Procedure file

Basic information

INI - Own-initiative procedure	2003/2150(INI)	Procedure completed
Company law perspectives in the European Union Subject 3.45.01 Company law		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs and Internal Market	PSE GHILARDOTTI Fiorella	07/07/2003
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs (Associated committee)	PSE BERÈS Pervenche	02/09/2003
	ITRE Industry, External Trade, Research, Energy	PPE-DE ARVIDSSON Per-Arne	26/08/2003
	EMPL Employment and Social Affairs	PSE KOUKIADIS Ioannis	04/06/2003
Council of the European Union	Council configuration	Meeting	Date
	Competitiveness (Internal Market, Industry, Research and Space)	2525	22/09/2003
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union		

Key events

21/05/2003	Non-legislative basic document published	COM(2003)0284	Summary
04/09/2003	Committee referral announced in Parliament		
22/09/2003	Resolution/conclusions adopted by Council		
06/04/2004	Vote in committee		
06/04/2004	Committee report tabled for plenary	A5-0253/2004	
19/04/2004	Debate in Parliament		

21/04/2004	Decision by Parliament	T5-0346/2004	Summary
21/04/2004	End of procedure in Parliament		

Technical information

Procedure reference	2003/2150(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 57; Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/19835

Documentation gateway

Non-legislative basic document		COM(2003)0284	21/05/2003	EC	Summary
Document attached to the procedure		COM(2003)0286	21/05/2003	EC	
Economic and Social Committee: opinion, report		CES1593/2003 OJ C 080 30.03.2004, p. 0017-0019	10/11/2003	ESC	
Committee report tabled for plenary, single reading		A5-0253/2004	06/04/2004	EP	
Text adopted by Parliament, single reading		T5-0346/2004 OJ C 104 30.04.2004, p. 0426-0714 E	21/04/2004	EP	Summary

Company law perspectives in the European Union

PURPOSE : to outline the approach that the Commission intends to follow in the area of company law and corporate governance. CONTENT : this document outlines the EU company law acquis and sets out the reasons why a fresh impetus to the harmonisation of company law is needed. These include the following: - making the most of the Internal Market: the growing trend of European companies to operate cross-border in the Internal Market calls for common European company law mechanisms, inter alia, to facilitate freedom of establishment and cross-border restructuring; - integration of capital markets: dynamic securities markets are vital to Europe's economic future. This requires giving both issuers and investors the opportunity to be far more active on other EU capital markets and to have confidence that the companies they invest in have equivalent corporate governance frameworks. Listed companies want a more coherent, dynamic and responsive European legislative framework; - to maximise the benefits of modern technologies : the rapid development of new information and communication technology is affecting the way company information is stored and disseminated, as well as the way corporate life is conducted; - the forthcoming enlargement will increase the diversity of the national regulatory frameworks in the EU, underlying further the importance of a principles-based approach able to maintain a high level of legal certainty in intra-Community operations; - recent financial scandals have prompted a new debate on corporate governance. Investors are demanding more transparency and better information on companies, and are seeking to gain more influence on the way the public companies they own operate. Shareholders own companies, not management - yet far too frequently their rights have been trampled on by greedy and occasionally fraudulent corporate behaviour. A new sense of proportion and fairness is necessary. The Commission identifies the following policy objectives: 1) Strengthening shareholders rights and third parties protection must be at the core of any company law policy. Protecting the savings and pensions of millions of people and strengthening the foundations of capital markets for the long term in a context of diversified shareholding within the EU, is essential if companies are to raise capital at the lowest cost. Reform should be organised along the following lines: - initiatives should be taken with a view to enhancing shareholder rights and clarifying management responsibilities and provisions related to the protection of creditors should be modernised with a view to maintaining a high quality framework (e.g.with respect to capital maintenance and alteration); - a proper distinction should be made between categories of companies. A more stringent framework is desirable for listed companies and companies which have publicly raised capital; - modern technologies can significantly help members and third parties to exercise their rights effectively; - a limited number of measures aimed at combating fraud and abuse of legal forms. 2) Fostering efficiency and competitiveness of business. This should be promoted along the following lines: - EU initiatives in the area of company law should address a number of specific cross-border issues (e.g. cross-border mergeror transfer of seat, crossborder impediments to the exercise of shareholders rights...), where Community action may be the only way to achieve the pursued objectives; - flexibility should be available to companies as much as possible: where systems are deemed to be equivalent, maximum room should be left open to the freedom of the parties involved. The Commission sets out an Action Plan, which identifies the nature and the scope of the actions, proposes the type of regulatory instrument which should be used, and establishes clear priorities for the short, medium and long term. It discusses the following issues: - enhancing corporate governance disclosure; - strengthening shareholders rights, especially with regard to access to information; - modernising the board of directors, and minimum standards applicable to the creation, composition and role of the nomination, remuneration and audit committees; - co-ordinating the corporate governance efforts of Member States; - capital maintenance and alteration; - groups of companies, with specific reference to financial and non financial information,

the implementation of a group policy and pyramids; - corporate restricting and mobility; - the European private company, the European Co-operative Society and other forms of enterprise.?

Company law perspectives in the European Union

The European Parliament adopted a resolution based on the own-initiative report drafted by Fiorella GHILARDOTTI (PES, I) on modernising company law. Parliament stated that the events which occurred recently, first in Japan and subsequently in the United States and Europe, involving major industrial groups (in particular Parmalat), illustrate that the rules on transparency that should provide a frame of reference for action by European companies need to be more clearly defined. The effects of such scandals are borne in particular by small shareholders, savers investing in funds or trusts and other creditors as well as workers, who lose their jobs and salaries. Furthermore, the current restructuring process is leading to greater fragmentation, outsourcing and delocalisation among companies, sometimes making it difficult to make out the actual composition of a company or where its real decision making centres are, and often making it almost impossible to understand holdings and cross-ownership of shares or the rules and contractual provisions governing workers whose jobs have been dislocated to different parts of a pyramid or group structure. Therefore Parliament felt that, whilst respecting the traditions in Member States' company law provisions in line with the principle of subsidiarity, it supported the need for urgent action to be taken on European company law. The enlargement process and subsequent consolidation of the internal market will make it necessary to harmonise or coordinate the different national laws so as to establish a general framework that will allow for mobility between European countries. Parliament put particular emphasis on the importance of paying attention to the fact that the aim of measures to harmonise EU company law is to help create a level playing field for companies and that a level playing field must be ensured in the case of all measures. Parliament supported the Commission's view that competition between national company rules is healthy, and therefore considered that competition under level playing field conditions may take the place of efforts to bring about maximum harmonization. On the question of stakeholders, Parliament felt that European corporate governance and company law must encompass substantial arrangements to inform and consult workers and that all directives concerning company law must lay down an obligation to inform and consult workers' representatives when it is necessary to take important decisions affecting the continued survival of companies and jobs. It is necessary in all cases to distinguish between large and small shareholders, mainly as regards the use of modern technology in the exercise of shareholders' voting rights, given that small shareholders are usually more at risk Parliament agreed with the Commission that there is no need to draw up a specific European code of corporate governance, but the EU should spell out a framework of international standards to be observed and determine procedures for these to be transposed, so as to supplement the existing regulatory provisions at national level. Priorities at EU level should be in genuine cross-border areas. Parliament warned of the emergence of a tendency to copy US solutions for US problems and to import US traditions and rules that would be counterproductive for proper corporate governancein Europe. On national codes, Parliament stated that is vital that the Member States' supervisory and monitoring bodies should meet three requirements: stability of the financial system, transparency of markets, corporate balance sheets and corporate behaviour, and safeguarding competition. In particular, it is vital to: - ensure the autonomy, independence and integrity of members of the management and supervisory boards, auditors and rating companies; - ensure that the authorities responsible for monitoring the stock exchange are able to function effectively, giving them the necessary resources and staff; - create framework conditions for the work of anti-trust authorities; - promote an effective system of cooperation between central banks. Parliament maintained that the basic principles of corporate social responsibility must be fully integrated into all spheres of Community activity, particularly company law, the internal market, competition policy, legislation on financial markets, commercial policy, the common foreign and security policy, and development cooperation policy. In order to attain these objectives, there must be a distinction drawn between those listed on the stock exchange, companies not listed on the stock exchange and particularly small and medium-sized businesses in this category. Parliament went on to regret that the Commission makes no mention of the consequences for corporate governance of certain practices resulting from differences in the financing of companies, especially between the Anglo-Saxon tradition - where share ownership spread through financial markets predominates - and the continental tradition where banks and majority shareholders play a more important role. Finally, Parliament insisted on the need to guarantee that, in the case of listed companies, the possibility of being audited and advised by the same firm is ruled out.?