

Riigikogu esimees

Mr José Manuel Barroso
President
European Commission

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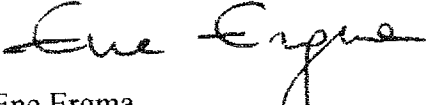
Reasoned Opinion of Riigikogu on the proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC (COM (2013)207)

Dear President Barroso

Riigikogu considered today at its Sitting 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 disclosure of nonfinancial and diversity information by certain large companies and groups under Article 5(3) of the Treaty on European Union and Protocol 2 on the application of the principles of subsidiarity and proportionality. Riigikogu decided that the proposal does not comply with the principle of subsidiarity.

I have enclosed a copy of the Resolution of Riigikogu that contains the Reasoned Opinion. I have also sent this letter to the Presidents of the European Council and Parliament.

Yours sincerely,



Enc Ergma
President of the Riigikogu

The Riigikogu is of the opinion that the proposal for the Directive of the European Parliament and the Council amending the Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups, does not comply with the principle of subsidiarity for the following reasons:

1.1. Under subsection 5(3) of the Treaty on European Union, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. In the explanatory memorandum of the proposed Directive, the European Commission states that many Member States have already adopted legal acts demanding that nonfinancial information be disclosed by companies. It therefore remains unclear why national level measures are not sufficient and Union level intervention is necessary.

1.2. In addition, the European Commission has not explained why it has chosen a Directive of all the possible measures, as this creates a binding obligation for the Member States to demand that companies and groups disclose their nonfinancial information. The field should first be regulated on the Union level by non-binding measures. As an alternative for a Directive, the Commission could make recommendations for achieving the set objective.

1.3. After all, company law is currently more in the competence of Member States, and companies generally exist on the basis of national law. This is also confirmed by the settled case law of the European Court of Justice which stipulates that companies are established in accordance with national law and exist only by virtue of the national legislation which determines their incorporation and functioning (judgment of the ECJ of 27 of September 1988 in Case 81/87 *Daily Mail and General Trust*, ECR 1998, p. 5483, paragraph 19; judgment of the ECJ of 16 December 2008 in Case C-210/06 *Cartesio*, ECR 2008, p. I-9641, paragraph 104; and judgement of the ECJ of 12 July 2012 in C-378/10 *VALE Építési kft*, yet to be published in ECR, paragraph 27). It is therefore up to the Member States to decide the correct balance between the obligations of companies and their freedom of enterprise, and the measures to be used to achieve this balance. The requirement that companies must give an overview of their assets and obligations, financial standing and profit or deficit is a sufficient measure for protecting the permanent interests of the capital companies. It is doubtful whether the obligation to disclose nonfinancial information would protect these interests to a larger extent.

1.5. It is also doubtful whether the proposal for a European Commission Directive is based on a correct legal basis. The proposal refers to the subsection 50(1) of the Treaty on the Functioning of the European Union, which says that in order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council shall act by means of directives. The proposal does not explain clearly how the obligation of companies to disclose nonfinancial and diversity information would help to attain the freedom of establishment. More than anything, the disclosure of financial information increases the administrative burden of companies and has a rather opposite effect to contributing to the freedom of establishment.