

Opinion of the European Economic and Social Committee on the ‘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’

COM(2011) 684 final — 2011/0308 (COD)

(2012/C 181/15)

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On 15 and 29 November 2011 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee under Article 50(1) of the Treaty on the Functioning of the European Union, on the

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

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The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 8 March 2012.

At its 479th plenary session, held on 28 and 29 March 2012 (meeting of 29 March), the European Economic and Social Committee adopted the following opinion by 125 votes to 2 with 8 abstentions.

1. Summary and conclusions

1.1 Micro-, small and medium-sized enterprises make up a vast proportion of the EU’s business fabric, and the EESC consequently welcomes any initiative that might improve the workings of the Single Market and which facilitates and promotes cross-border investment and trade. It is Small and Medium-Sized Enterprises (SMEs) that contribute most to economic growth, job creation and innovation. They are also the most susceptible to changes and developments.

1.2 The simplifications proposed in the current review therefore reflect the aim set out in the Europe 2020 Strategy for sustainable and inclusive growth, the principle of simplification advocated in the Communication on the Single Market Act and the recognition of SMEs’ key role in economic development voiced in the Commission communication entitled *Think Small First – A Small Business Act for Europe*.

1.3 The complete harmonisation of size criteria throughout the European Union (EU) is a welcome initiative and should, in the EESC’s view, be extended to cover what are known as ‘micro-enterprises’. What needs to be promoted, therefore, is simply legislation that provides a framework covering the entire business world. By promoting fairness across the EU, this across-the-board standardisation should emerge as one way of boosting competition.

1.4 It is also worth emphasising the fact that Member States are not allowed to require small businesses to present any information above and beyond what is provided for in the new directive. This is the only means of achieving the goal of

simplification that is proposed in this review and of implementing it in a way that benefits everyone, safeguarding the interests of the users of financial information, be they investors, creditors, the State or members of the public.

1.5 The EESC considers that, since the interests referred to above are assured, the simplification and harmonisation proposals should also be applicable for tax purposes; the Member States would then not have to request additional information for tax collection purposes. In addition, banks should be made aware of the changes and the possibility of adapting their methods of analysis to the new rules for financial statements, avoiding the need for additional information to be provided.

1.6 Simplifying financial statements alone cannot be expected to encourage business start-ups and improvements in the business environment. This aim will only be achievable if other measures are adopted at the same time to boost economic growth. Nevertheless, this or any other initiative that helps reduce administrative and opportunity costs or other measures to cut red tape (such as duty of disclosure, obtaining licences and concessions, etc.) is to be welcomed.

1.7 With regard to reducing costs, both human and financial, the simplifications being proposed will undoubtedly free up resources that companies can then use in other areas of their business.

1.8 The importance of small businesses being exempted from mandatory statutory audits, irrespective of whether or not they are limited liability companies, is noted and

welcomed, but the EESC feels that this procedure should be kept mandatory for companies with more than 25 employees. Having to comply with this procedure, which some small businesses are obliged to do, is quite a burden and exemption should be assured for small unlisted companies, regardless of their legal form. This procedure should be optional and the subject of a decision by the partners or shareholders.

1.9 On the other hand, if accounting procedures are carried out electronically and financial statements are drawn up using readily-available accounting software, simplification could initially incur higher costs, due to businesses having to update this software, and these costs will be far from negligible.

1.10 Account should also be taken of the cost-related impact that adapting the form of collecting available information will have on both statistical and tax authorities.

1.11 Most small businesses still view financial statements as nothing more than a legal obligation for the benefit of the tax authorities. While a company's small size might play a large part in shaping this view, as hiring in-house accountants is unfeasible, the main factor remains the lack of training of many SMEs' managers and directors. We would therefore recommend and support continuing and further developing training and awareness-raising schemes to help entrepreneurs interpret the information available, thus potentially avoiding certain mistakes caused by the management approach of 'navigating by sight'. At the same time, it is worth considering the importance of updating the training of technical staff in accounting offices where most of the preparation of small companies' financial statements is concentrated. Training for technical staff on legislative updates should also be encouraged and supported.

1.12 As regards the requirement for companies involved in the extractive industry and in primary forest logging to disclose payments to governments, the EESC welcomes this measure, but calls for it to be extended to other relevant areas. For reasons of transparency, these disclosures should include any concession of public interests to private hands, such as transactions in the fields of the transport network, water, energy and communications, as well as gambling, in which considerable sums are involved and which, apart from gambling, represent the most fundamental public services.

1.13 Some of the provisions in the directive under consideration run counter to the practices laid down in the International Financial Reporting Standards (IFRS), especially unpaid subscribed share capital being included in the balance sheet and the maximum amortisation periods for goodwill. The EESC welcomes the fact that the proposed directive does not provide for the mandatory adoption of the IFRS for SMEs, pending experience with its recent implementation worldwide.

1.14 Discussions are currently taking place on the application of rules for micro-entities that deal with these

companies independently. It is important that the regulatory framework for micro-entities is compatible with that now under consideration, so as to avoid the dispersal of information in various documents.

2. Background to the proposal

2.1 This proposal for a directive proposes repealing the Fourth Directive 78/660/EEC on the annual accounts of certain types of companies and the Seventh Directive 83/349/EEC on consolidated accounts, replacing them with just one directive on annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

2.2 This review forms part of an extensive set of Commission initiatives to simplify the procedures required of SMEs, in order to reduce the administrative burden on this type of company and to complement the 2009 proposal for a directive on the financial statements of micro-entities. The preparation of financial statements is considered to be one of the most burdensome regulatory obligations for companies, especially smaller ones.

2.3 Reference to the review of the Accounting Directives is made in the Communication on the *Single Market Act - Twelve levers to boost growth and strengthen confidence - 'Working together to create new growth'* as one of the levers to boost growth, emphasising the importance of lessening regulatory requirements for SMEs at both the European and national levels.

2.4 The aims of the review are to reduce and simplify the administrative burden involved in drawing up financial statements, especially for small businesses, to increase the clarity and comparability of financial statements, which is of particular importance to undertakings engaged in cross-border activity, to protect users of financial information and to increase transparency regarding payments to governments by companies involved in the extractive industry and in primary forest logging.

2.5 Consultations were held with stakeholders, including those responsible for drawing up financial statements, users, standardisation bodies and public authorities. An impact assessment was also carried out, and the following conclusions were reached:

2.5.1 With regard to the drawing-up of financial statements and the reason for this being seen as an extremely burdensome task for companies, having an especially marked impact on smaller undertakings, the directives' requirements are amended, creating a 'mini-regime' specific to small companies. This reduces the requirements for information to be attached to accounts, makes statutory auditing more flexible and exempts small groups from the obligation to draw up consolidated financial statements.

2.5.2 The size thresholds for undertakings are harmonised, ensuring equal treatment throughout Europe for companies of the same size.

2.5.3 The number of options available to Member States for the submission of additional information is limited in order to harmonise practices in the EU and increase the comparability of financial statements.

2.5.4 Complementing the Commission's support for the International Extractive Industry Transparency Initiative (EITI), and the commitment made in the final declaration of the Deauville G8 Summit, there is now a requirement for disclosure of payments made by companies to governments, at both the individual and consolidated levels.

2.6 As a means of protecting stakeholders from any reduction in available information, it will now be mandatory to disclose information on guarantees and commitments and on transactions with related parties. This is already a requirement in some countries.

2.7 It is hoped that the simplification of accounting rules for SMEs will help improve the business environment and encourage company start-ups, with the concomitant benefits for job creation. At the same time and given that the savings linked to this simplification would arise from the reduction in fees paid to external accountants or accountancy firms, a marginally negative impact on employment is to be expected: but according to the Commission, the measure will have no impact on overall employment levels.

2.8 The simplification of accounting records for smaller companies is not expected to have the effect of discouraging growth. The higher costs that resizing would entail for a company are not deemed to be a key factor in a company's decision to expand.

3. Key measures

3.1 With a view to lessening the administrative burden relating to drawing up financial statements, a specific scheme is introduced for small companies, limiting the obligation to disclose certain information by way of notes to the accounts. The mandatory references will now consist only of: accounting policies; guarantees, commitments, contingencies and arrangements that are not recognised in the balance sheet; post-balance sheet events not recognised in the balance sheet; long-term and secured debts and related party transactions. Although mandatory in some Member States, the majority have provided for exemptions from disclosures for post-balance sheet events and related party transactions. These could result in new obligations for small companies. Nevertheless, including this requirement is deemed to be necessary in order to offset the reduction in the information available and to protect the users of such information.

3.2 Company size thresholds are harmonised into small, medium-sized and large (calculated on the basis of balance sheet total, net turnover, and number of employees), ensuring that classification is standardised across the EU. Thus, companies of the same size in different Member States will be treated equally. Reducing the administrative burden, which is the purpose of this proposal, will thus provide a level playing field for companies of the same size in all Member States.

3.3 Statutory audits will no longer be mandatory for small companies. However, taking into account the size of the companies in question, there generally seems to be no risk involved as regards the transparency required in drawing up accounts. The requirements for independent certification of accounts, including simplified accounts, and transparency in drawing up such accounts or providing information to interested parties, including, specifically, in relation to the social dialogue, must continue to apply to small companies.

3.4 Small groups will be exempt from preparing consolidated financial statements (when the parent company and subsidiaries, on a consolidated basis, do not exceed two of the criteria stipulated).

3.5 The general principles of 'materiality' and the prevalence of 'substance over form' will apply. In conjunction with the fewer options available to the Member States as regards the provision of additional information, this will help to harmonise practices across the EU, making financial statements easier to compare.

3.6 A new procedure is provided for to apply to large companies and public entities involved in the extractive industry and in primary forest logging to disclose payments made to governments.

4. Comments

4.1 The impact of the current burden of preparing financial statements is considerable and the EESC therefore supports the Commission's aim of simplification, on the basis of the principle 'think small first'. It is micro-, small, and medium-sized enterprises that are hardest hit by the administrative burden and the opportunity costs involved in preparing financial statements: the impact of these simplifications will therefore be felt by the broad majority of European businesses.

4.2 Nearly 20 years after the creation of the single market, the Commission is now showing a willingness to simplify the procedures with which they have been burdening businesses. The importance of the efforts at simplification is beyond dispute and the goals that underpin them are to be welcomed and supported. However, care must be taken to ensure that the

drive for simplification does not risk being excessive, that the confidence of stakeholders and users of financial information is not undermined, and that the provision of information to these parties is not jeopardised, as appears to be the case with this proposal. Simplification must not give rise to a need to pad out the information contained in financial statements with additional elements to satisfy tax reporting requirements or the requirements of banks. If this were to happen, it would have a pernicious effect, completely run counter to the aims of the proposal and place further cost burdens on businesses, who would be obliged to maintain three different types of information for legal, fiscal and funding purposes.

4.3 As with any new approach, the current proposals will require changes which, while they might not initially enjoy universal support or even have a major economic impact, will inevitably lead to lower costs and the standardisation of the criteria and type of information required throughout the EU. The principle could even have a negative impact in terms of costs for essential elements, such as, namely updating software, training and adapting the collection of tax and statistical data. This will, of course, quickly be offset by the benefits resulting from the changes. Efforts to achieve simplification must therefore be supported and what would help this considerably is accompanying these measures with others, such as promoting training and awareness-raising for entrepreneurs, accountants and users of the information provided by financial statements.

4.4 Of particular relevance to this proposed amendment is the introduction of exemption from statutory audit for small businesses, irrespective of whether or not they are limited liability companies. The EESC does not endorse this exemption for companies with more than 25 employees because certification by an independent accredited body is of significant help to SMEs and provides them with a guarantee in this sphere. Statutory audit plays the societal role of establishing the veracity of financial statements, which is the *sine qua non* of a society which depends largely on the performance of companies in a market economy. This measure will have a very considerable financial impact on the lives of small unlisted companies, which have been obliged to comply with this procedure simply because of their legal form rather than their size. It makes no sense for a small company which is unlisted, and therefore not obliged to comply with the disclosure and transparency requirements resulting from a stock exchange listing, and with which compliance is essential, to be subject to a costly procedure just because it has chosen to be an entity with legal personality which is obliged to comply with such a procedure because the law requires it. The legal certification of accounts should be for the benefit of the recipients of financial statements and not simply a legal procedure to be blindly followed because a business has a certain legal form. It is up to the partners and shareholders, managers and administrators of small businesses to decide whether or not the accounts should be audited; the Member States should be prevented from imposing this requirement and for this it should not be necessary to amend national legislation on the legal framework of types of companies.

Statutory audit will be able to be required from companies with more than 25 employees,

4.5 As set out in the opinion on the Proposal for a Directive of the European Parliament and of the Council on Directive 78/660/EEC on the annual accounts of certain types of companies, where micro-enterprises are concerned, the EESC welcomes the proposal for simplification as a boost for entrepreneurship and competitiveness, which will assist with the completion of the single market. It is also pleased to note the efforts to achieve standardisation through imposing simplification in all Member States, as was advocated in that document.

4.6 Another innovation worth highlighting, and which will certainly be of great relevance to promoting the single market, is the definition of size criteria and their application in all Member States. This is the only means of ensuring a level playing field throughout the EU for companies of the same size. However, the categories mentioned in Article 3 of the Directive do not include micro-enterprises, which is inconsistent with the definitions used in such matters as state aid, the participation of structural funds and Community programmes. Admittedly, as these entities are considered to be a source of entrepreneurial dynamism and job creation, they are included in Recommendation 2003/361/EC. The current directive must therefore include a definition of micro-enterprises that can be applied, in the same document, to all the enterprise categories commonly used in the EU.

4.7 The draft directive of 2009 relating to micro-enterprises is still being negotiated. This situation of having two documents covering the same subjects seems to make no sense. Such a dispersal of information is a source of confusion and costs for users which must - and in this case can - be avoided. It is therefore important that the regulatory framework for micro-entities be brought into line with the present proposal for a directive, or even be incorporated into it, so as to avoid this dispersal and the need for businesses and technical staff to consult several different documents.

4.8 With regard to the issue of disclosing payments to governments, there might be some resistance to applying this measure to other sectors of public interest or which involve public concessions, as well as to the extractive and forestry industries. The EESC nevertheless argues that this ambition should be pursued, with information made available on links between companies and public sectors in transactions concerning the transport network, water energy and communications, as well as gambling. The introduction of this measure is innovative but it can - and should - go further.

4.9 Some provisions appear to contradict IFRS practices, at a time when most EU countries have already adopted the international standards, although there is no Europe-wide obligation to adopt these rules for SMEs. IFRS are already mandatory for the preparation of the financial statements of listed businesses, and there is a trend towards standardising accounting practices by using these standards, so the present directive should respect

this trend. In this regard, it should be pointed out that there are inconsistencies on two matters: including unpaid subscribed share capital under the heading of share capital in the balance sheet and the writing-off of goodwill within a maximum period of five years. Once all the lessons have been learned from the

international implementation of the recent IFRS standards relating to SMEs and provided that correcting these two inconsistencies is not incompatible with the simplification of procedures, it will be important to align the rules applied in the EU with internationally accepted standards.

Brussels, 29 March 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON
