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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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
COMMON GUIDELINES
Consultation deadline for Croatia: 15.2.2012

In accordance with Article 294(8) of the Treaty on the Functioning of the European Union,
this document will not be the subject of approval by the Council;
it is intended solely for the information of delegates

DIRECTIVE 2012/.../EU
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 European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 317, 23.12.2009, p. 67.

² Position of the European Parliament of 10 March 2010 (OJ C 349 E, 22.12.2010, p. 111) and position of the Council at first reading of 12 September 2011 (OJ C 337 E, 18.11.2011, p. 1). Position of the European Parliament of 13 December 2011. [(OJ ...)] [(not yet published in the Official Journal)] [and decision of the Council of...].

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/EC¹ 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. 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.

¹ OJ L 124, 20.5.2003, p. 36.

- (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/EEC¹.

¹ OJ L 222, 14.8.1978, p. 11.

- (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 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, so that a copy should be obtainable upon application. In such cases the obligation laid down in Article 47 of Directive 78/660/EEC to publish any accounting document in accordance with Article 3(5) of Directive 2009/101/EC¹, would not apply.

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 54 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).
Editorial note: The title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty.

- (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 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/EEC¹ on consolidated accounts avail themselves of accounting data detailed enough for that purpose and that exemptions in this Directive are without prejudice to the obligation to prepare consolidated accounts in accordance with Directive 83/349/EEC.

¹ OJ L 193, 18.7.1983, p. 1.

- (12) 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.
- (13) 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 350 000;
 - (b) net turnover: EUR 700 000;
 - (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;
- (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 set out 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 54 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).

Editorial note: The title of Directive 77/91/EEC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 12 of the Treaty of Amsterdam and Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 58 of the Treaty.

** 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 54 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

Editorial note: The title of Directive 2009/101/EC has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to the second paragraph of Article 48 of the Treaty."

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

"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

Report

Not later than ... * the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation of micro-entities taking account in particular of the situation at national level regarding the number of companies covered by the size criteria and the reduction of administrative burdens resulting from the exemption from the publication requirement.

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*.

* OJ: Please insert date: five years after the entry into force of this Directive.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at ..., ...

For the European Parliament
The President

For the Council
The President
