Procedure file

Basic information

INI - Own-initiative procedure	2006/2051(INI)	Procedure completed
Recent developments in and prospects for company law Subject 3.45.01 Company law		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs	PSE SZEJNA Andrzej Jan	24/11/2004
	Committee for opinion	**Rapporteur for opinion**	**Appointed**
	ECON Economic and Monetary Affairs (Associated committee)	PPE-DE LEHNE Klaus-Heiner	03/04/2006

Key events

16/03/2006	Committee referral announced in Parliament		
16/03/2006	Referral to associated committees announced in Parliament		
22/06/2006	Vote in committee		
26/06/2006	Committee report tabled for plenary	A6-0229/2006	
03/07/2006	Debate in Parliament		
04/07/2006	Results of vote in Parliament		
04/07/2006	Decision by Parliament	T6-0295/2006	Summary
04/07/2006	End of procedure in Parliament		

Technical information

Procedure reference	2006/2051(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Stage reached in procedure	Procedure completed

Committee dossier	JURI/6/34531

Documentation gateway

Committee draft report		PE371.948	05/04/2006	EP	
Amendments tabled in committee		PE374.184	29/05/2006	EP	
Committee opinion	ECON	PE372.190	20/06/2006	EP	
Committee report tabled for plenary, single reading		A6-0229/2006	26/06/2006	EP	
Text adopted by Parliament, single reading		T6-0295/2006	04/07/2006	EP	Summary
Commission response to text adopted in plenary		SP(2006)3801	28/08/2006	EC	
Commission response to text adopted in plenary		SP(2006)3874-4	29/09/2006	EC	
Follow-up document		SEC(2007)1707	12/12/2007	EC	Summary

Recent developments in and prospects for company law

The European Parliament adopted a resolution based on the own-initiative report drafted by on recent developments and prospects in relation to company law.

General aspects: Parliament called on the Commission to ensure that the measures aimed at modernisation in the field of company law and corporate governance were consistent with measures in related sectors, such as financial services, industrial policy, social policy and corporate social responsibility. It stressed the importance of taking into account the case-law of the Court of Justice on the principle of freedom of establishment, and also asked the Commission to take the European social model into consideration when deciding on further measures for the development of company law. This also involved the participation of employees.

Better regulation and simplification: Parliament highlighted the importance of better regulation in order to provide a more effective legislative framework. It suggested choosing instruments that placed less of a burden on companies and left them as much flexibility as possible, as well as comprehensive impact assessment in respect of any new legislative initiative. EC company law directives in force should not be discussed: they should be simplified only in exceptional and duly justified cases, when they were not dealing with very sensitive matters or are not the result of difficult compromises, in order not to have an adverse effect on the companies concerned.

Small and medium-sized enterprises: Parliament called on the Commission to examine the SME dimension when assessing the impact of legislative proposals in the field of company law and to ensure that the needs of SMEs are properly and systematically taken into account, and it stressed that the barriers faced by SMEs in terms of the administrative burden must be removed.

Corporate governance: Parliament regretted that the Commission had not developed a clear vision of the governance of European businesses but seemed to be taking measures on disparate aspects on an ad hoc basis. It asked the Commission to act on its resolution of 21 April 2004. Corporate governance was not only about the relationship between shareholders and management: other stakeholders within the company were also important and should be able to contribute to decisions on the strategy of companies. In particular, that there should be room for the provision of information to, and consultation of, employees. Parliament expressed doubts about the need for a European initiative in the field of the special investigation right of shareholders, since this directly affects the separation of competences between directors and shareholders, which is a topic typically addressed by national corporate laws.

Company law: Parliament asked the Commission to do the following, inter alia:

-to propose measures to enhance the cross-border availability of information regarding the disqualification of directors;

-to reconsider a European initiative in the field of wrongful trading ? there was no need for one, since there were already relevant regulations in the Member States;

-to submit a proposal for the differentiation of obligations to disclose share-holding levels. Parliament would welcome a differentiation which provided for the following percentage steps: 3%, 5%, 10%, 15% and 20%, plus a notification obligation for every percentage point above 20%;

-to lay down clear rules governing transitional periods, i.e. the "decent interval" after which active members of the management board who wish, on leaving the board, to transfer to the supervisory board (in the dualistic system) or the non-executive board (in the monistic system), may do so;

-to resolve legislative issues, such as the independence of directors, by legislative means (directives) rather than by recommendations, so that the public and the legislature are involved and the resulting rules reflect actual practice;

-to be alert to conflicts of interests and the disproportional accumulation of information and influence by some large players in the chain of intermediaries and advisors involved in the exercise of shareholders' voting rights in companies;

-to ensure that companies are given the choice between different governance systems, including the one-tier and two-tier systems, without there being any need to adopt provisions defining the powers and obligations of a company's governing bodies;

-to examine the possibilities for revision of the rules in the Statute for a European company on the formation of such companies, with a view to simplifying those rules and adjusting them in line with market requirements. Parliament strongly deplored the fact that the Commission had withdrawn the two proposals for a regulation on a Statute for a European association and for a regulation on a Statute for a European mutual society;

-to present a proposal on the European private company in order to meet the needs of SMEs;

-to present a proposal concerning the Fourteenth Company Law Directive on the cross-border transfer of the registered office of limited companies;

-to pay greater attention to the issue of delisting and to submit a legislative proposal for future harmonisation at EU level. ?Going private" should be made possible in future with the minimum of bureaucratic effort, with particular consideration being given to safeguarding the financial interests of the shareholders;

-to involve Parliament more effectively in discussions concerning international and European accounting standards and to reinforce the definition of a European approach based on the best practices and traditions in the Member States, instead of blindly following the traditions of US auditing;

Finally, Parliament asked the Commission to propose measures for greater transparency regarding institutional investors.

Recent developments in and prospects for company law

This Commission staff working document concerns the impact assessment on the impact assessment on the Directive on the cross-border transfer of registered office.

As the law stands in most Member States, moving a registered office would typically imply the winding-up of the company in Member State A and its re-incorporation in Member State B. Given the high costs involved, the time involved and the related administrative burden, with sometimes more than 35 procedural steps to overcome, this hardly ever occurs and European companies are, in practice, deprived of the possibility of moving their place of registration within the EU.

Some Community measures, in particular the European Company Statute and the European Cooperative Society, already grant the right of transfer of registered office, however, this possibility is available only to companies established as Societas Europea (SE) or a European Cooperative Society. The practice to date has shown that not many companies decide to transfer their registered office on the basis of the SE Statute.

This impact assessment reviews the nature and scope of the problems raised by the absence of cross-border transfers of companies' registered offices within the EU and identifies policy options to address the situation at EU level.

The twin objectives of any initiative on this matter should be to improve the efficiency and competitive position of European companies by providing them with the possibility of transferring their registered office more easily and, hence, choose a legal environment that best suits their business needs, while at the same time guaranteeing the effective protection of the interests of the main stakeholders in respect of the transfer.

The report looks at different options which could further the achievement of these objectives. Firstly, the 'no action' option is examined. In particular, the possible impact of existing legislation and legislation about to enter into force, notably Directive 2005/56/EC on cross-border mergers which will enter into force on 16 December 2007 and the possible European Private Company Statute, is assessed. The impact assessment focuses on whether the time, costs and procedures required to complete the transfer of registered office would be substantially different from those required to carry out such transfer through a cross-border merger operation under the existing cross-border merger directive. Possible developments in the Community case law are also examined, in particular the currently pending case which concerns a transfer of registered office and whose outcome might affect the scope and content of a possible EU measure.

?No action? option would involve proposing Community action to facilitate the transfer of the registered office.

As for the nature of the instrument, the assessment considers four main options which are also compared with the 'no action' option.

Option 1 considers action by the Member States, i.e. signature of the convention on mutual recognition of companies. Option 2: envisages a nonbinding and flexible instrument, i.e. a recommendation. The last two options concern the adoption of a binding Community instrument, a directive (option 3) or a regulation (option 4).

From the comparison of the different possible options the assessment concludes that 'no action' option or a directive would be suitable to achieve of the policy objectives. However, when the proportionality test is applied, it is not clear that adopting a directive would represent the least onerous way of achieving the objectives set. Since the practical effect of the existing legislation on cross-border mobility (i.e. the cross-border merger directive) is not yet known and that the issue of the transfer of the registered office might be clarified by the Court of Justice in the near future, the assessment concludes that it might be more appropriate to wait until the impacts of those developments can be fully assessed and the need and scope for any EU action better defined.