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from: Presidency

to: Working Party on Company Law

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Subject : 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
- Presidency compromise proposal

Delegations will find in Annex a compromise proposal submitted by the Presidency for discussion at the Working Party on Company Law on 18 June 2008.

Presidency compromise
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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) In its Conclusions, the European Council of 8 and 9 March 2007 underlined that reducing administrative burden is important for boosting the European economy, especially considering the benefits this could bring for small and medium-sized companies. It stressed that a strong joint effort of the European Union and the Member States is necessary to reduce administrative burdens.
- (2) Accounting and auditing have been identified as an area for reducing administrative burden for companies within the Community.
- (3) The Commission Communication on 10 July 2007⁴ on a simplified business environment for companies in the areas of company law, accounting and auditing identifies necessary amendments to 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 companies⁵ and Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts⁶. Special attention was given to finding further relief from reporting by small and medium-sized companies.

¹ OJ C [...] [...], p.[...]

² OJ C [...] [...], p.[...]

³ OJ C [...] [...], p.[...]

⁴ COM(2007) 394, 10.7.2007.

⁵ OJ L 222, 17.8.1978, p. 11. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137)

⁶ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/99/EC.

- (4) In the past, a number of changes have been made in order to enable companies falling within the scope of Directives 78/660/EEC and 83/349/EEC to use accounting methods in accordance with International Financial Reporting Standards (IFRS). Pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards⁷ companies whose securities are admitted to trading on a regulated market of any Member State have to prepare their consolidated accounts in accordance with IFRS, and are consequently relieved from most of the requirements in Directives 78/660/EEC and 83/349/EEC. Those Directives, however, still form the basis for small and medium-sized companies' accounting in the Community.
- (5) 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 such companies. Extensive reporting rules create a financial burden and can hinder efficient use of capital for productive purposes.
- (6) The application of Regulation (EC) No 1606/2002 has also highlighted the need to clarify the relationship between the accounting standards required by Directive 83/349/EEC and IFRS.
- (7) Where formation expenses can be treated as an asset in the balance sheet, Article 34(2) of Directive 78/660/EEC requires that those 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 that Directive. In order to reduce the unnecessary administrative burden, it should be possible to exempt also medium-sized companies from these disclosures.
- (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.

⁷ OJ L 243, 11.9.2002, p. 1.

- (10) Since the objectives of this Directive, namely reducing administrative burdens relating to certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts for certain companies within the Community, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (11) Directives 78/660/EEC and 83/349/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 78/660/EEC

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).”

Article 2
Amendment to Directive 83/349/EEC

In Article 13 of Directive 83/349/EEC the following paragraph 2a is inserted:

”(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).”

Article 3
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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 4
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 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
