Danish proposals for simplification **September 2007.**

- fast track actions and proposals for priority areas

Area of the proposal	**No. of proposals**
Company Law	5
Maritime	3
Financial	4
Statistics	2
Environment	1
Total	**15**

Fast track proposals

1	**Company Law**
Legislation	3rd Council Directive of 9 October 1978 (78/855/EEC) and 6th Council Directive of 17 December 1982 (82/891/EEC)
Need for simplification	In case of a merger and division both a draft terms and a statement are required. The draft terms, that are to be drawn up by the administrative or management bodies, must contain a series of information regarding amongst other things the type, name and registered office, the share exchange ratio and the amount of any cash payment to the stockholders in the dissolving companies. The management body must in the statement explain and justify the plan. The statement must furthermore explain the fixing of cash payments to stockholders. Practice has shown that there is a considerable overlap between the two documents. To this must be added that the statements are often futile and therefore of very little practical use for the stockholders.
Proposal for simplification	On this regard it is recommended that the demand of a statement in case of a merger or division is abolished or alternatively that the two documents are compiled into one.
Reductions	€169.718 + €74.384
2	**Company Law**
Legislation	3rd Council Directive of 9 October 1978 (78/855/EEC)
Need for simplification	Report done by an impartial assessor in case of a merger where the continuing company is a public limited company and one of the dissolving companies is a private company (3rd council directive). Where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital there is in the 2nd council directive an obligation for the companies to present a report

	done by an impartial assessor – typically an accountant. 2nd council directive and 3rd council directive contain an exemption to this rule, which stipulates that a report is not required in case of a merger. The exemption however only involves public limited companies who are covered by these directives. This means that only mergers between public limited companies are exempted from the requirement of a report. In merger cases where the continuing company is a public limited company and one of the dissolving companies are a private company a report will therefore be required.
Proposal for simplification	It is recommended that the 3rd council directive is changed so that it becomes clear that all mergers are exempted from the requirement of an assessment report without regard to the fact only public limited companies are covered by the 2nd and 3rd council directive.
Reductions	€90.726
3	**Company Law**
Legislation	6th council directive of 17 December 1982 (82/891/EEC)
Need for simplification	<u>Assessment report in case of division (6th council directive)</u> As noted above, where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital there is in the 2nd council directive an obligation for the companies to present a report done by an impartial assessor – typically an accountant. 2nd council directive and 3rd council directive contain an exemption to this rule, which stipulates that such a report is not required in case of a merger. By mistake a similar provision has not been implemented in 2nd council directive or 6th council directive regarding divisions.
Proposal for simplification	It is recommended that an increase of capital and foundations as part of a division is also exempted from the requirement of an assessment report.
Reductions	€395.565
4	**Company Law**
Legislation	3rd Council Directive of 9 October 1978 (78/855/EEC) and 6th Council Directive of 17 December 1982 (82/891/EEC)
Need for simplification	<u>Accounting statement in case of merger and division (3rd and 6th council directive).</u> It is important to notice, that the fact, that an accounting statement in some circumstances is required is not a large burden in an AMVAB-perspective. The reason for this is however that the costs of drawing up such an accounting statement are so large that the companies avoid putting themselves in situations where an accounting statement

	is needed. The Accountant statement, that must be done in case the latest annual accounts relate to a financial year which ended more than six months before that date, is aimed at securing that the stockholders are able to take well informed decisions.
Proposal for simplification	It seems logical that the stockholders themselves have the opportunity to decide whether the document should be drawn up. This is however not possible with the current directives.
Reductions	€67.204 + €54.940
5	**Company Law**
Legislation	SECOND COUNCIL DIRECTIVE of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (77/91/EEC)
Need for simplification	Art. 15 (2) When the laws of a Member State allow the payment of interim dividends a interim accounts shall be drawn up showing that the funds available for distribution are sufficient.
Proposal for simplification	The Board of directors will be responsible, if for example a creditor incur losses due to a payment of dividens. It seems logical that the board of directors, who have the responsibility, also have the opportunity to decide which documents should be drawn up. This is however not possible with the current directive.
Reductions	€2.016.129
6	**Maritime**
Legislation	Regulation No 725/2004 of 31 March 2004 on enhancing ship and port facility security.
Need for simplification	Article 9 regulation 4 states: *"Six months after the date of application of the relevant measures referred to in Article 3, the Commission, in cooperation with the focal point referred to in paragraph 2, shall start a series of inspections, including inspections of a suitable sample of port facilities and relevant companies, to monitor the application by member States of this Regulation."* The fact is that vessels are very often inspected by a number of different authorities who perform inspections of the very same objects

	such as for example the efficiency of the vessel's access control, the presence of the vessel's certificates and to various degrees also the crew's ability to cope with the requirements in the vessel's Ship Security Plan: • All vessels to which Regulation 725/2004 applies were ISPS certified in 2004 by the Contracting Government • These vessels are being audited in the future by the Contracting Government on a regular basis • These vessels are being monitored closely by the Contracting Government as required in the ISPS Code reg. A 4.4 • These vessels are being inspected (incl. ISPS) by the Port State Control regime on a regular basis Further ISPS inspections will increase the administrative burdens on board the vessels.
Proposal for simplification	The Commission is encouraged to consider the above mentioned ISPS inspections on board ships as sufficient and consider to participate with Member States on the regular inspections. Thus, article 9 regulation 4 must be adapted accordingly to include a coordination of EU and national ISPS inspections.
Reductions	Save time for inspections on board ships and minimise the administrative burdens related to inspections (working hours).Thus, a co-ordination of EU/national ISPS inspections of ships will reduce the overall number of inspections to mutual benefit of all involved relevant parties. A rough estimate is that a national ISPS inspection takes two working days and is conducted nationally three times a year while an EU ISPS inspection takes three days. It is not yet possible to estimate the reductions as it is up to the Commission to decide the number of inspections. Therefore, it is impossible to estimate the overall costs in working hours saved.
7	**Maritime**
Legislation	Regulation No 725/2004 of 31 March 2004 on enhancing ship and port facility security.
Need for simplification	Article 6 concerning notification of security information prior to entry into every port of a member State. The ISPS already includes reporting procedures and in general ships are already monitored through AIS systems and reporting procedures to ports at arrival already exists. Reporting should be minimized due to workload of the crew on board ships and in ports.
Proposal for	The Commission is encouraged to consider whether the existing

simplification	requirement could be removed.
Reductions	Less administrative work load on board vessels and in ports. Assuming there are 20.000 reports annually and one report takes about 15 minutes, the administrative reductions will make a total around EUR 173,000 (DKK 1,300,000) annually according to a rough estimate. This estimate accounts for Danish ports only.
8	**Maritime**
Legislation	Council Directive 97/70/EC of 11 December 1997 setting up a harmonized safety regime for fishing vessels of 24 meters in length and over.
Need for simplification	Article 3 of the directive General requirements states: *"Member States shall ensure that the provisions of the Annex to the Torremolinos Protocol are applied to the fishing vessels concerned flying their flag, unless Annex I to this Directive provides otherwise."* Article 6 point 2 of the directive and regulation 6 of chapter I to the Annex to the Torremolinos Convention states in (1) (b) that surveys regarding the structure including the outside of the hull shall be carried out with intervals of four years. This requirement is in contradiction to the requirements adopted by the recognised organisations mentioned in Article 5 of the directive these organisations are carrying out surveys with intervals of five years. This means that a fishing vessel according to the rules of the recognised organisations have to carry out surveys within intervals of 5 years and according to the flag State rules within intervals of 4 years, which is a unnecessary burden.
Proposal for simplification	The need for harmonisation to a system as in the SOLAS convention (surveys within 5 years) is very much needed.
Reductions	Reduce the administrative burdens for the industry. Assuming a fishing vessel's life in average is around 40 years, the number of surveys is reduced by four surveys per vessel and a survey takes around eight working hours per fishing vessel, the administrative reductions will make a total of around EUR 185,000 (DDK 1,400,000) annually according to a rough estimate.
9	**Financial**
Legislation	Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation.
Need for simplification	Intermediaries (Tied agents) who only carry on the activity of insurance mediation under the full responsibility of one or more insurance companies should not be subject to registration requirements like independent intermediaries who act on their own behalf and under their own full responsibility.

	When intermediaries act under the full responsibility of one or more insurance companies there is no need for consumer protection in the form of a registration system. Insurance companies, which are fully responsible and to which consumers can refer if an intermediaries do not act correctly, will not allow their products to be sold by intermediaries who do not act in a proper way.
Proposal for simplification	Abolish the demand in article 3 for registration of intermediaries who act under the full responsibility of one or more insurance companies.
Reductions	Estimated €400,000 (proposal 9 and 10)
10	**Financial**
Legislation	Directive 2002/92/EC on insurance mediation
Need for simplification	The directive should be simplified regarding the registration requirements and the use of criminal records. For instance, when a bank – being an insurance mediation – is registered with the cooperating insurance company, art 3, it seems administratively burdensome and too excessive that also the persons within the management who are responsible for the mediation business. The requirement in art 4 according to which the management and any staff directly involved in insurance mediation shall provide a clean police record and be subject to current surveillance on this issue is also administratively burdensome. The fulfilment of the principle of "good repute" should be left to the banks and should not be based on a general requirement of providing a clean police record, unless where there is reason for that.
Proposal for simplification	Abolish the requirement in art 4 according to which the management and any staff directly involved in insurance mediation shall provide a clean police record and be subject to current surveillance on this issue.
Reductions	Estimated €400,000 (proposal 9 and 10)
11	**Statistics**
Legislation	Harmonize the nomenclatures in Intrastat, Extrastat and Prodcom Council Regulation (EEC) No 3330/91 on the statistics relating to the trading of goods between Member States.
Need for simplification	The nomenclatures in Intrastat, Extrastat and Prodcom are not identical; two different measures of quantity (net mass in kg, and secondary measure like litres or pieces) are required for trading information on some goods.
Proposal for simplification	The measures of quantity should be made meaningful in relation to the products. It often causes big difficulties for the enterprises to measure the weight of for example software and clothing. Furthermore it is of great importance that the measures of quantity are made similar in Intrastat, Extrastat and Prodcom. With similar measures more information can be transferred between the statistics.
Reduction	No studies have been made of the potential economic gains of a

	harmonisation of the nomenclatures. In Denmark the companies' administrative burdens from the statistics are: Intrastat 17 mio. euro per year, Prodcom 475.000 euro per year, Extrastat - import 4.750 euro per year.
12	**Environment**
Legislation	Harmonisation of VOC-definitions Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations. Directive 2004/42/CE of the European Parliament and of the Council of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC. 2002/739/EC: Commission Decision of 3 September 2002 establishing revised ecological criteria for the award of the Community eco-label to indoor paints and varnishes and amending Decision 1999/10/EC.
Need for simplification	The definition of a volatile organic compound varies in the Directives. It is generally not suitable to have different definitions, especially when the directives interact. Examples: In Directive 1999/13/EC a VOC is defined as: "…any organic compound having at 293,15 K a vapour pressure of 0,01 kPa or more, or having a corresponding volatility under the particular conditions of use." In Directive 2004/42/EC a VOC is defined as: "…any organic compound having an initial boiling point less than or equal to 250°C measured at a standard pressure of 101,3 kPa." In Commission Decision 2002/739/EC the same definition is used but with a different wording: "…a volatile organic compound is any organic compound with, at normal conditions for pressure, a boiling point (or initial boiling point) lower than or equal to 250 °C."
Proposal for simplification	The definitions should be harmonised; so the enterprises have one definition to comply with. Denmark appreciates the necessity of harmonisation of VOC-definitions in the 3 directives. Particularly because of the interfaces between the regulations. The Fast Track proposal may imply relaxation of administrative as well as economic burdens for both companies and authorities. Denmark therefore supports harmonization of VOC-definitions, provided that a future common VOC-definition ensures an equally environmentally strong regulation of VOC release as regulation according to the existing three directives.

Reductions	It has not been calculated how much the enterprises could save if the proposal was implemented, but it must be assumed that a clear set of rules would entail an economic gain, when the enterprises only would have one definition to relate to. A clear set of rules would also remove a cause of frustration.

Proposals for the priority areas

13	**Statistics**
Legislation	Abolish the statistic on the businesses' investments for environmental purposes. Council Regulation (EC, Euratom) No 58/97 of 20 December 1996 concerning structural business statistics, Regulation EC No. 2056/2002.
Need for simplification	The Structural Business Statistics Regulation (Council Regulation EC No. 58/97) instructs the Member States to collect information on businesses investment for the protection of the environment. The reporting requirements were originally limited to "end of pipe investments". An amendment of the Regulation adopted in November 2002 (Regulation EC No. 2056/2002) expands the legal reporting requirements to include the variables "investments in integrated technologies" and "total current expenditure on environmental protection". Denmark has along with several of the Member States asked for an exemption from the statistic and with good reason. It is a guessing game for the enterprises how much of the investment is for environmental purposes. For example, an enterprise buys a new machine which enhances productivity, and has less effect on the environment. How much of the total investment is environmental? A hard question to answer.
Proposal for simplification	The part of the statistic which relates to environmental investments should be abolished; as it does not make any sense to collect figures which are not reliable.
Reductions	At the moment the numbers are only collected in some countries, and DI does not have the figures for the potential economic gain for the enterprises. An abolishment would without a doubt remove a big frustration for the enterprises, as it is a pointless exercise to try and collect these figures.
14	**Financial**
Legislation	Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance
Summary	The directive imposes, among other things, several information obligations on the companies.

Need for simplification	In a number of areas it would be possible to simplify the rules so that the information required, to a higher degree than today, reflects the needs of the customer. This also implies the possibility of applying means of digital communication, for example presenting information relevant to the customers at the internet. Besides simplification along these lines would considerably reduce the administrative burden for the companies.
Proposal for simplification	Art. 36, 1. - " Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder" The directive requires that the company communicate a number of information to the policy holder before conclusion of the insurance contract. The requirement for information before conclusion of the contract should be replaced by a requirement for information in connection with the conclusion of the contract. The important thing is to make sure that the information is communicated to the policy holder at the time when he needs the information, at the latest, for example when the policy holder is to make certain choices or back off from the contract. Furthermore, in certain insurance schemes, not least schemes where membership of the scheme is made mandatory by another contract, it is often not possible to fulfil the requirement for communication of the information before conclusion of the contract as the policy holder is enrolled in the scheme before the insurance company obtains knowledge of the policy holder's identity. The insurance company may for example not be informed on the policy holder's enrolment until the first premium payment. *Art 36, stk. 2* - " The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B)" The directive should be amended so that the required time for notification of the policy holder of changes is determined by the importance of the change for the policy holder. In cases of less important changes, for example changes not concerning essential parts of the contract, the company should be allowed to postpone the communication of the information and include it in a broader publishing at a later point in time. *Annex III - demand for written information* The companies should be entitled to fulfil the demand for written information by making the information available electronically. A company should be able to assume that communication from company to customer has a digital form even if there is no specific agreement on this. However, the customer should be able to, on request, have the information in paper (active request), unless the information concerns

	pure web–based products. The company's digital communication must live up to certain basic principles. Among other things, confidentiality of personal information must be secured and it must be assured that the company has not subsequently changed the information.
15	**Financial**
Legislation	Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.
Summary	The directive should be reviewed with regard to simplification
Need for simplification	The definition of financial institutions in Art 4 (5) also includes Undertakings for Collective Investments in Transferable Securities (UCITS). It is felt unreasonable especially with regard to the deduction rules in art. 57 (1) point (l) and (m) that investments in UCITS made by credit institutions exceeding some thresholds of ten pct. always have weight 100 although the underlying investments have a lower weight.
Proposal for simplification	Revise the rule in art. 57 (1) point (l) and (m).