

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0462/2008

26.11.2008

*****I**

REPORT

on 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

(COM(2008)0195 – C6-0173/2008 – 2008/0084(COD))

Committee on Legal Affairs

Rapporteur: Ieke van den Burg

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	9
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	12
PROCEDURE.....	16

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on 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

(COM(2008)0195 – C6-0173/2008 – 2008/0084(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0195),
 - having regard to Article 251(2) and Article 44(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0173/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0462/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive – amending act
Recital 8

Text proposed by the Commission

Amendment

(8) Directive 78/660/EEC requires that a breakdown of turnover into activity and geographical markets is disclosed. This is required for all companies, but small companies can be excluded in accordance with Article 44(2) of that Directive. In order to reduce the unnecessary administrative burden, it should be possible to exempt also medium-sized companies from this disclosure

deleted

requirement.

Amendment 2

Proposal for a directive – amending act Recital 9

Text proposed by the Commission

(9) Directive 83/349/EEC requires a parent company to prepare consolidated accounts even if the only subsidiary or all of the subsidiaries as a whole are not material for the purposes of Article 16(3) of Directive 83/349/EEC. As a consequence these companies fall under Regulation (EC) No 1606/2002 and therefore have to prepare consolidated financial statements in accordance with IFRS. This requirement is considered to be burdensome where a parent company has only immaterial subsidiaries. Therefore ***it should be possible to exempt*** a parent undertaking from the obligation to draw up consolidated accounts and a consolidated annual report if that parent undertaking has only subsidiary undertakings considered as not material, both individually or as a whole.

Amendment

(9) Directive 83/349/EEC requires a parent company to prepare consolidated accounts even if the only subsidiary or all of the subsidiaries as a whole are not material for the purposes of Article 16(3) of Directive 83/349/EEC. As a consequence these companies fall under Regulation (EC) No 1606/2002 and therefore have to prepare consolidated financial statements in accordance with IFRS. This requirement is considered to be burdensome where a parent company has only immaterial subsidiaries. Therefore a parent undertaking ***should be exempt*** from the obligation to draw up consolidated accounts and a consolidated annual report if that parent undertaking has only subsidiary undertakings considered as not material, both individually ***and*** as a whole. ***Although this statutory obligation should be lifted, a parent undertaking could still draw up consolidated accounts and a consolidated annual report on its own initiative.***

Amendment 3

Proposal for a directive – amending act Article 1 Directive 78/660/EEC Article 44

Text proposed by the Commission

Article 44 of Directive 78/660/EEC is amended as follows:

Amendment

deleted

1. The following paragraph 1a is inserted:

“(1a) Member States may permit the companies referred to in Article 27 to draw up abridged notes on their accounts without the information required in Article 43(1)(8).”

2. The following paragraph 2a is inserted:

“(2a) Member States may permit the companies referred to in Article 27 to be exempted from the obligation to disclose in the notes on their accounts the information prescribed in Article 34(2).”

Amendment 4

Proposal for a directive – amending act Article 1

Directive 78/660/EEC

Article 45 – paragraph 2

Text proposed by the Commission

Amendment

In Article 45(2) of Directive 78/660/EEC, the first sentence of the second subparagraph shall be replaced by the following:

“The Member States may permit the companies referred to in Article 27 to omit disclosure of the information specified in Articles 34(2) and 43(1)(8).”

Amendment 5

Proposal for a directive – amending act Article 2

Directive 83/349/EEC

Article 13 – paragraph 2a

Text proposed by the Commission

Amendment

“(2a) Without prejudice to Articles 4(2) and Articles 5 and 6, any parent undertaking governed by the national law of a Member State which only has subsidiary undertakings which are not

“(2a) Without prejudice to Articles 4(2) and Articles 5 and 6, any parent undertaking governed by the national law of a Member State which only has subsidiary undertakings which are not

material for the purposes of Article 16(3), both individually **or** as a whole, shall be exempted from the obligation imposed in Article 1(1).”

material for the purposes of Article 16(3), both individually **and** as a whole, shall be exempted from the obligation imposed in Article 1(1), ***provided that it sets out grounds for this in the annex to its annual accounts.***”

Justification

Amendment for clarification, could effect only the EN version.

The exemption proposed by the Commission must not be acted on unless there is continued complete transparency vis-à-vis third parties. Accordingly, it should be made clear that any company availing itself of this exemption must disclose, in the annex to its annual accounts, why it decided not to draw up consolidated accounts.

EXPLANATORY STATEMENT

1. Background

The 4th Company Law Directive (Council Directive 78/660/EEC) 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. In 1983, the 7th Company Law Directive (Council Directive 83/349/EEC) was adopted and added a common set of requirements for consolidated financial statements. During the past 25 years the Accounting Directives have been modified several times. Through the adoption of Regulation (EC) No 1606/2002 on the application of international accounting standards (IAS Regulation)¹ listed companies (and those with listed debt) have to present IFRS accounts, and are consequently relieved from most of the requirements in the 4th and 7th Directives. These Directives however still form the basis for SME accounting in the EU. Furthermore, the 7th Company Law Directive requires a parent company to prepare consolidated accounts even if the only subsidiary or all of the subsidiaries as a whole are not material. As a consequence these companies are scoped in the IAS Regulation and have to prepare their consolidated financial statements in accordance with IFRS.

2. The Commission's proposal

The Commission's proposal forms part of the second fast track package for the reduction of administrative burden² which includes legislative measures in the areas of company law, accounting and auditing aiming at simplifying the business environment for European companies in a short term perspective. The following amendments to the 4th and the 7th Company Law Directives are proposed:

– Removal of disclosure requirement for formation expenses

Formation expenses can under some circumstances be treated as an asset in the balance sheet. If this is the case, Article 34(2) of the 4th Company Law 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(2) of the same Directive. The Commission suggests adding in Article 44(2) of the 4th Company Law Directive medium sized companies within the context of Article 44(2) of this Directive and extending so the discretion of Member States to relieve these companies from the obligation imposed by Article 34(2).

– Amendment to the 7th Company Law Directive in order to clarify the relationship of its consolidation rules with the rules of International Financial Reporting Standards

The Commission proposes to add in Article 13 of the 7th Company Law Directive a new paragraph 2a which would exempt any parent undertaking governed by its national law from

¹ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

² See Commission working document "Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook" - SEC(2008)0035.

the obligation to draw up consolidated accounts and consolidated annual report if this parent undertaking has only subsidiary undertakings considered as not material (for the purposes of Article 16(3)), both individually and as a whole.

3. The rapporteur's view

The rapporteur supports the Commission in its aim of reducing administrative burden as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts.

Small and medium-sized companies are often subject to the same rules as larger companies, but their specific accounting needs have rarely been assessed and extensive reporting rules create a cost burden and can hinder efficient use of capital for productive purposes.

In the area of accounting and auditing the objective of raising the quality of accounts of limited liability companies and of increasing transparency is of paramount importance. On the other hand the increasing obligations on companies are often particularly burdensome for small and medium-sized companies.

The rapporteur supports the general approach of the Commission to propose targeted changes to the Accounting Directives in order to achieve reduction of burden for medium sized companies on a short term perspective. These changes, however, should not lead to less transparency and to a significant loss information for the users of accounts.

The rapporteur fully supports the Commission proposal as regards the proposed removal of disclosure requirements for formation expenses (amendment to Article 44(2) of the 4th Company Law Directive). Extending the scope of the exemptions for small companies, which are already widely used by most of the Member States, also for medium sized companies, would lead to a reduction of reporting burden for these companies.

As regards the proposed amendment to the 7th Company Law Directive, the rapporteur agrees with the Commission's view that the relationship between the IAS Regulation and the 7th Company Law 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. It has to be considered as excessive to require the preparation of consolidated accounts in the situation where a parent company has only immaterial subsidiaries. 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 following the IAS regulation).

As regards disclosure requirements for breakdown of turnover into activity and geographical markets, the rapporteur's amendments 1 and 3 take into account, that there is a duplicity in the Commission's proposal, as Article 45(2) of the 4th Directive already contains an exemption for medium-sized companies.

With a view to stimulate simplification and harmonisation of company law and in particular accounting rules within the internal market, the European Commission should continue its efforts on reviewing the 4th and 7th Company law directive and should present a European and uniform accountancy framework, including those which now may be excluded from the scope of this directive, before the end of 2009. A uniform standard will reduce the

administrative burden for SMEs and will increase the transparency for all relevant stakeholders. Simplification should also be very much stimulated by a European and structured introduction of XBRL¹.

¹ Extensible Business Reporting Language.

16.10.2008

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on 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 account (COM(2008)0195 – C6-0173/2008 – 2008/0084(COD))

Rapporteur: Kristian Vigenin

SHORT JUSTIFICATION

Your draftsman fully supports the initiative to reduce the administrative burden for medium sized enterprises (MSE) and can subscribe to the following proposals made by the European Commission as a part of the second fast track package¹:

- To exempt MSE from disclosing in the notes to the accounts the Formation Costs as an asset (those are costs, related to the creation of a company such as registration fees or legal assistance costs).
- To exempt MSE from disclosing the breakdown of turnover into activity and geographical markets.
- To clarify the interactions and relationship between IAS (IFRS) regulations and the 7th Company Law Directive in order to provide certainty that a parent company that has only immaterial subsidiaries can be exempted from drawing up consolidated accounts.

The European Commission states that its aim is to simplify the business environment and to provide the enterprises with the possibility to reallocate the resources freed into more productive activities, which is favoured by your Draftsman.

Your draftsman would like, however, to recall that it is already now possible to exempt MSE from disclosing a breakdown of turnover into activity and geographical markets (Article 45, paragraph 2, sentence 2 of the already existing 4th Company Law Directive), Therefore the

¹ See Commission working document "Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook" - SEC(2008)35.

second measure proposed is redundant and should be deleted.

Furthermore since the Commission proposal is so limited your draftsman urges the Commission to resist changes to the transposition date.

Moreover, your draftsman considers that the Commission's proposal lack sufficient ambition not least in respect of the grand Commission agenda for reducing administrative burdens and generally stimulating the starting up of new businesses.

Against that background, your draftsman would like to stress one more time the importance of the small and medium sized enterprises for the European economy and particularly for the employment (about 97% of all companies are SMEs) and to call on the Commission to stick close to its agenda and to provide the European Parliament and the Council with much more ambitious proposals.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 8

Text proposed by the Commission

Amendment

<i>(8) Directive 78/660/EEC requires that a breakdown of turnover into activity and geographical markets is disclosed. This is required for all companies, but small companies can be excluded in accordance with Article 44(2) of that Directive. In order to reduce the unnecessary administrative burden, it should be possible to exempt also medium-sized companies from this disclosure requirement.</i>	<i>deleted</i>
--	----------------

Amendment 2

Proposal for a directive – amending act Article 1 – point 1 Directive 78/660EEC Article 44 – paragraph 1 a

Text proposed by the Commission

Amendment

1. The following paragraph 1a is inserted: ***deleted***

“(1a) Member States may permit the companies referred to in Article 27 to draw up abridged notes on their accounts without the information required in Article 43(1)(8).”

PROCEDURE

Title	Disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts	
References	COM(2008)0195 – C6-0173/2008 – 2008/0084(COD)	
Committee responsible	JURI	
Opinion by Date announced in plenary	ECON 20.5.2008	
Drafts(wo)man Date appointed	Kristian Vigenin 20.5.2008	
Discussed in committee	6.10.2008	13.10.2008
Date adopted	13.10.2008	
Result of final vote	+: 19 -: 6 0: 1	
Members present for the final vote	Mariela Velichkova Baeva, Paolo Bartolozzi, Zsolt László Becsey, Pervenche Berès, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Elisa Ferreira, José Manuel García-Margallo y Marfil, Robert Goebbels, Donata Gottardi, Benoît Hamon, Sophia in 't Veld, Wolf Klinz, Christoph Konrad, Guntars Krasts, Astrid Lulling, John Purvis, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Margarita Starkevičiūtė	
Substitute(s) present for the final vote	Harald Ettl, Thomas Mann	
Substitute(s) under Rule 178(2) present for the final vote	Jan Cremers	

PROCEDURE

Title	Disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts	
References	COM(2008)0195 – C6-0173/2008 – 2008/0084(COD)	
Date submitted to Parliament	17.4.2008	
Committee responsible Date announced in plenary	JURI 20.5.2008	
Committee(s) asked for opinion(s) Date announced in plenary	ECON 20.5.2008	
Rapporteur(s) Date appointed	Ieke van den Burg 25.6.2008	
Discussed in committee	8.9.2008	3.11.2008
Date adopted	17.11.2008	
Result of final vote	+: 18 -: 0 0: 1	
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka	
Substitute(s) present for the final vote	Jean-Paul Gauzès, József Szájer, Jacques Toubon, Ieke van den Burg	