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

2011/0308(COD) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 657 votes to 17 with 13 abstentions, a legislative resolution 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.

Parliament adopted its resolution on first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

Scope: partnerships will fall within the scope of the Directive where members of a partnership which are not constituted as private or public limited companies in fact have limited liability for the partnership's obligations because that liability is limited by other undertakings within the scope of the Directive.

Categories of undertakings and groups: the Directive defines and differentiates small, medium and large enterprises, as well as micro-enterprises on the basis of their balance sheet total, net turnover and the average number of employees during the financial year:

- **micro-undertakings** are defined as undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 350 000; (b) net turnover: EUR 700 000; (c) average number of employees during the financial year: 10;

- **small undertakings** are undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 4 000 000; (b) net turnover: EUR 8 000 000; (c) average number of employees during the financial year: 250.

Member States may define thresholds exceeding these, the thresholds shall not exceed EUR 6 000 000 for the balance sheet total and EUR 12 000 000 for the net turnover;

- **large groups** are defined as groups consisting of parent and subsidiary undertakings to be included in a consolidation and which, on a consolidated basis, exceed the limits of at least two of the three following criteria on the balance sheet date of the parent undertaking: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) average number of employees during the financial year: 250.

Member States may require parent undertakings to calculate their thresholds on a consolidated basis rather than on an individual basis, and may also require affiliated undertakings to calculate their thresholds on a consolidated or aggregated basis where such undertakings have been established for the sole purpose of avoiding the reporting of certain information.

Content of financial statements: Member States may require undertakings other than small undertakings to disclose information in their annual financial statements which is **additional** to that required pursuant to the Directive. By way of derogation they may require small undertakings to prepare, disclose and publish information in the financial statements which goes beyond the requirements of the Directive, provided that any such information is gathered under a single filing system and the disclosure requirement is contained in the national tax legislation for the strict purposes of tax collection.

Presentation of balance sheet: for the presentation of the balance sheet, Member States shall **prescribe one or both of the layouts set out in Annexes III and IV**. If a Member State prescribes both layouts, it shall permit undertakings to choose which of the prescribed layouts to adopt.

Special provisions relating to certain balance sheet items: Member States may permit or require value adjustments to be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.

Where the amount repayable on account of any debt is greater than the amount received, Member States may permit or require that the difference be shown as an asset. It shall be shown separately in the balance sheet or in the notes to the financial statements. The amount of that difference shall be written off by a reasonable amount each year and completely written off no later than at the time of repayment of the debt.

Content of the notes to the financial statements: the amended text stipulates that the notes should contain, amongst other things, the following information:

- **for all enterprises**: (i) the amount of advances and credits granted to members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid or written off or waived, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category; (ii) the amount and nature of individual items of income or expenditure which are of exceptional size or incidence; (iii) the average number of employees during the financial year;

- **for medium-sized and large undertakings and public-interest entities**: (i) the average number of employees during the financial year; (ii) where a provision for deferred tax is recognised in the balance sheet, the deferred tax balances at the end of the financial year, and the movement in those balances during the financial year; (iii) the nature and business purpose of the undertaking's arrangements that are not included in the balance sheet and the financial impact on the undertaking of those arrangements, provided that the risks or benefits arising from such arrangements are material; (iv) the nature and the financial effect of material events arising after the balance sheet date which are not reflected in the profit and loss account or balance sheet; and (v)transactions which have been entered into with related parties by the undertaking. Member States may permit or require that only transactions with related parties that have not been concluded under normal market conditions be disclosed.

General publication requirement: Member States shall ensure that undertakings publish within a reasonable period of time, which **shall not exceed 12 months** after the balance sheet date, the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor or audit firm.

The members of the administrative, management and supervisory bodies of an undertaking, will have collective responsibility for ensuring that the consolidated financial statements, consolidated management reports and, when provided separately, the consolidated corporate governance statement, are drawn up and published in accordance with the requirements of the Directive.

Where an audit firm carries out the statutory audit, the **audit report** shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.

Micro-entities: in view of the fact that micro-entities have limited resources with which to comply with demanding regulatory requirements, micro-entities will be exempt 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.

Member States are permitted to exempt micro and small entities from a general publication requirement, provided that: (i) balance sheet information is **duly filed**, in accordance with national law, with at least one designated competent authority and that (ii) the information is **transmitted to the business register**, so that a copy should be obtainable upon application.

Investment undertakings or financial holding undertakings may not benefit from the derogations for micro-enterprises.

Undertakings required to report on payments to governments: the amended text stipulates that any payment, whether made as a single payment or as a series of related payments, need not be taken into account in the report **if it is below EUR 100 000 within a financial year.**

Undertakings active in the extractive industry or the logging of primary forests will not be required to disaggregate and allocate payments on a project basis **where payments are made in respect of obligations imposed on the undertakings at the entity level rather than the project level.**

Payments or activities should not be artificially split or aggregated with a view to evading such disclosure requirements.

Equivalence criteria: the Commission shall be empowered to adopt delegated acts identifying the criteria to be applied when assessing the equivalence of third-country reporting requirements and the requirements of this Chapter.