the register): 123479 Litas (35,808.91 €);<br>Monthly fee for a direct access by electronic means: 100 Litas (29 €);<br>fee for an extract of a fixed form:<br>- short extract (of identification data) in electronic form: 17 Litas (4.93 €);<br>- Main data extract in electronic form: 11 Litas (3.19 €);<br>- expanded extract in electronic form: 13 Litas (3.77 €);<br>- expanded extract with a history in electronic form: 22 Litas (6.38 €);<br>fee for an electronic copy of a company's or a branch's document from the electronic archive: 3 Litas (0.87 €) | * Submission of financial accounts of companies by electronic means from the register of legal entities: 31 Litas (8.99 €),<br>* for each separate account: 7,75 Litas (2.25 €) |
| **Luxembourg** | * Extracts: 10.43 €, with an electronic signature: 15.43 €<br>* Certificate: 4.75, with an electronic signature: 9.75 €<br>* Copy of a document per page: 0.32 € | 30 € |
| **Malta** | Log in charge €2.33; downloading of documents in PDF €0.23 to €4.33 depending on document type | in PDF €2.33 |
| **Netherlands** | per registered information: 2.50€;<br>certified extract of registration: 7.50€ | Access to PDF: 2.90€ |
| **Norway** | In Norway, accessing the electronic register by search on website by company name can be made free of charge.<br>Name of director is not a search option on our website. | Annual accounts can be obtained electronically at NOK 150 (EUR 20). |

| | | |
|---|---|---|
| **Poland** | * Costs are dependent on the request:<br>- Information about companies in the register: 5 Zloty (EUR 1);<br>- full duplicate of the register: 60 Zloty (EUR 17);<br>- current duplicate of register: 30 Zloty (EUR 8);<br>- extract of register in respect to each extracting section: 1-10 (EUR 0.2 - 3) Zloty, for each next section: 5 Zloty (EUR 1);<br>* attestation of a register: 15 Zloty (EUR 4);<br>* copy of a document from the electronic catalog: 50 Zloty (EUR 14) | |
| **Portugal** | | |
| **Romania** | * extract from the register: from RON 0.85/information to RON 30;<br>* download via online register: from RON 0.5 to RON 2.1/information | Information regarding annual accounts: RON 3 + RON 0.85/ indicator |
| **Slovakia** | a) For the excerpt from the Commercial Register, with the exception of the excerpt pursuant to Art. 8(2) of the Act No 530/2003 Coll. on Commercial Register,<br>1. In paper form - SKK 200 (EUR 5.64),<br>2. In electronic form - SKK 10 (EUR 0.28),<br>b) For a copy of document from the Collection of Documents of the Commercial Register, 10 Sk (EUR 0.28) for every page,<br>c) for a copy of electronic form of a document from the Collection of Documents of the Commercial Register via electronic means - SKK 10 (EUR 0.2) (for a whole document),<br>d) for a confirmation, that certain particular is not entered in the Commercial Register, or for a confirmation that certain document is not in the Collection of Documents - SKK 100 (EUR 2.82),<br>e) for a confirmation, that certain particular is not entered in the Commercial Register, or for a confirmation that certain document is not in the Collection of Documents via electronic means SKK 10 (EUR 0.28) | |
| **Slovenia** | * Free access to relevant AJPES internet page; insight possible by date or by subject | * Free access to relevant AJPES internet page<br>* Charge of public disclosure depending on the subject, way of submission and the scope of annual accounts 8.35 – 45.90 € for sole enterpreneur and 31.30 - 75.15€ for companies; +VAT (AJPES 2007 Tariff)<br>* Extract from register: depending on data size, paper or electronis extract 5.22 - 6.22 € and 0.21-0.62 € per page (AJPES 2007 Tariff) |
| **Spain** | | |
| **Sweden** | * Information is free of charge;<br>* specific occasional data: 6 SEK (EUR 0.6) | * 40 SEK (EUR 4);<br>* XBRL-format: 20 SEK (EUR 2) |
| **United Kingdom** | * There is no charge for: company/branch name, registered office address, SIC code, incorporation date, account filing due dates, annual return due date and previous names.<br>* Details of director: £1 (EUR 1.3) per director. | Accounts: £1 (EUR 1.3) per set of accounts. |

Blank fields indicate that no information was provided on this point.

## TABLE 4: COSTS OF TRANSLATION AND CERTIFICATION

| Registration of a branch - costs of translation | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **COUNTRY** | **Disclosure of the Articles of association of the (mother company)** | **Disclosure of the attestation of the register** | **Translation of the accounting documents** | **Translation of the Articles of Association** | **Translation of the attestation** | **Certification of the translation of the accounting documents** | **Certification of the translation of the Articles of Association** | **Certification of the translation of the attestation** | **Costs of translation** | **Costs of certification** |
| **Austria** | Yes (§ 254 Abs. 4 AktG, § 107 Abs. 4 GmbHG) | Yes (§ 254 Abs. 4 AktG, § 107 Abs. 4 GmbHG iVm § 12 Abs. 2 UGB) | Yes (§ 280a UGB) | Yes (§ 254 Abs. 4 AktG, § 107 Abs. 4 GmbHG) | Not explicitly. However, given that German is the official language (Amtssprache) of Austria, the courts might not accept documents for registration in a language other than German without a (certified) translation. | No | Yes (§ 254 Abs. 4 AktG, § 107 Abs. 4 GmbHG) | Not explicitly. | The average page is 15,20 Euro | |
| **Belgium** | Yes (art. 81, 1°, Belgian Company Code) | Yes (art. 81, 4°, Belgian Company Code) | Yes (art. 101, first paragraph, Belgian Company Code) | Yes (art. 85 Belgian Company Code) | Yes (art. 85 Belgian Company Code) | No legal obligation | No legal obligation | No legal obligation | N/A | N/A |
| **Cyprus** | Yes | No | Yes | Yes | Yes, if available and produced | Yes, through a sworn affidavit. | Yes, through a sworn affidavit. | Yes, through a sworn affidavit. | N/A | N/A |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Czech Republic** | Yes | Yes | Yes | Yes | Yes | No legal obligation for translation from/into EU official languages | No legal obligation for translation from/into EU official languages | No legal obligation for translation from/into EU official languages | N/A | N/A |
| **Denmark** | Yes | Yes | No | Yes | Yes | No | Yes | Yes | N/A | N/A |
| **Estonia** | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes (apostil), unless otherwise provided for in an international agreement | N/A | Notary fee for authentication of a translation of a document is 40 – 200 EEK (2.55 - 12.77 €) per page +VAT (18%) (Notary Fees Act § 31 p 19) The fee charged by a sworn translator for certification of the correctness of a translation of a document is 15 EEK (0.96 €) per page. The fee charged by a sworn translator for certification of the authenticity of a copy of a translation of a document and for certification of the authenticity of a copy of a document to be translated is 20 EEK (=1.28 €) for the first page and 5 EEK (=0.319 €) for each subsequent page (Sworn Translator Act § |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | 8). |
| **Finland** | Yes | Yes | No | Yes | * Yes<br>* The company register of the National Board of Patents and Registration (NBPR) offers limited information also in foreign languages. A certificate of registration in Finnish, Swedish, English, French or German costs 15 €. A translation in English of the essential registered information of a company (max. 3 pages) is also available and costs 91.50 €. | No | NBPR is flexible with translations. Even an unofficial translation is accepted if there is no doubt of the reliability of the translation. In clear cases translations are not required (e.g. a foreign certificate of registration in a European language generally understood in NBPR/Finland or a copy of a passport). | | N/A | N/A |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Greece** | Yes | Yes | No at the registration of the branch (only the annual accounting statements of the mother company are requested translated at the end of each year) | Yes | Yes | No at the registration of the branch | Yes | Yes | The cost of the certified translation by the Ministry of foreign affairs is 14 €/per page (a certified translation can be done also by a lawyer but this cost can vary). | |
| **Hungary** | Yes | Yes | No | No | Yes | No | No | Yes | * Certified translations are issued by the Hungarian Office for Translation and Attestation Company<br>* Costs of the certified translation is approx. 13-15 €/page. | |
| **Ireland** | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Bourne by the company, N/A | Bourne by the company, N/A |
| **Lithuania** | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | The costs of the translation of these documents depends on a language and is approximately 35 – 70 Litas (10 – 20 EUR) per sheet. | The costs of the certification of these documents is about 5 Litas (1.45 EUR) per sheet. |
| **Malta** | Yes | No | Yes | Yes , if not in English or Maltese | Yes | Yes | Yes | Yes | market rates (docs are translated to English) | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Norway** | Yes (Business Enterprise Registration Act § 3-8) | No | Written or translated to NO, DK, SE or EN (Annual Accounts Act § 8-2) | Yes (in NO but in special cases may be in other languages) | N/A | No in practice but may be requested | No in practice but may be requested | No in practice but may be requested | N/A | N/A |
| **Slovakia** | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | The price for one page of certified translation of document written in a European language is SKK 600 (16.93 €) per page (except of translation from the Czech language, where the price is SKK 400 (11.29 €) per page). Certified translations can be obtained from any translator that is listed in the register of translators (accessible via the website of the Ministry of Justice) and do not require any further certification.<br>The fee for the control of a translated document and its certification is 25% of the fee for a certified translation.<br>Abovementioned fees could be decreased by translators in case of bigger volumes. For instance, the Institute of Languages and Education provide for a discount of SKK 150 (4.23 €) in case of volume above 100 pages and discount of SKK 100 (2.82 €) in case of volume between 100 and 50 pages. | |
| **Sweden** | Yes | Yes | Yes (not when the branch is registered but when the accounting documents are handed in) | Partly (only the objectives/ activities of the branch) | * SE and EN are accepted, on other cases translation is needed;<br>* register can issue attestation in SE and in EN | No | No | No | The company takes care of it. Costs differ. | The company takes care of it. Costs differ. |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **United Kingdom** | | | | | | | | | | If a translation was made outside the United Kingdom, it should be certified by:<br>(i) a notary public;<br>(ii) a person authorised in the place where the translation was made to administer an oath;<br>(iii) any of the British officials mentioned in section 6 of the Commissioners of Oaths Act 1889;<br>(iv) a person certified by a person mentioned above known to him to be competent to translate the document into English. |

Blank fields indicate that on this point no information was provided.

## TABLE 5: LEGAL MINIMUM CAPITAL OF PRIVATE LIMITED-LIABILITY COMPANIES

**Table 6. Minimum Capital Requirements and Incorporation Costs in the E.U.**

This table reports minimum capital requirements for private and public limited liability companies in the 25 E.U. Member States and Norway. Typical setup costs are the upper bounds of figures reported in EVCA (2004) and checked against estimates of law firms based in various Member States. A contact list is available from the authors. All reported figures are in Euro.

| Country | Private limited company | | | | | Public limited company | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Local name | Abbreviation | Minimum capital | Paid-up capital | Typical setup costs | Local name | Abbreviation | Minimum capital | Typical setup costs |
| Austria | Gesellschaft mit beschränkter Haftung | GesmbH | 35,000 | 17,500 | 3,500 | Aktiengesellschaft | AG | 70,000 | 7,000 |
| Belgium | Besloten vennootschap met beperkte aansprakelijkheid or Société responsabilité limitée | BVBA or SPRL | 18,550 | 6,000 | 980 | Naamloze vennootschap or Société anonyme | NV or SA | 61,500 | 1,798 |
| Cyprus | Private company limited by shares | Ltd | 2 | 2 | n.a. | Public company limited by shares | Plc | 8,850 | n.a. |
| Czech Republic | Společnost s ručením omezeným | s.r.o. | 6,700 | 3,350 | 1,234 | Akciová společnost | a.s. | 67,000 | 1,234 |
| Denmark | Anpaartsselskap | ApS | 16,800 | 16,800 | 6,715 | Aktieselkab | A/S | 67,200 | 6,715 |
| Estonia | Osaühing | OÜ | 2,560 | 2,560 | n.a. | Aktsiaselts | AS | 25,560 | n.a. |
| Finland | Osakeyhtiö | Oy | 8,000 | 8,000 | 285 | Julkinen osakeyhtiö | OYJ | 80,000 | 285 |
| France | Société à responsabilité limitée | SARL | 1 | 1 | 450 | Société anonyme | SA | 37,000 | 550 |
| Germany | Gesellschaft mit beschränkter Haftung | GmbH | 25,000 | 12,500 | 1,000 | Aktiengesellschaft | AG | 50,000 | 1,500 |
| Greece | Eteria periorismenis efthynis | E.P.E. | 18,000 | 18,000 | 1,500 | Anonymos eteria | A.E. | 60,000 | 3,000 |
| Hungary | Korlátolt felelősségű társaság | Kft | 12,170 | 12,170 | 430 | Részvénytársaság | Rt | 81,150 | 2,443 |
| Ireland | Private limited liability company | Ltd | 1 | 1 | 1,500 | Public limited liability company | Plc | 38,092 | 5,000 |
| Italy | Società a responsabilità limitata | S.r.l. | 10,000 | 2,500 | 2,750 | Società per azioni | S.p.A. | 120,000 | 2,750 |
| Latvia | Sabiedriba ar ierobežotu atbildibu | SIA | 2,880 | 2,440 | n.a. | Akciju sabiedriba | AS | 35,950 | n.a. |
| Lithuania | Uždaroji akcine bendrove | UAB | 2,900 | 2,900 | n.a. | Akcine bendrove | AB | 43,440 | n.a. |
| Luxembourg | Société à responsabilité limitée | SARL | 12,500 | 12,500 | 2,300 | Société anonyme | SA | 31,000 | 2,500 |
| Malta | Private limited liability company | Ltd | 1,160 | 232 | n.a. | Public limited liability company | Plc | 46,400 | |
| Netherlands | Besloten vennootschap | B.V. | 18,000 | 18,000 | 1,750 | Naamloze vennootschap | N.V. | 45,000 | 1,750 |
| Norway | Aksjeselskap | AS | 11,913 | 5,957 | 1,787 | Allmennaksieselskap | ASA | 119,130 | 1,787 |
| Poland | Spólka z ograniczona odpowiedzialnoscia | SP.Z.O.O | 12,460 | 12,460 | 650 | Spólka akcyjna | S.A. | 124,580 | 3,500 |
| Portugal | Limitada | Lda. | 5,000 | 5,000 | 650 | Sociedade anónima | S.A. | 50,000 | 830 |
| Slovakia | spoločnost s ručením omezeným | s.r.o. | 5,230 | 4,230 | 4,000 | Akciová spoločnost | a.s. | 26,140 | 5,000 |
| Slovenia | Druzba z omejeno odgovornostjo | d.o.o. | 8,780 | 4,180 | n.a. | Delniska druzba | d.d. | 25,090 | n.a. |
| Spain | Sociedad de responsabilidad limitada | S.L. | 3,010 | 3,010 | 600 | Sociedad anónima | S.A. | 60,100 | 1,200 |
| Sweden | Privat aktiebolag | privat AB | 10,650 | 10,650 | 2,210 | Publikt aktiebolag | publikt AB | 53,240 | 2,210 |
| United Kingdom | Private limited company | Ltd | 2 | 2 | 425 | Public limited company | Plc | 75,450 | 779 |

*Source:* Becht, Marco, Mayer, Colin and Wagner, Hannes F., "Where Do Firms Incorporate? Deregulation and the Cost of Entry" . ECGI - Law Working Paper No. 70/2006 Available at SSRN: http://ssrn.com/abstract=906066

## TABLE 6: NUMBER OF LIMITED-LIABILITY COMPANIES IN THE EU

**Indicateurs sur la démographie des entreprises selon la forme juridique**

**indic_sb** ***v11119*** **Nombre d'entreprises actives durant la période de référence (t)**
**leg_form** ***ll*** **Entreprises privées ou par actions limitant la responsabilité des personnes détenant des parts**
**nace** ***c_to_k_not_k7415*** **Industrie et services, sauf administration publique et administration d'entreprises (C à K à l'exclusion de 74.15)**

| <> | time | 2005a00 |
|---|---|---|
| geo | | |
| ***eu_v*** **Union européenne - agrégats modifiés selon la disponibilité du pays (voir notes explicatives)** | | : |
| ***be*** **Belgique** | | : |
| ***bg*** **Bulgarie** | | 93307 |
| ***cz*** **République tchèque** | | 143021 |
| ***dk*** **Danemark** | | : |
| ***ee*** **Estonie** | | 41390 |
| ***es*** **Espagne** | | 1090591 |
| ***fr*** **France** | | : |
| ***it*** **Italie** | | 633872 |
| ***cy*** **Chypre** | | 20510 |
| ***lv*** **Lettonie** | | 43279 |
| ***lt*** **Lituanie** | | : |
| ***lu*** **Luxembourg (Grand-Duché)** | | 19211 |
| ***hu*** **Hongrie** | | 148063 |
| ***mt*** **Malte** | | 6758 |
| ***nl*** **Pays-Bas** | | 213278 |
| ***pt*** **Portugal** | | 305604 |
| ***ro*** **Roumanie** | | 409462 |
| ***si*** **Slovénie** | | : |
| ***sk*** **Slovaquie** | | 70911 |
| ***fi*** **Finlande** | | 109040 |
| ***se*** **Suède** | | 237989 |
| ***uk*** **Royaume-Uni** | | 1168275 |
| ***no*** **Norvège** | | : |
| ***ch*** **Suisse** | | : |

Source: ESTAT – Démographie des entreprises - Indicateurs sur la démographie des entreprises selon la forme juridique ;
http://epp.eurostat.ec.europa.eu/portal/page?_pageid=2293,59872848,2293_68195655&_dad=portal&_schema=PORTAL#bd3

## TABLE 7: NUMBER OF BRANCHES OF LIMITED-LIABILITY COMPANIES IN THE EU



*VI. European companies- A*

| Country | Do you require that the branch of company registered in another EU country be registered? | Register: | | | Number of company registered as of December 31, 2006 | | | |
|---|---|---|---|---|---|---|---|---|
| | | European Economic Interest Grouping (EEIG) | European Companies (SE) | European Cooperative Society (SCE) | European Economic Interest Grouping (EEIG) | European Companies (SE) | European Cooperative Society (SCE) | Branches |
| AT | Sometimes | Yes | Yes | Yes | 23 | 5 | 0 | 0 |
| BE | No | No | Yes | No | . | 0 | . | 0 |
| BG | Yes | No | Yes | Yes | . | 0 | 0 | 489 |
| HR | Yes | Yes | Yes | No | 0 | 0 | . | 0 |
| CS | Yes | Yes | Yes | Yes | 0 | 0 | 0 | 0 |
| DK | Yes | Yes | Yes | No | 8 | 0 | . | 261 |
| EE | Yes | Yes | Yes | Yes | 0 | 0 | 0 | 437 |
| FI | Yes | Yes | Yes | No | 1 | 1 | . | 757 |
| FR | Yes | Yes | Yes | No | 16899 | 0 | . | 0 |
| DE | No | Yes | Yes | . | 0 | 0 | 0 | 2049 |
| GI | Yes | Yes | Yes | No | 3 | 0 | . | 8 |
| GB | Yes | Yes | Yes | No | 190 | 1 | . | 9210 |
| GR | Yes | No | No | . | . | . | 0 | 0 |
| HU | Yes | No | Yes | . | . | 2 | 0 | 471 |
| IS | Yes | Yes | Yes | No | 0 | 0 | . | 58 |
| IE | Yes | Yes | No | No | 18 | . | . | 1375 |
| IM | Yes | No | No | No | . | . | . | 0 |
| IT | Yes | Yes | Yes | Yes | 146 | 0 | 0 | 6450 |
| JE | No | No | No | No | . | . | . | 0 |
| LV | Yes | Yes | Yes | Yes | 0 | 1 | 0 | 262 |
| LI | Yes | Yes | Yes | No | 1 | 1 | . | 85 |
| LT | Yes | Yes | Yes | Yes | 2 | 0 | 0 | 250 |
| LU | Yes | Yes | Yes | No | 48 | 2 | . | 1077 |
| MT | Yes | Yes | Yes | No | 0 | 0 | . | 260 |
| MD | Yes | No | No | No | . | . | . | 179 |
| NL | No | Yes | Yes | Yes | 50 | 6 | 0 | 0 |
| NO | Yes | Yes | Yes | No | 0 | 1 | . | 7742 |
| RO | Yes | Yes | Yes | No | 0 | 0 | . | 0 |
| RS | Yes | No | No | No | . | . | . | 80 |
| SI | Yes | Yes | Yes | No | 3 | 0 | . | 32 |
| ES | Yes | Yes | Yes | No | 220 | 0 | . | 2134 |
| SE | Sometimes | Yes | Yes | Yes | 29 | 4 | 0 | 1346 |
| CH | Sometimes | No | No | Yes | . | . | . | 3750 |
| UA | No | No | No | No | . | . | 0 | 0 |

Source: European Commerce Registers Forum Survey 2006.
http://www.ecrforum.org/member/Documentation/ECRF_Survey_2006.pdf

# ***ANNEX 2***

**Table of content**

## 1. CONTEXT

*Purpose of financial reporting; the Accounting Directives*

The purpose of general financial statements is to inform stakeholders (investors, creditors, employees and other interested parties) about the financial position of a company. The Fourth Company Law Directive ("Fourth Directive") was adopted in 1978 in order to create a harmonised set of requirements for the external reporting of all limited liability companies in the EU. A common reporting basis is efficient as it avoids that every stakeholder of a company defines his own reporting requirements.

In 1983, the Seventh Company Law Directive was adopted and added a common set of requirements for consolidated financial statements.

During the past 25 years the Fourth and Seventh Company Law Directives (the "Accounting Directives") have been modified several times, notably through adding new disclosure requirements. A number of changes have been made in order to enable companies within the scope of the Directives to use accounting methods from International Financial Reporting Standards (IFRS). Furthermore, a Directive[50] harmonising transparency requirements in relation to issuers of listed securities was adopted in 2004. Through the adoption of the IAS Regulation[51] listed companies (and those with listed debt) have to present IFRS accounts, and are consequently relieved from most of the requirements in the Fourth and Seventh Directives. These Directives however still form the basis for SME accounting in the EU.

The Commission has identified accounting and auditing as priority areas for reducing administrative burden for European companies[52]. Consequently, research was conducted in order to identify the potentially most burdensome requirements in the Accounting Directives. The initial findings indicated that several amendments could be made to the Accounting Directives in order to simplify the reporting requirements, in particular for SMEs.

These initial ideas and suggestions were discussed with the Member States in the Accounting Regulatory Committee and the Audit Regulatory Committee at several meetings from December 2006 onwards. Following these discussions, the Commission published a Communication in July 2007 identifying potential amendments/changes to the Accounting Directives[53]. Special attention was given to finding further relief for reporting by small and medium-sized companies. A public consultation was conducted[54]. The Commission document issued for consultation included the following potential measures:

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50 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

51 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, published 11.9.2002.

52 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on "Action programme for reducing administrative burdens in the EU" - COM(2007) 23, not yet published in the Official Journal.

53 Communication from the Commission on a simplified business environment for companies in the areas of company law, accounting and auditing, COM (2007) 394 final, 10.7.2007. Available on DG MARKT's website at: http://ec.europa.eu/internal_market/company/simplification/index_en.htm.

54 The results can be found in Annex 3 of this document.

(1) Introduction of "Micro entities".

(2) Criteria for trespassing the thresholds for SMEs.
(3) Relief from publication requirement for small entities.
(4) Extension of exemption for companies without particular external user:
    (a) Management owned companies,
    (b) Unlimited liability medium companies.
(5) Simplification for all companies:
    (a) Full use of Article 57 – audit exemptions under specific circumstances,
    (b) Clarification of the relationship between the IAS Regulation and the Seventh Directive,
    (c) Consolidation requirement for personal holdings,
    (d) Abolition of deferred tax[55] accounting,
    (e) Abolition of disclosure of explanation on formation expenses in the notes to the accounts,
    (f) Abolition of disclosure of breakdown of net turnover into categories of activity and geographical markets in the notes to the accounts.

All these potential ideas were analysed in detail by the Commission services. The feedback received from all constituents was analysed in detail[56]. Taking into account the given criteria as part of the fast track simplification project, three different measures have been identified as being appropriate (see chapter 4).

## 2. PROBLEM DEFINITION

Preparing, publishing and auditing financial statements create administrative costs to companies. At the same time, the accounts enable companies to run their operations efficiently and are useful communication tools with outside stakeholders. From a total cost-benefit perspective, the analysis is difficult as costs can be assessed for the preparers, but general benefits to users are more complex to ascertain.

It goes without saying that the Directives have led to an improved financial reporting[57] environment in the EU and that this has been in the interest of preparers as well as users. Every subsequent addition to the Directives has however created new requirements, and whilst every added requirement may have been justified in its own right, it is now important to reconsider whether less useful requirements should be removed or replaced.

The current simplification exercise addresses some issues, which could lead to simplification in the short term perspective:

- The disclosure requirements in the Directives have been extended several times since their inception. This creates problems for SMEs who do not have the internal capacity or

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55 According to current accounting literature deferred taxes are either assets, i.e. amounts of income taxes recoverable in future periods in respect of deductable temporary differences; the carryforward of unused tax losses and tax credits; or liabilities, i.e. amounts of income taxes payable in future periods in respect of taxable temporary differences.

56 See the summary of the analysis in Annex 3.

57 Although the notes in the Accounting Directives is often used as a basis for tax accounting in Member States it must be clarified that their primary purpose is financial reporting (which is harmonised), as compared with tax reporting (which is a Member State responsibility).

resources to prepare these disclosures, which are normally of limited value to their stakeholders.

- The introduction of the IAS Regulation 1606/2002 has highlighted the need to clarify the relationship between the IFRS and the Directives. One important difference between IFRS and the Seventh Directive relates to when a parent company with only immaterial subsidiaries can be relieved from the obligation to prepare consolidated accounts. Recent discussions in the Accounting Regulatory Committee indicate that the Seventh Directive in fact requires preparation of consolidated accounts also in such cases. This leads to extra work without increased information.

### 2.1. Who is affected?

Companies, in particular SMEs, have indicated that the increasing complexity and widening scope of the accounting rules have led to costs which divert resources from the core business activities of companies. Small and medium-sized companies are often subject to the same rules as larger companies, but their specific accounting needs have rarely been assessed. In particular the increasing number of disclosure requirements raises concerns for small and medium-sized companies. Most of the added information is furthermore not of interest to other stakeholders.

The situation that partly conflicting consolidation rules in IFRS and in the Directives could lead to preparation of additional sets of accounts is unsatisfactory and costly for preparers. Under all normal circumstances this information has limited value for external stakeholders.

### 2.2. How large is the problem?

The fact that a large part of the approx. 6-7 million EU companies in the scope of the Directives are subjected to sometimes quite extensive reporting rules inevitably creates a cost burden and can hinder efficient use of capital for productive purposes. Of course, not all of the workload can be considered "burdensome", as it also supports the business activities of the company. It is however important to reflect on the different types of reporting requirements that a company is exposed to and the associated costs. This is particularly important for small entities.

A recent study prepared by Ramboll Management for the Commission in July 2007[58] concluded that the different reporting requirements took the following amounts of time to perform for small and medium-sized companies (tables below, left hand columns). For illustrative purposes standard amounts for internal and external costs could be used and would give the results presented in right hand columns of the grid.

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[58] Ramboll Management. July 2007. Study on administrative costs of EU Company Law Acquis. Available on DG MARKT's website at: http://ec.europa.eu/internal_market/company/docs/simplification/final_report_company_law_administrative_costs_en.pdf.

*Table 1. Assessment of administrative costs: Condensed balance sheet, small[59] companies*

| Data requirement | Time per company (minutes) | | | Cost per company (EUR) | | |
|---|---|---|---|---|---|---|
| | Internal time | External time | Total time | Internal cost | External cost | Total cost |
| **Statement by Management** | 80 | 150 | 230 | 60 | 278 | 338 |
| **Balance sheet** | 170 | - | 170 | 127 | - | 127 |
| **Notes** | - | 230 | 230 | - | 427 | 427 |
| **Due approval** | 15 | - | 15 | 11 | - | 11 |
| **Publication** | 37 | 38 | 75 | 28 | 71 | 98 |
| **Total** | **302** | **418** | **720** | **225** | **776** | **1.001** |
| Note: Internal cost: 45 EUR/hour<br>External cost: 111 EUR/hour | | | | | | |

Source: Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p.22, Commission Services analysis

*Table 2. Assessment of administrative costs: Annual report, medium size[60] companies*

| Data requirement | Time per company (minutes) | | | Cost per company (EUR) | | |
|---|---|---|---|---|---|---|
| | Internal time | External time | Total time | Internal cost | External cost | Total cost |
| Management review (article 46) | 80 | 60 | 140 | 60 | 111 | 171 |
| Statement by Management (article 47) | 10 | 30 | 40 | 7 | 56 | 63 |
| Income statement (article 2) | 110 | 330 | 440 | 82 | 612 | 694 |
| Balance sheet (article 2) | 110 | 330 | 440 | 82 | 612 | 694 |
| Notes (article 2) | 110 | 270 | 380 | 82 | 501 | 583 |
| Auditors' report (article 51) | - | 7 560 | 7 560 | - | 14 023 | 14 023 |
| Due approval (article 47) | 85 | - | 85 | 63 | - | 63 |
| Publication (article 47-50) | 15 | - | 15 | 11 | - | 11 |
| **Total** | **520** | **8.580** | **9.100** | **388** | **15.915** | **16.303** |
| Note: Internal cost: 45 EUR/hour<br>External cost: 111 EUR/hour | | | | | | |

Source: Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p.24, Commission Services analysis

59 Article 11 of the Fourth Directive defines companies as "small" which meet two of the following three criteria:
- turnover below 8.800.000 €
- Balance sheet total below 4.400.000 €
- Number of employees below 50.

60 Article 27 of the Fourth Directive defines companies as "medium" if they do not exceed the limits of two of the following criteria:
- Balance sheet total 14 600.000 €
- net turnover 29 200 000 €
- average number of employees 250.

It is important to highlight that the above figures are very approximate, and relate to the complete preparation of the accounts and all disclosures. It is however important to keep in mind that also limited reductions in the requirements if aggregated can lead to considerable savings. See further Chapter 5.

## 3. OBJECTIVES

Derived from the objectives of the short term better regulation programme it was concluded to identify potential changes to the Fourth and Seventh Directive to decrease the administrative burden in a quick and efficient way without any considerable negative counter effects. Therefore, the following actions are being proposed for this fast-track exercise:

- Simplify financial reporting for SMEs in a short-term perspective. The changes should lead to reduced administrative burden without loss of relevant information.
- Clarify the interaction between the Seventh Directive and IAS Regulation.

## 4. IDENTIFICATION OF POLICY OPTIONS

### 4.1. Simplifying certain disclosure requirements for SMEs

Different options have been examined with a view to achieving the objectives set out above:

*Option 1 - No legislative action*

*Option 2 - Targeted, technical changes in order to achieve simplification in the short term*

*Option 3 - General revision of the Accounting Directives*

*Option 1 - No legislative action*

The rules creating the reporting requirements are included in the Directives and legislative change is therefore needed to obtain simplification for SMEs. Commission Recommendations or guidance cannot "override" Directive requirements. Legislative change is consequently necessary in order to fulfil the objectives. In general, simplification in the area of accounting and auditing can only be achieved by revising the law. Otherwise the variance in accounting requirements between Member States might even increase in future.

*Option 2 - Targeted, technical changes in order to achieve simplification in the short term*

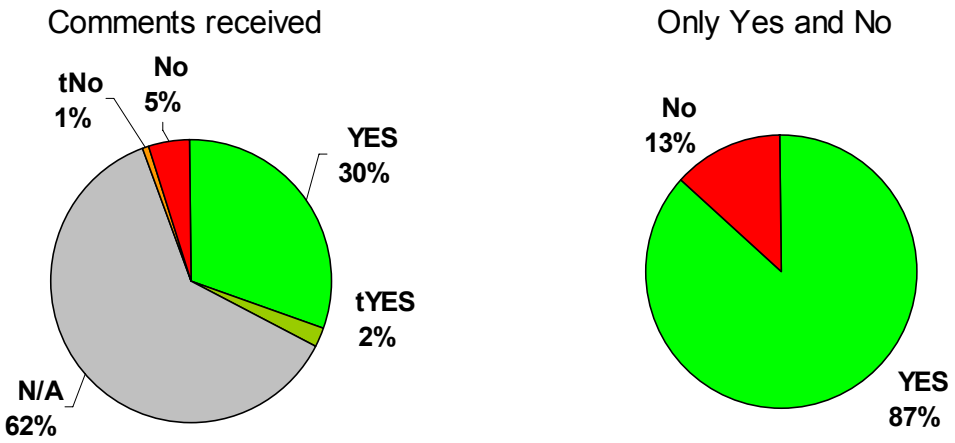
Another potential approach to achieve simplification is to focus on targeted, limited changes that could lead to simplification in the short term perspective. In the Communication, the Commission Services highlighted a number of measures, some of which could be taken within the deadlines of this project. Such changes could also be seen as the first attempts to modernise certain disclosure requirements in the Accounting Directives. Further amendments in this direction could be taken in a subsequent revision of the directives.

The results of a public consultation on the Communication have revealed large support for the following possible technical changes to the Fourth Directive[61]:

*2. a Allow Member States to remove the disclosure requirement for formation expenses for medium-sized enterprises*

Formation expenses are different types of costs related to the creation of a company, for example registration fees or legal assistance costs. These can under some circumstances be treated as an asset in the balance sheet. If this is the case, Article 34, paragraph 2, of the Fourth Directive requires that these "formation expenses" are explained in the notes to the accounts. Small companies can be exempted from this disclosure requirement in accordance with Article 44, paragraph 2, of the same Directive.

***Fig. 1. Support graphs for the deletion of formation expenses disclosure***




*Legend: tYes: tentative Yes; tNo: tentative No; n/a: no answer on the question*

Source: Commission Services analysis of comments on the Commission Communication see Annex 3

In its July Communication, the Commission suggested that these disclosures could be abolished also for medium-sized companies. A large majority of commentators to the communication supported the proposal. Only a small number of respondents (one third of accountants and auditors) argued that this disclosure provided useful information.

Considering the strong support by Member States and major constituents for this simplification measure, it seems appropriate to include it in the package of legal proposals.

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61 The comments on the Commission Communication of 10 July 2007 can be found at http://ec.europa.eu/internal_market/company/simplification/index_en.htm, see also Annex 3 to this Impact Assessment. This study is based on 129 replies the Commission received as part of our consultation until November 2007. Respondents are originating from 22 MS. Reactions were also sent in by 18 MS governments plus 1 EEA (European Economic Area - Norway). Distribution of respondents according to origin were mainly Germany and UK (> 20%), FR and EU organisations (>10%). In respect of the distribution according to field of activity the biggest groups were accountants and auditors (26%), companies (21%) and public authorities (14%). The statistical analysis prepared on that basis in figures 2 to 10 is done by not weighting the answers and comment letters received by any kind (e.g. size of organisation or jurisdiction).

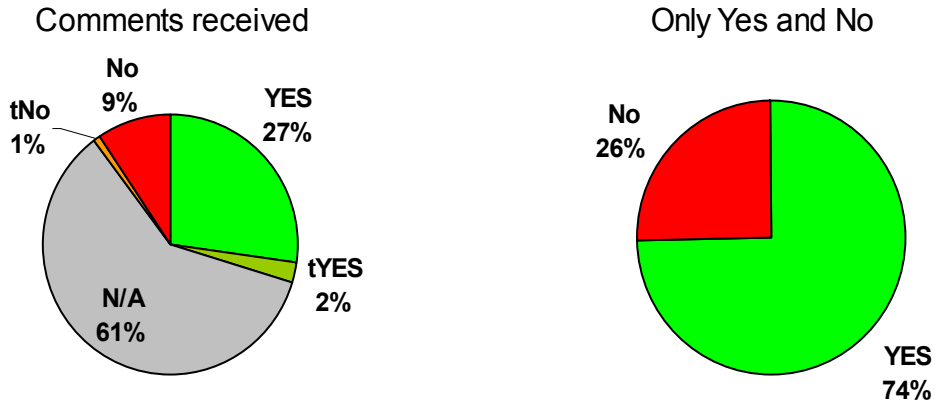
*2. b Allow Member States to remove the disclosure requirement for breakdown of turnover into activity and geographical markets for medium-sized enterprises*

Article 43, paragraph 1 (8) of the Fourth Directive requires that a breakdown of net turnover into activity and geographical markets is explained in the notes on the accounts. This is mandatory for all companies, but small companies can be excluded in accordance with Article 44, paragraph 2.

In the Communication it was suggested that this disclosure requirement could be abolished also for medium-sized companies.

The proposal was supported by almost three quarters of those who responded to the consultation on the Communication (one third of accountants and auditors and public authorities).

***Fig. 2. Support graphs for the deletion of breakdown of turnover into activity and geographical markets disclosure requirement***




*Legend: tYes: tentative Yes; tNo: tentative No; n/a: no answer on the question*

Source: Commission Services analysis of comments on the Commission Communication see Annex 3

Considering the support by Member States and major constituents for this simplification measure, it seems appropriate to include it in the package of legal proposals.

*Option 3 - General revision of the Accounting Directives*

It could be argued that a general revision of the Accounting Directives is needed in order to ensure that they are kept up to date and constitute a modern financial reporting framework. The economic environment has changed significantly during the last three decades and so has the way in which accounting standards are written. A general revision of the Directives is a long-term exercise which necessitates technical input from public authorities as well as private stakeholders.

The need for a general overhaul of the directives has been discussed with Member States in meetings of the Accounting Regulatory Committee (ARC), a group of government experts on accounting. At this time it seems that there is wide-spread resistance to too extensive changes to the Accounting Directives. Some Member States were hesitant to embark on a revision

exercise at this time when so many resources are used for ensuring proper IFRS implementation. Others referred to problems related to the linkage to taxation. However, a few Member States would welcome such a project.

In the draft "Radwan report", the rapporteur in the European Parliament calls "for the Commission to arrange a proper consultation procedure for a European accounting framework for SMEs along the lines of normal legislative proposals"[62].

The objective of the current simplification exercise is to come up with changes that could lead to relief for SMEs in a short term perspective. This makes it difficult to include major revisions of provisions in the Accounting Directives in this exercise. However, the simplification work is at an initial stage at EU level and the Commission may come back at a later stage with further proposals for simplification and modernisation of the Directives. The exact objectives of such a more general project should be discussed with Member States, Parliament and be subject to further consultation with stakeholders.

***Summary of arguments and conclusion***

The different policy option discussed above is analysed in the grid below according to the following criteria:

How well the measure ***fulfils the objectives*** of the simplification exercise

- Whether the measure is ***effective*** (the extent to which options can be expected to achieve the objectives of the proposal)
- How ***efficient*** (the extent to which objectives can be achieved for a given level of resources) does the measure achieves the objectives
- Whether the measure is ***consistent*** (the extent to which options are likely to limit trade-offs across the economic, social and environmental domain)
- Whether the measure affects the ***information value of accounts***

***Table 3. Comparison of options***

| | Fulfilment of objectives | Effectiveness | Efficiency | Consistency | Information value of accounts |
|---|---|---|---|---|---|
| Option 1 - No legislative action | 0 | 0 | 0 | 0 | 0 |
| Option 2 - Targeted, technical changes in order to achieve simplification in the short term | + | + | + | + | 0 |
| Option 3 - General revision of the Accounting Directives | 0 | + | 0 | + | 0 |

Note: "+" favourable, "-" unfavourable; "0" neutral

Source: Commission Services analysis

62 European Parliament, 5.2.2008, Report on International Financial Reporting Standards (IFRS) and the Governance of the International Accounting Standards Board (IASB) (2006/2248(INI)), Committee on Economic and Monetary Affairs, Rapporteur: Alexander Radwan, page 11 available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0032+0+DOC+PDF+V0//EN&language=EN.

The analysis clearly indicates that the only measure fulfilling the objectives in the time frame possible is the targeted, technical changes to the Directives (option 2). The impact analysis of these measures can be found in the following chapter.

### 4.2. Targeted change in the Seventh Directive in order to clarify the relationship to IFRS

The following policy options to clarify the interaction between the consolidation rules by Article 13 of the Seventh Directive and IFRS have been analysed:

*1. No legislative action*

This consolidation issue has been discussed in detail with Member States in the Accounting Regulatory Committee. From a legal point of view it is not possible to interpret the Directive in a way that would solve the current problem. A change to the Directive is consequently needed. No legislative action would therefore force companies with only immaterial subsidiaries to start/continue spending significant time and/or money on preparing consolidated financial statements in accordance with IFRS, without increased information value for external stakeholders.

*2. Amendment to Article 13 of the Seventh Directive*

Various discussions with Member States and constituents have shown that the relationship between the IAS Regulation 1606/2002 and the Seventh Directive is not clear in cases where parent companies have no material subsidiaries. The problematic issue is whether such a parent company would fall under the IAS Regulation – and therefore have to prepare IFRS accounts – or not.

In the discussions in the Accounting Regulatory Committee, the majority of Member States expressed the view that it would be excessive to require the preparation of consolidated accounts in the situation where a parent company has only immaterial subsidiaries. This also seems to be used practice in some Member States. Some Member States disagreed and argued that also these sets of financial statements have important information value.

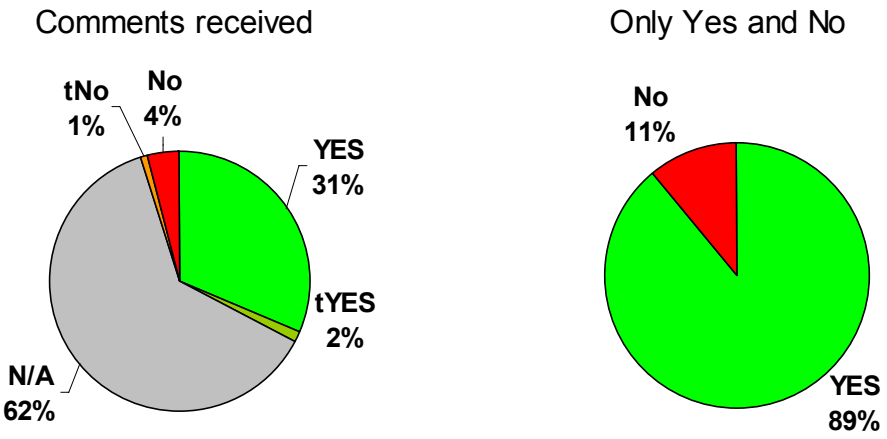
Following the discussion with Member States, the Commission included this issue in the Communication and proposed to clarify the situation through an amendment to the Seventh Directive.

The respondents to the Communication were strongly in favour of such a proposal (see Fig. 3 below), with companies being unanimously positive[63]. The main argument presented was that it is unreasonable to require a separate set of accounts as the consolidated accounts would be - in this scenario- quasi identical to the individual accounts (which do not fall mandatorily into the IFRS regime due to the IAS regulation). Commentators regarded this change as substantial and welcomed simplification.

Considering the strong support for this measure, it seems appropriate to include it in the package of legal proposals.

[63] 12 companies responded to this question.

*Fig. 3. Support graphs for the amendments to the Seventh Directive*




*Legend: tYes: tentative Yes; tNo: tentative No; n/a: no answer on the question*

Source: Commission Services analysis of comments on the Commission Communication see Annex 3

***Summary of arguments and conclusion***

The different policy options discussed above are analysed in the grid below according to the following criteria:

***Table 4. Comparison of options for clarification of relationship between Seventh Directive and IAS Regulation***

| | Fulfilment of objectives | Effectiveness | Efficiency | Consistency | Information value of accounts |
|---|---|---|---|---|---|
| Option 1 - No legislative action | 0 | 0 | 0 | 0 | 0 |
| Option 2. Amendment to Article 13 of the Seventh Directive | + | + | + | + | 0 |

Note: "+" favourable, "-" unfavourable; "0" neutral

Source: Commission Services analysis

As a result the Commission Services recommend to pursue alternative 2: to clarify the interaction between the Seventh Directive and the IAS Regulation.

## 5. IMPACT ANALYSIS FOR THE PROPOSED SIMPLIFICATION MEASURES

### Information needs of users of accounts

According to current accounting literature on the preparation and presentation of financial statements" financial statements are of use to present and potential investors, employees, lenders, suppliers/trade creditors, customers, government bodies and public at large. All these groups have various information needs, however it is assumed that some requirements are common for all groups and that investors' needs are most representative for common requirements.

In Chapter 4, it is proposed to include three legislative measures in the current simplification exercise. The impact, to the extent possible, of the first two in respect of the Fourth Directive will be assesses in 5.1, the third measure proposing a change to the Seventh Directive in 5.2. The overall impact will be summarised in 5.3.

## 5.1. Impact of changes to the Fourth Directive

*1. Allow Member States to remove the disclosure requirement for formation expenses for medium-sized companies*

*2. Allow Member States to remove the disclosure requirement for breakdown of turnover into activity and geographical markets for medium-sized companies*

According to a study prepared by Ramboll Management[64], the number of companies in the EU according to size can be estimated as follows:

***Table 5. Population of SMEs in the EU***

| Company category | Micro | Small | Medium | Total |
|---|---|---|---|---|
| Balance sheet total | < 500.000 € | < 3.650.000 € | < 14.600.000 € | X |
| Net turnover | < 1.000.000 € | < 7.300.000 € | < 29.200.000 € | X |
| Number of employees | < 10 | < 50 | < 250 | X |
| **Number of relevant enterprises, EU-27** | **4.431.515** | **1.477.172** | **240.273** | **6.148.960** |
| Share of total enterprises | 70,2%* | 23,4%* | 3,8% | 97,4% |

*The Danish data from the SCM Baseline measurements do not distinguish between micro and small companies. However, it has been assumed in this study that 75% of the total number of small Danish companies affected by the Company Law regulation constitute micro-companies.

Source: Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p.10, Commission Services analysis

Currently all medium-sized in the scope of the Fourth Directive have to report formation expenses and a breakdown of turnover. Our targeted research made by Ramboll estimated the number of medium-sized entities to 240.273. Differences in statistics in Member States make a simple addition difficult. The consultant's estimation has been discussed with authorities in Member States and Eurostat.

It can thus be concluded that up to 240.273 medium-sized entities could benefit from these actions. It will of course take the collaboration of Member States to reach a high implementation rate on the proposal. For several reasons we believe that this could be achieved:

1. High support from Member States for these simplification measures in the consultation. Furthermore, at recent meetings of the Accounting Regulatory Committee the measures were strongly supported by several Member States and contested by none.

2. Most Member States have in fact used the similar exemption for small entities, and this is an indication that the willingness by Member States is in fact there.

64 Ramboll study (page 10), see footnote 58.

*5.1.1. Remove the disclosure requirement for formation expenses for medium-sized companies (Article 35(2) of 4th Directive)*

***Extent of impact:*** According to the latest available study, all Member States except Denmark, Sweden and the UK allow "formation expenses" to be capitalised and require the disclosure of such expenses[65]. Companies within the scope of Article 11 (small companies) of the Fourth Directive can already be exempted from this disclosure requirement according to Article 44, paragraph 2, of the same directive. This exemption has been widely used, and only Spain requires this disclosure as a separate item of small companies. Some Member States require however disclosure as intangible fixed assets. The proposed change therefore would be focused on medium-sized companies, as most small companies in the EU are already exempted by the Member States.

It is difficult to make an exact determination of the overall savings this will bring, but one could make the following approximate estimation concerning the total cost associated with this measure. As indicated in chapter 2.2., medium-sized companies need 110 minutes of internal and 270 minutes of external time to prepare the notes and get them audited. Taking into account the numbers of potentially applicable disclosure notes, which form most of the notes, it can be guessed that the particular disclosure on formation expense takes 2-4 minutes of internal and 5-10 minutes of external time.

***Table 6. Assessment of administrative costs of formation expenses disclosure for medium-sized companies***

| Scenario | Time per company (minutes) | | | Cost per company (EUR) | | | No. of companies | Total cost (EUR) |
|---|---|---|---|---|---|---|---|---|
| | Internal time | External time | Total time | Internal time | External time | Total time | | |
| **Min** | 2 | 5 | 7 | 1,5 | 9,25 | 10,75 | 240.273 | **2.582.935** |
| **Max** | 4 | 10 | 14 | 3 | 18,5 | 21,5 | 240.273 | **5.165.870** |
| Note: Internal cost: 45 EUR/hour<br>External cost: 111 EUR/hour | | | | | | | | |

Source: Commission Services analysis, Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p.10, 24

On the basis of this ballpark estimation, an amount ranging between 2.5 and 5 million Euro could be saved through this simplification measure.

***Administrative burden: Even if this may seem a relatively small step, it is a trend-break.*** Indeed the change leads to a reduction of reporting burden for companies and should be seen in combination with other simplification measures included in the Commission initiative, this kind of technical and mechanic effects will be of significance.

***Information value:*** There is no significant loss of information for users of accounts, because even if capitalised the amount has to be written off in 5 years time and therefore cannot be considered very relevant for users. The removal, actually, is a step in the direction of streamlining the accounts and not overburdening them with less important information.

***Winners and losers among stakeholders:*** Both preparers and users benefit from the proposal as both save costs for not being forced to prepare and respectively analyse additional information. Other stakeholders are basically not affected.

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65 Report: Implementation of the Fourth Directive in Member States as per 1 January 1998, pages 2, 38, 62. Available on DG MARKT's website at: http://ec.europa.eu/internal_market/accounting/docs/studies/1998-fourth-dir_en.pdf.

***Environmental, social and equal opportunity impacts:*** Not relevant

*5.1.2. Remove the disclosure requirement for breakdown of turnover into activity and geographical markets for medium-sized companies (Article 43 §1 (8) of 4th Directive)*

***Extent of impact:*** According to the latest available study, all Member States require disclosure of the breakdown of turnover into activity and geographical markets[66]. The possibility granted by Article 44, paragraph 2 of the Fourth Directive to exempt small companies (Article 11) from this requirement has been used by all Member States. A change therefore only would need to be proposed with a view to medium-sized companies. It seems likely that Member States will make use of the proposed change, despite the fact that the minimum harmonisation nature of the directives would allow them to require more information. As indicated in table 5 above, about 240.000 medium-sized companies would be able to benefit from this simplification measure.

***Table 7. Assessment of administrative costs of breakdown of turnover into activity and geographical markets for medium size companies***

| Scenario | Time per company (minutes) | | | Cost per company (EUR) | | | No. of companies | Total cost (EUR) |
|---|---|---|---|---|---|---|---|---|
| | Internal time | External time | Total time | Internal cost | External cost | Total cost | | |
| **min** | 4 | 10 | 14 | 3 | 18,5 | 21,5 | 240.273 | **5.165.870** |
| **max** | 8 | 20 | 28 | 6 | 37 | 43 | 240.273 | **10.331.739** |
| Note: Internal cost: 45 EUR/hour<br>External cost: 111 EUR/hour | | | | | | | | |

Source: Commission Services analysis, Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p.10, 24

It is difficult to assess correctly the costs involved for medium-sized companies to comply with disclosure requirements under *Article 43 §1 (8) of 4th Directive*, due to the diversity of their activities and presence in geographical regions. On the basis of the assumption used before for the removal of formation expense disclosure requirement it appears logical that to prepare and audit the breakdown of turnover into activity and geographical markets for medium-sized companies takes double-time. Using the similar rate per hour and number of companies, it is possible that a cost saving ranging between 5 and 10 million Euro could be achieved through this simplification measure.

***Administrative burden:*** Removal of this requirement enables companies to structure their internal reporting according to management needs, rather than financial reporting requirements. The change leads to a reduced reporting burden for companies and should be seen in combination with the other simplification measures included in the Commission initiative.

***Information value:*** There is no significant loss of information for users of accounts. Users of accounts of SMEs and other companies in the scope of the Directives do not particularly request this kind of information. Being forced to disclose all activities in one region or all regions in one field of activity could be seen as a requirement to disclose confidential information. The removal actually is a step in the direction of streamlining accounts and not overburdening them with less important information.

[66] See footnote 655.

***Winners and losers among stakeholders:*** Both preparers and users benefit from the proposal. Certain stakeholders with particular interest in this information may be affected but this effect is considered limited.

***Environmental, social and equal opportunity impacts:*** Not relevant

## 5.2. Impact of changes to the Seventh Directive

*Amendments to the Seventh Directive in order to clarify the relationship with consolidation rules in IFRS*

***Extent of impact:*** The Commission Services have discussed this issue with regulators, in particular with the Committee of European Securities Regulators (CESR). The problem seems to be very specific, and concentrated to some larger Member States. Smaller Member States seem to be less affected mainly due to the smaller number of listed groups. Furthermore certain Member States have not enforced the preparation of such accounts, but may be inclined to do so after the clarification given in discussions in the Accounting Regulatory Committee during 2007.

In particular in the UK and in France there seem to be a number of cases where the preparation of such accounts causes problems[67].

The Commission Services have estimated the resources needed to prepare such accounts. Our estimations show that the switch from national GAAP to IFRS (as the major burden and result of this issue) would take an extra 3-6 days by a company to prepare the consolidated set of financial statements. The auditor would most probably need 2-4 days to audit these figures.

***Table 8. Assessment of administrative costs of preparing consolidated accounts in the UK***

| Scenario | Time per company (minutes) | | | Cost per company (EUR) | | | No. of companies | Total cost (EUR) |
|---|---|---|---|---|---|---|---|---|
| | Internal time | External time | Total time | Internal cost | External cost | Total cost | | |
| **min** | 1.440 | 960 | 2.400 | 1.080 | 1.776 | 2.856 | 1.000 | **2.856.000** |
| **max** | 2.880 | 1.920 | 4.800 | 2.160 | 3.552 | 5.712 | 1.000 | **5.712.000** |
| Note: Internal cost: 45 EUR/hour<br>External cost: 111 EUR/hour | | | | | | | | |

Source: Commission Services analysis (footnote 67), Ramboll Management, 2007, Study on administrative costs of the EU Company Law Acquis, p. 24

In total this would lead to a potential cost reduction between 3 and 6 million Euro.

***Administrative burden:*** The preparation of these accounts entails significant costs without corresponding benefits to the company. These accounts also need to be audited, which entails additional costs.

***Information value:*** There is no loss of information as these consolidated accounts are virtually identical to the individual accounts. Supervisors may under certain, limited circumstances lose some information, but this can easily be compensated through other prudential/regulatory channels.

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67 According to data provided by the UK, there are 1.6m active limited liability companies in UK, with 51 000 forming groups out of which only 10000 provide consolidated accounts. It was identified that 1 000 groups provide consolidated accounts while having only non-material subsidiaries.

***Winners and losers among stakeholders:*** The big winners are parent companies with immaterial subsidiaries that have to prepare consolidated accounts, because they have not to switch from national accounting rules based on the accounting Directives to IFRS.

***Environmental, social and equal opportunity impacts:*** Not relevant

## 5.3. Impact summary

Adding up the above savings of the three proposed short term measures, the potential savings – based on the above named assumptions – will be between 11 and 21 million Euro.

***Table 9. Estimation of cost reduction through application of proposed measures***

| Scenario | Proposed measures | | | Total cost (EUR) |
|---|---|---|---|---|
| | Formation expenses disclosure | Breakdown of turnover into activity and geographical markets disclosure | Clarification of relationship between 7th Directive and IAS Regulation | |
| **min** | 2.582.935 | 5.165.870 | 2.856.000 | **10.604.805** |
| **max** | 5.165.870 | 10.331.739 | 5.712.000 | **21.209.609** |

Source: Commission Services analysis

The public consultation revealed the level of support for various stakeholder groups indicated below. For further information on the outcome of the consultation please consult Annex 3.

***Table 10 Attitude of major stakeholder groups to the proposed changes***

| | Preparers | Users | Public authorities | Accountants and auditors |
|---|---|---|---|---|
| Removal of the disclosure requirement for formation expenses for medium-sized companies | ++ | ++ | ++ | + |
| Remove the disclosure requirement for breakdown of turnover into activity and geographical markets for medium-sized companies | ++ | + | + | + |
| Clarification of relationship between Seventh Directive and IAS Regulation | ++ | ++ | ++ | ++ |

Note: "++"support > 75%; "+" support >50%, "0" neutral; "-"; support < 50%; "- -" support < 25%

The questions attracted limited attention of respondents (around 40% answered) as they were considered neither controversial nor relevant.

Source: Commission own analysis of simplification consultations

## 6. NEXT STEPS – MONITORING AND EVALUATION

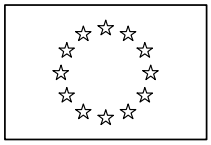
The proposals should be seen in connection with other simplification measures and the impact should be evaluated together. This is only the first part of the simplification exercise in company law and accounting. The efficiency of these measures could be monitored in future steps of the simplification process.

The Commission will continue to monitor the functioning of the Accounting Directives and can then propose further amendments when appropriate.

## 7. CHANGES INTRODUCED UPON REQUEST FROM THE IMPACT ASSESSMENT BOARD

Following the review of the Impact Assessment by the Impact Assessment Board and positive opinion thereof, several recommendations for clarification were presented that were subsequently introduced into the text. These included more detailed explanation of the scope of the problem and proposed actions, thorough description of the consultation process, amendments to the comparison criteria and greater focus on information needs of the stakeholders as well as various clarification of the text, which all contributed to the enhanced clarity of the document. The draft final report on the measurement of administrative burden carried out for DG Enterprise will only be available later in spring 2008. If additional relevant important information results from this exercise, it will be made available to the Council and the European Parliament.

# *ANNEX 3*



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE

## SYNTHESIS OF THE REACTIONS RECEIVED TO THE

## COMMISSION COMMUNICATION ON A SIMPLIFIED BUSINESS ENVIRONMENT FOR COMPANIES IN THE AREAS OF COMPANY LAW, ACCOUNTING AND AUDITING (COM(2007)394)

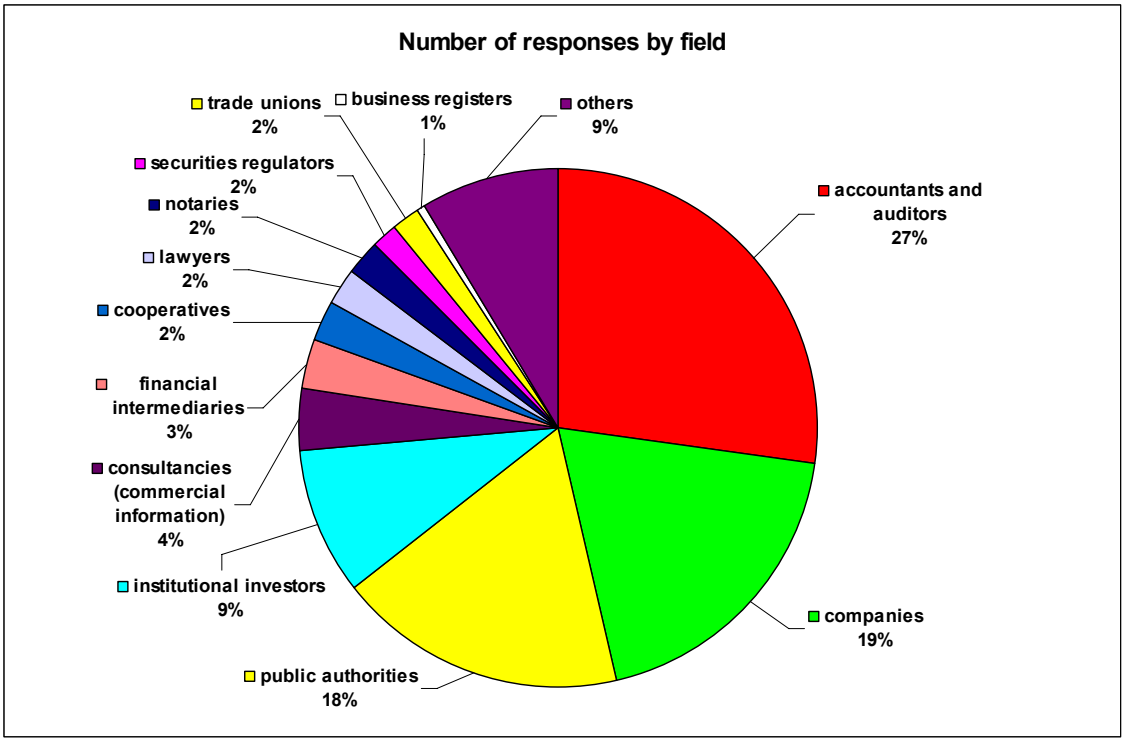
## THE INTERNAL MARKET AND SERVICES DIRECTORATE-GENERAL

**DECEMBER 2007**

On 10 July 2007, the Commission adopted its communication on a simplified business environment for companies in the areas of company law, accounting and auditing. In this communication, the Commission set out its proposals for reducing administrative burdens and adapting the acquis in these areas to the needs of today's businesses.

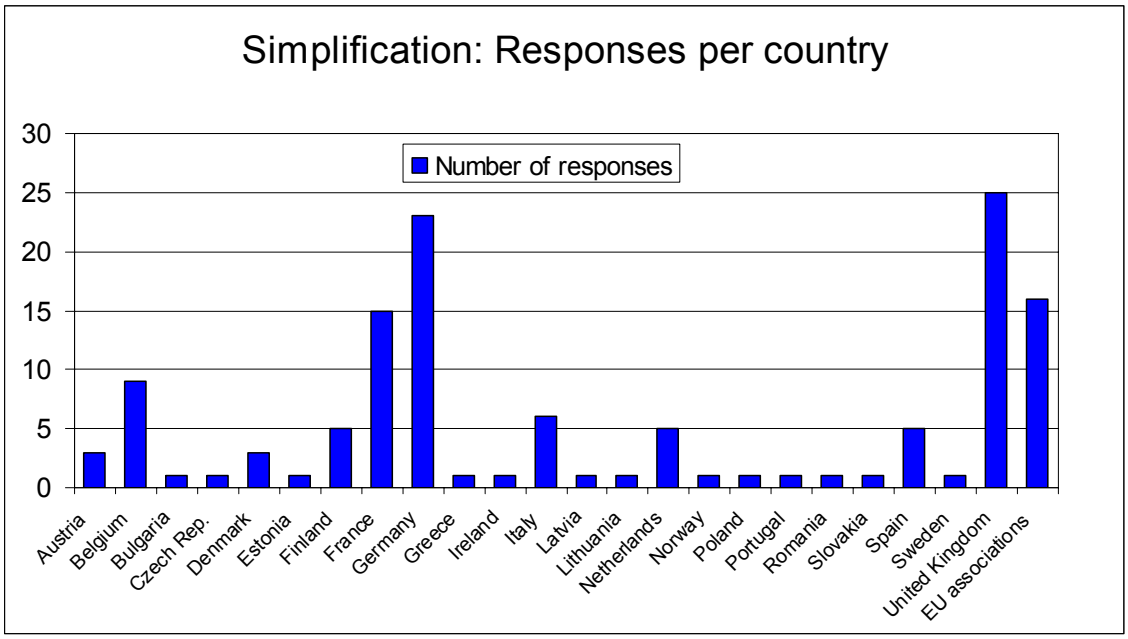
On 22 November, the Competitiveness Council adopted Council conclusions[68] welcoming the Commission initiative and calling on the Commission to expedite consideration of responses to its communication and, where appropriate and preferably before the end of 2008, bring forward proposals, based on impact assessments. The Legal Affairs Committee of the European Parliament is currently working on a report on the communication to be adopted early in 2008.

In addition, 18 Member States' governments, the government of one EEA country and 110 stakeholders reacted to the invitation, in the communication, to submit comments on the proposals in writing, by mid-October 2007.




These contributions from governments and stakeholders originated from 23 countries in total, including 22 Member States. A number of contributions were also submitted by European bodies and associations.

[68] Council document 15222/07 DRS 48.




DG MARKT would like to thank the interested parties who sent in written opinions for their contributions.

This report summarises the reactions that DG MARKT received to the communication and the main comments made. It does not provide detailed statistical data, but rather seeks to present a qualitative assessment of the contributions received. It also does not represent any indication as to what follow-up could be given, by the Commission, to the July communication.

## 1. EXECUTIVE SUMMARY

A clear majority of those that reacted to the proposal to repeal certain company law directives did not support it. The main argument put forward was that these directives provide legal certainty and that their repeal would rather cause additional costs than lead to savings for companies.

However, about three quarters of those who took a position on the question whether individual simplification measures should be proposed supported the idea. They considered that the Company Law Directives are in some parts overly descriptive and restrict the flexibility of Member States and companies beyond what is really necessarily. There was, in particular, overwhelming support for the proposals to abolish the requirement to publish details contained in the register in the national gazette (First Company law Directive) and to oblige Member States authorities to accept certified translations prepared and accepted in another Member State (Eleventh Company law Directive). On the proposal to reduce, at EU level, the reporting requirements in the case of domestic mergers and divisions, there was a slight majority supporting this idea, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents. The majority of respondents supported, however, also the idea to streamline the creditor protection rules in these cases with the recent modification of the Second Company law Directive and to reduce the requirements for mergers with 90% or wholly owned subsidiaries.

Concerning the proposals put forward in the communication in the areas of accounting and auditing there was clear support from respondents for the proposal to introduce a Member State option to exempt micro-entities from the scope of the accounting directives. The proposal to extend the transition period to the status of SME to five years met some scepticism. However, a period of three years was considered acceptable. A slight majority of respondents disagreed with the potential relief from publication requirement for small entities. Also the idea to allow unlimited liability medium-sized companies to follow the rules for small companies met support whereas respondents were split over the proposal to take the same measure with a view to management-owned companies. Finally, the proposals for more minor simplification measures for all companies were supported in respect of audit exemptions under specific circumstances, a clarification of the IAS Regulation as well as the deletion of certain disclosure requirements.

## 2. GENERAL REMARKS

Respondents in general welcomed the initiative to address the issue of administrative burdens for companies, and in particular small and medium-sized ones. A number of respondents, however, stressed that any simplification should take full account of the advantages of harmonisation and that thorough impact assessments should be established in order to support individual simplification proposals.

In the area of company law, reactions to the proposals seemed to be influenced mainly by geographical origin and less by the sector the respondents belonged to. However, this was not the case for the proposals concerning accounting and auditing where support came in particular from companies and, in many instances, from investors and public authorities whereas the reactions from the side of the accounting and auditing profession and from consultancies to these proposals were often critical.

## 3. OPTION 1: PLACING THE FOCUS ON CROSS-BORDER PROBLEMS (SECTION 3.1.1 OF THE COMMUNICATION)

In the communication, reducing the acquis in EU company law to those legal acts that aim at solving specific cross-border problems was proposed as one possible way forward in company law. Under this option, it was therefore suggested to repeal directives such as the Third, the Sixth, the Twelfth and – subject to the outcome of the ongoing outside study on the current capital maintenance system – the Second Company law Directive.

About half of the respondents took a position on this option 1. Of those respondents, about one third expressed themselves in favour of the proposal whereas two thirds opposed it.

Those who supported the proposal pointed out in particular that EU company law in its current form is too inflexible and hinders regulatory competition. A number of these respondents, however, preferred taking a by case-by-case approach: the directives should be judged one by one and article by article in order to establish whether the provisions are relevant to the effective functioning of the single market.

This approach was reflected in the views expressed on the different directives mentioned in the Commission communication: about a quarter of those respondents who took a position on

the Third and the Sixth Directive were in favour of repealing these directives whereas only one fifth considered that the Second Directive should be repealed. However, about two fifths of the respondents either asked for a repeal of the Twelfth Directive or indicated that they could accept such repeal.

Those respondents that expressed themselves against option 1 stressed in particular the positive effects of harmonisation. In their view, there are instances when it is valid to impose minimum standards which apply only at the domestic level, thus ensuring at least a partial level playing field throughout the EU. In particular, the repeal of enabling legislation is seen as counterproductive. Furthermore, they consider that the reduction in legal certainty caused by the repeal of the directives will cause new costs to companies that will outweigh the savings. Additional costs will, in their view, also be created for the other stakeholders if they have to deal again with 27 different legal systems in the future. This is likely to have a harmful effect on the confidence, in particular, of non-resident shareholders and creditors. Some respondents who opposed option 1 also took the view that the practical effect of such measures would be limited as Member States will not necessarily make use of the new flexibility.

With a view to **the Third and the Sixth Company law Directives**, opponents to the proposal of repealing the directives believe that the directives' transparency requirements create cross-border benefits and stressed that these directives form the basis for the Tenth Company law Directive on cross-border mergers. One respondent also recalled that the harmonisation of the transmission of rights and obligations in the directives has advantages for companies (e.g. patents of the merging companies in all Member States are automatically transferred to the acquiring or recipient company). Those that supported a repeal of these directives often considered these directives as outdated, in particular after the adoption of the Directive on cross-border mergers, or found the rules much too detailed and considered that they unduly restrict the flexibility of Member States and companies.

On the **Second Company law Directive**, most respondents took the view that the outcome of the outside study commissioned by the Commission in 2006 should be awaited before taking further action. On the substance, a number of respondents, however, considered that the rules of the directive are overly restrictive, impose excessive burdens on companies and do not achieve its objective to protect, in particular, the creditors of the company. Today financial mechanisms are much more sophisticated than at the time of the adoption of the directive. In order to increase the flexibility, one respondent proposed to introduce a Member States' option to allow for real non-par value shares. The large majority of those respondents who expressed a view on the Second Directive opposed the proposal of repealing the directive, mainly for the reason that the provisions provide for the necessary protection to investors and creditors, that the provisions on distributions to shareholders are important in order to preserve company and shareholder value and because pre-emption rights are considered as an important mechanism to protect shareholder rights. The latter right was considered important even by many of those respondents who, in general, favoured repealing the directive.

Most respondents considered the possibility to establish single-member companies important. Those respondents that nevertheless supported a repeal of the **Twelfth Company law Directive** mainly took this view because they considered that today this principle is established in all Member States so that EU intervention is not necessary any more. At the same time, some of them regarded the formal requirements contained in the directive (registration requirement, obligation to take decisions in writing and to conclude written contracts between the company and the member) as unnecessarily burdensome. Those

respondents that expressed themselves in favour of maintaining the directive stressed the enabling character of the directive and the risk that the national legal systems will diverge after its repeal which would be particularly harmful for companies that have 100% subsidiaries in other Member States.

## 4. OPTION 2: MORE PRINCIPLE-BASED, LESS DETAILED REGULATION (SECTION 3.1.2. AND ANNEX 2 TO THE COMMUNICATION)

The second option offered in the communication consisted in the proposal to simplify at least parts of the Third, the Sixth and probably also the Second Company law Directives as these directives, in their current form, leave Member States little flexibility to adapt their respective national systems to the evolving needs of businesses and stakeholders in general.

Just over half of the total replies took a position on this option. Almost three quarters of those who expressed a view were generally in favour of or, at least, could accept adopting individual simplification measures as a second best option after repealing some of the directives. Those who chose this option believe that there are provisions in the company law directives that are truly obsolete and have no real effect and should be repealed or amended. Simplification measures however should be examined and justified on a case by case basis.

Some respondents objected to the proposals under option 2 not because they did not see the need to simplify EU company law but because they expressed the concern that individual simplification measures might render the legal texts and the procedures more complex and costly than this is currently the case. They commented that it is very hard to set up a common technical method for simplification. Therefore if the repeal of the directives does not gain sufficient support, they would prefer not to amend the directives at all.

### 4.1. Reporting requirements under the Third and the Sixth Company law Directives

Not all respondents who generally support option 2 commented on the individual simplification measures set out in the annexes of the communication. Among those who did comment there is a slight majority in favour of the detailed proposals to amend or repeal the reporting requirements in the Directives, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents.

Those respondents who are in favour of changing the rules on the reporting requirements (the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement) consider that it would be better to leave it to the Member States to fit the respective information obligations in their legal system. At Community level it would be sufficient and more appropriate to set out an obligation to provide for adequate, transparent and objective information to shareholders covering not only the economic and legal justification for the operation but also its financial terms and the valuation of the share exchange. However, the way by which such information is to be provided, in the view of these respondents, can be left to the Member States to decide.

Half of those respondents who expressed themselves in favour of amending the rules on the reporting requirements are in favour of abolishing the requirement of drawing up the respective reports or statements only where shareholders renounce to them. Most of these respondents suggest that this decision would have to be taken by unanimity.

According to some respondents, the possibility of differentiating between listed and unlisted companies regarding the reporting requirements could also be considered. While it is essential to keep the requirements to protect the shareholders of listed companies, the by-laws of unlisted companies in their view may set out different requirements.

A number of respondents who oppose changing the legislation stress the importance of the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement in ensuring the transparency of the operation and in the protection of shareholders' interests. In their view, these reports provide important information for the shareholders and facilitate understanding of the motivations and the financial arrangements of the merger or the division.

Regarding more substantial changes, a significant number of respondents mention that shifting from ex-ante information to ex-post liability may be costly and lessens the efficiency of shareholder protection. In particular, the cross-border enforcement of claims for damages is difficult. Some point out that such a change would reduce the positive impacts of the provisions of the Transparency Directive and the Shareholders' rights Directive facilitating cross-border voting.

Some respondents indicated that mergers or divisions are rare events in companies' lives and that therefore the related reports do not constitute a relevant cost factor. Accordingly the proposed modifications would not result in significant cost-savings for the company.

*4.1.1. Written report by the management in case of a merger or a division*

Slightly more than half of those who expressed a view on this question support the proposal to amend the requirement on the written report or to leave it to the Member States to decide if they require a report by the management explaining the draft terms of the merger or the division and setting out their legal and economic grounds.

Most respondents who are in favour of amending the provision believe that the requirement of the written report of the management should remain as it stands but shareholders should be given the right to renounce to it. Most respondents suggest that this decision would have to be taken by unanimity.

Some suggest that shareholders should also be given the right to waive the management report in the case of a cross-border merger (Directive 2005/56/EC).

*4.1.2. Independent expert report*

Almost three fifths of the respondents who addressed this question took a position against abolishing or substantially amending the requirement for an independent expert report in a case of a merger or a division. Most of them referred to the recently adopted Directive 2007/63/EC amending the Third Company law Directive on mergers and the Sixth Company law Directive on divisions. This amendment grants an exemption under the requirement of the independent expert report if all shareholders renounce to it.

Most respondents argue that shareholders have a legitimate interest to be informed about the reasons and effects of the merger or the division, including the valuation of the share exchange ratio. The report ensures transparency and is indispensable to enable shareholders to take a well-informed decision at the general meeting.

A few of those respondents who are in favour of amending the requirement of an independent expert report consider that the report may be abolished if a clear point of reference exists for fixing the exchange ratio, as e.g. the stock price of listed shares, similarly as this is provided for in Directive 2006/68/EC amending the Second Company law Directive.

*4.1.3. Financial statement*

Slightly more than half of the respondents also expressed themselves in favour of the proposal to amend the provisions on the accounting statement that has to be drawn up in the case of a merger or a division. These respondents who supported the abolition of the statement consider the requirement for an accounting statement in all cases where annual reports are older than 6 months excessive. They believe it could be left to market forces to decide if such a statement is necessary. Some suggest that directors should be allowed to certify, in their written report, the amount of net assets and the net result for the relevant period and possibly other items on and off the balance sheet that were decisive in the setting of the share exchange ratio.

Several respondents consider keeping the requirement for a financial statement but allowing shareholders to renounce to it. The decision, in their view, would have to be taken unanimously.

The respondents who oppose the proposal underline the statement's role in shareholder protection. They claim that it is an important means for the shareholders to judge if the proposed exchange ratio is appropriate.

*4.1.4. Double reporting requirement in the case of a division*

Relatively few respondents – less than one third - expressed a view on the proposal to abolish a double reporting requirement in the Sixth Company law Directive. The Directive allows Member States only to provide that the report on consideration in kind (Second Directive) and the expert report on the draft terms of division may be drawn up by the same expert. They cannot grant an exemption from the double reporting requirement.

A minority of respondents opposed the modification of the provisions for the reason that the expert report under the Second Directive and a report on the draft terms of the division under the Sixth Directive have different objectives. In their view the former requires objective measurement while the assessment of the share exchange ratio aims at ensuring that the exchange ratio is appropriate.

The majority of respondents, however, supported the proposal of granting an exemption to companies from one of the reporting requirements and underlined that even if the two reports do not serve the same purpose, measuring the value of the contribution in kind is a precondition for the assessment of the share exchange ratio. Therefore the report on the draft terms of the division may be sufficient. Producing only one report could bring about cost savings to the company.

**4.2. Protection of creditors under the Third and the Sixth Directives**

Two thirds of the respondents who expressed a view on this question agree that the creditor protection rules in the Third and the Sixth Directives should be aligned with the provisions of the Second Directive as amended by Directive 2006/68/EC.

Those who support the proposal to require creditors to credibly demonstrate to the administrative or judicial authority that, in the event of a merger or a division, their interest is at stake, emphasise the importance of increased coherence of EU company law provisions.

Some respondents in the minority suggest waiting to see how the amendment of the Second Directive is applied in practice. One respondent considers that the provisions in the Second Directive are stricter and give less leeway to Member States than the rules of the Third and the Sixth Directives.

### 4.3. Protection of shareholders of the acquiring/recipient company in the Third and the Sixth Directives

Less than one third of the respondents commented on the proposal to give Member States the right to determine the conditions that have to be fulfilled if the acquiring/recipient company does not wish to hold a general meeting to decide upon the merger or the division.

Two thirds of those who responded to the question believe that the respective rules should remain subject to EU law. Many argue that holding a general meeting is essential to ensure shareholders' rights and to reasonably limit directors' liability since the resulting company does not only take over assets but also liabilities.

The minority in favour of the proposal consider that the general meeting should be discharged of duties that are parts of the day-to-day management of the company. It would reduce transaction costs for companies.

However, a slight majority of the respondents who gave a reply to the question agreed that some flexibility should exist at least in the cases of the transfer of the assets of a wholly owned subsidiary and of the acquisition of a subsidiary whose parent company already holds 90 % of the shares.

## 5. ADDITIONAL SIMPLIFICATION MEASURES IN COMPANY LAW (SECTION 3.2 AND ANNEX 3 TO THE COMMUNICATION)

Alongside with both options presented in the paper for company law, a number of individual simplification measures were proposed, in order to reduce administrative burdens that are linked to certain directives whose usefulness as such was not put into question by the communication.

### 5.1. National gazette

In particular, it was proposed with a view to the **First Company law Directive** to abolish the requirement to publish information in the national gazettes that also has to be entered into the Member States' commercial registers, to the extent that the publication in the national gazette entails additional costs for the companies.

This proposal was supported by an overwhelming majority of respondents. A number of them stressed, however, that in this case the electronic register should provide a daily transaction lists. Some respondents furthermore, took the view that the requirement for publication in the national gazette should only be deleted from the directive. It should then be left to Member States to decide whether they want to impose such an obligation at national level. The minority of respondents that opposed the proposal mainly put forward the arguments that the

current system functions well, that the electronic registers are not sufficiently developed yet to provide an equivalent service, that costs caused to companies by this requirement are relatively minor or that they oppose individual simplification measures in general (see above under point 4).

### 5.2. Certified Translations

The second proposal contained in this section of the communication referred to the possibility, for Member States, to request translations in the context of the establishment of a branch under the **Eleventh Company Law Directive**.

A very broad majority of respondents agreed with the proposal to oblige Member States to accept certified translations to the extent that they are accepted by the judicial or administrative authorities of the Member State where they were established. Those respondents stressed that Member States' laws sometimes impose excessive requirements, such as for notarisation. However, many respondents emphasised the importance of guaranteeing that the translation is reliable which would be the case if it is certified in a way accepted by the other Member States' authorities. The few respondents that objected to the proposal referred for example to the differences in certification procedures in the Member States or opposed individual simplification measures in general (see above under point 4).

### 5.3. Registered office of a European Company

A clear majority of respondents also supported the proposal to adapt Article 7 of the **Statute for a European Company (SE)** concerning the company's registered office to the "Überseering" jurisprudence of the European Court of Justice. These respondents considered that the change would give European Companies more flexibility in structuring their operations. Some respondents drew the attention to the fact that a practical interest of the company in having its registered office in another Member State than the administration can in particular exist where the administrations of different companies of one group are concentrated in one place in order to reduce the administrative expenses. Those respondents that opposed the proposal put forward in particular that the current rule provides more transparency and that the "Überseering" judgment only applies directly to companies under national law, or considered the proposal not to be a priority, in view of the limited number of SEs up to date.

## 6. ACCOUNTING AND AUDITING (SECTION 4 AND ANNEX 4 TO THE COMMUNICATION)

In the areas of accounting and auditing, five different measures had been identified in the communication that aim at reducing the administrative burdens, notably for small and medium-sized entities, while maintaining the goal to keep and improve accounting and auditing quality in the EU.

Each single measure is summarised in identical order as it appeared in the Commission Communication with no prejudgement whether or not and how to pursue these in the future.

### 6.1. Introduction of "Micro entities"

The Commission proposed to introduce a new category of so called micro entities in the Fourth Directive, which could be optionally exempted by Member States from the accounting directives. Micro entities are tentatively defined as entities with:

– less than ten employees,

– balance sheet total below 500,000 EUR, and

– turnover below 1,000,000 EUR.

The proposal to introduce the micro entities definition into the Fourth Directive was welcomed by a majority of those respondents that commented on the issue (about 80% of the total number of respondents). Nine respondents stated that the tentative figures defining the thresholds for micro-entities should be higher, seven wished them to be lower.

Those respondents that welcomed the proposal considered it a major reduction of administrative burden for those entities, which will encourage new start-ups through removal of disincentives to incorporation. Support was the strongest amongst public authorities and companies where more than four fifths expressed themselves in favour of the proposal. There were also comments suggesting that the thresholds for the micro entities should be as high as currently defined by Article 11 of the Fourth Directive for small companies. Those that opposed the proposal, primarily accountants and auditors, took the view that, despite the possibility of Member States to maintain equivalent requirements at their level, it would lead to an abolition of bookkeeping and preparation of accounting data in general for those entities.

### 6.2. Trespassing the thresholds for SMEs

Under this topic three issues were discussed:

– to prolong the two-year period in Article 12 of the Fourth Directive to five years;

– to implement a one year period for those entities ceasing to exceed the thresholds instead of the existing two years period (Article 12); and

– to change the general procedure on how to amend and update the thresholds.

Around 60% of respondents commented on the first issue and about 40% on the second one. Amongst these respondents, a slight majority were against the proposed changes; however, replies coming from companies were almost unanimously in favour. A major concern of the opponents was that an exceptionally bad year in terms of financial thresholds of Article 11 could result in a 5 year switch to the small companies' accounting regime (as a consequence of combining the two proposed changes). In their view, this effect was likely to lead to abuse. However, more than one fifth of these opponents would agree if the prolongation was limited to a period of 3 years. Some also suggested that it should be made a Member States' option.

Only 30% of the responses took a view on the last question concerning the change of procedure to amend and update the thresholds. However, almost four fifths of these were rather positive, expressing a broad agreement that the current process needs to be streamlined. Supporters were in favour of periodic updates with some kind of reference or indexation, e.g. according to the percentage of inflation rate.

Opponents argued that the threshold criteria are politically important and therefore should not be decided purely on technical grounds.

### 6.3. Relief from publication requirement for small entities

Around three quarters of all respondents commented on the issue with a majority expressing themselves against the proposed change. The strongest support for the proposal was expressed by companies with three quarters of them pleading in favour. The most vocal opponents were information providers (consultancies) who use the financial data in order to feed their databases.

Supporters of the proposal stressed that in the present situation mainly the competitors of small businesses benefit from the availability of information. Opponents took the view that publication is not expensive, especially taking into account electronic possibilities such as XBRL. They also highlighted that the proposal would lead to a decrease in transparency and reliability with potential counterproductive results like the increase in credit costs. It was also stressed that the publication requirement is seen as a consequence of the limited liability status which requires that some information is provided to the stakeholders of the companies.

### 6.4. Extension of exemption for companies without particular external user

#### *6.4.1. Management owned companies*

Little more than half of respondents provided comments on the proposal to allow medium-size companies whose managers are at the same time their owners to follow the same regime as the one applying to small companies. Their views were split evenly. However, among the companies, a majority of four fifths supported the proposal.

Opponents to the issue stressed the interests of stakeholders and the overall importance to maintain medium-sized enterprises transparent. The risk based approach was also criticised as being vague and creating a new, unnecessary category of companies. Technical problems of enforcement were raised as well, pointing out for example to the lack of ownership databases.

#### *6.4.2. Unlimited liability medium companies*

Almost half of respondents commented on the proposal to render the regime for small companies also applicable to unlimited liability medium-sized companies, and about two thirds of these expressed themselves in favour. The strongest support came from companies that were almost unanimous in their positive assessment of the proposal.

Some of the supporters even suggested extending the scope of the exemption to all unlimited liability companies instead of restricting it to medium-sized companies.

Opponents stressed the information needs of stakeholders.

### 6.5. Simplification for all companies

#### *6.5.1. Full use of Article 57 – audit exemptions under specific circumstances*

Almost half of the respondents took a position on this proposal. A large majority of two thirds were fully or rather supportive. Respondents from Member States which have made use of Article 57 generally provided a positive feed back. Respondents mainly supported the sole exemption of statutory audit, even though concerns were put forward concerning the risk of further concentration of the audit market into the hands of big players. Some put forward that given existing consolidation audit techniques, the benefits of the proposed measures might not

live up to the expectations. Some supported consistency of auditing practice with consolidation requirements (IFRS). A number of respondents urged the Commission to investigate why only a few Member States have so far implemented the options in extant Article 57 in their jurisdiction, and call for further impact assessment.

*6.5.2. Clarification of the relationship between the IAS regulation and the Seventh Directive*

About 40% of respondents commented on the proposal to clarify the relationship between the IAS regulation and the Seventh Directive, and in particular that parent companies with immaterial subsidiaries do not need to prepare IFRS consolidated financial statements. These respondents were strongly in favour with companies being unanimously positive.

Supporters encouraged also further clarifications of the IAS Regulation, e.g. whether listed companies that do not form a group should follow IFRS, and addressed more detailed questions on the interlinkage between the IAS regulation and national accounting regimes.

*6.5.3. Consolidation requirement for personal holdings*

Less than one fifth of respondents elaborate on this issue, with a majority of these being in favour.

*6.5.4. Abolition of deferred tax accounting*

This issue attracted the attention of about 40% of the respondents, with a clear majority of them being in favour; all companies supported the proposal.

Some commented that it is unclear whether the proposal is referring just to SMEs (as stated in the last sentence of the respective paragraph of the Communication) or to all companies as referred to in the title. Therefore those, who read it as restricted to SMEs, advocated for relief to be granted to all companies for their separate and consolidated accounts. Others would prefer this becoming a Member State option.

Opponents claimed that deferred taxes contain useful information and stressed that in any case there is already an option for Member States to allow for abridged notes without deferred tax disclosures for small companies. Others suggested differentiating this measure in the way that there should be a mandatory abolition for small companies, but a requirement for full consideration (accounts and disclosures) for medium-sized and large companies.

*6.5.5. Formation expenses*

The proposal to repeal the requirement for disclosure of an explanation of formation expenses attracted attention of about 40% of the respondents, out of whom an overwhelming majority showed to be in favour. The strongest support comes from companies and from public authorities.

Proponents favoured an even stronger reduction of disclosure duties, such as the repeal of statements about auditors' fees, statements about derivative financial instruments (both for medium-sized companies) and statements regarding financial instruments stated at fair value (for small companies only).

Opponents argue that information about formation expenses is valuable. Some pointed out that exemption possibilities exist already for small companies (at Member State level).

*6.5.6. Breakdown of net turnover into categories of activity and geographical markets*

This issue was addressed by more than 40% of the respondents. Around three quarters were in favour, including almost all companies.

The arguments put forward corresponded to those set out with a view to the formation expenses (see point 6.5.5), with the reservation that large companies should continue to disclose.

## 7. ADDITIONAL SUGGESTIONS

### 7.1. Company law

In the Commission communication, it was emphasised that the list of measures proposed therein was not considered to be exhaustive, and the Commission invited stakeholders to submit additional suggestions for possible simplification measures. This invitation was seized by some of the respondents.

One respondent proposed to distinguish, in company law, better between listed and non listed companies, as this is the case already for the EU securities markets legislation: for non-listed company the rules could be much less detailed and more principle based and a bottom-up approach (”think small first”) should apply. For listed companies, more complex circumstances would have to be addressed so that for these companies the rules could have a grater level of detail.

With a view to the Third and the Sixth Directive, two respondents proposed to remove the current requirement to make available the last three annual reports at the registered office of the companies involved. At least for the two reports on the previous financial years it should be sufficient to make them available online, via the company’s website.

Concerning the Eleventh Directive, some respondents took the view that the current situation where it is only ensured that the information is available at the moment of the registration of the branch is not satisfactory. Although the directive contains rules to have changes concerning the mother company filed at the branch's register this is not enforceable in practice. Also, the register of the parent company should be informed about changes in the branch register. In this context and also from a number of other respondents there was a call on the Commission to increase its support for the BRITE project, in order to make sure that information can be exchanged via the European Business Register (EBR).

Another proposal that was made was to look not only at the Company law Directives but also at the Capital markets Directives[69]. Finally, one respondent suggested proposing a single simplification directive in case option 1 would not obtain sufficient support.

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[69] Here, it should be noted that the ongoing exercise to measure administrative burdens also extends to certain Financial Services and Capital Markets Directives. Results of this measurement will be available in the course of 2008.

### 7.2. Accounting

In addition to responding on questions, commentators presented the following additional suggestions on the accounting side of the Commission Communication:

Many respondents perceived the need to prepare different statements for different users (tax, statistics, etc.) as a major burden, and therefore encourage general work on 'all purpose' financial statements accompanied by single filing.

In terms of disclosure it was suggested that Commission should exert pressure on Member Sates to utilise already existing exemption options in accounting directives.

Some respondents commented on the current IASB draft "IFRS for SMEs" by stating that it is too complex and not focussing enough on the particular user needs and thus not suitable for SMEs.

A call to reduce the number of options available in the directives was also issued. Other respondents, however, highlighted the need to keep options available to Member States so as to accommodate accounting requirements to national setting (especially where threshold values are concerned).

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