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E-MAIL

JURI Draft Report on the Commission's Proposal on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings COM(2011) 684 - Alternative measurements basis of fixed assets at revalued amounts and of fair value – General financial reporting principles – Provision estimation - Amendments 6, 39 and 40 – Amendments 36, 37, 38 – Amendment 51– Clarification Article 21 (3)

Dear Mr. Lehne,

The Members of the EACB have taken note of your draft report for the JURI Committee on the Commission Proposal on the annual financial statements, consolidated financial statements and related reports of certain undertakings (revising and replacing the 4th and 7th accounting directives). We support the objectives of this draft report which provides greater clarity and a better comparability of financial statements. However, we would like to draw your attention to the following issues:

- We have doubts that full harmonization of accounting rules for small and medium-sized companies in Europe would be desirable and appropriate. Indeed, many important rules for companies, especially regarding taxation, remuneration and capital are based on national laws. We therefore consider that full harmonization in the EU is not desirable.
- We disagree with the complete deletion of Articles 6 and 7 which suggest the right of Member States to use alternative measurement basis both of revalued amounts and of fair value (Amendments 39 and 40). Indeed, in many countries, national standards already allow, if not even obliged, the use of these alternative methods. This deletion would have particularly far-reaching impacts on national accounting and reporting methods of credit institutions which are currently using these approaches. It should also be noted that alternative valuation approaches under Articles 6 and 7 could improve the information content of financial reporting compared to the historic costs model. The preparation of financial statements at historic costs without alternative approaches is not sufficient. Moreover, European accounting rules based on the Accounting Directive would only be competitive if the information, provided in the financial statements during the year-end closing, give a fair and clear view. We therefore strongly support Articles 6 and 7 and Recital 10 of the Accounting Directive.
- The principle of substance over form (Amendment 36) is a key accounting principle in commercial law. It strengthens the information in the financial statements. We therefore advocate maintaining this Article 5 (1) (h), as the Commission proposed it and not amending the essential principle.

The voice of 4.200 local and retail banks, 50 million members, 160 million customers

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- Your draft report suggests (Amendment 37) that the materiality principle should apply only for presentation and disclosure of financial statements. In many Member States, the principle of materiality in financial statements provides that both recognition and measurement but also presentation and disclosure should be subject to materiality constraints. Amendment 37 should be modified accordingly and we support not amending Article 5 1 (j) in this respect.
- The EACB is not in favor of the deletion of the reference to the "true and fair view" of the financial statements in Article 5 (3), (Amendment 38). The Members of the EACB think that the highest priority in the preparation of financial statements should be to give a true and fair view of assets, liabilities, financial position and results of the institutions. The preparer of financial statements should prove that he has a "true and fair view" at the year-end closing. We therefore support not deleting the reference to the "true and fair view" of the undertaking's assets, liabilities and financial position and profit and loss. Amendment 38 should be modified accordingly.
- Furthermore, you propose the modification of the wording of the rules regarding the measurement of provision (Amendment 51). In practice, the valuation of the provision is forward-looking and the amount of the provision depends on the future prices and the costs when the obligation is settled. We therefore recommend not changing the text proposed by the Commission for the measurement of provisions in Article 11 (11) subparagraph 3. Amendment 51 should be modified accordingly.
- Finally, we see an urgent need for the clarification of Article 21 (3) of the Commission's Proposal. Article 21 (3) provides for a member state option to exempt Public Interest Entities (PIEs) from different obligations in Article 21 (1) provided that they have issued securities other than shares that are publically traded. According to the wording, PIEs which have issued no securities at all would not be exempted. This evident mistake needs to be corrected. We therefore suggest amending Article 21 accordingly (see annex).

Should you have any questions, we would be happy to clarify the issues more precisely.

Yours sincerely,

Volker HEEGEMANN
Head of Unit

Hugo SALVAIRE
Adviser Banking Supervision



ANNEX

Suggestion for wording – Article 21 (3)

Text proposed by the Commission

(3) Without prejudice to Article 46, Member States may exempt public interest entities which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, from the application of paragraph 1(a), (b), (e) and (f), unless such public interest entities have issued shares which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.

EACB Suggestion for wording

(3) Without prejudice to Article 46, Member States may exempt public interest entities **which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC,** from the application of paragraph 1(a), (b), (e) and (f), unless such public interest entities have issued shares **admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, or unless such public interest entities have only issued securities other than shares admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, and shares** which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.