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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council at first reading with a view to the adoption of 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

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 26/02/2009.
(document COM(2009) 83 final – 2009/0035 COD):

Date of the opinion of the European Economic and Social Committee: 15/07/2009.

Date of the position of the European Parliament, first reading: 10/03/2010.

Date of transmission of the amended proposal: Not applicable.

Date of adoption of the position of the Council: 12/09/2011.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal from the Commission was adopted in the context of the Better Regulation initiative. In providing an option for Member States to exempt micro-entities from the requirements of the Fourth Company Law Directive¹, the aim of the proposal was to simplify and improve the existing regulatory framework so as to limit information obligations resulting from accounting requirements on EU micro-entities in order to:

- reduce the administrative burden; and
- enable alignment of micro-entities' reporting requirements with the real needs of users and preparers of accounts.

¹ Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1 General comments

As a key priority of the Better Regulation agenda, this fast track amendment was proposed in February 2009 with a view to obtaining significant simplification in the short-term.

Following a request, in December 2008, to the Commission to continue the simplification of accounting, the European Parliament welcomed the proposal in its legislative resolution of March 2010. It however agreed *inter alia* upon an amendment to require that companies should still be obliged by EU legislation to keep accounting records showing the company's business transactions and financial situation.

The Council generally welcomed the Commission objective to simplify existing legislation for the micro-entities. Whilst a majority of the Council welcomed the Commission proposal, a blocking minority thought that the Commission proposal was not an entirely appropriate way in which to achieve the stated objectives. The Council position reflects a compromise between those views. In particular, it maintains an EU obligation for micro-entities to draw up accounts.

3.2 Follow up of amendments introduced by the European Parliament

- (1) Amendment introduced requiring micro-entities to still be subject to the obligation to keep accounting records that show the company's business transactions and financial situation: this amendment has been retained in essence in Recital 5 of the Council position (last sentence).
- (2) Various amendments, highlighting that Member States should have the free choice of exempting micro-entities or not, taking particular account of the situation at national level regarding the number of businesses covered by the thresholds laid down in the Directive: these have been maintained in essence in Recitals 6 and 7 and Article 2 of the Council position.

3.3 New measures introduced by the Council position

The Commission proposal was to amend Directive 78/660/EEC on the annual accounts of EU companies with limited liability as follows:

- (1) creation of a category of micro-entities, defined as companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:
 - (a) balance sheet total: EUR 500 000;
 - (b) net turnover: EUR 1 000 000
 - (c) average number of employees during the financial year: 10
- (2) the Member States would be able to exempt micro-entities within their jurisdiction from any obligations under Directive 78/660/EEC.

The Council position supported the approach of having a separate category of micro-entity company, but it proposed a new definition that would reduce the size thresholds for the balance sheet total and net turnover respectively to EUR 250 000 and EUR 500 000. The Commission estimates that with these lower thresholds, the simplification measures in the Council position would reach around 15% fewer companies than the Commission proposal would.

The Council proposed that the Member States should not have the ability to provide for an outright exemption from EU accounting requirements for micro-entities, but instead proposed a number of simplifications that the Member States could adopt, including:

- The ability to reduce the information presented in the accounts in accordance with simplified layouts for the balance sheet and the profit and loss. A Member State may, in addition, relieve micro-entities from the obligation to calculate year-end accruals and prepayments in respect of certain types of expenses;
- The ability to considerably reduce the information usually disclosed in the notes to the accounts, and allow this information to be disclosed at the foot of the balance sheet;
- The ability to exempt micro-entities from publishing their accounts, provided these are provided to a competent authority that in turn files at least the balance sheet with the national register;

To provide certainty and ensure greater comparability between micro-entity accounts, the Council also proposed that fair value accounting be prohibited for this category of company.

Compared to the Commission proposal, the Council position would nevertheless continue to impose a certain number of accounting obligations at EU level, including for instance general valuation rules, mandatory layouts for the balance sheet and profit and loss account, as well as minimum transparency requirements.

4. CONCLUSION

The Council adopted its position at first reading by qualified majority. Even though it amends the Commission proposal to a considerable extent, especially on the definition of micro-entities, it maintains the thrust of the Commission proposal to offer the ability to the Member States to exempt micro-entities from a considerable number of burdensome accounting obligations at EU level. Whilst the Commission proposal was to allow for a full exemption, the Council position would restrict this to a pre-defined number of areas that would still allow for significant progress towards simplification.

The Commission therefore considers that it can endorse the Council position. Having regard to the opinion of the European Parliament at first reading, the Commission undertakes to facilitate the inter-institutional negotiation to reach an acceptable compromise for both co-legislators.