

EUROPEAN PARLIAMENT

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2009

Committee on Economic and Monetary Affairs

2008/2196(INI)

7.11.2008

OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

on Cross-borders transfers of company seats
(2008/2196(INI))

Rapporteur(*): Harald Ettl

(Initiative - Rule 39 of the Rules of Procedure)

(*) Associated committee – Rule 47 of the Rules of Procedure

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SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Notes that undertakings can currently transfer their seat only either by dissolution and establishing a new legal entity in the Member State of destination, or by establishing a new legal entity in the Member State of destination and then merging both undertakings; further notes that this procedure involves administrative obstacles, costs and social consequences and offers no legal certainty; calls once again on the Commission, therefore, to submit its proposal which has been overdue since 2005;
2. Draws attention to the freedom of establishment that is guaranteed for undertakings under Article 48 of the EC Treaty and that has been interpreted by the Court of Justice of the European Communities¹;
3. Notes that a transfer of a company seat implies a transfer of supervision; points out that when drafting the 14th Company Law Directive on cross-border transfer of the registered offices the maintenance of the existing rights of shareholders, creditors and workers must be guaranteed and the existing equilibrium in the management of the company ('corporate governance') preserved;
4. Proposes that reference be made in the new Directive to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees² and Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies³, in order to guarantee the coherence and substantive nature of employee participation procedures in the application of European company law directives;
5. Takes the view that a transfer of company seat must be preceded by the issuing of a transfer plan and a report explaining and justifying the legal and economic aspects and any consequences of the transfer for shareholders and employees; points out that the transfer plan and the report must be made available in good time to all those involved;
6. Emphasises the positive effects of tax competition on economic growth in the context of the Lisbon Strategy;
7. Notes that a transfer of a company seat should be tax neutral;
8. Suggests that the exchange of information and mutual assistance between tax authorities be improved;

¹ Judgment of the Court of 9 March 1999 in Case C-212/97, *Centros v Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1459.

² OJ L 254, 30.9.1994, p. 64.

³ OJ L 310, 25.11.2005, p. 1.

9. Calls for transparency in the application of the new directive in the Member States and therefore proposes a reporting requirement for Member States vis-à-vis the Commission in accordance with which undertakings transferring their seat under the directive must be entered onto a European companies register; points out that, in the interest of better law-making, excessive information ('overkill') must be avoided when transposing the reporting requirement into national law provided that sufficient information is guaranteed.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.11.2008
Result of final vote	+: 19 -: 16 0: 8
Members present for the final vote	Paolo Bartolozzi, Zsolt László Becsey, Slavi Binev, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Christian Ehler, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Wolf Klinz, Christoph Konrad, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Sirpa Pietikäinen, John Purvis, Alexander Radwan, Bernhard Rapkay, Heide Rühle, Antolín Sánchez Presedo, Salvador Domingo Sanz Palacio, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser, Sahra Wagenknecht
Substitute(s) present for the final vote	Mia De Vits, Harald Ettl, Ján Hudacký, Werner Langen, Klaus-Heiner Lehne, Vladimír Maňka, Gianni Pittella, Theodor Dumitru Stolojan
Substitute(s) under Rule 178(2) present for the final vote	Wolfgang Bulfon