

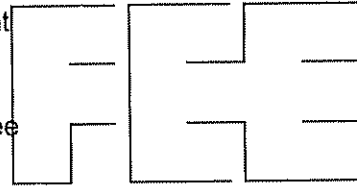
Date
27 October 2008

Le Président

Fédération
des Experts
Comptables
Européens

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To Hans-Gert Pöttering, President of the European Parliament
Presidents of European Parliament Political Groups
Presidents of European Parliament Committees
Members of European Parliament Legal Affairs Committee



Cc Commissioner McCreevy
Jürgen Holmquist
Pierre Delsaux

Dear Sir,

1. We are writing regarding the vote in JURI on 4 November of one of the fast track simplification proposal of the Commission in the area of company law.¹
2. We were surprised to see that unexpected amendments have been proposed² which significantly change the nature of the proposal and differ in several instances from the May 2008 Resolution of Parliament on this matter³. In our views, this would justify further careful consideration, in particular through a thorough debate of your Parliament and a full impact assessment. FEE would be looking forward to contributing to such a process.
3. In substance these amendments will:
 - Create micro-companies that are excluded from the EU company law framework, double the thresholds proposed by the Commission for micro-entities and increase those foreseen in the 4th Company Law Directive for mid-sized entities;
 - Eliminate a number of Member States' options, one of the consequences of which is a ban on the possibility for Member States to submit small companies (less than 50 employees) to an audit
 - Prevent Member States from requiring small companies to publish financial information (profit & loss account, annual report and audit opinion)
 - Stop Member States from requiring mid-sized companies to publish non-financial information.
4. These amendments contradict the internal market, the EU better regulation agenda and SME policy.

¹ Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts (SEC (2008) 466) {SEC (2008) 467}

² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts {SEC(2008) 466} {SEC(2008) 467}
AMENDMENTS 7 – 24, Draft report Ieke van den Burg (PE412.044v01-00) on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and obligation to draw up consolidated accounts
Proposal for a directive – amending act (COM(2008)0195 – C6-0173/2008 – 2008/0084(COD))

³ European Parliament resolution of 21 May 2008 on a simplified business environment for companies in the areas of company law, accounting and auditing (2007/2254(INI)).



The amendments dismantle the *acquis communautaire* in company law which is instrumental to the Internal Market

5. Instead of simplifying and improving regulation, an objective that FEE supports, as do most stakeholders, these amendments threaten 50 years of efforts to develop a consistent EU framework for company law.
6. The thresholds proposed in the amendments for micro-companies are double the thresholds discussed in the Commission consultation. The HLG did not ask for such high thresholds, but only invited the EC to investigate their effects. As a result, the EU company law framework (the 4th Directive) would see its scope reduced to approximately 10% of the companies currently covered by the partly harmonised framework.
7. These amendments will significantly impact on market transparency and comparability of financial information at the expense of other stakeholders (trading partners, creditors, employees, public administrations, minority shareholders...). The availability and reliability of information on business will suffer, a concern that has also been outlined by the European Committee of Central Balance-Sheet Data Offices⁴. Under such circumstances, SMEs from smaller Member States will find it harder to penetrate the markets of the bigger Member States.
8. As the draft report proposes to eliminate options, Member States will face new prohibitions and the European Parliament will have to assess the compatibility of such obligations with the subsidiarity principle. For instance, Member States willing to require a statutory audit for companies with less than 50 employees (e.g. for reasons linked to the maturity of its economy and the necessity to strengthen corporate governance or the needs of its tax administration) will be prevented to do so.
9. In addition, the option is essential for the majority of Member States that use the framework of the 4th Directive for tax purposes; this shows that a mandatory option will not deliver the expected costs reductions.

The amendments have not been impact assessed

10. We believe the Parliament will be better informed if a normal legislative process is followed in line with the basic principles of better regulation. The opinion of the HLG, on which the proposed amendments are justified, cannot replace an impact assessment or a Commission initiative. It is worth noting that the operation and output of the HLG have already generated some concerns and that point 25, often quoted as a justification for some of the amendments, is of a mere general nature.
11. Moreover, the amendments propose to abolish requirements to publish financial information, while a majority of stakeholders opposed this exemption in a recent EC consultation. Regarding the publication of non-financial information, a key step forward on the road to corporate social responsibility and sustainable development for which the Parliament has been acclaimed by many stakeholders, it is surprising to see that it is proposed to do away with these after their introduction in 2003⁵.

⁴ Opinion of the ECCBSO Communication from the European Commission on Simplified business environment for companies in the areas of company law, accounting and auditing (COM 2007 394 final)

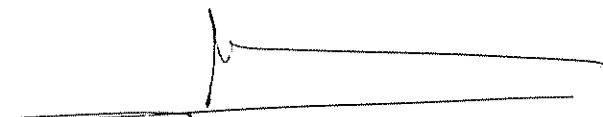
⁵ Directive 2003/51 of 18 June 2003

12. In addition, we understand that these amendments circumvent a proposal that the Commission intended to table in 2009 that would have been subject to a full impact assessment as required by all stakeholders.

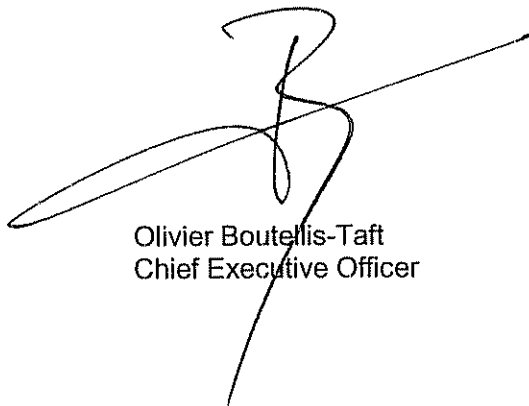
SMEs will suffer from the amendments

13. FEE has developed a detailed technical analysis of several of these proposals and issued a joint statement with UEAPME⁶, the organisation representing SMEs in Europe, on this matter. The conclusions were that:
- rather than a reduction of administrative burden, SMEs are likely to incur higher costs due to the lack of harmonisation and standardisation;
 - SMEs' access to credit will be negatively impacted, at a time where they already suffer from a credit crunch;
 - SMEs will be excluded from an internal market where they may be subject to 27 different company law rules, in contradiction with the objectives of the Lisbon strategy.
14. FEE is also concerned that such proposals are made at a time when the consensus is that both markets and policymakers need more information on the economy and better regulation.
15. We will be pleased to answer any question you may have with respect to the above and would welcome an opportunity to meet. Please contact the undersigned at obt@fee.be.

Yours sincerely,



Jacques Potdevin
President



Olivier Boutellis-Taft
Chief Executive Officer

⁶ http://www.fee.be/publications/default.asp?library_ref=4&category_ref=45&content_ref=755