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FLASH INFO

The simplification of the accounting will not correspond with the “light” system of publications for the Luxembourg holding companies

This is the position taken by the Council of State in its opinion from July 17, 2015 on the implementation of the European directive from June 26, 2013 (“the directive”) concerning annual accounts¹.

The directive deals with the presentation and content of annual financial statements. It should have been transposed at the latest on July 20, 2015 in order to be applied as of the financial year starting January 1st, 2016. The aim of the directive is in particular the administrative simplification and reduction of administrative burden for small undertakings as well as to energize the small and middle sized enterprises.

One question arose: could holding companies, which meet the criteria set out in Art. 35 of the Commercial Register Law, defining the size of the undertaking (“The companies, which, at the closing date of the balance sheet, do not exceed the numbered limits of two of the three following criteria : - total balance-sheet : 4,4 million euros – net amount of the turnover : 8,8 million euros – total number of the members of the personnel being employed full-time and part-time during the financial year: 50”) qualify as small undertakings and benefit from the new system of administrative simplification?

In the first draft of the implementing law the Government and the Chamber of Commerce have considered an *at minima* interpretation of the directive: the new article 66 of the Commercial Register Law would have allowed small undertakings, including the majority of **holding companies**, to benefit from the exemption from certain disclosure requirements (such as the indication of the participations held) in the notes to the annual accounts.

However, the Council of State preferred to follow the recommendation of the “Ordre des Experts-Comptables” and the “Institut des Réviseurs d’Entreprises”, which gives priority to the interpretation of the directive in accordance with the spirit of the text.

The Council of State considers **the information related to the participations held by a holding company as essential in order not to jeopardize a true and fair view of the accounts. Not disclosing this information**

¹ Draft of the law N°6718 concerning the report on the payments done in favour of the governments and amending the different dispositions relating to the accounting and the annual accounts of the companies as well as the consolidated accounts of certain types of companies and

- Transposing the Directive 2013/34/UE of the European Parliament and the Council of June 26, 2013 pertaining to the annual financial statements, the consolidated financial statements and the related accounts of certain types of companies, amending the directive 2006/43/CE of the European Parliament and the Council and revoking the directives 77/660/CEE and 83/349/CEE of the Council ;
- Changing :
 - o Title II of the amended law of December 19, 2002 related to the trade and companies’ register as well as the accounting and the annual accounts of companies ;
 - o The amended law of August 10, 1915 concerning the commercial companies ;
 - o Title II of the 1st book of the Code of Commerce.

might contradict the purpose of the directive, the aim of financial transparency in Luxembourg and the priorities set in this context by the Government, the European Union, the OECD and the G20.

The next challenge for the Council of State was to integrate this obligation to disclose information in the law despite the fact that the provisions of the directive foreclose the possibility of demanding small undertakings in general, and holding companies in particular, to disclose this information.

The challenge was met by applying Art. 4 paragraph 6 of the directive to be transposed, which enables the Member States to demand the collection of this kind of information for the small companies “ 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.”

Therefore, the Council of State recommends extending the obligation to prepare, communicate and publish the information in the annual accounts set out in point 2 of Art. 65 of the Commercial Register Law also to small undertakings, including the majority of holding companies qualifying as such.

We will keep you informed concerning the promulgation and the enactment of the law.

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