Press release

Private company statute: an easier way to start up a business in the EU

A proposed European Private Company Statute - an easier and less costly way to start up a business in the EU and take advantage of its single market - was backed by the Legal Affairs Committee on Tuesday. Members amended the text to prevent misuse and ensure respect for workers' rights. A legislative initiative to facilitate the transfer of companies within the EU was also approved by the committee.

The report, drafted by Klaus Heiner Lehne (EPP-ED, DE) welcomes the Commission proposal for a single set of rules for establishing a company under Community law. The proposal responds to a formal request by Parliament in February 2007 for a European Private Company (EPC) Statute, designed for small and medium-sized enterprises (SMEs).

The European Private Company Statute provides a uniform set of rules for establishing a company anywhere in the EU. The aim is to reduce costs arising from disparities between Member States' national laws and to facilitate the formation and operation of firms.

According to the Commission proposal, the EPC statute is suitable for any company having legal personality and limited-liability share capital which does not offer its shares to the public. An EPC company would be able to have its offices in any Member State and transfer it to any other Member State, without having to move also its central headquarters, as is currently required to comply with national rules.

A cross-border component to qualify for EPC status

MEPs in committee agreed on the general purpose of the proposed regulation, but decided to amend it to avoid misuse, particularly with regard to employee participation, checks on registration and minimum capital requirements.

The committee amended the proposal to establish that a company must have a cross-border component in its business to be eligible for an EPC statute. A "cross-border component" could mean, for example, having founding members from different countries, a business objective covering more than one Member State, or subsidiaries established in several countries.

Nevertheless, to avoid adding to obligations on new companies, MEPs in clarified that the cross-border component should not be an obstacle to setting up an EPC: Member States would be able to verify that this condition is met two years after the new firm is founded.

Harmonisation towards the greatest degree of employee participation

The proposed text says that each EPC should apply the conditions on employee participation laid down by the national law of the Member State of registration.

In event of a company transfer, the rules of the host country apply, unless one-third of the employees are from the original Member State. In this case, if the country to which the EPC moves does not offer the same degree of workers' participation, the management of the firm would have to negotiate new conditions with employees' representatives. If negotiations fail, the law of the Member State from which the company originally comes shall apply.

MEPs amended the provisions on employees' participation to protect their rights better and avoid disparities. According to the approved text, where more than 500 workers in an EPC are from a Member State providing better conditions, the existing EU legislation on employees' participation, and not national legislation, applies.

Minimum capital should not be an obstacle

Finally, the committee also amended the provisions on minimum capital requirement for setting up an EPC, which the Commission had proposed should be a token €1.

MEPs agreed that starting capital should not be an obstacle, but added a requirement that the new company sign a "solvency certificate" to show that the EPC is able to pay its debts. In the event of failure to provide this certificate, the minimum capital requirement would be set at €8,000.

Call for new legislation to facilitate company transfers

At the same voting session, the Legal Affairs Committee also approved a legislative initiative calling on the Commission to put forward a proposal to facilitate cross-border transfers of companies within the EU.

The report, also drafted by Mr Lehne, lays down the conditions for the Commission legislative proposal. MEPs say the transfer should not entail any interruption of activity or loss of legal personality. Finally, the committee recommends that Commission take account of the rights of all stakeholders, e.g. minority shareholders and creditors, in its text.

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