

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0400/2008

31.10.2008

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REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies (COM(2008)0194 – C6-0171/2008 – 2008/0083(COD))

Committee on Legal Affairs

Rapporteur: Piia-Noora Kauppi

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies
(COM(2008)0194 – C6-0171/2008 – 2008/0083(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0194),
 - having regard to Article 251(2) and Article 44(2)(g) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0171/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of Committee on Economic and Monetary Affairs (A6-0400/2008),
1. Approves the Commission proposal as amended;
 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;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

**Proposal for a directive – amending act
Recital 5**

Text proposed by the Commission

(5) In most cases, the publication obligations entail additional costs for the companies without providing real added value given that company registers make their information available online. Initiatives aimed at facilitating the Community wide access to such registers further reduce the need for publishing this information in a national gazette or in other print media.

Amendment

(5) In most cases, the publication obligations entail additional costs for the companies without providing real added value given that company registers make their information available online. Initiatives – ***such as the future European e-Justice portal*** – aimed at facilitating the Community wide access to such registers further reduce the need for publishing this information in a national gazette or in other print media.

Justification

A number of Member States have begun, with the support of the Commission, to set up a European E-Justice portal to allow the exchange of information, the linking of national registers and on-line access to European procedures such as payment orders. This portal would be the appropriate platform for electronic company information.

Amendment 2

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

(6) In order to allow for a cost effective publication that provides users with easy access to the information Member States should make mandatory the use of a central electronic platform. ***They*** should, furthermore, ensure that ***this publication and any additional publication duties they may impose on companies in this context, do not lead to any specific fees, in addition to those that may be charged for entries in the register.***

Amendment

(6) In order to allow for a cost effective publication that provides users with easy access to the information Member States should make mandatory the use of a central electronic platform. ***This platform should either contain all the information that is required to be disclosed or give access to this information in the company's electronic file in the Member States' registers. Member States*** should, furthermore, ensure that ***any costs charged to companies for such publication are included in a single fee, together with those, if any, that are charged for entries in the register. Any existing publication obligations in Member States should not lead to any additional specific fees. This should not, however, prejudice the freedom of Member States to pass on to companies the costs connected with the setting-up and operation of the platform, including the formatting of documents, either by including those costs in registration fees or by demanding a mandatory periodical contribution from companies.***

Amendment 3

Proposal for a directive – amending act Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In line with the principle of subsidiarity, Member States may continue all other existing forms of publication, provided that they are well defined and based on objective conditions, particularly in the interests of legal certainty and information security and having regard to the availability of access to the Internet and national practices. Member States should cover the costs of such complementary publication obligations within the single fee.

Amendment 4

Proposal for a directive – amending act Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Consistently with the use of a central electronic platform, the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interest 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 equivalent¹ should be amended.

¹ OJ L 26, 31.1.1977, p. 1.

Amendment 5

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

(13) Directives 68/151/EEC and 89/666/EEC should therefore be amended accordingly,

Amendment

(13) Directives 68/151/EEC, **77/91/EEC** and 89/666/EEC should therefore be amended accordingly,

Amendment 6

Proposal for a directive – amending act Article 1

Directive 68/151/CEE
Article 3 – paragraph 4

Text proposed by the Commission

4. Disclosure of the documents and particulars referred to in Article 2 shall be effected by publication through a central electronic platform that allows access to the information disclosed in chronological order.

Member States shall ensure that companies are not charged a specific fee in respect of **the publication obligation through a** central electronic platform or any additional publication obligation imposed by Member States relating to those documents and particulars.

Amendment

4. Disclosure of the documents and particulars referred to in Article 2 shall be effected by publication through a central electronic platform that allows access to the information disclosed in chronological order.

Member States shall ensure that companies are not charged a specific fee in respect of **a publication on the** central electronic platform or **in respect of** any additional publication obligation imposed by Member States relating to those documents and particulars. ***This provision shall not affect the ability of Member States to pass on to companies the costs in respect of the central electronic platform.***

Amendment 7

Proposal for a directive – amending act Article 2

Directive 89/666/EEC
Article 4 – paragraph 1

Text proposed by the Commission

1. The Member State in which the branch has been opened may stipulate that the documents referred to in ***points*** (b) ***and*** (c) of Article 2(2) and in Article 3 must be ***published*** in an official language of the Community other than the official language of the register referred to in point (c) of Article 2(1), and that the translation of such documents must be certified. ***A translation shall be deemed certified where it has been certified in a procedure accepted by the administrative or judicial authorities of any other Member State.***

Amendment

1. The Member State in which the branch has been opened may stipulate that the documents referred to in ***point*** (b) of Article 2(2) and in Article 3 must be ***disclosed*** in an official language of the Community other than the official language of the register referred to in point (c) of Article 2(1), and that the translation of such documents must be certified. ***Where a Member State requires certification, the translation shall be certified by a person so qualified in any Member State.***

Amendment 8

**Proposal for a directive – amending act
Article 2**

Directive 89/666/EEC

Article 4 – paragraph 2

Text proposed by the Commission

2. ***Member States shall accept*** the attestation referred to in point (c) of Article 2(2) ***in the language in which it is published in accordance with paragraph 1 of this Article.***

Amendment

2. ***Paragraph 1 shall apply mutatis mutandis to*** the attestation referred to in point (c) of Article 2(2), ***unless the attestation has been issued from the register referred to in point (c) of Article 2(1) in the official language required by the Member State in which the branch has been opened.***

Amendment 9

**Proposal for a directive – amending act
Article 2**

Directive 89/666/EEC

Article 4 – paragraph 3

Text proposed by the Commission

3. Member States shall not impose any formal requirement relating to the

Amendment

3. Member States shall not impose any ***additional*** formal requirement relating to

translation of the documents *referred to in paragraph 1* other than those *laid down in paragraphs 1 and 2*.

the translation of the documents other than those *referred to* in paragraphs 1 and 2.

Amendment 10

Proposal for a directive – amending act

Article 2 a (new)

Directive 77/91/EEC

Article 29 – paragraph 3

Text proposed by the Commission

Amendment

Article 2a

Amendment of Directive 77/91/EEC

Article 29(3) of Council Directive 77/91/EEC is replaced by the following:

"3. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in the national gazette [...]. However, the laws of a Member State need not provide for such publication where all a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders."

Amendment 11

Proposal for a directive – amending act

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2010 at the latest. They shall forthwith communicate to the

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2010 at the latest.
Member States may continue all other

Commission the text of those provisions and a correlation table between those provisions and this Directive.

existing national forms of publication, provided that they are well defined and based on objective conditions, particularly in the interests of legal certainty and information security and having regard to the availability of access to the Internet and national practices. Member States shall cover the costs of such complementary publication obligations within the single fee. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

EXPLANATORY STATEMENT

The rapporteur supports the Commission in its aim of diminishing administrative burdens as regards publication and translation obligations of certain types of companies. The proposal is part of the wide ranging administrative burden reduction exercise, by freeing up and redirecting business resources and thus enhancing the competitiveness of the economies in the Member States.

Under the First Company law Directive (68/151/EEC), companies need to publish certain information in the national gazettes that has to be entered into the Member States' commercial registers (e.g. information about the company's foundation, later changes to this information and the annual accounts, etc.) In most cases, the publication in the national gazette entails additional costs for the companies without providing real added value in times where company registries make their information available online. The objective of the Commission proposal is therefore to remove any additional publication requirements in national law that cause additional costs to the companies.

Among the available options (one to four) that the Commission considered to achieve the goal of diminishing the administrative burdens related to the publishing requirements, it seems that the proposed fourth option balances the interests in question at best. The Member States should adopt an electronic platform containing the full information or providing access to this information in the companies' electronic file in the register. This would be a cost effective and an easily accessible way to provide all the necessary information regarding the companies. A single fee set by the Member States should cover all the costs related to the publication and administration requirements. This fee should also cover the possible national requirements to publish information on local or regional newspapers as well. In other words, the Member States would be free to provide for additional publication obligations but they would have to respect the restriction on imposing any additional fees.

This option number four is a compromise, which, on one hand, leaves Member States more flexibility to provide for additional publication duties if necessary, and, on the other hand, ensures that there are no additional specific fees imposed on companies in connection with such duties.

Regarding the Eleventh Company law Directive (89/666/EEC), the proposal deals with the translation requirements for documents to be filed in the registers of company branches. When registering a branch, companies need to file certain information also in the register of the company branch. This often leads to remarkable additional costs for companies as they not only have to ensure the translation of certain documents into the language of the Member State where the branch is situated, but also have to comply with sometimes excessive requirements for certification and/or notarisation of that translation. The objective is to reduce the costs for translation and certification to the minimum. Among the available options (one to three) that the Commission considered to achieve the goal of diminishing the administrative burdens related to the translation (registration), it seems that the proposed third option (mutual recognition of translations) balances the interests in question at best. This option leads to benefits for companies by achieving a certain reduction in costs while ensuring the reliability

of the translations.

The rapporteur therefore agrees with the Commission proposal and introduces some amendments clarifying the practical implementation of the provisions related to the publication costs and translation provisions. The rapporteur also introduces one technical amendment in order to ensure a correct cross-referencing with the Second company law Directive (77/91/EEC).

7.10.2008

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies
(COM(2008)0194 – C6-0171/2008 – 2008/0083(COD))

Rapporteur: Margaritis Schinas

SHORT JUSTIFICATION

Your draftsman supports the aims to reduce administrative burdens and costs, improve the quality of legislation, and to update existing rules in order to make them clearer. Moreover, your draftsman believes that new technology should be used to its fullest in pursuit of limiting administrative burdens and costs. However, it must be taken into account that Internet penetration in most EU countries is still lower than 50%. If the information is only available on a single electronic platform, some EU citizens who cannot have access to Internet or who prefer to use more traditional forms of communication will not be able to receive information related to companies in their local area. In consequences, Member States should have the possibilities to organize the disclosure of information through other complementary means under specific conditions.

Both the First Company law Directive and the Eleventh Company law Directive has been identified as candidate for fast-track-simplification.

In relation to the First Company law Directive, it is in particular the obligation for companies to publish, in the national gazettes, certain information that has to be entered into the Member States' commercial register. This is in particular information about the company's foundation, later changes to this information and the annual accounts that have to be published on a yearly basis. In most cases, this publication in the national gazette entails additional costs for the companies without providing real added value in times where company registries make their information available online.

In relation to the Eleventh Company law Directive, it is in particular the translation requirements, in national law, for documents to be filed to the branch's register. When

registering a branch, companies need to file certain information contained in the companies register file also with the register of the branch. This often leads to a double cost for companies as they not only have to ensure the translation of certain documents into the language of the Member State where the branch is situated but also have to comply with sometimes excessive requirements for certification and/or notarisation of that translation.

Your draftsman considers that some legal obligations to provide information have become needlessly time-consuming, excessively complicated, or useless. By reducing unnecessary reporting, translation and certification requirements the costs of production will be reduced and allow additional investment and innovation, which in turn should improve productivity and overall competitiveness.

Therefore your draftsman supports the Commissions proposal. Nevertheless, your draftsman underlines that simplification and reduction of administrative burdens and costs must not undermine quality of languages, cultural heritage and diversity. In this context your draftsman considers that the community's approach to multilingualism must be underlined in the final text of the directive.

AMENDMENTS

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

Amendment 1

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

(6) In order to allow for a cost effective publication that provides users with easy access to *the* information Member States should make mandatory the use of a central electronic platform. They should, furthermore, ensure that *this* publication and any additional publication duties they may impose on companies in this context, do not lead to any specific fees, in addition to those that may be charged for entries in the register.

Amendment

(6) In order to allow for a cost effective publication that provides users with easy access to information, Member States should make mandatory the use of a central electronic platform. ***Because access to the Internet is not universally available in certain Member States, Member States may, in addition, arrange for publication by complementary means.*** They should, furthermore, ensure that this publication and any additional publication duties they may impose on companies in this context, do not lead to any specific fees, in addition to those that may be charged for entries in the register, ***unless such fees are based on well-defined and objective criteria in order to ensure that better information is provided to citizens of the Union.***

Amendment 2

Proposal for a directive – amending act Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In line with the principle of subsidiarity, Member States should be

able to continue other forms of publication obligations, particularly in the interests of legal certainty and information security and with regard to national requirements and practices. Member States should be able to cover the costs of such publication obligations by a single fee.

Amendment 3

Proposal for a directive – amending act Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Disclosure of the documents and particulars referred to in Article 2 shall be effected by publication through a central electronic platform that allows access to the information disclosed in chronological order.

Amendment

4. Disclosure of the documents and particulars referred to in Article 2 shall be effected by publication through a central electronic platform that allows access to the ***company*** information disclosed in chronological ***and thematic*** order. ***Member States may also require the documents to be published by other means.***

Amendment 4

Proposal for a directive – amending act Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Member states shall ensure that companies are not charged a specific fee in respect of the publication obligation through a central electronic platform or any additional publication obligation imposed by Member States relating to those documents and particulars.

Amendment

Member States shall ensure that companies are not charged a specific fee in respect of the publication obligation through a central electronic platform or any additional publication obligation imposed by Member States relating to those documents and particulars, ***unless such fees are based on well-defined and objective criteria in order to ensure that better information is***

provided to citizens of the Union.

Amendment 5

Proposal for a directive – amending act

Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 2 a – introductory part (new)

Text proposed by the Commission

Amendment

This paragraph shall not affect the ability of Member States to:

Amendment 6

Proposal for a directive – amending act

Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 2 a – indent 1 (new)

Text proposed by the Commission

Amendment

- pass on to companies publication costs, including those relating to the establishment and operation of the central electronic platform;

Amendment 7

Proposal for a directive – amending act

Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 2 a – indent 2 (new)

Text proposed by the Commission

Amendment

- continue providing for other publication obligations, particularly in the interests of legal certainty and information security and with regard to national requirements and practices, in accordance with the principle of subsidiarity;

Amendment 8

Proposal for a directive – amending act

Article 1

Directive 68/151/EEC

Article 3 – paragraph 4 – subparagraph 2 a – indent 3(new)

Text proposed by the Commission

Amendment

- pass on to companies the costs of establishing and operating the central electronic platform or of any continued additional publication obligations in a single fee.

PROCEDURE

Title	Publication and translation obligations of certain types of companies
References	COM(2008)0194 – C6-0171/2008 – 2008/0083(COD)
Committee responsible	JURI
Opinion by Date announced in plenary	ECON 20.5.2008
Drafts(wo)man Date appointed	Margaritis Schinas 8.7.2008
Discussed in committee	9.9.2008
Date adopted	7.10.2008
Result of final vote	+ : 24 - : 6 0 : 0
Members present for the final vote	Mariela Velichkova Baeva, Pervenche Berès, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, Christian Ehler, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Andrea Losco, Gay Mitchell, John Purvis, Alexander Radwan, Bernhard Rapkay, Salvador Domingo Sanz Palacio, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser
Substitute(s) present for the final vote	Piia-Noora Kauppi, Werner Langen, Margaritis Schinas

PROCEDURE

Title	Publication and translation obligations of certain types of companies						
References	COM(2008)0194 – C6-0171/2008 – 2008/0083(COD)						
Date submitted to Parliament	17.4.2008						
Committee responsible Date announced in plenary	JURI 20.5.2008						
Committee(s) asked for opinion(s) Date announced in plenary	ECON 20.5.2008						
Rapporteur(s) Date appointed	Piia-Noora Kauppi 25.6.2008						
Discussed in committee	9.9.2008						
Date adopted	7.10.2008						
Result of final vote	<table> <tr> <td>+: </td><td>20</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	20	–:	0	0:	0
+:	20						
–:	0						
0:	0						
Members present for the final vote	Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Othmar Karas, Piia-Noora Kauppi, Katalin Lévai, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka						
Substitute(s) present for the final vote	Jean-Paul Gauzès, Kurt Lechner, Rareș-Lucian Niculescu, Georgios Papastamkos						