



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

Summary of the Impact Assessment

{COM(2008) 194}
{COM(2008) 195}
{SEC(2008) 466}

Executive summary

1. INTRODUCTION

1.1. Simplification of 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 amended several times in order to adapt to new developments¹. However, with the exception of the 2006 revision of the Eighth Directive² none of these amendments touched on the scope or the basic content of the directives concerned. They have remained fundamentally unchanged since their adoption.

The Commission, therefore, in 2007 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 setting out its ideas on simplification ("the Communication"). The Communication was submitted to the European Parliament, the Council and stakeholders.

Eighteen Member States' governments, the government of one EEA country and 110 stakeholders reacted to the Communication. The clear message from these reactions was that any proposed simplification measures in the field of company law should not go as far as to repeal directives in their entirety. Instead, the focus should be on individual identified simplification measures as the directives provide legal certainty and their repeal would cause additional costs rather than lead to savings for companies. In the areas of accounting and auditing, inter alia, the proposals to delete certain disclosure requirements and to clarify the

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, the IAS regulation 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 L 157, 9.6.2006, p. 87).

application of the Regulation introducing International Accounting standards (IAS Regulation)³ in the case of immaterial subsidiaries in groups were supported. 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.htm⁴.

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 companies⁵. On 19 December 2007, in the European Parliament, the committee in the lead, the Legal Affairs Committee, presented a draft report which was discussed on 26 February⁶ and individual simplification measures were broadly supported. The opinion adopted by the Economic Affairs Committee on the same subject on 26 February followed the same line while stressing that any simplification measure should not affect the interests of stakeholders, including investors, creditors and employees⁷. The adoption of the final EP report is expected for May 2008.

1.2. Reduction of administrative burdens

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 programme⁸ and the main elements for measuring administrative costs and reducing administrative burdens⁹. Both programmes emphasised the need to generate tangible economic benefits. They were complemented by the Action Programme adopted on 24 January 2007¹⁰ which fixed the aim of reducing administrative burdens on businesses in the EU by 25% until the year 2012¹¹ and launched the first package of fast-track proposals.

The Action Programme was endorsed by the Spring European Council in March 2007¹².

European company law, accounting and auditing had been identified as priority areas within the initiative on reducing administrative burdens. First analyses carried out by a number of Member States had shown that administrative costs caused by EU rules in these areas are particularly high¹³. When the Commission submitted, in 2007, a number of proposals to the

³ Council Regulation ...

⁴ The report is also attached as Annex 3 to the Impact Assessment.

⁵ Council document 15222/07 DRS 48.

⁶ Document PE398.420v01-00.

⁷ Document PE400.482v02-00.

⁸ 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.

⁹ Commission working document of 14.11.2006 – "Measuring administrative costs and reducing administrative burdens in the European Union" - COM(2006) 691.

¹⁰ See footnote 4.

¹¹ COM(2007) 23.

¹² Presidency Conclusions of the Brussels European Council - doc. 7224/07 Concl 1.

¹³ 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.

European Parliament and the Council for consideration by way of a fast track procedure, a proposal for a directive in the area of company law was therefore part of the package. The directive that repeals 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 was adopted by the European Parliament and the Council on 13 November 2007¹⁴.

In July 2007, furthermore, as a key part of the Action Programme, a large-scale measurement was launched to measure administrative costs caused by legal obligations in EU law or in national transposition measures to provide information to third parties. With a view to the already ongoing discussions on simplification in company law, accounting and auditing the measurement of these areas was accelerated and should be completed by the beginning of April 2008.

2. 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.

3. 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.

4. SCOPE FOR RAPID ACTION

Whereas certain proposals envisaged in the Communication would necessitate a thorough examination and discussion, the Communication also acknowledged that others might allow for improvements to be achieved for European companies rapidly, both in the areas of company law and 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"¹⁵, which was accompanied by the Commission working document "Reducing administrative burdens in the European Union"¹⁶ and announced a second package of fast track measures for 2008.

¹⁴ 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 L 300, 17.11.2007, p. 47).

¹⁵ 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.

¹⁶ Commission working document "Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook" - SEC(2008) 35.

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

In the area of *company law*, the proposals that were identified in the Communication as possible fast track actions for 2008 concerned amendments to 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 is in particular information about the company's foundation, later changes to this information and the annual accounts that have to be published on a yearly basis. In most cases, this publication in the national gazette entails additional costs for the companies without providing real added value in times where company registries make their information available online.

In relation to the Eleventh Company law Directive, the Communication 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 proposals 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 proposals set out in the Communication, i.e. the proposals to abolish the requirement for providing, for medium-sized companies, the explanation on formation expenses and the breakdown of turnover into activity and geographical markets for SMEs. 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. Furthermore, the opportunity should be used to clarify the relationship between the International Accounting Standards (IAS) Regulation and the Seventh Directive in the sense that the IAS Regulation does not require groups with only immaterial subsidiaries to establish International Financial Reporting Standards (IFRS) accounts.

4.2. 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.

In addition, the High Level Group of Independent Stakeholders¹⁷ established to examine administrative burdens welcomed all the proposals in its opinion adopted on 26 February 2008.

The 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

¹⁷ 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

opinion on 19 March 2008¹⁸. The recommendations of the board led to changes into the impact assessment draft, in particular regarding the link with the measurement carried out by the consortium (section 5 of the impact assessment), the available options concerning the First Directive (section 1.4 of Annex 1 to the impact assessment), 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).

5. 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 the impact assessment.

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 to the impact assessment can be summarised as follows:

5.1. Company law

5.1.1. Publication requirements for limited-liability companies

The total minimum cost of the current rule on the publication in national gazettes is estimated at around 410 Mio €/year in relation 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 requirements:

- 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 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

¹⁸ This opinion is available at:

electronic national gazette) that gives chronological access to changes in the register.

- Oblige 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, Member States would be free to provide for additional publication obligations as long as they respect the restriction on fees.

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 finally 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 conclusion in Annex 1 to the Impact Assessment is that option 4 should be preferred.

5.1.2. 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.

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 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 annex 1 to the Impact Assessment 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 conclusion is that option 3 should be preferred.

5.2. Accounting

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

Three options are available in this context:

- 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, i.e.
 - (1) to remove the disclosure requirement for formation expenses for SMEs;
 - (2) to remove the disclosure requirement for breakdown of turnover into activity and geographical markets for SMEs; and
 - (3) to amend the Seventh Directive in order to clarify the relationship with consolidation rules in IFRS.
 - 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 this assessment is that only option 2 is likely to provide improvements for SMEs in the short term.

It is estimated that about 240,000 medium-sized companies could benefit from targeted changes (1) and (2) in option 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 targeted changes are therefore estimated at between 2.5 and 5 Mio € for the first and between 5 and 10 Mio € for the second measure. Targeted change (3) 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 potential overall savings from the three measures lie between 11 and 21 Mio €.

The conclusion in Annex 2 to the Impact Assessment is therefore that option 2 should be preferred.

6. MONITORING AND EVALUATION

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