



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE

**SYNTHESIS OF THE REACTIONS RECEIVED TO THE
COMMISSION COMMUNICATION ON A SIMPLIFIED BUSINESS
ENVIRONMENT FOR COMPANIES IN THE AREAS OF
COMPANY LAW, ACCOUNTING AND AUDITING (COM(2007)394)**

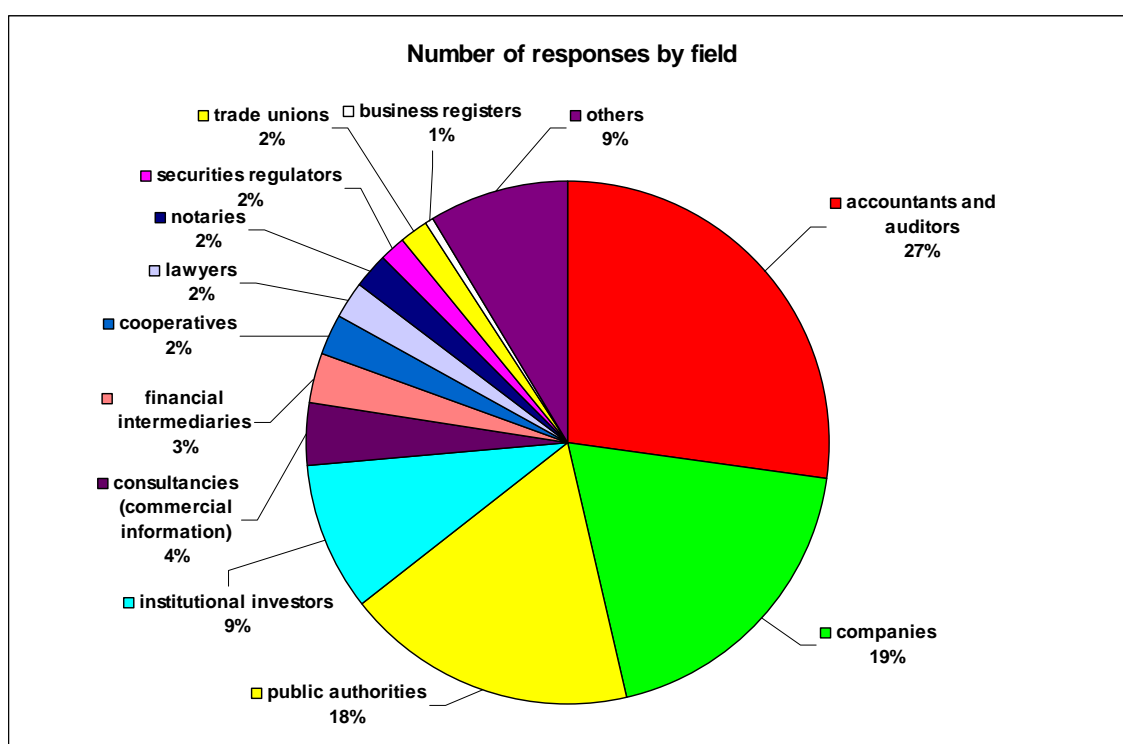
**THE INTERNAL MARKET AND SERVICES
DIRECTORATE-GENERAL**

DECEMBER 2007

On 10 July 2007, the Commission adopted its communication on a simplified business environment for companies in the areas of company law, accounting and auditing. In this communication, the Commission set out its proposals for reducing administrative burdens and adapting the acquis in these areas to the needs of today's businesses.

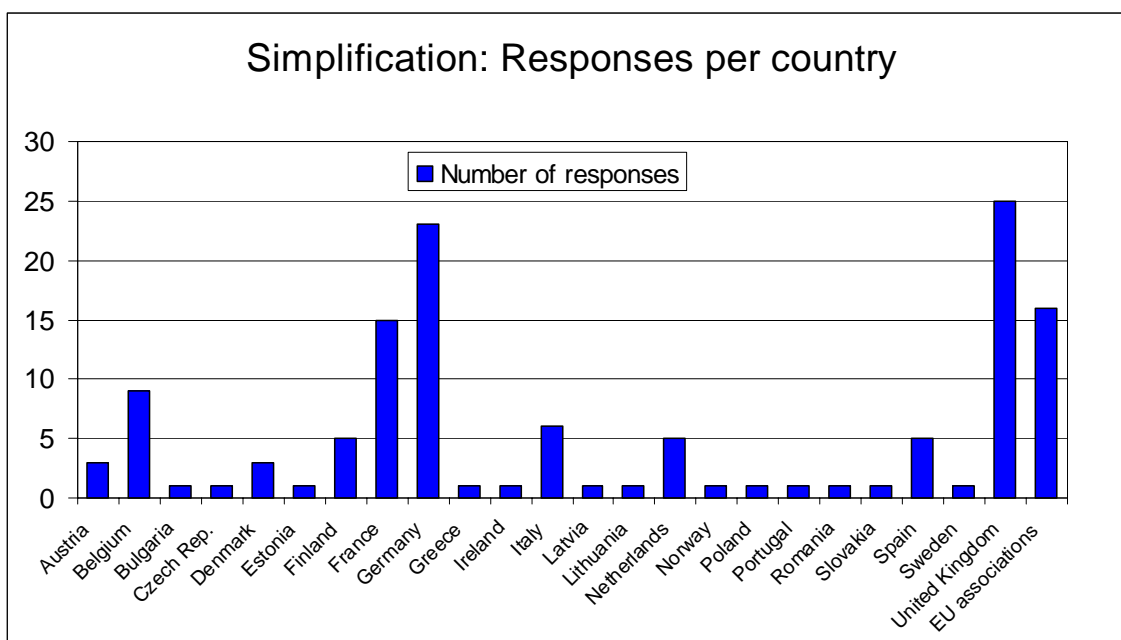
On 22 November, the Competitiveness Council adopted Council conclusions¹ welcoming the Commission initiative and calling on the Commission to expedite consideration of responses to its communication and, where appropriate and preferably before the end of 2008, bring forward proposals, based on impact assessments. The Legal Affairs Committee of the European Parliament is currently working on a report on the communication to be adopted early in 2008.

In addition, 18 Member States' governments, the government of one EEA country and 110 stakeholders reacted to the invitation, in the communication, to submit comments on the proposals in writing, by mid-October 2007.



These contributions from governments and stakeholders originated from 23 countries in total, including 22 Member States. A number of contributions were also submitted by European bodies and associations.

¹ Council document 15222/07 DRS 48



DG MARKT would like to thank the interested parties who sent in written opinions for their contributions.

This report summarises the reactions that DG MARKT received to the communication and the main comments made. It does not provide detailed statistical data, but rather seeks to present a qualitative assessment of the contributions received. It also does not represent any indication as to what follow-up could be given, by the Commission, to the July communication.

1. EXECUTIVE SUMMARY

A clear majority of those that reacted to the proposal to repeal certain company law directives did not support it. The main argument put forward was that these directives provide legal certainty and that their repeal would rather cause additional costs than lead to savings for companies.

However, about three quarters of those who took a position on the question whether individual simplification measures should be proposed supported the idea. They considered that the Company Law Directives are in some parts overly descriptive and restrict the flexibility of Member States and companies beyond what is really necessarily. There was, in particular, overwhelming support for the proposals to abolish the requirement to publish details contained in the register in the national gazette (First Company law Directive) and to oblige Member States authorities to accept certified translations prepared and accepted in another Member State (Eleventh Company law Directive). On the proposal to reduce, at EU level, the reporting requirements in the case of domestic mergers and divisions, there was a slight majority supporting this idea, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents. The majority of respondents supported, however, also the idea to streamline the creditor protection rules in these cases with the recent modification of the Second Company law Directive and to reduce the requirements for mergers with 90% or wholly owned subsidiaries.

Concerning the proposals put forward in the communication in the areas of accounting and auditing there was clear support from respondents for the proposal to introduce a Member State option to exempt micro-entities from the scope of the accounting directives. The proposal to extend the transition period to the status of SME to five years met some scepticism. However, a period of three years was considered acceptable. A slight majority of respondents disagreed with the potential relief from publication requirement for small entities. Also the idea to allow unlimited liability medium-sized companies to follow the rules for small companies met support whereas respondents were split over the proposal to take the same measure with a view to management-owned companies. Finally, the proposals for more minor simplification measures for all companies were supported in respect of audit exemptions under specific circumstances, a clarification of the IAS Regulation as well as the deletion of certain disclosure requirements.

2. GENERAL REMARKS

Respondents in general welcomed the initiative to address the issue of administrative burdens for companies, and in particular small and medium-sized ones. A number of respondents, however, stressed that any simplification should take full account of the advantages of harmonisation and that thorough impact assessments should be established in order to support individual simplification proposals.

In the area of company law, reactions to the proposals seemed to be influenced mainly by geographical origin and less by the sector the respondents belonged to. However, this was not the case for the proposals concerning accounting and auditing where support came in particular from companies and, in many instances, from investors and public authorities whereas the reactions from the side of the accounting and auditing profession and from consultancies to these proposals were often critical.

3. OPTION 1: PLACING THE FOCUS ON CROSS-BORDER PROBLEMS (SECTION 3.1.1 OF THE COMMUNICATION)

In the communication, reducing the *acquis* in EU company law to those legal acts that aim at solving specific cross-border problems was proposed as one possible way forward in company law. Under this option, it was therefore suggested to repeal directives such as the Third, the Sixth, the Twelfth and – subject to the outcome of the ongoing outside study on the current capital maintenance system – the Second Company law Directive.

About half of the respondents took a position on this option 1. Of those respondents, about one third expressed themselves in favour of the proposal whereas two thirds opposed it.

Those who supported the proposal pointed out in particular that EU company law in its current form is too inflexible and hinders regulatory competition. A number of these respondents, however, preferred taking a by case-by-case approach: the directives should be judged one by one and article by article in order to establish whether the provisions are relevant to the effective functioning of the single market.

This approach was reflected in the views expressed on the different directives mentioned in the Commission communication: about a quarter of those respondents who took a

position on the Third and the Sixth Directive were in favour of repealing these directives whereas only one fifth considered that the Second Directive should be repealed. However, about two fifths of the respondents either asked for a repeal of the Twelfth Directive or indicated that they could accept such repeal.

Those respondents that expressed themselves against option 1 stressed in particular the positive effects of harmonisation. In their view, there are instances when it is valid to impose minimum standards which apply only at the domestic level, thus ensuring at least a partial level playing field throughout the EU. In particular, the repeal of enabling legislation is seen as counterproductive. Furthermore, they consider that the reduction in legal certainty caused by the repeal of the directives will cause new costs to companies that will outweigh the savings. Additional costs will, in their view, also be created for the other stakeholders if they have to deal again with 27 different legal systems in the future. This is likely to have a harmful effect on the confidence, in particular, of non-resident shareholders and creditors. Some respondents who opposed option 1 also took the view that the practical effect of such measures would be limited as Member States will not necessarily make use of the new flexibility.

With a view to **the Third and the Sixth Company law Directives**, opponents to the proposal of repealing the directives believe that the directives' transparency requirements create cross-border benefits and stressed that these directives form the basis for the Tenth Company law Directive on cross-border mergers. One respondent also recalled that the harmonisation of the transmission of rights and obligations in the directives has advantages for companies (e.g. patents of the merging companies in all Member States are automatically transferred to the acquiring or recipient company). Those that supported a repeal of these directives often considered these directives as outdated, in particular after the adoption of the Directive on cross-border mergers, or found the rules much too detailed and considered that they unduly restrict the flexibility of Member States and companies.

On the **Second Company law Directive**, most respondents took the view that the outcome of the outside study commissioned by the Commission in 2006 should be awaited before taking further action. On the substance, a number of respondents, however, considered that the rules of the directive are overly restrictive, impose excessive burdens on companies and do not achieve its objective to protect, in particular, the creditors of the company. Today financial mechanisms are much more sophisticated than at the time of the adoption of the directive. In order to increase the flexibility, one respondent proposed to introduce a Member States' option to allow for real non-par value shares. The large majority of those respondents who expressed a view on the Second Directive opposed the proposal of repealing the directive, mainly for the reason that the provisions provide for the necessary protection to investors and creditors, that the provisions on distributions to shareholders are important in order to preserve company and shareholder value and because pre-emption rights are considered as an important mechanism to protect shareholder rights. The latter right was considered important even by many of those respondents who, in general, favoured repealing the directive.

Most respondents considered the possibility to establish single-member companies important. Those respondents that nevertheless supported a repeal of the **Twelfth Company law Directive** mainly took this view because they considered that today this principle is established in all Member States so that EU intervention is not necessary any more. At the same time, some of them regarded the formal requirements contained in the directive (registration requirement, obligation to take decisions in writing and to

conclude written contracts between the company and the member) as unnecessarily burdensome. Those respondents that expressed themselves in favour of maintaining the directive stressed the enabling character of the directive and the risk that the national legal systems will diverge after its repeal which would be particularly harmful for companies that have 100% subsidiaries in other Member States.

4. OPTION 2: MORE PRINCIPLE-BASED, LESS DETAILED REGULATION (SECTION 3.1.2. AND ANNEX 2 TO THE COMMUNICATION)

The second option offered in the communication consisted in the proposal to simplify at least parts of the Third, the Sixth and probably also the Second Company law Directives as these directives, in their current form, leave Member States little flexibility to adapt their respective national systems to the evolving needs of businesses and stakeholders in general.

Just over half of the total replies took a position on this option. Almost three quarters of those who expressed a view were generally in favour of or, at least, could accept adopting individual simplification measures as a second best option after repealing some of the directives. Those who chose this option believe that there are provisions in the company law directives that are truly obsolete and have no real effect and should be repealed or amended. Simplification measures however should be examined and justified on a case by case basis.

Some respondents objected to the proposals under option 2 not because they did not see the need to simplify EU company law but because they expressed the concern that individual simplification measures might render the legal texts and the procedures more complex and costly than this is currently the case. They commented that it is very hard to set up a common technical method for simplification. Therefore if the repeal of the directives does not gain sufficient support, they would prefer not to amend the directives at all.

4.1. Reporting requirements under the Third and the Sixth Company law Directives

Not all respondents who generally support option 2 commented on the individual simplification measures set out in the annexes of the communication. Among those who did comment there is a slight majority in favour of the detailed proposals to amend or repeal the reporting requirements in the Directives, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents.

Those respondents who are in favour of changing the rules on the reporting requirements (the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement) consider that it would be better to leave it to the Member States to fit the respective information obligations in their legal system. At Community level it would be sufficient and more appropriate to set out an obligation to provide for adequate, transparent and objective information to shareholders covering not only the economic and legal justification for the operation but also its financial terms and the valuation of the share exchange. However, the way by which such information is to be provided, in the view of these respondents, can be left to the Member States to decide.

Half of those respondents who expressed themselves in favour of amending the rules on the reporting requirements are in favour of abolishing the requirement of drawing up the respective reports or statements only where shareholders renounce to them. Most of these respondents suggest that this decision would have to be taken by unanimity.

According to some respondents, the possibility of differentiating between listed and unlisted companies regarding the reporting requirements could also be considered. While it is essential to keep the requirements to protect the shareholders of listed companies, the by-laws of unlisted companies in their view may set out different requirements.

A number of respondents who oppose changing the legislation stress the importance of the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement in ensuring the transparency of the operation and in the protection of shareholders' interests. In their view, these reports provide important information for the shareholders and facilitate understanding of the motivations and the financial arrangements of the merger or the division.

Regarding more substantial changes, a significant number of respondents mention that shifting from ex-ante information to ex-post liability may be costly and lessens the efficiency of shareholder protection. In particular, the cross-border enforcement of claims for damages is difficult. Some point out that such a change would reduce the positive impacts of the provisions of the Transparency Directive and the Shareholders' rights Directive facilitating cross-border voting.

Some respondents indicated that mergers or divisions are rare events in companies' lives and that therefore the related reports do not constitute a relevant cost factor. Accordingly the proposed modifications would not result in significant cost-savings for the company.

4.1.1. Written report by the management in case of a merger or a division

Slightly more than half of those who expressed a view on this question support the proposal to amend the requirement on the written report or to leave it to the Member States to decide if they require a report by the management explaining the draft terms of the merger or the division and setting out their legal and economic grounds.

Most respondents who are in favour of amending the provision believe that the requirement of the written report of the management should remain as it stands but shareholders should be given the right to renounce to it. Most respondents suggest that this decision would have to be taken by unanimity.

Some suggest that shareholders should also be given the right to waive the management report in the case of a cross-border merger (Directive 2005/56/EC).

4.1.2. Independent expert report

Almost three fifths of the respondents who addressed this question took a position against abolishing or substantially amending the requirement for an independent expert report in a case of a merger or a division. Most of them referred to the recently adopted Directive 2007/63/EC amending the Third Company law Directive on mergers and the Sixth Company law Directive on divisions. This amendment grants an exemption under the requirement of the independent expert report if all shareholders renounce to it.

Most respondents argue that shareholders have a legitimate interest to be informed about the reasons and effects of the merger or the division, including the valuation of the share exchange ratio. The report ensures transparency and is indispensable to enable shareholders to take a well-informed decision at the general meeting.

A few of those respondents who are in favour of amending the requirement of an independent expert report consider that the report may be abolished if a clear point of reference exists for fixing the exchange ratio, as e.g. the stock price of listed shares, similarly as this is provided for in Directive 2006/68/EC amending the Second Company law Directive.

4.1.3. Financial statement

Slightly more than half of the respondents also expressed themselves in favour of the proposal to amend the provisions on the accounting statement that has to be drawn up in the case of a merger or a division. These respondents who supported the abolition of the statement consider the requirement for an accounting statement in all cases where annual reports are older than 6 months excessive. They believe it could be left to market forces to decide if such a statement is necessary. Some suggest that directors should be allowed to certify, in their written report, the amount of net assets and the net result for the relevant period and possibly other items on and off the balance sheet that were decisive in the setting of the share exchange ratio.

Several respondents consider keeping the requirement for a financial statement but allowing shareholders to renounce to it. The decision, in their view, would have to be taken unanimously.

The respondents who oppose the proposal underline the statement's role in shareholder protection. They claim that it is an important means for the shareholders to judge if the proposed exchange ratio is appropriate.

4.1.4. Double reporting requirement in the case of a division

Relatively few respondents – less than one third - expressed a view on the proposal to abolish a double reporting requirement in the Sixth Company law Directive. The Directive allows Member States only to provide that the report on consideration in kind (Second Directive) and the expert report on the draft terms of division may be drawn up by the same expert. They cannot grant an exemption from the double reporting requirement.

A minority of respondents opposed the modification of the provisions for the reason that the expert report under the Second Directive and a report on the draft terms of the division under the Sixth Directive have different objectives. In their view the former requires objective measurement while the assessment of the share exchange ratio aims at ensuring that the exchange ratio is appropriate.

The majority of respondents, however, supported the proposal of granting an exemption to companies from one of the reporting requirements and underlined that even if the two reports do not serve the same purpose, measuring the value of the contribution in kind is a precondition for the assessment of the share exchange ratio. Therefore the report on the draft terms of the division may be sufficient. Producing only one report could bring about cost savings to the company.

4.2. Protection of creditors under the Third and the Sixth Directives

Two thirds of the respondents who expressed a view on this question agree that the creditor protection rules in the Third and the Sixth Directives should be aligned with the provisions of the Second Directive as amended by Directive 2006/68/EC.

Those who support the proposal to require creditors to credibly demonstrate to the administrative or judicial authority that, in the event of a merger or a division, their interest is at stake, emphasise the importance of increased coherence of EU company law provisions.

Some respondents in the minority suggest waiting to see how the amendment of the Second Directive is applied in practice. One respondent considers that the provisions in the Second Directive are stricter and give less leeway to Member States than the rules of the Third and the Sixth Directives.

4.3. Protection of shareholders of the acquiring/recipient company in the Third and the Sixth Directives

Less than one third of the respondents commented on the proposal to give Member States the right to determine the conditions that have to be fulfilled if the acquiring/recipient company does not wish to hold a general meeting to decide upon the merger or the division.

Two thirds of those who responded to the question believe that the respective rules should remain subject to EU law. Many argue that holding a general meeting is essential to ensure shareholders' rights and to reasonably limit directors' liability since the resulting company does not only take over assets but also liabilities.

The minority in favour of the proposal consider that the general meeting should be discharged of duties that are parts of the day-to-day management of the company. It would reduce transaction costs for companies.

However, a slight majority of the respondents who gave a reply to the question agreed that some flexibility should exist at least in the cases of the transfer of the assets of a wholly owned subsidiary and of the acquisition of a subsidiary whose parent company already holds 90 % of the shares.

5. ADDITIONAL SIMPLIFICATION MEASURES IN COMPANY LAW (SECTION 3.2 AND ANNEX 3 TO THE COMMUNICATION)

Alongside with both options presented in the paper for company law, a number of individual simplification measures were proposed, in order to reduce administrative burdens that are linked to certain directives whose usefulness as such was not put into question by the communication.

5.1. National gazette

In particular, it was proposed with a view to the **First Company law Directive** to abolish the requirement to publish information in the national gazettes that also has to be entered into the Member States' commercial registers, to the extent that the publication in the national gazette entails additional costs for the companies.

This proposal was supported by an overwhelming majority of respondents. A number of them stressed, however, that in this case the electronic register should provide a daily transaction lists. Some respondents furthermore, took the view that the requirement for publication in the national gazette should only be deleted from the directive. It should then be left to Member States to decide whether they want to impose such an obligation at national level. The minority of respondents that opposed the proposal mainly put forward the arguments that the current system functions well, that the electronic registers are not sufficiently developed yet to provide an equivalent service, that costs caused to companies by this requirement are relatively minor or that they oppose individual simplification measures in general (see above under point 4).

5.2. Certified Translations

The second proposal contained in this section of the communication referred to the possibility, for Member States, to request translations in the context of the establishment of a branch under the **Eleventh Company Law Directive**.

A very broad majority of respondents agreed with the proposal to oblige Member States to accept certified translations to the extent that they are accepted by the judicial or administrative authorities of the Member State where they were established. Those respondents stressed that Member States' laws sometimes impose excessive requirements, such as for notarisation. However, many respondents emphasised the importance of guaranteeing that the translation is reliable which would be the case if it is certified in a way accepted by the other Member States' authorities. The few respondents that objected to the proposal referred for example to the differences in certification procedures in the Member States or opposed individual simplification measures in general (see above under point 4).

5.3. Registered office of a European Company

A clear majority of respondents also supported the proposal to adapt Article 7 of the **Statute for a European Company (SE)** concerning the company's registered office to the "Überseering" jurisprudence of the European Court of Justice. These respondents considered that the change would give European Companies more flexibility in structuring their operations. Some respondents drew the attention to the fact that a practical interest of the company in having its registered office in another Member State than the administration can in particular exist where the administrations of different companies of one group are concentrated in one place in order to reduce the administrative expenses. Those respondents that opposed the proposal put forward in particular that the current rule provides more transparency and that the "Überseering" judgment only applies directly to companies under national law, or considered the proposal not to be a priority, in view of the limited number of SEs up to date.

6. ACCOUNTING AND AUDITING (SECTION 4 AND ANNEX 4 TO THE COMMUNICATION)

In the areas of accounting and auditing, five different measures had been identified in the communication that aim at reducing the administrative burdens, notably for small and medium-sized entities, while maintaining the goal to keep and improve accounting and auditing quality in the EU.

Each single measure is summarised in identical order as it appeared in the Commission Communication with no prejudgement whether or not and how to pursue these in the future.

6.1. Introduction of "Micro entities"

The Commission proposed to introduce a new category of so called micro entities in the Fourth Directive, which could be optionally exempted by Member States from the accounting directives. Micro entities are tentatively defined as entities with:

- less than ten employees,
- balance sheet total below 500,000 EUR, and
- turnover below 1,000,000 EUR.

The proposal to introduce the micro entities definition into the Fourth Directive was welcomed by a majority of those respondents that commented on the issue (about 80% of the total number of respondents). Nine respondents stated that the tentative figures defining the thresholds for micro-entities should be higher, seven wished them to be lower.

Those respondents that welcomed the proposal considered it a major reduction of administrative burden for those entities, which will encourage new start-ups through removal of disincentives to incorporation. Support was the strongest amongst public authorities and companies where more than four fifths expressed themselves in favour of the proposal. There were also comments suggesting that the thresholds for the micro entities should be as high as currently defined by Article 11 of the Fourth Directive for small companies. Those that opposed the proposal, primarily accountants and auditors, took the view that, despite the possibility of Member States to maintain equivalent requirements at their level, it would lead to an abolition of bookkeeping and preparation of accounting data in general for those entities.

6.2. Trespassing the thresholds for SMEs

Under this topic three issues were discussed:

- to prolong the two-year period in Article 12 of the Fourth Directive to five years;
- to implement a one year period for those entities ceasing to exceed the thresholds instead of the existing two years period (Article 12); and
- to change the general procedure on how to amend and update the thresholds.

Around 60% of respondents commented on the first issue and about 40% on the second one. Amongst these respondents, a slight majority were against the proposed changes; however, replies coming from companies were almost unanimously in favour. A major concern of the opponents was that an exceptionally bad year in terms of financial thresholds of Article 11 could result in a 5 year switch to the small companies' accounting regime (as a consequence of combining the two proposed changes). In their view, this effect was likely to lead to abuse. However, more than one fifth of these opponents would agree if the prolongation was limited to a period of 3 years. Some also suggested that it should be made a Member States' option.

Only 30% of the responses took a view on the last question concerning the change of procedure to amend and update the thresholds. However, almost four fifths of these were rather positive, expressing a broad agreement that the current process needs to be streamlined. Supporters were in favour of periodic updates with some kind of reference or indexation, e.g. according to the percentage of inflation rate.

Opponents argued that the threshold criteria are politically important and therefore should not be decided purely on technical grounds.

6.3. Relief from publication requirement for small entities

Around three quarters of all respondents commented on the issue with a majority expressing themselves against the proposed change. The strongest support for the proposal was expressed by companies with three quarters of them pleading in favour. The most vocal opponents were information providers (consultancies) who use the financial data in order to feed their databases.

Supporters of the proposal stressed that in the present situation mainly the competitors of small businesses benefit from the availability of information. Opponents took the view that publication is not expensive, especially taking into account electronic possibilities such as XBRL. They also highlighted that the proposal would lead to a decrease in transparency and reliability with potential counterproductive results like the increase in credit costs. It was also stressed that the publication requirement is seen as a consequence of the limited liability status which requires that some information is provided to the stakeholders of the companies.

6.4. Extension of exemption for companies without particular external user

6.4.1. Management owned companies

Little more than half of respondents provided comments on the proposal to allow medium-size companies whose managers are at the same time their owners to follow the same regime as the one applying to small companies. Their views were split evenly. However, among the companies, a majority of four fifths supported the proposal.

Opponents to the issue stressed the interests of stakeholders and the overall importance to maintain medium-sized enterprises transparent. The risk based approach was also criticised as being vague and creating a new, unnecessary category of companies. Technical problems of enforcement were raised as well, pointing out for example to the lack of ownership databases.

6.4.2. Unlimited liability medium companies

Almost half of respondents commented on the proposal to render the regime for small companies also applicable to unlimited liability medium-sized companies, and about two thirds of these expressed themselves in favour. The strongest support came from companies that were almost unanimous in their positive assessment of the proposal.

Some of the supporters even suggested extending the scope of the exemption to all unlimited liability companies instead of restricting it to medium-sized companies.

Opponents stressed the information needs of stakeholders.

6.5. Simplification for all companies

6.5.1. Full use of Article 57 – audit exemptions under specific circumstances

Almost half of the respondents took a position on this proposal. A large majority of two thirds were fully or rather supportive. Respondents from Member States which have made use of Article 57 generally provided a positive feed back. Respondents mainly supported the sole exemption of statutory audit, even though concerns were put forward concerning the risk of further concentration of the audit market into the hands of big players. Some put forward that given existing consolidation audit techniques, the benefits of the proposed measures might not live up to the expectations. Some supported consistency of auditing practice with consolidation requirements (IFRS). A number of respondents urged the Commission to investigate why only a few Member States have so far implemented the options in extant Article 57 in their jurisdiction, and call for further impact assessment.

6.5.2. Clarification of the relationship between the IAS regulation and the Seventh Directive

About 40% of respondents commented on the proposal to clarify the relationship between the IAS regulation and the Seventh Directive, and in particular that parent companies with immaterial subsidiaries do not need to prepare IFRS consolidated financial statements. These respondents were strongly in favour with companies being unanimously positive.

Supporters encouraged also further clarifications of the IAS Regulation, e.g. whether listed companies that do not form a group should follow IFRS, and addressed more detailed questions on the interlinkage between the IAS regulation and national accounting regimes.

6.5.3. Consolidation requirement for personal holdings

Less than one fifth of respondents elaborate on this issue, with a majority of these being in favour.

6.5.4. Abolition of deferred tax accounting

This issue attracted the attention of about 40% of the respondents, with a clear majority of them being in favour; all companies supported the proposal.

Some commented that it is unclear whether the proposal is referring just to SMEs (as stated in the last sentence of the respective paragraph of the Communication) or to all companies as referred to in the title. Therefore those, who read it as restricted to SMEs, advocated for relief to be granted to all companies for their separate and consolidated accounts. Others would prefer this becoming a Member State option.

Opponents claimed that deferred taxes contain useful information and stressed that in any case there is already an option for Member States to allow for abridged notes without deferred tax disclosures for small companies. Others suggested differentiating this measure in the way that there should be a mandatory abolition for small companies, but a requirement for full consideration (accounts and disclosures) for medium-sized and large companies.

6.5.5. Formation expenses

The proposal to repeal the requirement for disclosure of an explanation of formation expenses attracted attention of about 40% of the respondents, out of whom an overwhelming majority showed to be in favour. The strongest support comes from companies and from public authorities.

Proponents favoured an even stronger reduction of disclosure duties, such as the repeal of statements about auditors' fees, statements about derivative financial instruments (both for medium-sized companies) and statements regarding financial instruments stated at fair value (for small companies only).

Opponents argue that information about formation expenses is valuable. Some pointed out that exemption possibilities exist already for small companies (at Member State level).

6.5.6. Breakdown of net turnover into categories of activity and geographical markets

This issue was addressed by more than 40% of the respondents. Around three quarters were in favour, including almost all companies.

The arguments put forward corresponded to those set out with a view to the formation expenses (see point 6.5.5), with the reservation that large companies should continue to disclose.

7. ADDITIONAL SUGGESTIONS

7.1. Company law

In the Commission communication, it was emphasised that the list of measures proposed therein was not considered to be exhaustive, and the Commission invited stakeholders to submit additional suggestions for possible simplification measures. This invitation was seized by some of the respondents.

One respondent proposed to distinguish, in company law, better between listed and non listed companies, as this is the case already for the EU securities markets legislation: for non-listed company the rules could be much less detailed and more principle based and a bottom-up approach ("think small first") should apply. For listed companies, more complex circumstances would have to be addressed so that for these companies the rules could have a grater level of detail.

With a view to the Third and the Sixth Directive, two respondents proposed to remove the current requirement to make available the last three annual reports at the registered office of the companies involved. At least for the two reports on the previous financial years it should be sufficient to make them available online, via the company's website.

Concerning the Eleventh Directive, some respondents took the view that the current situation where it is only ensured that the information is available at the moment of the registration of the branch is not satisfactory. Although the directive contains rules to have changes concerning the mother company filed at the branch's register this is not enforceable in practice. Also, the register of the parent company should be informed

about changes in the branch register. In this context and also from a number of other respondents there was a call on the Commission to increase its support for the BRITE project, in order to make sure that information can be exchanged via the European Business Register (EBR).

Another proposal that was made was to look not only at the Company law Directives but also at the Capital markets Directives.² Finally, one respondent suggested proposing a single simplification directive in case option 1 would not obtain sufficient support.

7.2. Accounting

In addition to responding on questions, commentators presented the following additional suggestions on the accounting side of the Commission Communication:

Many respondents perceived the need to prepare different statements for different users (tax, statistics, etc.) as a major burden, and therefore encourage general work on 'all purpose' financial statements accompanied by single filing.

In terms of disclosure it was suggested that Commission should exert pressure on Member States to utilise already existing exemption options in accounting directives.

Some respondents commented on the current IASB draft "IFRS for SMEs" by stating that it is too complex and not focussing enough on the particular user needs and thus not suitable for SMEs.

A call to reduce the number of options available in the directives was also issued. Other respondents, however, highlighted the need to keep options available to Member States so as to accommodate accounting requirements to national setting (especially where threshold values are concerned).

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² Here, it should be noted that the ongoing exercise to measure administrative burdens also extends to certain Financial Services and Capital Markets Directives. Results of this measurement will be available in the course of 2008.