



Texts adopted by Parliament

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Provisional edition

Recent developments in and prospects for company law

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A6-0229/2006

► European Parliament resolution on recent developments and prospects in relation to company law (2006/2051(INI))

The European Parliament,

- having regard to the Communication from the Commission to the Council and the European Parliament of 21 May 2003, entitled "Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward" (COM(2003)0284),
 - having regard to the Commission's Communication to the spring European Council: Working together for growth and jobs - A new start for the Lisbon Strategy (COM(2005)0024),
 - having regard to the Communication from the Commission to the Council and the European Parliament entitled "Common Actions for Growth and Employment: the Community Lisbon programme" (COM(2005)0330),
 - having regard to the Communication from the Commission to the Council and the European Parliament entitled "Outcome of the screening of legislative proposals pending before the Legislator" (COM(2005)0462),
 - having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions entitled "Implementing the Community Lisbon programme: a strategy for the simplification of the regulatory environment" (COM(2005)0535),
 - having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions entitled "Implementing the Community Lisbon programme - Modern SME policy for growth and employment" (COM(2005)0551),
 - having regard to its resolution of 21 April 2004 on modernising company law and enhancing corporate governance⁽¹⁾,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0229/2006),
- A. whereas the Action Plan proposed in the abovementioned Commission communication of 21 May 2003 ("the 2003 Action Plan") defines important objectives for the modernisation of company law and corporate governance,
- B. whereas important progress has already been made in the achievement of those objectives,
- C. whereas, since the 2003 Action Plan has to be seen in the light of the renewed Lisbon Strategy, measures need to be taken in order to provide for company law mechanisms that enhance the efficiency and competitiveness of business across Europe,

D. whereas improving the competitiveness of European business requires an integrated approach at EU level,

E. whereas it is essential to improve the regulatory environment for companies in order to achieve the Lisbon Agenda objectives,

F. whereas a statutorily regulated system of employee participation at the level of undertakings, as found in a large number of Member States, should be seen as forming an integral part of European corporate governance which makes a contribution to achieving the objectives of the Lisbon Strategy,

G. whereas better regulation is of particular importance for small and medium-sized enterprises ("SMEs"),

H. whereas simplification of the company law *acquis* can be an efficient tool to improve the effectiveness of the legislative framework; whereas, however, simplification does not mean deregulation,

General aspects

1. Calls on the Commission to ensure that the measures aimed at modernisation in the field of company law and corporate governance are consistent with measures in related sectors, such as financial services, industrial policy, social policy and corporate social responsibility;
2. Stresses the importance of taking into account the case-law of the Court of Justice of the European Communities on the principle of freedom of establishment;
3. Calls on the Commission to take the European social model into consideration when deciding on further measures for the development of company law; this also involves the participation of employees;

Better regulation and simplification

4. Highlights the importance of better regulation in order to provide a more effective legislative framework; emphasises that it is important to improve the quality of legislation through systematic consultations with stakeholders on all future initiatives, strict compliance with the principle of subsidiarity, choosing instruments that place less of a burden on companies and leave them as much flexibility as possible, and comprehensive impact assessment in respect of any new legislative initiative;
5. Stresses that EC company law directives in force should not be discussed: they should be simplified only in exceptional and duly justified cases, when they are 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;
6. Calls on the Commission to explain in detail the plans to present a complete consolidation of the company law directives in one single act; stresses in this context that priority should be given to the objective of achieving clarity and consistency of the company law *acquis* within the different areas of company law; calls on the Commission to specify, in particular, which directives would be recast, which repealed, which codified and which modified;

Small and medium-sized enterprises

7. Welcomes the Commission's initiative to create a better regulatory environment for SMEs;
8. Calls 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;
9. Stresses that, in particular, the barriers faced by SMEs in terms of the administrative burden must be removed;
10. Asks the Commission to have more regard to the needs of SMEs in future legislative proposals or future revisions of existing legislation; recalls that SMEs are creators of jobs and a motor of economic growth;

Corporate governance

11. Stresses the importance of developing best practices which respect the different traditions and systems in the Member States;
12. Notes that the European Corporate Governance Forum and Corporate Governance Advisory Group have been established, and calls on the Commission to keep Parliament regularly informed about the results of the work of those bodies and the decisions taken on the basis of those results;
13. Regrets that the Commission has not developed a clear vision of the governance of European businesses but seems to be taking measures on disparate aspects on an ad hoc basis; reiterates the conclusions of its abovementioned resolution of 21 April 2004 and calls on the Commission to act on them;
14. Stresses that corporate governance is not only about the relationship between shareholders and management, but that other stakeholders within the company are also important for a balanced decision-making process and should be able to contribute to decisions on the strategy of companies; points out, in particular, that there should be room for the provision of information to, and consultation of, employees;
15. Expresses 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, who manage the company, and shareholders, which is a topic typically addressed by national corporate laws; considers, in addition, that any further initiative should be evaluated in the light of the on-going legislative process; points out that the recent proposal for a directive on shareholders' rights already provides for the right to add items to the agenda of the general meeting and to table resolutions;
16. Stresses the need for involvement of the financial market regulators and supervisors in the development of clear corporate governance rules and recommendations, and for a close coordination of the policies in the field of financial market regulation on the one hand and company law on the other;

Company law

17. Welcomes the abovementioned proposal of the Commission for a directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC (2005/0265(COD));
18. Welcomes the agreements reached on the following proposals:
 - a) proposal for a directive of the European Parliament and of the Council amending Council Directive 77/91/EEC as regards the formation of public limited companies and the maintenance and alteration of their capital (2004/0256(COD));
 - b) proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC concerning the annual accounts of certain types of companies and consolidated accounts (2004/0250(COD));
19. Calls on the Commission to propose measures to enhance the cross-border availability of information regarding the disqualification of directors;
20. States that there is no need for a European initiative in the field of wrongful trading since there are already relevant regulations in the Member States; although those regulations in the Members States may vary, the national differences constitute no obstacle to the internal market;
21. Calls on the Commission to submit a proposal for the differentiation of obligations to disclose share-holding

levels; 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%; notes that the differentiation of disclosure obligations would necessarily improve transparency concerning shareholding;

22. Calls on the Commission 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; notes that these transitional periods must be at least two years; stresses the importance of such transitional periods in preserving the independence of supervisory boards;

23. Calls on the Commission 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;

24. Urges the Commission 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, and stresses the need for transparency and fair opportunities for issuers to defend themselves against the undue concentration and coordinated action of shareholder parties;

25. Asks for a clear regulatory regime for the disclosure and comparability of information on the individual remuneration of, and remuneration policy for, directors, including elements such as pension schemes and stock-option plans;

26. Calls on the Commission 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;

27. Calls on the Commission 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;

28. Calls on the Commission to present a proposal on the European private company in order to meet the needs of SMEs;

29. Strongly deplores the fact that the Commission has already decided to withdraw the two proposals for a regulation on a Statute for a European association ([1991/0386\(COD\)](#)) and for a regulation on a Statute for a European mutual society ([1991/0390\(COD\)](#)) and the two proposals for directives supplementing those Statutes with regard to the involvement of employees ([1991/0387\(COD\)](#) and [1991/0391\(COD\)](#));

30. Notes, however, that, in its 2003 Action Plan, the Commission announced its intention actively to support the legislative process undertaken in relation to those statutes, in response to the desire expressed by Parliament for significant attention to be given to the development of new legal forms of enterprises; regards those proposals as useful instruments for the development of economic activity throughout Europe by associations and mutual societies;

31. Calls on the Commission to submit new proposals for statutes for European mutual societies and European associations;

32. Stresses that the transfer of a registered office is today either impossible or hindered by the requirements imposed at national level, that a directive in this area is crucial for freedom of establishment, and that the long-awaited Fourteenth Company Law Directive would fill a lacuna in the system of the internal market for companies;

33. Therefore calls on the Commission to present in the near future a proposal concerning the Fourteenth Company Law Directive on the cross-border transfer of the registered office of limited companies; stresses that the transfer of registered offices must not be wrongly used, for example to restrict workers' rights, in particular as regards employee participation in company decisions, or to reduce the protection of creditors; considers, in particular, that safeguarding employees' acquired rights as regards participation in company decisions must be a declared aim of the directive;

34. Calls on the Commission to continue its preparation of Community legislation providing for other legal forms of entrepreneurial organisation, such as the European foundation;
35. Recommends that the Commission should further examine whether there is a need to address the problems concerning groups and pyramids, especially with regard to the framework for the transparency of group structures and the special problems relating to pyramid structures;
36. Calls on the Commission to pay greater attention to the issue of delisting and to submit a legislative proposal for future harmonisation at EU level; notes that, while delisting is possible in the Member States, it involves enormous bureaucratic and legal cost for the businesses concerned; calls, therefore, for "going private" to be made possible in future with the minimum of bureaucratic effort, with particular consideration being given to safeguarding the financial interests of the shareholders;
37. Calls on the Commission 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; stresses again the need for more representatives with a European background in the international standard-setting bodies, in order to legitimate a true international approach; emphasises that regulations on accounting standards have an impact on tax law and business structures;
38. Deplores the fact that the International Accounting Standards Board (IASB) lacks democratic control and thus comes to decisions that do not adequately reflect the reality of European companies and fail, for example, to respond to the needs of SMEs; cites by way of example the requirement, laid down in IAS 32, to distinguish in balance sheets between equity and liability, which, in the case of partnerships, has led to significant material problems, such as a distorted portrayal of their creditworthiness; calls on the Commission, therefore, to ensure that greater weight is attached to Parliament's decisions within the IASB;
39. Wishes to make it clear that the Commission has no authority to endorse International Financial Reporting Standards for SMEs;
40. Calls on the Commission to take further steps to keep the company law *acquis* constantly under review;
41. Calls on the Commission to monitor thoroughly the transposition of the company law *acquis* in the accession countries during the pre-accession period, and to report on the results of that monitoring;
42. Looks forward to the results of the external study commissioned by the Commission on proportionality between ownership and control in EU listed companies, provided that it delivers not only an objective analysis of the empirical and theoretical evidence regarding the effects of the different ownership models in the Member States on economic efficiency, owner-control of companies and the possibilities for cross-border transactions, but also a sound analysis of corporate law as regards the wider economic and legal context in Member States and different models of corporate governance; stresses that due account should be taken of the need for transparency in the structure of control rights;
43. Expects that the Commission will, if appropriate make a legislative proposal concerning the principle "one share one vote" only after the outcome of the revision of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁽²⁾, as provided for in Article 20 of that directive, and an evaluation of that directive;
44. Asks the Commission to propose measures for greater transparency regarding institutional investors; recalls that transparency is needed with regard to investment policy, voting policy and share ownership, and that such transparency must not be confined to the relationship between funds and single investors; recalls that there should also be certain disclosure obligations incumbent on institutional investors towards the companies in which they are engaged, e.g., with regard to their intentions and the proposed duration of their engagement;
45. Calls on the Commission to inform Parliament about the results of the consultation on the future priorities for the 2003 Action Plan, launched by the Commission in December 2005, and to explain in detail the decisions taken by it as a result of the outcome of that consultation;

46. Calls on the Commission to analyse the problems relating to the implementation of the existing legislation in order to take the results of that analysis into consideration when considering new legislative proposals;

47. Calls on the Committee on Legal Affairs and the Committee on Economic and Monetary Affairs to follow the work of the Commission;

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48. Instructs its President to forward this resolution to the Council and the Commission.

(1) OJ C 104 E, 30.4.2004, p. 714.

(2) OJ L 142, 30.4.2004, p. 12.

Last updated: 7 July 2006

Legal notice