

Public limited liability companies: coordination of safeguards in respect of their formation and the maintenance and alteration of their capital. Recast

2011/0011(COD) - 01/02/2011 - Legislative proposal

PURPOSE: to present a proposal on the 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 54 of the Treaty on the Functioning of the European Union, 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 (Recast).

PROPOSED ACT: Directive of the European Parliament and the Council.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 50(2) of the Treaty on the Functioning of the European Union.

CONTENT: on 16 September 2008, the Commission presented a [proposal for a Directive](#) of the European Parliament and of the Council codifying Second Council Directive 77/91/EEC 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.

In its opinion of 16 October 2008 the Consultative Working Party of the Legal Services stated that the proposal does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

On 26 August 2010 the Commission presented an [amended proposal](#) for the codification of Directive 77/91/EEC, following subsequent amendments to it. In its further opinion of 12 October 2010 the Consultative Working Party of the Legal Services stated that that amended proposal does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

In that opinion the Consultative Working Party of the Legal Services also acknowledged that Article 6(3) of Directive 77/91/EEC, which corresponds to Article 6(2) in the proposed codified text, established a secondary legal basis. In the light of the judgment of the Court of Justice of 6 May 2008 in Case C-133/06, it was considered necessary to redraft Article 6(2) of the proposed codified text. Since such a redrafting would imply a substantive change, and would therefore go beyond straightforward codification, it is therefore appropriate to transform the codification of Directive 77/91/EEC into a recast in order to incorporate the necessary amendment.

The amendment to be made to Article 6(2) of the proposed codified text concerns the insertion of the words "the European Parliament and" before the words "the Council", in order to confer on both institutions the competence to examine and, if need be, revise the minimum amount of EUR 25 000 required for a company to be incorporated or obtain authorisation to commence business.

BUDGETARY IMPLICATION: this proposal has no implications on the EU budget.