Company law: annual financial statements, consolidated financial statements and related reports of certain types of undertakings

2011/0308(COD) - 25/10/2011 - Legislative proposal

PURPOSE: to establish rules on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: the preparation of financial statements has been identified as one of the most burdensome regulatory obligations for companies. Small companies face proportionally higher administrative burdens in comparison to medium-sized/large companies. On 18 December 2008, the European Parliament adopted a non-legislative Resolution on accounting requirements as regards small and medium-sized companies, particularly micro-entities, stating that Directives 78/660/EEC and 83/349 /EEC ('the Accounting Directives') are often very burdensome for small and medium-sized companies, and in particular for micro-entities, and asking the Commission to continue its efforts to review those Directives.

Furthermore, it is necessary to establish at a Union level minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by undertakings that are in competition with one another.

IMPACT ASSESSMENT : broadly, the Impact Assessment looked at two issues:

Financial Statements: five broad policy options were examined, starting from the baseline scenario. The **broad option of revising and modernising selected requirements currently in the Accounting Directives was finally retained as the preferred option.**

After examining more detailed options, it appeared that a "mini-regime" specific to small companies would be the best policy choice. The potential for administrative burden reduction of this policy amounts to EUR 1.5 bn which arises from reduced reporting requirements in the notes, further relaxation of statutory audit and the exemption from preparing consolidated financial statements for small groups.

A second detailed option concerned the increase of the thresholds for small and medium-sized companies. The burden reduction potential of this proposal amounts to around EUR 0.2 billion.

The estimated potential for savings is therefore estimated at EUR 1.7 bn overall. Micro-companies will in any event benefit from the simplified regime offered to small companies. However, the impact on micro-entities of the above policy choices has been disregarded as the proposal for a Directive on micro-entities that is pending before the European Parliament and the Council specifically addresses these.

Reporting of payments to governments: the Impact Assessment analysed five broad policy options starting from the baseline scenario (policy option 0), next examining possible schemes that would result in a global agreement for country-by-country reporting for EU and non-EU MNCs (policy option 1), and lastly assessing several policy options that would oblige only EU companies to disclose country by country information (policy options 2 to 4). Whilst policy option 2 requires the disclosure of payments to governments on a country basis from the extractive industry and the loggers of primary forests, policy option 3 requires the disclosure of such information on a country- and project- basis. In addition to a report on payments to government, policy option 4 would require a complete set of country-by-country accounts to be prepared by companies active in the extractive industry and loggers of primary forests. **The option of requiring country-by-country reporting (CBCR) of payments to government on a country-and-project basis by EU Multinational Companies (MNCs) in the extractive industry and logging of primary forests (policy option 3) was retained.**

LEGAL BASIS: Article 50(1) TFEU.

CONTENT: the proposal introduces certain key provisions.

A specific regime for small companies: this will considerably reduce the administrative burden currently borne by small companies when they prepare their financial statements. It will limit disclosures by way of notes to the accounts to (i) accounting policies; (ii) guarantees, commitments, contingencies and arrangements that are not recognised in the balance sheet; (iii) post-balance sheet events not recognised in the balance sheet; (iv) long-term and secured debts; and (v) related party transactions. It should be noted that mandating the disclosure of items (iii) and (v) will result in new obligations imposed for small companies, as a majority of Member States have provided for exemptions from these disclosures for such companies.

Harmonise thresholds: the proposal also seeks to harmonise thresholds to ensure that the administrative burden reduction actually reaches all small companies in the EU. Currently many companies that are small under EU definitions enter the medium-sized or large company category because the definitions in the Directives are lower when transposed at Member State level.

Small companies: the main measures are as follows:

- maximum harmonisation will ensure that companies of the same size benefit from a level playing field across the EU;
- notes to the accounts will be limited to only five key areas;
- no requirement for a statutory audit;
- small groups will be exempt from preparing consolidated financial statements

Medium and large companies: the proposal seeks to improve the comparability and clarity of financial statements prepared by medium-sized and large companies, and by small companies to a limited extent. To this end, it seeks to reduce the number of options currently available to Member States, insofar as these options are detrimental to the comparability of the financial statements. General principles such as "substance over form" will become mandatory so as to increase the clarity of financial statements.

Reporting of payments to governments: in order to promote governments' accountability and good governance, the proposal introduces new reporting requirements for companies active in the extractive industry or in the logging of primary forests. It is proposed that companies shall disclose the payments they make to governments in each country where they operate and for each project, where the payment has been attributed to a certain project and when material to the recipient government. In line with the overall objective and in order to limit the additional administrative burden, the new requirement is limited to large companies and public interest entities.

Proposed Directive and repeal of existing legislation: the proposal will repeal the Accounting Directives.

Micro-entities: it should be noted that the proposal complements the proposal for a Directive on the financial statements of micro-entities which is currently still being negotiated by the EU co-legislators. Given that the Council and the Parliament have now both agreed to the principle of a micro entity regime, the current proposal does not contain any new policy proposal regarding micro companies as assessed in the Impact Assessment. The Commission is willing to consider, together with the EU co-legislators, how best to integrate into the current proposal the final inter-institutional agreement on the Directive of 2009.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Union budget.