



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 May 2012

9555/12

**Interinstitutional File:
2011/0308 (COD)**

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COMPET 242
ECOFIN 384
CODEC 1187**

NOTE

From: General Secretariat
To: Delegations

No. Cion prop.: 16250/11 DRS 111 COMPET 475 ECOFIN 733 CODEC 1862
+ ADD 1 + ADD 2 + ADD 3 + ADD 4

Subject: Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

Delegations will find attached the Commission's justification for requesting the insertion of a recital on explanatory documents in the above proposal.

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COMMISSION EUROPÉENNE
SECRETARIAT GÉNÉRAL

Secrétaire général adjoint

Ares (2012) 544 978

03 MAI 2012

Bruxelles, le
SG.DSG3.G1 D(2012)

Monsieur l'Ambassadeur,
Madame la Secrétaire générale,

Concerne : Justification d'un considérant concernant les documents explicatifs ayant trait aux mesures de transposition de la proposition de directive du Parlement européen et du Conseil relative aux états financiers annuels, aux états financiers consolidés et aux rapports associés de certaines formes d'entreprises – 2011/0308 COD

Le 28 septembre 2011, un accord est intervenu entre les trois institutions sur une approche concernant les documents qui doivent, le cas échéant, accompagner la notification des mesures de transposition d'une directive afin d'expliquer le lien entre les éléments de la directive en cause et les parties correspondantes des instruments nationaux la transposant. Selon cet accord, il incombe à la Commission de proposer ou non la nécessité de l'incorporation d'un considérant dans ce sens. En conséquence, vous trouverez ci-annexé un document présentant les éléments justifiant un tel considérant dans le projet de texte mentionné en objet.

Veillez noter que la Commission ne transmettra au Parlement européen et au Conseil des éléments justifiant ou pas la reprise du considérant évoqué ci-dessus que pour les textes qui sont actuellement soumis à la procédure législative ordinaire.

Son Excellence Monsieur l'Ambassadeur,
Représentant permanent du Danemark auprès de L'Union européenne,
Jeppe Tranholm Mikkelsen
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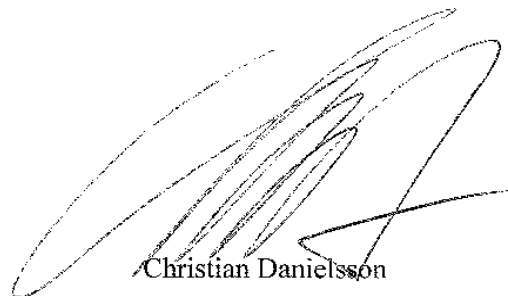
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http://ec.europa.eu/dgs/secretariat_general/

En ce qui concerne les futures propositions de directive, la Commission fera état dans les exposés des motifs de celles-ci des éléments justifiant ou pas la reprise du considérant en cause.

Veillez agréer, Monsieur l'Ambassadeur et Madame la Secrétaire générale, l'expression de ma haute considération.



Christian Danielsson

Copie : Uwe Corsepius, Secrétaire général du Conseil,
Jim Cloos, Directeur général adjoint du Secrétariat général du Conseil

EXPLANATORY DOCUMENTS

In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.

With regard to this Directive, the Commission considers the transmission of such documents to be justified for the following reasons:

- Complexity of the Directive and of the sector concerned: The field of accounting is particularly complicated and very technical from the point of view of professionals who are not specialised into it. In the absence of well-structured explanatory documents, the task of overseeing the transposition would be disproportionately time-consuming. The current proposal represents a consolidation exercise during which the texts of the 4th and the 7th Company Law Directives were updated and combined in one text. Even though many of the provisions have not changed as to their substance, a number of new provisions have been introduced, and a number of existing provisions have been revised or deleted. The structure, form, and presentation of the texts are completely new. The new structure has been necessary to give a clearer and more logical order to the legal provisions but it will result in the need for a structured approach during the transposition supervision.

Some of the provisions of the proposed Directive may potentially have an impact on a number of areas of the national legal order such as the company, commercial or tax law or other legislative areas in the Member States. It may also affect secondary national law including Generally Accepted Accounting Principles. The interrelation of accounting matters with all these neighbouring fields may mean, depending on the system in the Member States, that some provisions are implemented by means of new or already existing rules from those fields, a clear view of which should be available.

- Harmonisation measures: Certain provisions in the Directive aim to harmonise the accounting approach across the EU. This is an innovation as compared to the original texts of the two Directives. It is important that the Commission shall be in a position to compare the resulting situations in the various Member States and thus properly carry out its task of overseeing the application of Union law.
- Country-by-country reporting: The text of the proposal features a Chapter requiring the disclosure of payments received from the primary extraction of natural resources in developing countries. There is a strong political will to put such provisions in place but, at the same time, there is very little experience as this is a new area. Therefore, it is of high importance that the Commission receives transposition documents on how the Member States have given effect to such provisions. Moreover, a revision clause is considered in the Chapter and, in order to be able to collect all relevant information on the functioning of those rules, the Commission will need to be able to monitor their implementation from the outset.
- Removal of Member States' options: In the current text, there are a number of provisions the application of which depends on the exercise of so-called "Member State options", i.e. there are several varieties of the rule and the Member States are free to choose the one which best fits their context. After careful evaluation, the Commission has proposed to remove concluded in favour of removing or altering those provisions. However, it is possible that some Member States have put them in practice since the current text dates back to 1978. Given that the options which will be removed might have been in use (and continue to be) used throughout the years, the Commission should be enabled to easily track the changes in the national provisions which would result from the removal.

- Low estimated additional administrative burden of requesting explanatory documents from Member States: As mentioned above, the current text has been in place since 1978 for the 4th Directive and since 1983 for the 7th Directive. Despite rearranging some of the core provisions, on a majority of issues there have been no substantive changes. Therefore, it will not be burdensome for Member States to notify their implementing provisions as they have normally been notifying most of them for quite some time already. The estimated low additional administrative burden of requesting explanatory documents from Member States regarding the new parts of the Directive is proportionate and necessary for the Commission to carry out its task of overseeing the application of Union law.

On the basis of the above, the Commission believes that the requirement to provide explanatory documents in the case of the proposed Directive is proportionate and does not go beyond what is necessary to achieve the objective to carry out efficiently the task of overseeing accurate transposition.

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