



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 May 2011

10642/11

**Interinstitutional File:
2009/0035 (COD)**

**DRS 85
COMPET 213
ECOFIN 284
CODEC 896**

NOTE

From: General Secretariat
To: Council

No. prev. doc.: 10534/11 DRS 82 COMPET 205 ECOFIN 280 CODEC 873
No. Cion prop.: 7229/1/09 REV 1 DRS 18 COMPET 125 ECOFIN 176 CODEC 298
+ ADD 1 + ADD 2

Subject: Proposal 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 (*Legislative deliberation*)
- Political agreement

I. INTRODUCTION

1. On 26 February 2009, the Commission presented, as a part of its economic recovery plan, a proposal for a Directive amending Council Directive 78/660/EEC on the annual accounts of certain types of companies ("the 4th Company Law Directive"). The proposed Directive would 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.

2. The European Economic and Social Committee adopted its opinion on the Commission proposal on 15 July 2009.¹
3. The European Parliament adopted its position at first reading on 10 March 2010² expressing broad support for the Commission proposal.
4. The Council (Competitiveness) had a policy debate on the proposed Directive on 24 September 2009. Due to the existence of a blocking minority, work had been put in abeyance until the beginning of 2011. Since the resumption of work within the Council, the Permanent Representatives Committee discussed Presidency compromise proposals on 18 May and 24 May 2011.
5. Following up on these discussions, a revised Presidency compromise text has been elaborated.
6. An outline of the Presidency compromise package, addressing the outstanding issues is set out in Part II of this Note, while the revised Presidency compromise text of the draft Directive can be found in the Annex to this Note.

II. PRESIDENCY COMPROMISE PACKAGE

a) Definition of micro-entities (Article 1a(1))

The Presidency compromise foresees that, in order to qualify as a "micro-entity" a company should not exceed the limits of two of the following three criteria on their balance sheet date, i.e. a balance sheet total of EUR 250,000, a net turnover of EUR 500,000 and an average number of 10 employees during the financial year in question.

¹ OJ C 317, 23.12.2009, p. 67.

² 7424/10 CODEC 196 DRS 7 COMPET 92 ECOFIN 157.

b) Exemption from the recognition of ‘Prepayments and accrued income’ and ‘Accruals and deferred income’ (Article 1a(2)(b))

The Presidency compromise would permit Member States to exempt micro-entities from the recognition of ‘Prepayments and accrued income’ and ‘Accruals and deferred income’ only for charges other than the cost of raw material and consumables, value adjustments, staff costs and tax.

c) Exemption from publication of annual accounts (Article 1a(2)(e))

The Presidency proposes to permit Member States to exempt micro-entities from a general publication requirement of annual accounts provided that the balance sheet information is filed with at least one designated competent authority and that the information is transmitted to the business registers.

III. CONCLUSION

The Council is invited to discuss the Presidency compromise package set out in the Annex to this Note with a view to reaching a political agreement on the Council's position at first reading at the Competitiveness Council on 30/31 May 2011.

Presidency compromise text

Proposal 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

(Text with EEA relevance)

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 Commission³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Council of 8 and 9 March 2007 underlined in its conclusions that reducing administrative burden is important for boosting the European economy and that a strong joint effort to reduce administrative burdens within the EU is necessary.
- (2) Accounting has been identified as one of the key areas for reducing administrative burdens for companies within the Community.

³ OJ C [...] [...], p.[...].

⁴ OJ C [...] [...], p.[...].

- (3) Commission Recommendation 2003/361/EC⁵ defines micro-, small and medium-sized enterprises. However, consultations with Member States have indicated that the thresholds for micro-enterprises in that Recommendation may be too high for accounting purposes. Therefore, a sub-group of micro-enterprises, so called micro-entities, should be introduced to cover companies with lower thresholds for balance sheet total and net turnover than the thresholds set up for the 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 are important for creating new jobs, fostering research and development and creating new economic activities.
- (5) Micro-entities have limited resources to comply with demanding regulatory requirements. However, they are often subject to the same reporting rules as larger companies. Those rules put a burden on them 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 some obligations that may result in an unnecessarily onerous administrative burden for such companies. However, micro-entities should still be subject to any national obligation to keep records showing the company's business transactions and financial position.
- (6) Given that the numbers of companies to which the threshold values 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 or limited bearing on cross-border trade or the functioning of the internal market, the Member States should take into account the differing impact of these values when implementing this Directive at national level.

⁵ OJ L 124, 20.5.2003, p. 36.

- (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 Directive 78/660/EEC.
- (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 presenting such items and from calculating such items only for charges other than the cost of raw material 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 that the obligations provided for in this Directive are complied with. Accordingly, Member States should be entitled to exempt micro-entities from a general publication requirement provided that the balance sheet information is duly filed in accordance with national law at least with one designated competent authority and that the information is transmitted to the business registers.
- (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 upon which the fair value of certain items has been determined. Given that the micro-entity regime anticipates very limited disclosure by way of notes on the accounts, accounts' users would not know whether the amounts presented within the profit and loss account and balance sheet incorporate fair values or not. Accordingly, to give certainty to accounts' users in this regard, Member States should not permit or require micro-entities using any of the exemptions available to them within this Directive to use the fair valuation basis in drawing up their accounts. Entities of micro-entity size 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 Directive 78/660/EEC, Member States must ensure that micro-entities that are to be consolidated under Directive 83/349/EEC shall avail of accounting data detailed enough for that purpose.
- (12) In accordance with point 34 of the Interinstitutional Agreement on Better Law-making, Member States are encouraged to draw up, for themselves and in the interest 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 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.
- (14) Directive 78/660/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 78/660/EEC

1. In Directive 78/660/EEC the following Article 1a is inserted:

"Article 1a

1. Member States may provide for exemptions from some obligations under this Directive in accordance with paragraphs 2 and 3 for 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) to present 'Prepayments and accrued income' and 'Accruals and deferred income' in accordance with Articles 18 and 21;

 - (b) where a Member State utilises the option in point (a) of this paragraph, it may permit those companies, only for other charges according to paragraph 3, point (b)(vi), 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 or in accordance with point (c) at the foot of the balance sheet;

 - (c) to draw up notes on the accounts in accordance with Articles 43 to 45, provided that the information required by Article 14, Article 43(1)(13) and Article 46(3) is disclosed at the foot of the balance sheet;

- (d) to draw up an annual report in accordance with Article 46, provided that the information required by Article 46(3) is disclosed in the notes or in accordance with point (c) at the foot of the balance sheet;
 - (e) to publish annual accounts in accordance with Articles 47 to 50a, provided that the balance sheet information therein is duly filed in accordance with national law at least with one competent authority designated by the Member State. 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 information filed to the register.
3. Member States may permit companies referred to in paragraph 1:
- (a) to draw up only a limited balance sheet showing separately at least those items preceded by letters in Article 9 or 10, where applicable. In cases where paragraph 2(a) 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 a limited profit and loss account showing separately at least the following items, where applicable:
 - (i) Net turnover;
 - (ii) Other income;
 - (iii) Cost of raw material 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 using any of the exemptions provided for in paragraphs 2 and 3.
5. For companies referred to in paragraph 1, annual accounts prepared in accordance with paragraphs 2 to 4 shall be regarded as giving the true and fair view required by Article 2(3), and consequently, Article 2(4) and 2(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 to 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 paragraph 1(a) shall consist either of the assets referred to in points A to E under 'Assets' in Article 9 or the assets referred to in points A to E in Article 10. If paragraph 2(a) applies, the balance sheet total referred to in paragraph 1(a) shall consist either of the assets referred to in points A to D under 'Assets' in Article 9 or the assets referred to in points A to D in Article 10.

2. In Directive 78/660/EEC, Article 5(1) is amended as follows:

"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 to investment companies and for financial holding companies."

3. In Directive 78/660/EEC Article 53a is amended as follows:

"Article 53a

Member States shall not make the exemptions set out in Articles 1a, 11, 27, 43(1), points (7a) and (7b), 46, 47 and 51 available to companies whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) 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 businesses covered under the threshold values laid down in 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

=====