

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 12/2011 OF THE COUNCIL AT FIRST READING**with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities****Adopted by the Council on 12 September 2011****(Text with EEA relevance)**

(2011/C 337 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The European Council of 8 and 9 March 2007 underlined in its conclusions that reducing administrative burdens is important for boosting Europe's economy and that a strong joint effort to reduce administrative burdens within the European Union is necessary.
- (2) Accounting has been identified as one of the key areas in which administrative burdens for companies within the Union may be reduced.
- (3) Commission Recommendation 2003/361/EC ⁽³⁾ defines micro-, small and medium-sized enterprises. However, consultations with Member States have indicated that the size criteria for micro-enterprises in that Recommendation may be too high for accounting purposes.

⁽¹⁾ OJ C 317, 23.12.2009, p. 67.

⁽²⁾ Position of the European Parliament of 10 March 2010 (OJ C 349E, 22.12.2010, p. 111) and Position of the Council at first reading of 12 September 2011. Position of the European Parliament of ... (not yet published in the Official Journal) and Decision of the Council of ...

⁽³⁾ OJ L 124, 20.5.2003, p. 36.

Therefore, a sub-group of micro-enterprises, so-called micro-entities, should be introduced to cover companies with lower size criteria for balance sheet total and net turnover than those laid down for micro-enterprises.

- (4) Micro-entities are in most cases engaged in business at local or regional level with no or limited cross-border activity. In addition, they play an important role in creating new jobs, fostering research and development and creating new economic activities.
- (5) Micro-entities have limited resources with which to comply with demanding regulatory requirements. However, they are often subject to the same financial reporting rules as larger companies. Those rules place on them a burden which is not in proportion to their size and is therefore disproportionate for the smallest enterprises as compared to larger ones. Therefore, it should be possible to exempt micro-entities from certain obligations that may impose on them an unnecessarily onerous administrative burden. However, micro-entities should still be subject to any national obligation to keep records showing their business transactions and financial position.
- (6) Given that the numbers of companies to which the size criteria set in this Directive will apply will vary greatly from one Member State to another, and given that the activities of micro-entities have no bearing, or only a limited bearing, on cross-border trade or the functioning of the internal market, Member States should take into account the differing impact of those criteria when implementing this Directive at national level.

- (7) Member States should take into account the specific conditions and needs of their own markets when making decisions about how or whether to implement a micro-entity regime within the context of Council Directive 78/660/EEC⁽¹⁾.
- (8) Micro-entities must take account of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges. However, the calculation of prepayments and accrued income and accruals and deferred income can be burdensome for micro-entities. Consequently, Member States should be permitted to exempt micro-entities from calculating and presenting such items, only to the extent that such exemption relates to charges other than the cost of raw materials and consumables, value adjustments, staff costs and tax. In this way, the administrative burden involved in calculating relatively small balances may be reduced.
- (9) Publication of annual accounts can be burdensome for micro-entities. At the same time, Member States need to ensure compliance with the obligations laid down by this Directive. Accordingly, Member States should be permitted to exempt micro-entities from a general publication requirement, provided that balance sheet information is duly filed, in accordance with national law, with at least one designated competent authority and that the information is transmitted to the business register.
- (10) The aim of this Directive is to enable Member States to create a simple financial reporting environment for micro-entities. The use of fair values can result in the need for detailed disclosures to explain the basis on which the fair value of certain items has been determined. Given that the micro-entity regime provides for very limited disclosure by way of notes on the accounts, the users of the accounts of micro-entities would not know whether or not the amounts presented in the balance sheet and the profit and loss account incorporate fair values. Accordingly, to provide certainty for such users in this regard, Member States should not permit or require micro-entities using any of the exemptions available to them under this Directive to use the fair valuation basis in drawing up their accounts. Micro-entities that wish or need to use fair value will still be able to do so by using other regimes under this Directive where a Member State permits or requires such use.
- (11) When making decisions about how or whether to implement a micro-entity regime within the scope of Directive 78/660/EEC, Member States should ensure that micro-entities that are to be consolidated under Council Directive 83/349/EEC⁽²⁾ on consolidated accounts avail themselves of accounting data detailed enough for that purpose.
- (12) In accordance with point 34 of the Interinstitutional Agreement on Better Law-making⁽³⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables which will, as far as possible, illustrate the correlation between this Directive and their transposition measures and to make them public.
- (13) Since the objective of this Directive, namely to reduce the administrative burden for micro-entities, cannot be sufficiently achieved by the Member States, and can therefore by reason of its effect be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (14) Directive 78/660/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 78/660/EEC

Directive 78/660/EEC is hereby amended as follows:

(1) the following Article is inserted:

'Article 1a

1. Member States may provide for exemptions from certain obligations under this Directive in accordance with paragraphs 2 and 3 in respect of companies which on their balance sheet dates do not exceed the limits of two of the three following criteria (micro-entities):

- (a) balance sheet total: EUR 250 000;
- (b) net turnover: EUR 500 000;
- (c) average number of employees during the financial year: 10.

2. Member States may exempt companies referred to in paragraph 1 from any or all of the following obligations:

- (a) the obligation to present "Prepayments and accrued income" and "Accruals and deferred income" in accordance with Articles 18 and 21;
- (b) where a Member State makes use of the option in point (a) of this paragraph, it may permit those companies, only in respect of other charges as referred to in point (b)(vi) of paragraph 3, to depart from Article 31(1)(d) with regard to the recognition of "Prepayments and accrued income" and "Accruals and deferred income", provided that this fact is disclosed in the notes on the accounts or, in accordance with point (c) of this paragraph, at the foot of the balance sheet;

⁽¹⁾ OJ L 222, 14.8.1978, p. 11.

⁽²⁾ OJ L 193, 18.7.1983, p. 1.

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

- (c) the obligation to draw up notes on the accounts in accordance with Articles 43 to 45, provided that the information required by Article 14 and point (13) of Article 43(1) of this Directive and Article 22(2) of Directive 77/91/EEC (*) is disclosed at the foot of the balance sheet;
- (d) the obligation to prepare an annual report in accordance with Article 46 of this Directive, provided that the information required by Article 22(2) of Directive 77/91/EEC is disclosed in the notes on the accounts or in accordance with point (c) of this paragraph at the foot of the balance sheet;
- (e) the obligation to publish annual accounts in accordance with Articles 47 to 50a, provided that the balance sheet information contained therein is duly filed, in accordance with national law, with at least one competent authority designated by the Member State concerned. Whenever the competent authority is not the central register, commercial register or companies register, as referred to in Article 3(1) of Directive 2009/101/EC (**), the competent authority is required to provide the register with the information filed.
3. Member States may permit companies referred to in paragraph 1:
- (a) to draw up only an abridged balance sheet showing separately at least those items preceded by letters in Article 9 or 10, where applicable. In cases where point (a) of paragraph 2 applies, items E under "Assets" and D under "Liabilities" in Article 9 or items E and K in Article 10 shall be excluded from the balance sheet;
- (b) to draw up only an abridged profit and loss account showing separately at least the following items, where applicable:
- (i) net turnover;
 - (ii) other income;
 - (iii) cost of raw materials and consumables;
 - (iv) staff costs;
 - (v) value adjustments;
 - (vi) other charges;
 - (vii) tax;
 - (viii) profit or loss.

4. Member States shall not permit or require the application of Section 7a to any micro-entity making use of any of the exemptions provided for in paragraphs 2 and 3.

5. In respect of companies referred to in paragraph 1, annual accounts drawn up in accordance with paragraphs 2, 3 and 4 shall be regarded as giving the true and fair view

required by Article 2(3), and consequently Article 2(4) and (5) shall not apply to such accounts.

6. Where on its balance sheet date a company exceeds or ceases to exceed the limits of two of the three criteria indicated in paragraph 1, that fact shall affect the application of the derogation provided for in paragraphs 2, 3 and 4 only if it occurs in both the current and the preceding financial year.

7. In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts specified in paragraph 1 shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of any Directive setting those amounts.

8. The balance sheet total referred to in point (a) of paragraph 1 shall consist either of the assets referred to in items A to E under "Assets" in Article 9 or the assets referred to in items A to E in Article 10. If point (a) of paragraph 2 applies, the balance sheet total referred to in point (a) of paragraph 1 shall consist either of the assets referred to in items A to D under "Assets" in Article 9 or the assets referred to in items A to D in Article 10.

(*) 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 (OJ L 26, 31.1.1977, p. 1).

(**) Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).;

(2) in Article 5, paragraph 1 is replaced by the following:

'Article 5

1. By way of derogation from Article 4(1) and (2), Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that those layouts give a view of these companies equivalent to that provided for in Article 2(3). Member States shall not make available the exemptions set out in Article 1a in respect of investment companies or financial holding companies.;

(3) Article 53a is replaced by the following:

Article 53a

Member States shall not make the exemptions set out in Articles 1a, 11 and 27, points (7a) and (7b) of Article 43(1) and Articles 46, 47 and 51 available in respect of companies whose securities are admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC.'

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive if and when they decide to make use of any option provided for in Article 1a of Directive 78/660/EEC, taking into account in particular the situation at national level regarding the number of companies covered by the size criteria laid down in paragraph 1 of that Article. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, ...

For the European Parliament

The President

...

For the Council

The President

...

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

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

The Economic and Social Committee adopted its opinion on the proposal on 15 July 2009. ⁽²⁾

The European Parliament adopted its position at first reading on 10 March 2010 ⁽³⁾.

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

II. OBJECTIVE

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

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

1. General

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

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

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

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

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

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

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

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

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

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

⁽¹⁾ 7229/1/09 REV 1

⁽²⁾ OJ C 317, 23.12.2009, p. 67.

⁽³⁾ 7424/10

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

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

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

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

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

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

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

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

a) Consequences of the Lisbon Treaty

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

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

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

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

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

(a) balance sheet total: EUR 500 000;

(b) net turnover: EUR 1 000 000;

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

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

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

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

IV. CONCLUSION

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