



OPINION OF THE HIGH LEVEL GROUP

Subject: Administrative burden reduction; priority area *company law / annual accounts*

I. Background

- (1) During the High Level Group (HLG) meeting of 15 April 2008 the Consortium¹ (hereinafter referred to as CST) presented its findings regarding the measurement as well as reduction proposals concerning the priority area *company law*, contained in the draft final report on this area. As agreed with the chair of the HLG a group of members (Ms. Fritsch, Mr. Corte-Real Goucha, Mr. Gibbons, Mr. Ludewig and Mr. Potdevin) was asked to prepare a draft opinion of the HLG regarding this priority area. Preparatory meetings were held on 21 April, 21 May and 4 July. The findings of the draft final report and in particular the reduction proposals contained therein have been closely analysed and discussed. Further proposals and comments were made by the members. During its meeting on 29 May, the Group discussed the accounting and auditing rules of the Fourth Directive² (see below) and, as no consensus could be reached, voted upon the proposal to allow Member States to exempt micro-enterprises from these rules.
- (2) Company law is one of thirteen priority areas chosen for the measurement exercise within the Action Programme for Reducing Administrative Burdens in the European Union. More than 40 pieces of legislation in these thirteen priority areas are believed to account for over 80 % of the administrative burden of EU origin³. Company law was selected as a pilot area, as measurement exercises conducted by Member States hinted at significant administrative burdens in this area. Company law is the single biggest priority area by number of information obligations (IO), and it is also expected to have extensive reduction potential.

¹ Capgemini, Deloitte, Rambøll management; assigned by the Commission to measure administrative burden based on certain EU legislation and to identify measures to reduce this burden.

² Fourth Council Directive of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC).

³ See Commission Working Document of 30 January 2008, COM(2008)35, p. 3.

- (3) The HLG gives the following opinion:

II. General Comments

- (4) The priority area company law is of major importance as regards cost of complying with information obligations and the number of enterprises subjected to them. If the European Union does not tackle this area in a persuasive manner, the ambitious reduction objective will not be met. Preparing a significant reduction package for this area in 2008 is important for the momentum and credibility of the action programme.
- (5) The Action Programme for Reducing Administrative Burden will only be successful, if businesses “feel” in their daily practice and in net terms that unnecessary administrative burden has been lifted from their shoulders. Therefore, the European Union and Member States have to cooperate in order to ensure that administrative burden reduction at EU-level will not be maintained or re-introduced at national level. All actors at all levels must work together, in order to achieve the ambitious target of cutting red tape by 25 % by 2012, focusing on relevant and significant objectives.
- (6) Whenever legislative proposals are presented, the Commission must draw up the necessary impact assessments⁴. In particular, the HLG calls upon the Commission to take full consideration of stakeholders’ input from a qualitative as well as quantitative standpoint. The impact assessment should *inter alia* weigh the costs and benefits of each idea, its impact on market dynamics with a longer-term perspective. The report by the Consortium cannot replace the impact assessment.

III. Comments on the CST Draft final report

- (7) When transmitting the draft final report to the reporting members of the HLG, the Commission pointed out that it had not yet been evaluated. While the HLG is aware that certain imperfections are to be expected in a draft version of such a report, it is concerned by the number and the significance of the inaccuracies that were identified. In particular, the reduction figures may not be totally reliable. These inaccuracies made it difficult for the HLG to base its decision entirely on the draft final report. The HLG looks forward to receiving a properly revised version of the report.
- (8) Members of the HLG questioned various figures and findings contained in the CST draft final report during the HLG’s meeting on 15 April 2008. Further issues were raised in the meeting of the reporting members on 21 April 2008 and later in written submissions to the Commission. The HLG advises the Commission to ask the CST to improve the draft final report and notably take into account the following comments:
- (9) – The overall figure of administrative costs seems surprisingly low when compared to the results of baseline measurements carried out in various Member States. It is therefore important that all gaps in the cost and population data are filled and that

⁴ http://ec.europa.eu/governance/impact/index_en.htm

methodological differences between the EU measurement and national baseline measurements are explained in detail.

- (10) – Unusual and unexpected results need to be explained, especially concerning cost figures attributed to certain member states, which are in many instances not in line with expectations. The HLG also recommends cross-checking extrapolation results with results from Member States which have completed their baseline measurements in the meantime (e.g. Austria).
- (11) – Description and analysis of the current rules of the company law *acquis* (e.g. on the “notes to the accounts”) and their transposition by the Member States (e.g. transposition of Art. 51(2) Fourth Directive) must be carefully checked for accuracy and improved where need be.
- (12) – More detailed explanations have to be given on methodological decisions made (e.g. interviews, baseline date, use of ISCO tariffs) and on the overall methodological consistency. Certain parts of the methodological explanations in the CST draft final report also need to be made more comprehensible to interested readers (e.g. the part on extrapolation).
- (13) The HLG calls for a significant improvement of the CST draft final report and would welcome the opportunity to review it at that stage and, if necessary, to consider the impact of its revision on this opinion.

IV. Comments on Reduction Ideas

- (14) The HLG notes that the Commission has made a major administrative costs reduction effort in the area of company law. The Commission has in particular tabled a range of ideas in July 2007⁵ and invited the European Parliament, Council and Member States as well as stakeholders to submit their views on these ideas with a view to establishing a broad consensus on them.
- (15) Some of the ideas presented in COM(2007)394 have already been taken up as Fast-Track-Actions in 2008. The HLG notes furthermore, that the Commission is preparing to follow up on the ideas concerning the reporting requirements in the Third and Sixth Directives (mergers and divisions)⁶. Most of the remaining reduction ideas from the Communication COM(2007)394 can be found in the draft final report. In this respect, the HLG is of the opinion that, in order to best use its resources and deliver, efforts should be focused on areas that have a direct, effective and significant impact on SMEs and where a broad consensus can be achieved.

⁵ Communication from the Commission on a simplified business environment for companies in the areas of company law, accounting and auditing (COM(2007)394)

⁶ Third Council Directive of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies (78/855/EEC); Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty concerning the division of public limited liability companies

- (16) The HLG has reviewed the proposals on the table on the basis of the Draft Final Report and used the quantitative estimations therein to give more extensive consideration to proposals with a higher reduction potential⁷. In so far as the HLG calls in this opinion upon the Commission to proceed on ideas, this must be done in accordance with due process, including impact assessment and stakeholders consultation, if not yet carried out.

IV.A Horizontal approaches

e-government Portals

- (17) The HLG is convinced that e-government solutions are essential not only to reduce costs, but also to simplify and modernise administrative requirements while maintaining the same degree of transparency and public access to information existing today. However, simply transposing paper work in an electronic environment is far from enough. To release the full potential of e-government solutions, administrations have to review their processes, as well as the structure, legal characterisation and format of the information they request. Even more important are the daily practices of administrations and the development of a true and widely shared "better regulation" mindset and service culture.
- (18) The HLG encourages the Commission and national administrations to consider the benefits of moving from a "push model" (whereby business has to submit data further to administrations' often redundant requests) to a "pull model" (whereby business provides data once into a single database and where administrations may find the data they need at their disposal).
- (19) The CST draft final report highlights the reduction potential of e-government portals, allowing companies to comply with the information obligations in electronic format over the internet. The CST estimates the reduction potential as regards information obligations contained in company law at EUR 272 mio. In the opinion of the HLG this seems to be a very conservative estimate. The benefits of e-government solutions still seem to be underestimated. Their multiplier effects, in particular, on other priority areas, have not been fully assessed, in particular, in the CST draft final report.
- (20) The HLG therefore fully endorses the idea of e-government portals if implemented as multi-purpose portals, i.e. one portal should be used for fulfilling as many information obligations as possible for as many areas as possible. The 'only once'-principle is important to business when filing information and concerns not only the company law area. The potential for administrative burden reduction by e-government portals will rise exponentially with the number of areas tackled. The HLG underlines in this context that any e-government initiative, be it on national and/or European level should be linked to existing programs and initiatives (e.g. e-Commission, i2010 initiative, XBRL initiative).
- (21) The Commission should examine whether legislative changes to the EU *acquis* can promote the use of e-government solutions. It should examine how it can reinforce

⁷ Please note that all reduction estimates cited in this opinion are taken from the Consortium's draft final report.

and interlink its own existing initiatives and use them for administrative burden reduction purposes. It should examine how the EU can contribute to international or multi-national initiatives in this field. The HLG strongly encourages the Member States to put in place e-government solutions and all parties to use them as much as possible.

BRITE Project

- (22) The BRITE project is a specific example of the use of IT technology in public administration. This project aims at achieving interoperability between trade registers throughout Europe and the development of a common European classification. It is designed to reduce unnecessary burdens without loss of information for stakeholders and to facilitate cross-border economic activities. The CST estimates possible savings to amount to EUR 161 mio. regarding certain information obligations stemming from the Eleventh Directive. The HLG fully supports this initiative.

Dissemination of Administrative Best Practices

- (23) The HLG notes significant differences in administrative cost between Member States and encourages the Commission to identify best practices and to disseminate these. This could include the use of e-government solutions as well as efficient administrative procedures or the experience Member States have made when using existing possibilities of exemptions in the directives on company law. The Commission should encourage the Member States to effectively implement such solutions, possibilities and best practices by monitoring and benchmarking progress made by Member States (and including publishing results).

IV.B Reduction ideas concerning Accounting and Auditing

- (24) The CST draft final report shows that the area of accounting and auditing may be a particularly complex area for enterprises depending on their size, the different options used by the Member States and the degree of gold-plating in the Member States. The CST draft final report shows that information obligations and the way they are carried out in accounting and auditing represent almost 90 % of the total administrative cost measured in this priority area. Taking into account the huge share of accounting and auditing within the company law area, the European Union can only meet the ambitious target of reducing administrative burden by 25 % by 2012, if decisive progress is made in this field.
- (25) The information obligations contained in the Fourth and Seventh Directive⁸ are particularly burdensome for small and medium enterprises; some rules do not seem to reflect the specific needs of smaller enterprises, since they were designed as general rules applicable to large businesses. All rules that apply to small and medium enterprises must be checked on whether they comply with the needs of smaller enterprises and whether they respect the “think small first”-principle. The HLG notes that these directives give Member States the possibility to exempt

⁸ Fourth Council Directive of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC); Seventh Council Directive of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC)

certain types of companies from certain provisions (e.g. Art. 11, 27, 44, 46(3)(4), 47(2)(3), 51(2) Fourth Directive). The HLG advises the Commission to inquire further into why these options have not been used by all Member States and to assess the related savings potential.

- (26) Keeping in mind the ambitious timetable, urgent actions are needed in this field in order to reach the target and the Commission should be commended for the measures it has proposed so far. This should, however, not exclude a mid-term general overhaul of the company law *acquis* that has not been tackled so far, in particular with a view of adapting the company law *acquis* to the needs of SMEs. Possible synergies with other areas should be examined with a view to implementing the “only once”-principle. Companies should be enabled to develop the most efficient and least burdensome solution to comply with legislation in other areas such as tax or statistics.

Exempting Micro-Entities from the Fourth Directive (Accounting and Auditing)

- (27) The CST presents the idea, based on COM(2007)394, of exempting micro-entities from the scope of the accounting directives⁹. The cost reduction potential of this idea is estimated at around EUR 5.7 bn. (77 % out of the total cost saving potential of EUR 7.35 bn., i.e. far more than all other proposals taken together).
- (28) On 29 May, the HLG discussed this idea. As no consensus could be reached, the Chair decided to proceed to a vote, further to which the following opinion was adopted:
- (29) The HLG is of the opinion that the Commission should propose a modification of the EU accounting and auditing rules, which allows Member States to exempt micro-entities from these rules.¹⁰ In this context the HLG asks the Commission to investigate the effects of a possible increase of thresholds regarding the definition of micro-entities.¹¹
- (30) This modification as well as the launch of the general overhaul of the accounting directives guided by the “think small first”-principle should take place rapidly.

Publishing Obligations of Small Companies (Art. 2, 47, 50 Fourth Directive)

- (31) The CST presents the idea of exempting small companies from the requirement to publish their annual accounts (Art. 50 Fourth Directive). In its first draft report the CST estimates the potential savings at around EUR 27 mio.¹². The HLG notes that

⁹ Stakeholders were consulted on COM(2007)394. For further information on the results of this consultation, please refer to http://ec.europa.eu/internal_market/company/simplification/index_en.htm.

¹⁰ This sentence was adopted with 9 votes in favour, 3 against and 2 abstentions.

¹¹ This sentence was adopted with 9 votes in favour, 2 against and 3 abstentions.

¹² This figure seems to be based only on internal costs; taking into account the fees of publishing information in accordance with Art. 3(4) First Directive would yield a higher estimate (up to EUR 145 mio) for the saving, but is however problematic in light of the said FTA.

the Fourth Directive already comprises an option for Member States to foresee a lighter publishing regime for small companies (Art. 47(2) Fourth Directive). It furthermore notes that the fast track action concerning Art. 3(4) First Directive (national gazettes), endorsed by the HLG and adopted by the Commission on April 17, will reduce publishing costs for all companies, including small companies. The HLG is of the opinion that there remains much scope for reducing the burdens deriving from the requirement to publish annual accounts for small companies. The HLG recommends the development of e-government solutions and the dissemination of best practices.

- (32) The HLG invites the Commission to propose to grant Member States the possibility to completely exempt small companies from the obligation to publish their annual accounts according to the Fourth Directive¹³.

Audit Obligations of Small Companies (Art. 51 Fourth Directive)

- (33) The HLG takes note of the fact that the Fourth Directive already allows Member States to exempt small companies from the statutory audit (Art. 51(2) Fourth Directive). If all Member States made full use of this exemption, this would entail an additional potential reduction of administrative costs of EUR 584 mio. as stated in the CST first draft final report.
- (34) The suggestion to convert the existing option into a general rule would be one way of ensuring the exemption of small companies from statutory audit. However, this could be seen as disproportionate, as this exemption has already been used by a significant number of Member States. Other Member States are likely to follow this example, e.g. a government committee in Sweden has presented a proposal to exempt small companies from statutory auditing in early April 2008. This case nevertheless illustrates the need for cooperation between the EU and the Member States. The HLG therefore calls upon the Commission to encourage the remaining Member States to make use of the existing exemption¹⁴.
- (35) As an alternative to the above, the CST presents the idea of allowing small companies to have only a “limited audit” of their annual accounts performed. The reduction potential of this idea is estimated at half of the estimated figure above, i.e. EUR 292 mio. The HLG invites the Commission to investigate the potential for an assurance service lower than the audit applicable to smaller entities in the context of a general overhaul of the accounting and auditing regime for SMEs.

Further ideas concerning the Fourth Directive (Accounting and Auditing)

- (36) The HLG notes that certain ideas from COM(2007)394 do not figure in the draft final report of the CST¹⁵. These ideas concern especially:

¹³ This sentence was adopted with 9 votes in favour, 5 against and no abstentions.

¹⁴ Mr. Potdevin disagrees with the last two sentences of this paragraph.

¹⁵ The HLG thanks Mr. Ludewig for having re-tabled those ideas.

- (37) – Introducing more flexibility concerning the thresholds for small and medium sized enterprises in the accounting directives while safeguarding legal certainty and predictability (Art. 11, 27 Fourth Directive)
- (38) – Allow medium-sized companies which are fully owned by their managers and unlimited liability companies falling under the scope of the directive to use the regime applicable for small companies (Art. 11, 27, 47(2), 51(2) Fourth Directive).
- (39) The HLG asks the Commission to proceed further on the basis of these ideas, to draw up the necessary impact assessments (comprising quantification) and present legislative proposals.
- (40) The HLG asks the Commission to investigate the feasibility of additional ideas¹⁶, not contained in COM(2007)394. These ideas concern:
 - (41) – a simplification of the layout of the income statement for all companies in relation to extraordinary income and extraordinary charges by deleting Art. 29 and 30 Fourth Directive and amending Articles 23 to 26 Fourth Directive;
 - (42) – a simplification of the disclosure requirements for small companies as defined in Art. 11 Fourth Directive, and notably concerning the disclosure requirements specified in Art. 13.1, 33.2.(a)(second paragraph), 33.4, 35.1.(d) and 39.1.(c)(second sentence) and Art. 41.1 (second sentence), Art. 43.1.(4), Art. 42.(b) and Article 44 (all Fourth Directive);
 - (43) – the application of the exemption of Art. 11 Fourth Directive to all single-member private limited liability companies (as defined in the Twelfth Directive).

IV.C Reduction ideas concerning other areas of Company Law

Reduction Ideas Concerning the Third and Sixth Directive (Mergers and Divisions)

- (44) The HLG notes that the Commission is currently working on a revision of the reporting requirements under the Third and the Sixth Directive on mergers and divisions. This revision, which will be completed before the autumn 2008, touches upon several ideas on reporting requirements advanced in last year's communication (COM(2007)349) and figuring in the draft final report by the CST, that is
 - (45) – the idea to remove unnecessary reporting requirements concerning the valuation of contributions in kind in the context of an increase in capital linked to a division (Art. 8(1) Sixth Directive, Art. 27(2) Second Directive). The reduction potential is estimated by the CST at EUR 62 mio.
 - (46) – the idea of introducing a possibility for shareholders to waive unanimously the detailed written report by the management in case of mergers (Art. 9(1) Third Directive) and of divisions (Art. 7(1) Sixth Directive). The reduction proposal is estimated at EUR 3 and 3.3 mio. respectively.

¹⁶ The HLG thanks Mr. Potdevin for having presented these ideas.

- (47) – the idea to introduce the possibility for shareholders to waive unanimously concerning the provision of certain documents to shareholders upon request in cases of mergers (Art. 11(1) Third Directive) and of divisions (Art. 9(1) Sixth Directive). The reduction ideas are estimated at EUR 1.1 and 0.9 mio. respectively.
- (48) The HLG welcomes the efforts by the Commission to review the reporting requirements in these two directives. The HLG calls upon the Commission to present ambitious legislative proposals which realize as much as possible the reduction potential identified for these two directives whilst protecting both shareholders' and creditors' interest.

Obligation to call a general meeting in case of a serious Loss of Capital

- (49) The CST presents the idea to completely exempt micro and small entities from the obligation imposed on companies by Art. 17 Second Directive to call a general meeting in case of a serious loss of the subscribed capital. The CST estimates the potential savings at around EUR 60 mio.
- (50) The HLG notes that this idea raises questions on the protection of shareholders, creditors or third parties. Bearing this in mind, the HLG advises the Commission to take into account that there should be at least a requirement to inform shareholders in a timely manner, unless all shareholders are directors.

Planned Withdrawal or Restriction of Pre-emption Rights

- (51) The CST presents the idea to remove the obligation imposed by Art. 29(4) Second Directive, to inform shareholders of a planned withdrawal or restriction of pre-emption rights, for cases where a new issue of shares is made at market price. The reduction potential is estimated by the CST at EUR 7 mio.
- (52) The HLG does not endorse this idea in view of the opposition of stakeholders, voiced in the consultation leading to COM(2004)730, and the limited reduction potential.

Reduction Ideas concerning the Twelfth Directive¹⁷ (Single-member Limited Liability Companies)

- (53) The CST, based on COM(2007)394, presents the idea to abolish the following information obligations imposed by the Twelfth Directive (concerning single-member limited-liability companies):
 - (54) – the obligation to record in minutes or draw up in writing all decisions taken by the sole member exercising the powers of the general meeting of the company (Art. 4 Twelfth Directive)
 - (55) – the obligation to record in minutes or to draw up in writing contracts between the sole member and his company as represented by him (Art. 5 Twelfth Directive)

¹⁷ Twelfth Council Company Law Directive of 21 December 1989 on single-member private limited-liability companies (89/667/EEC)

- (56) The savings of removing these two requirements is estimated by the CST to be EUR 152 mio. The HLG supports these ideas and asks the Commission to proceed with the necessary legislative proposals. The Commission should, however, inquire into the feasibility of a distinction between the recording and the drawing up of decisions taken by the sole member acting as general meeting.

V. Conclusions

- (57) The HLG takes note of the suggestions made by the CST and other parties. Implementing these suggestions will be a major step on the way to reach the 25% reduction goal in 2012. The HLG will continue to collect, assess and present additional ideas for reduction measures.
- (58) In order to meet the objective of reducing administrative burden by 25 % by 2012, a common effort of all Institutions and Member States is required. The HLG therefore endorses the proposed measures for the priority area company law / annual accounts, subject to the principles detailed above, and calls upon all parties involved to continue to reflect on further possible measures.
- (59) As substantial administrative burdens originate also from national administrations, the HLG calls on the Commission to reflect on how to best encourage Member States to reduce these burdens.

Brussels, 10 July 2008