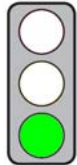


MAIN ISSUES

Objective of the Directive: Member States are authorized to exempt “micro-entities” from the obligation to draw up annual accounts.

Parties Affected: Micro-entities, their shareholders, creditors, employees, business partners and potential investors.



Pros: (1) The Directive reduces administrative burdens for micro-entities, though far less than hoped.
(2) The Directive increases efficiency without distorting competition in an unacceptable manner.

Cons: –

CONTENT

Title

Proposal COM(2009) 83 of 26 February 2009 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**

Brief Summary

Legal provisions cited refer to the Directive 78/660/EEC as amended.

► Existing EU accounting requirements for companies with limited liability

- Companies with limited liability are obliged to draw up annual accounts giving a “true and fair view” of the company’s assets, financial position and profit or loss (Art. 2 (3)).
- The annual account must comprise at least a balance sheet, the profit and loss account and notes on the accounts. Member States may expand the annual account by further elements. (Art. 2 (1)).
- A layout is prescribed for the presentation of the balance sheet and the profit and loss account. There are also minimum requirements as to the content of the notes on the accounts. (Art. 8-10a; Art. 22-26; Art. 43).
- Uniform valuation methods are prescribed to ensure a better comparability of annual accounts (Art. 31-42f).
- Annual accounts must be verified by an authorised auditor. (Art. 51)
- Along with annual accounts, companies with limited liability must draw up an annual report. It must include “a balanced and comprehensive analysis of the development and performance of the company’s business and of its position, consistent with the size and complexity of the business” (Art. 46 (1)).
- Both the audited annual account and the annual report must be deposited with a central register, commercial register or companies’ register. A reference to the deposited documents is then to be publicly disclosed (Art. 46 (1) in conjunction with Art. 3 of the Directive 68/151/EEC).

► Existing options to relieve small companies

Member States may provide the following relief for companies which do not exceed two of the three following threshold values on their balance sheet dates:

	Balance Sheet Total	Net Turnover	Average Number of Employees during the Financial Year
Abridged Balance Sheets (Art. 11)	4.400.000 €	8.800.000 €	50
Abridged Notes (Art. 44)			
Waiver of Annual Reports (Art. 46 (3))			
Reduced Disclosure Requirements (Art. 47 (2) and (3))			
Exemption from Annual Audits (Art. 51 (2))			
Simplified profit and loss account (Art. 27)	17.500.000 €	35.000.000 €	250

► **New exemptions for micro-entities**

- Member States wishing to do so may fully exempt “micro-entities” from all obligations under the Directive 78/660/EEC (new Art. 1a (1)).
- Companies are considered as micro-entities if at least two of the three following criteria apply to them (new Art. 1a (1)):
 - their balance sheet does not exceed € 500.000;
 - their net turnover does not exceed € 1.000.000;
 - their average number of employees during a financial year does not exceed 10.
- Companies which have not been considered as micro-entities in two consecutive financial years may not be exempted from the obligations under the Directive before they meet the criteria for micro-entities during two consecutive years (new Art. 1a (2)).

Changes Compared to the Status Quo

- Though Directive 78/660/EEC provides for options to exempt small companies from accounting requirements, it does not allow to fully exempt companies with limited liability from the relevant EU requirements.
- The proposed threshold values for defining “micro-entities” are far lower than the threshold values for simplified accounting requirements.

Statement on Subsidiarity

The Commission argues that an EU directive can be amended by the EU only.

Political Context

The proposed Amendment Directive is an integral part of the Commission’s Better Regulation programme: In 2006, the Commission had already submitted a Communication on the reduction of administrative burdens [COM(2006) 689], which in 2007 was complemented through an action programme [COM(2007) 23]. This programme caused a stir, particularly the target to reduce administrative burdens by 25% by 2012. This is where the idea of exempting micro-entities from accounting requirements was first mentioned and later substantiated in a Communication in 2007 [COM(2007) 394].

In July 2008, the “High-Level Group of Independent Stakeholders on Administrative Burdens”, chaired by the former Bavarian Prime Minister Edmund Stoiber, argued in favour of that project. In November 2008, the Commission declared it an integral part of its “European Economic Recovery Plan” [COM(2008) 800]. In December 2008, the European Parliament also welcomed options to exempt micro-entities [Resolution (T6-0635-2008)], yet wishes to limit them to companies which operate only in one Member State.

On behalf of Germany, Ms. Zypries, the German Federal Minister of Justice, stated on 26 February 2009 that she is ready to accept the amendment of the EU Directive. This is to be seen against the background of the German Accounting Law Modernization Act (“Bilanzrechtsmodernisierungsgesetz” or BilMoG), which was adopted by the German Bundestag and the Bundesrat in early April 2009. The BilMoG stipulates that small one-person businesses (“Einzelkaufleute”) be exempted from accounting and balancing requirements. The Commission’s Proposal aims at a similar target for small-sized companies with limited liability.

Legislative Procedure

26.02.09 Adoption by Commission

Open Adoption by European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Internal Market
Committees of the European Parliament:	Legal Affairs (in charge), rapporteur: Klaus-Heiner Lehne (EPP-ED-Group, D); Economic and Monetary Affairs
Committees of the German Bundestag:	Open
Decision Mode in the Council:	Qualified majority (adoption with a majority of the Member States and 255 of 345 votes; Germany: 29 votes)

Formalities

Legislative competence:	Art. 44 (1) TEC (Right of Establishment)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Art. 251 TEC (Co-decision)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

EU accounting rules aim to make EU-wide comparable information on assets, financial positions and profit or loss of companies accessible to the public. Such mandatory statements are of particular importance to minority shareholders, as they are not always able to form an independent opinion of a company, but this information also has significance for creditors, employees, business partners and potential investors.

Nonetheless, **the Member States' option to exempt micro-entities from the obligation to prepare annual accounts is to be expressly welcomed, since the existing requirements do not take account of the conditions under which micro-entities operate.**

Firstly, micro-entities are normally run by their owners and so measures to protect external shareholders – e.g. through comprehensive accounting requirements – are not generally necessary. Secondly, debt capital does play a role for many micro-entities, but by no means for all. In as far as they do make use of debt capital, micro-entities do not normally draw it from the capital market but from their local banks. And in order to grant credits, these banks need information (e.g. on the cash-flow) which deviates from the data given in annual accounts, and which they therefore request directly from the companies concerned. Thirdly, the relation between micro-entities and their employees, business partners and potential investors relies much more on personal confidence than it is the case in bigger companies. A basis of mutual trust is, above all, built through personal contacts. Annual accounts can have a trust-building effect, but they can also quite simply be superfluous. It should be left to the companies and their business partners to figure out whether it is necessary to use annual accounts to cover any need for information.

Policy options enabling Member States the reduction of administrative burdens always also bear **the risk of cross-border distortions of competition**. However, in this case the risk is relatively **low, since 93 % of micro-entities do not operate at cross-border level** (source: Eurobarometer, "Observatory of European SMEs", May 2007).

Distortion of competition may, however, emerge between micro-entities and larger companies within one single Member State. Especially companies that only just fail to meet the criteria for micro-entities are affected by this discrimination. **This is acceptable, however, because by maintaining the present legal status micro-entities would continue to be subject to administrative burdens that weigh particularly heavy on them:** the average burden per employee is up to five times higher than in bigger companies, due to the fixed costs which depend on company size (source: Impact Assessment by the Commission, SEC(2009)206, p. 14).

Impact on Growth and Individual Freedom of Choice

According to a survey conducted on behalf of the Commission, 7.2 million companies are subject to the European accounting requirements. 5.3 million (75%) of these are micro-entities (source: "Evaluation of Thresholds for Micro-Entities", Centre for Strategy & Evaluation Services, January 2008).

According to the Commission's Impact Assessment, **the Directive may lead to average savings of € 1.200 per company**, though only if **all Member States made use of the exemption options** of the Proposal. The total savings accruing in the ideal case amount to € 6.3 bn per year. Even the Commission admits that "at this point in time it is not possible to quantify the potential effect at EU level" (source: Summary of the Impact Assessment, SEC(2009) 207, p. 9). And **indeed** the estimate that the proposed exemption rule might reduce costs for micro-entities by € 6.3 bn seems to be too optimistic. There are several reasons why **lower savings are to be expected.**

Firstly, micro-entities will still have to draw up balance sheets and profit and loss accounts for tax authorities as they form the basis for taxation. It is true that accounts for commercial purposes may deviate from tax accounts. However, micro-entities often use uniform accounting for both purposes, in which case the proposal will result in lower savings. Secondly, in some Member States statistical offices use annual accounts of companies, also of micro-entities, for macroeconomic accounting. The expected savings will be gained only if such Member States do not introduce new reporting duties, which is, however, not unlikely in view of the great number of micro-entities. Thirdly, many micro-entities will continue to draw up annual accounts without being legally obliged to do so, simply in order to meet their business partners', investors' and banks' demands for information.

Impact on Growth and Employment

Simplifying accounting requirements for micro-entities boosts their competitiveness and increases their potential for growth. Negative effects on the granting of credits are not to be expected: In countries where accounting duties for small-sized enterprises are already less burdensome – for instance the USA, Japan, and Canada – such negative effects cannot be observed.

Impact on Europe as a Business Location

The reduction of administrative burdens increases the attractiveness of Europe as a business location. But as micro-entities do not normally operate at international level, the impact of the proposed Directive on the attractiveness of Europe as a business decisions is negligible.

Legal Assessment

Legislative Competence

Since largely harmonised obligations of companies with limited liability are a prerequisite for the right of free establishment in the EU's internal market, the EU rightly draws upon the competence laid down in Art. 44 (1) TEC (right of establishment).

Subsidiarity

The Proposal is to amend an existing EU Directive. This can be done by the EU only.

Proportionality

Unproblematic. The Proposal does not oblige Member States to exempt micro-entities from accounting requirements, but grants them the right to choose whether or not to do so.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

In Germany, public limited companies (*Aktiengesellschaften, AG*), limited partnerships by shares (*Kommanditgesellschaften auf Aktien, KGaA*) and limited liability companies (*Gesellschaften mit beschränkter Haftung, GmbH*) are subject to the provisions of directive 78/660/EEC, which was transposed into German law by §§ 264 et seq. of the German Code of Commerce (*Handelsgesetzbuch, HGB*). General partnerships (*offene Handelsgesellschaften, oHG*) and private limited partnerships (*Kommanditgesellschaften, KG*) are also concerned if one of their fully liable partners is a company with limited liability. Should Germany decide to exempt micro companies from these provisions, §§ 264 et seq. HGB must be changed.

Alternative Policy Options

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Possible Future EU Action

In the third quarter of 2009, the Commission plans to propose further amendments to the Directive 78/660/EEC on annual accounts and the Directive 83/349/EEC on consolidated accounts. In preparation of these revisions, the Commission has initiated a public consultation on 25 February 2009, which runs until 30 April 2009.

Conclusion

The option to exempt micro-entities from the obligation to draw up annual accounts takes into account the particular conditions under which micro-entities operate. Distortions of competition possibly resulting from this new option are marginal and justifiable. The proposed Directive is generally suitable to ease administrative burdens on micro-entities. However, it will lead to smaller saving as expected by the Commission.