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A7-0348/2011

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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council 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 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)
(COM(2011)0029 – C7-0037/2011 – 2011/0011(COD))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council 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 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) (COM(2011)0029 – C7-0037/2011 – 2011/0011(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0029),
 - having regard to Article 294(2) and Article 50(2)(g) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0037/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 15 March 2011¹,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts²,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0348/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

¹ OJ C 132, 3.5.2011, p. 113.

² OJ C 77, 28.3.2002, p. 1.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(2)(g) thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) **and** (2)(g) thereof,

Justification

The legal basis by which the European Parliament and the Council shall adopt directives, in accordance with the ordinary legislative procedure, is set out in Article 50(1) TFEU. That Paragraph must therefore also be quoted.

Amendment 2

Proposal for a directive

Article 6

Text proposed by the Commission

Article 6

1. The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than EUR 25 000.
2. Every five years the European Parliament and the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amount expressed in paragraph 1 in euro in the light of economic and monetary trends in the Union and of the tendency towards allowing only large and medium-sized undertakings to opt for the types of company listed in Annex I.

Amendment

Article 6

1. The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than EUR 25 000.
2. Every five years the European Parliament and the Council, acting on a proposal from the Commission **in accordance with Article 50(1) and (2)(g) of the Treaty on the Functioning of the European Union (TFEU)**, shall examine and, if need be, revise the amount expressed in paragraph 1 in euro in the light of economic and monetary trends in the Union and of the tendency towards

allowing only large and medium-sized undertakings to opt for the types of company listed in Annex I.

Justification

The Commission proposal sets out in Recital 14 that against the background of the judgment of the Court of Justice in Case C-133/06¹, it is considered necessary to redraft the wording of this Article in order to remove an existing secondary legal basis and to confer competence on both the European Parliament and the Council to examine and, if need be, revise the amount referred to in Paragraph 1. The annexed opinion of the Consultative Working Party recommended replacing the existing secondary legal basis with the ordinary legislative procedure. The proposed amendment goes in that line.

¹ Judgment of the Court of Justice of 6 May 2008 in Case C-133/06 *Parliament v Council* [2008] ECR I-3189.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 5 July 2011

OPINION

FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT THE COUNCIL THE COMMISSION

**Proposal for a directive of the European Parliament and of the Council 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 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
COM(2011) 29 final of 1.2.2011- 2011/0011 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 11 February, 17 March and 18 May 2011 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings¹, an examination of this proposal resulted in the Consultative Working Party's establishing by common accord that, in order for the substantive change proposed by the Commission (consisting of a proposed replacement of a secondary legal base with the ordinary legislative procedure) to be correctly presented in the draft recast text, in Article 6(2) in place of the words "*the European Parliament and the Council, acting on a proposal from the Commission*" it would have been appropriate that the following wording be used: "*the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee*".

As regards the manner in which the proposed substantive change should have been identified in the draft recast text, all three legal services are of the opinion that the change proposed by

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

the Commission in Article 6(2) should have been identified by marking with "double-strikethrough" combined with grey-shaded type the words "*the Council, acting on a proposal from the Commission*" (which appear in the existing text of Article 6(3) of Directive 77/91/EEC), and by marking with grey-shaded type the new wording "*the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee*".

However, the Council Legal Service is of the opinion that also the remaining, unchanged part of the wording in Article 6(2) of the proposal should have been grey-shaded, since the content of the measures to be adopted under the provisions concerned and the procedure foreseen for their adoption are inextricably linked. The legislator's political choice in this respect cannot therefore be limited only to the procedural aspect of the provision concerned, but must extend also to the content of the measures concerned.

Subject to the above dissenting opinion of the Council Legal Service, examination of the proposal has enabled the Consultative Working Party to conclude that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance.

C. PENNERA
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director

PROCEDURE

Title	Coordination of safeguards required of companies within the meaning of the second paragraph of Article 54 of the TFEU (recast)
References	COM(2011)0029 – C7-0037/2011 – 2011/0011(COD)
Date submitted to Parliament	1.2.2011
Committee responsible Date announced in plenary	JURI 14.2.2011
Rapporteur(s) Date appointed	Klaus-Heiner Lehne 28.2.2011
Discussed in committee	11.4.2011
Date adopted	11.10.2011
Result of final vote	+: 24 –: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Kurt Lechner, Eva Lichtenberger, Toine Manders
Substitute(s) under Rule 187(2) present for the final vote	Giuseppe Gargani
Date tabled	13.10.2011