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*****I** **REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies
(COM(2002) 0279 – C5-0252/2002 – 2002/0122(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Klaus-Heiner Lehne

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 3 June 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 44 of the EC Treaty, the proposal for a directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (COM(2002) 0279 – 2002/0122(COD)).

At the sitting of 10 June 2002 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Economic and Monetary Affairs for its opinion (C5-0252/2002).

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne rapporteur at its meeting of 10 September 2002.

The committee considered the Commission proposal and draft report at its meetings of 4 November 2002, 3 December 2002, 23 January 2003 and 20 February 2003.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Willi Rothley, first vice-chairman and acting chairman; Klaus-Heiner Lehne, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster (for Maria Berger), Ward Beysen, Michel J.M. Dary, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Malcolm Harbour, The Lord Inglewood, Piia-Noora Kauppi (for Rainer Wieland), Carlos Lage (for Carlos Candal) Kurt Lechner, Neil MacCormick, Xaver Mayer (for Joachim Wuermeling), Manuel Medina Ortega, Marcelino Oreja Arburúa (for Stefano Zappalà), Carlos Ripoll y Martínez de Bedoya (for José María Gil-Robles Gil-Delgado), Dagmar Roth-Behrendt (for François Zimeray), Anne-Marie Schaffner, Ioannis Souladakis, Marianne L.P. Thyssen and Ria G.H.C. Oomen-Ruijten, (for Giuseppe Gargani, pursuant to Rule 153(2)).

The opinions of the Committee on Economic and Monetary Affairs is attached

The report was tabled on 20 February 2003.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (COM(2002) 0279 – C5-0252/2002 – 2002/0122(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 0279¹),
 - having regard to Article 251(2) and Article 44 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0252/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Economic and Monetary Affairs (A5-0052/2003),
1. Approves the Commission proposal as amended;
 2. Asks for the matter to be referred to it again, should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 4

(4) The list of companies covered by Directive 68/151/EEC should be ***extended*** to take account of the new types of companies created at national level since the Directive's adoption.

(4) The list of companies covered by Directive 68/151/EEC should be ***updated*** to take account of the new types of companies created at national level since the Directive's adoption, ***as well as of the types of companies abolished at national level since the Directive's adoption.***

¹ OJ C .C 227, 24.9.2002, p. 377

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 2
Recital 6

(6) In the context of the pursued modernisation, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means. ***Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means.***

(6) In the context of the pursued modernisation, ***and without prejudice to substantive requisites and formalities established by the national law of the Member States***, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 3
Recital 6 a (new)

(6a) Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 4
ARTICLE 1, PARAGRAPH 1, POINT (b)

Article 1, indent 6 (Directive 68/151/EEC)

“- In the Netherlands:

de naamloze vennootschap, *de commanditaire vennootschap op aandelen*, de besloten vennootschap met beperkte aansprakelijkheid;”

“- In the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;”

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 5
ARTICLE 1, PARAGRAPH 1, POINT (d)

Article 1, indent 14 (Directive 68/151/EEC)

“- In Finland:

osakeyhtiö/aktiebolag”

“- In Finland:

“yksityinen osakeyhtiö/privat aktiebolag, julkinen osakeyhtiö/publikt aktiebolag;”

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 6
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 2, subparagraph 2 (Directive 68/151/EEC)

Member States shall ensure that the filing by companies of all documents and particulars which must be disclosed in pursuance of Article 2 shall be possible by electronic means *as from* 1 January 2005. Member States may impose upon all – or certain categories of – companies the filing

Member States shall ensure that the filing by companies *and other persons and bodies required to make notifications or to assist* of all documents and particulars which must be disclosed in pursuance of Article 2 shall be possible by electronic means *not later than* 1 January 2005. In

by electronic means of all – or certain types of – such documents and particulars as from 1 January 2005.

addition, Member States may impose upon all – or certain categories of – companies the filing by electronic means of all – or certain types of – such documents and particulars as from 1 January 2005.

Justification

The amendment makes it clear that no matter which specific party, as laid down in the rules of the Member States, makes declarations to be registered for company purposes, everyone involved in the process has to be given the opportunity to communicate by electronic means.

Amendment 7
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 2, subparagraph 2 (Directive 68/151/EEC)

Member States shall ensure that the filing by companies of all documents and particulars which must be disclosed in pursuance of Article 2 shall be possible by electronic means **as from 1 January 2005**. In addition, Member States may impose upon all – or certain categories of – companies the filing by electronic means of all – or certain types of – such documents and particulars **as from 1 January 2005**.

Member States shall ensure that the filing by companies of all documents and particulars which must be disclosed in pursuance of Article 2 shall be possible by electronic means **no later than 1 January 2007**. In addition, Member States may impose upon all – or certain categories of – companies the filing by electronic means of all – or certain types of – such documents and particulars.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 8
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 2, subparagraph 3 (Directive 68/151/EEC)

All documents and particulars referred to in Article 2 which are filed as from **1 January 2005**, whether by paper means

All documents and particulars referred to in Article 2 which are filed as from **1 January 2007 at the latest**, whether by

or by electronic means, must be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means as from **1 January 2005** are converted by the register to electronic form.

paper means or by electronic means, must be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means as from **1 January 2007 at the latest** are converted by the register to electronic form.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 9
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 2, subparagraph 4 (Directive 68/151/EEC)

The documents and particulars referred to in Article 2 that have been filed by paper means up to **31 December 2004** do not have to be converted automatically to electronic form by the register. Member States shall nevertheless ensure that they are converted to electronic form by the register **on** application submitted in accordance with the rules adopted **pursuant** to paragraph 3.

The documents and particulars referred to in Article 2 that have been filed by paper means up to **31 December 2006 at the latest** do not have to be converted automatically to electronic form by the register. Member States shall nevertheless ensure that they are converted to electronic form by the register **upon receipt of an application for disclosure by electronic means** submitted in accordance with the rules adopted **to give effect** to paragraph 3.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 10
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 3, subparagraph 1 (Directive 68/151/EEC)

A copy of the whole or any part of the documents or particulars referred to in

A copy of the whole or any part of the documents or particulars referred to in

Article 2 must be obtainable on application. As from **1 January 2005**, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

Article 2 must be obtainable on application. As from **1 January 2007 at the latest**, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 11
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 3, subparagraph 2 (Directive 68/151/EEC)

As from **1 January 2005**, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses, whether ***the documents or particulars have been*** filed before or after **1 January 2005**. However, Member States may decide that all – or certain types of – the documents and particulars that have been filed by paper means up to **31 December 2004** shall not be obtainable from the register by electronic means, if they have been filed before a stated period preceding the date of the application submitted to the register. Such stated period may not be less than 10 years.

As from ***a date to be chosen by each Member State, which can be no later than 1 January 2007***, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses. ***This applies in the case of all documents and particulars, irrespective of whether they were*** filed before or after ***the chosen date***. However, Member States may decide that all – or certain types of – the documents and particulars that have been filed by paper means up to **31 December 2006 at the latest** shall not be obtainable from the register by electronic means, if they have been filed before a stated period preceding the date of the application submitted to the register. Such stated period may not be less than 10 years.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 12
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 3, subparagraph 5 (Directive 68/151/EEC)

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means **at least** of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

Justification

In keeping with the explanatory memorandum of the Commission text (COM(2002) 0279, pp. 5-6), the addition makes it clear that Member States may also use electronic signatures of higher quality with correspondingly farther reaching legal effects.

Amendment 13
ARTICLE 1, PARAGRAPH 3

Article 3, paragraph 8 (Directive 68/151/EEC)

8. For the purposes of this article, “by electronic means” shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.”

8. For the purposes of this article, “by electronic means” shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received **in a manner to be determined by Member States** by wire, by radio, by optical means or by other electromagnetic means.”

Justification

The addition makes it clear that the definition of electronic form is not confined to any one

technical design for the electronic register and the transmission channels.

Amendment 14
ARTICLE 1, PARAGRAPH 4

Article 3 a, paragraph 1 (Directive 68/151/EEC)

1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up in one of the languages permitted by the language rules applicable in the Member State in which the **company has its registered office**.

1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up **and filed** in one of the languages permitted by the language rules applicable in the Member State in which the **file referred to in Article 3(1) is opened**.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 15
ARTICLE 1, PARAGRAPH 4

Article 3 a, paragraph 2, subparagraph 1 (Directive 68/151/EEC)

2. In addition to the mandatory disclosure referred to in **paragraph 1**, Member States shall allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any official language(s) of the Community.

2. In addition to the mandatory disclosure referred to in **Article 3**, Member States shall allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any official language(s) of the Community.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 16
ARTICLE 1, PARAGRAPH 4

Article 3 a, paragraph 2, subparagraph 3 (Directive 68/151/EEC)

Member States shall take the necessary measures to ***ensure that electronic access is provided in each of the official languages of the Community in which such documents and particulars have been*** disclosed.

Member States shall take the necessary measures to ***facilitate the access by third parties to the translations voluntarily*** disclosed.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 17
ARTICLE 1, PARAGRAPH 4

Article 3 a, paragraph 3, subparagraph 1 (Directive 68/151/EEC)

3. In addition to the mandatory disclosure ***as required under paragraph 1***, and to the disclosure allowed under paragraph 2, Member States may allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any other language(s).

3. In addition to the mandatory disclosure ***referred to in Article 3***, and to the disclosure allowed under paragraph 2, Member States may allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any other language(s).

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 18
ARTICLE 1, PARAGRAPH 4

Article 3 a, paragraph 4 (Directive 68/151/EEC)

4. Member States shall take the necessary measures to avoid any discrepancy between the documents and particulars

disclosed pursuant to paragraph 1 and any translation disclosed pursuant to paragraph 2 or paragraph 3.

However, in cases of discrepancy, the translation disclosed pursuant to paragraph 2 or paragraph 3 may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the version disclosed pursuant to paragraph 1.

4. In cases of discrepancy between the documents and the particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter one may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the mandatory disclosure.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 19
ARTICLE 1, PARAGRAPH 6

Article 6 (Directive 68/151/EEC)

Member States shall provide for appropriate penalties in case of:

Member States shall provide for appropriate penalties *at least* in case of:

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 20
ARTICLE 2, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall bring into force by **31 December 2004** at the latest the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

1. Member States shall bring into force by **31 December 2006** at the latest the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

Amendment 21
ARTICLE 2, PARAGRAPH 3 (NEW)

3. The Commission will present to the European Parliament and to the Council, at the latest on 1 January 2012, a report, together with a proposal – if appropriate – amending this Directive in the light of the experience acquired in applying it, of its aims and of the technological developments observed at the time.

Justification

Council amendment accepted by rapporteur in order to reach adoption in first reading.

EXPLANATORY STATEMENT

1. General

The First Company Law Directive is being amended, as regards its substance, for the first time since it entered into force in 1968.

The changes being proposed by the Commission bring the disclosure requirements into the computer age and also cover the additional types of companies forms which have emerged in some Member States since 1968.

The significance of the disclosure requirement for company law should not be underestimated, because those involved in legal or economic relations or transactions must be able at any time, using simple, inexpensive means, to acquaint themselves with the position of market players. One particular point to bear in mind is that, for all the technological progress of recent years, paper remains an important data medium. At any rate, legal relations should not be consigned in the foreseeable future solely to publicity carried on the World Wide Web or Internet. Furthermore, small and medium-sized companies that may not yet have them should not be forced to set up their own web sites (costs).

2. Key changes proposed

(a) Article 3 (new)

- From 1 January 2005 companies may file any commercial register documents or particulars by electronic means if they so choose.
- The Member States' 'paper' commercial registers will gradually be converted into electronic registers from 1 January 2005.
- From 1 January 2005 those wishing to obtain copies of documents or particulars entered in a register must also be allowed to submit applications by electronic means.
- Copies of register documents or particulars must be obtainable by electronic means from 1 January 2005 (but Member States may make exceptions where certain documents are concerned).
- Electronic copies must in future be certified by means of an electronic signature as defined in Directive 1999/93/EC.
- Member States must publish all documents and particulars in a national gazette (which may also be in electronic form).
- The reference to 'publication' (i.e. 'published' in the press, among other things) is replaced by the more general term 'disclosure' (i.e. 'disclosed' in accordance with paragraph 4).

(b) Article 4 (new)

This article stipulates that the particulars required to identify a company's commercial register must likewise be stated in standard correspondence documents in electronic form.

3. Who will be affected?

The directive will apply throughout the EU to all limited liability companies. No distinctions are made according to sector, company size, or location. However, Member States will be able to allow for the situation of small and medium-sized companies when determining which documents must be filed by electronic means.

Whether in paper or electronic form, letters and order forms will in future **have to** state the particulars specified in Article 4.

4. The amendments

The Commission proposal strikes a sensible balance between, on the one hand, the requirements and new opportunities of the Internet age and, secondly, the need to inform the public accurately through readily accessible consistent sources. It is a flexible instrument affording sufficient scope for small companies and Member States alike to meet the disclosure requirements of Directive 68/151/EC in an economical and reliable way.

That being the case, your rapporteur was anxious not to make any more legal clarifications than was absolutely necessary, not least because he wished to ensure that the directive could be adopted as quickly as possible (at first reading).

Unfortunately, the 'Competitiveness' Council failed to show the same restraint and, disregarding the overriding interest, has tabled 18 amendments to the Commission text.

To ensure that agreement on a joint text can nevertheless be reached at the earliest possible date, your rapporteur is consequently proposing that the Council amendments be taken over exactly as they stand, thereby enabling the Council to adopt the amended act in accordance with the first indent of Article 251(2) of the EC Treaty (adoption at first reading).

21 January 2003

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council directive amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies (COM(2002) 0279 – C5-0252/2002 – 2002/0122(COD))

Draftsman: Christopher Huhne

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Christopher Huhne draftsman at its meeting of 1 October 2002.

It considered the draft opinion at its meetings of 3 December 2002 and 21 January 2003.

At the last meeting it adopted the following amendments by 36 votes to 3, with no abstentions.

The following were present for the vote: Christa Randzio-Plath, chairman; José Manuel García-Margallo y Marfil, vice-chairman; Philippe A.R. Herzog, vice-chairman; John Purvis, vice-chairman; Christopher Huhne, draftsman; Generoso Andria, Richard A. Balfe (for Ingo Friedrich), Hans Blokland, Armonia Bordes, Renato Brunetta, Hans Udo Bullmann, Benedetto Della Vedova, Manuel António dos Santos (for a member to be nominated), Harald Ettl (for Giorgos Katiforis), Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Mary Honeyball, Othmar Karas, Pii-Noora Kauppi, Christoph Werner Konrad, Wilfried Kuckelkorn (for Fernando Pérez Royo), Werner Langen (for Brice Hortefeux), Astrid Lulling, Thomas Mann (for Ioannis Marinou), Helmuth Markov (for Ioannis Patakis), David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Peter Michael Mombaur (for Mónica Ridruejo), Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Helena Torres Marques, Bruno Trentin, Ieke van den Burg (for Pervenche Berès), and Theresa Villiers.

SHORT JUSTIFICATION

The Commission's proposal for a directive simplifying and modernising the provision of company information updates the 1st company law directive¹, which dates back to 1968. This first company law directive provides for the compulsory disclosure (to a centralised or decentralised register in each country) by limited liability companies of certain items of information relating to those companies.

The general objective of the Commission's updating proposal is to facilitate ease of access to information about limited liability companies. The proposal provides that from January 2005 companies must be able to file their documents electronically, as well as by paper means. Access to company information must be possible via electronic or paper means.

Your Draftsman considers that the proposal is welcome, but that it could be improved with regard to two fundamental aspects, in order to take account of the evolving usage of company information since the original directive was adopted in the 1960s.

Firstly, the proposal does not take adequately into account needs that have arisen since the 1960s concerning the type and detail of information that companies should provide. In your Draftsman's opinion, this type of information should include a list for each director of other companies for which they hold directorships. Information should also be provided as to whether there are transactions being carried out between companies for which there are shared directors. Finally, information should be available as to whether in the past year the companies have been involved in any pending or concluded legal cases.

Secondly, the proposal does not provide for compulsory provision of information via the internet. Interested parties now include a large number of applicants from countries other than where a company is based, and they therefore need to obtain information from a foreign register. Your Draftsman considers that applicants should be able to request and pay for the information via a website and receive the information electronically. The Commission's proposal obliges Member States to ensure that company information should be obtainable 'by electronic means', but this does not necessarily mean that the information would be available via an on-line web-site and does not mean that you could pay on-line via a web-site. Provision and payment via an on-line web-site would ensure genuine access from abroad, and genuine access to information for those who are based in the same country as the relevant register, but who are prevented logistically or due to time constraints from physically visiting the register.

Additionally, your Draftsman considers that the 'national gazettes' (which are a fundamental source for interested parties to obtain information) should be published on an online web-site (the 'national gazettes' were set up under the first company law directive and have to contain either the full documents or references to the documents).

¹ Directive 68/151/EEC

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 6

In the context of the pursued modernisation, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means. Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means

In the context of the pursued modernisation, companies should be able to choose to file their compulsory documents and particulars by paper means or by electronic means. Interested parties should be able to obtain from the register a copy of such documents and particulars by paper means as well as by electronic means, ***including via an on-line web-site. Interested parties should be able to pay for such documents and particulars via an on-line web-site.***

Justification

Interested parties should be able to obtain and pay for company information via electronic means, including via a web-site. This will facilitate access to company information for interested parties who are not located in the Member State of the company and will also facilitate access for interested parties who are based in the same country as the company but who cannot for logistical or time constraints physically travel to the place of the register.

Amendment 2 Recital 7

Member States should ***be able to decide to*** keep the national gazette, appointed for

Member States should keep the national gazette, appointed for publication of

¹ OJ C 151, 25.6.2002, p. 285.

publication of compulsory documents and particulars, in paper form or electronic form, *or to provide for disclosure by equally effective means.*

compulsory documents and particulars, in paper form *and* electronic form, *including at least via an on-line web-site.*

Justification

Since the national gazette is a key method of publicising company information for interested parties, it should be available via an on-line web-site arranged by the company register.

Amendment 3
ARTICLE 1.2

Article 2.1.d subparagraph 2a (new) of Directive 68/151/EEC is amended as follows:

It must appear from the disclosure whether the persons referred to in (d) also hold a similar function in one or more other companies and whether contractual obligations exist between these companies.

Justification

In the interests of transparency, companies should be obliged to disclose whether persons authorised to bind the company (such as company directors) hold directorships in other companies. Disclosure must also be ensured of any contractual obligations existing between companies which have shared directors.

Amendment 4
ARTICLE 1.2

Article 2.1 ha (new) of Directive 68/151/EEC is amended as follows:

Any pending or concluded legal proceedings involving the company during the previous year;

Justification

In the interests of transparency, companies should be obliged to disclose if the company is the subject of pending or concluded legal cases during the previous year.

Amendment 5
ARTICLE 1.3

Article 3.3 subparagraph 2 of Directive 68/151/EEC is amended as follows:

As from 1 January 2005, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses, whether the documents or particulars have been filed before or after 1 January 2005. However, Member States may decide that all – or certain types of – the documents and particulars that have been filed by paper means up to 31 December 2004 shall not be obtainable from the register by electronic means, if they have been filed before a stated period preceding the date of the application submitted to the register. Such stated period may not be less than **10 years**.

As from 1 January 2005, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means (**which must include at least via a web-site**) as the applicant chooses, whether the documents or particulars have been filed before or after 1 January 2005. However, Member States may decide that all – or certain types of – the documents and particulars that have been filed by paper means up to 31 December 2004 shall not be obtainable from the register by electronic means, if they have been filed before a stated period preceding the date of the application submitted to the register. Such stated period may not be less than **5 years**.

Justification

Interested parties should be able to access company information via electronic means, including via a web-site. This will facilitate access to company information for interested parties who are not located in the Member State of the company and will also facilitate access for interested parties who are based in the same country as the company but who cannot for logistical or time constraints physically travel to the place of the register. To restrict the maximum time allowed for conversion to electronic format of copies of documents and particulars, with all the Member States being responsible for fulfilling this obligation in respect of the length of time proposed for which the information has been on file.

Amendment 6
ARTICLE 1.3

Article 3.3 subparagraph 3 of Directive 68/151/EEC is amended as follows:

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Member States shall ensure that payment for the documents or particulars referred to in Article 2 must be possible via electronic means (which must include at least via a web-site).

Justification

Interested parties should be able to pay for company information via electronic means, including via a web-site. This will facilitate access to company information for interested parties who are not located in the Member State of the company and will also facilitate access for interested parties who are based in the same country as the company but who cannot for logistical or time constraints physically travel to the place of the register.

Amendment 7
ARTICLE 1.3

Article 3.4 subparagraph 1 of Directive 68/151/EEC is amended as follows:

Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette appointed for that purpose **may** be kept in electronic form.

Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette appointed for that purpose **shall** be kept in electronic form **and accessible via a web-site.**

Justification

Since the national gazette is a key method of publicising company information for interested parties, it should be available via the on-line web-site of the company register.

Amendment 8

ARTICLE 1, POINT 4

Article 3 a, paragraph 2 (new)(Directive 68/151/EEC)

2. In addition to the mandatory disclosure referred to in paragraph 1, Member States shall allow documents and particulars referred to in Article 2 to be disclosed in accordance with Article 3 in any official language(s) of the Community. *deleted*

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to ensure that electronic access is provided in each of the official languages of the Community in which such documents and particulars have been disclosed.

Or. es

Justification

With regard to voluntary disclosure and the use of the official languages of the Community, imposed restrictively, the proposed move would reduce the options open to companies and might prejudice the language arrangements for any possible common technological platform for access to trade registers.