

EVROPSKI PARLAMENT

2004



2009

Odbor za ekonomske in monetarne zadeve

2004/0256(COD)

18.7.2005

MNENJE

Odbora za ekonomske in monetarne zadeve

za Odbor za pravne zadeve

o predlogu Direktive Evropskega parlamenta in Sveta o spremembi Direktive Sveta 77/91/EGS o ustanavljanju delniških družb in ohranjanju ter spreminjanju njihovega kapitala
(KOM(2004)0730) – C6-0169/2004 – 2004/0256(COD))

Pripravljalca mnenja: Margarita Starkevičiūtė

PA_Leg

SHORT JUSTIFICATION

I. Current situation/ legislative background

Aiming at co-ordination of national provisions applicable to public limited liability companies as far as their formation, minimum share capital requirements, shareholders distribution and capital increase/reduction are concerned, in 1976 the European Commission presented the so-called *Second Company Law Directive*¹. Its overall purpose was to lay down the conditions needed to ensure that a company's capital is maintained in the interest of creditors. Further on, it aimed at safeguarding the position of minority shareholders enshrining the principle of equal treatment of all shareholders in an identical situation.

In 1996 the Commission launched a multi-annual project streamlining the key Internal Market Legislation - the so-called SLIM project² - examining 17 different legislative areas during five phases in the years 1996-2002 and targeted at identifying ways of simplification of current legislation in order to reduce burdens on businesses. The IV phase highlighted the need to review the provisions of the company law directives.

II. Stimuli for change

The hitherto company law directives were designed more to establish a proper level of protection to safeguard interested of shareholders and creditors in particular.

Notwithstanding proper mechanisms of protection for shareholder and creditors do contribute to greater efficiency (risk reduction), it should be noticed that the primary focus of the EU legislation should be to provide mechanism enhancing efficiency and competitiveness of businesses. In this light some of the above related provision, especially in the area of capital maintenance and corporate restructuring, are considered to be hold-ups on the way to a more competitive market.

It is argued that the 1976 Directive was adopted at a time when the U.S. Model Business Corporation Act eliminated legal capital and mandatory pre-emption rights as futile devices burdening corporate activities with additional costs. The independent report by the Accounting Standards Board and the British Institute of International and Comparative Law concluded also that the hitherto EU corporate legislation "[...] *is not widely relied on in practice by creditors, is complex, expensive and anomalous, producing inconsistent results as between companies within Member States and between different Member States*". To meet the demands of continuously growing need to revise the existing rules in view of the changing economic circumstances, in October 2004 the Commission has proposed a legislative act amending the *Second Company Law Directive*.

¹ Directive 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 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 equivalent, OJ L026 of 31.01.1977.

² Simpler Legislation for the Internal Market

III. Commission Proposal

According to former Internal Market Commissioner Frits Bolkenstein "[...] to maximise the efficiency and competitiveness of European business, we need to simplify and improve EU rules on companies' capital while maintaining strong safeguards for creditors and investors, especially minority shareholders".

In applying the Second Company Law Directive it has become apparent that some of its provisions would have to be modified, in order to meet the needs of greater flexibility to react more promptly and efficiently to developments of the market. In line with the SLIM recommendations, the Directive Proposal aims particularly at eliminating certain reporting requirements, facilitating acquisitions of shares by the company itself and a third party and streamlining company's ownership in the capital share.

Specifically, the Commission Proposal aims at the following capital related measures of the public limited liability companies:

- *increase of capital* - relaxing unnecessary administrative burden linked to the reporting requirements accompanying increase on capital against consideration in cash (by issue of shares) and the principle of a pre-emptive right to acquire proportional part of the 'new' shares by a shareholder;
- *reduction of capital* - further harmonisation of creditors' protection and elimination of unnecessary delays in cases of undue demands for securities by creditors and establishment of specific judicial or administrative procedures;
- *valuation of assets* - elimination of administrative burden linked to costly, and often undue and imprecise, expert valuation reports by extending number of cases in which such valuations need not be required;
- *acquisition of own shares* - greater flexibility and elimination of administrative burden by increasing the maximum of transaction authorisation period up to five years allowing companies to react properly to market developments;
- *acquisition of shares by a third party* - further protection of shareholders and increased flexibility with regard to changes in the ownership structure by allowing companies to grant financial assistance up to their distributable reserves;
- *'squeeze out' and 'sell out' rights* - greater flexibility and more viable ownership structure by allowing under certain conditions the majority shareholders to buy out minority shareholders at a fair price and the complementary right of minority shareholders to compel the majority shareholders to buy their shares.

All of the aforementioned measures implemented would help provide for a better harmonised legal basis and modernised public limited liability companies given a chance to remain both efficient and competitive in the ever-evolving markets.

IV. Conclusion

Your draftswoman expresses support for the Commission's deregulation proposals for the 2nd Company Law Directive, since its main objective is to reduce administrative burden for the companies. However, it should be noted that on several points the Commission's proposals are not compatible with the already existing regulations on the

capital market, while some terms of the proposals are too vague. Therefore with regard to the interests of investors and companies some modifications are needed.

PREDLOGI SPREMEMB

Odbor za ekonomske in monetarne zadeve poziva Odbor za pravne zadeve kot pristojni odbor, da v svoje poročilo vključi naslednje predloge sprememb:

Besedilo, ki ga predlaga Komisija

Predlogi sprememb Parlamenta

Predlog spremembe 1

ČLEN 1, TOČKA -1 (novo)

Člen 1, odstavek 1, alinea 21 (Direktiva 77/91/EGS)

(-1) V členu 1(1), se enaindvajseta alinea nadomesti z:

- na Madžarskem:

nyilvánosan működő részvénytársaság

Obrazložitev

The Second Company Law Directive aims to harmonize capital maintenance rules applicable to public limited companies. In Member States where company law makes distinction between public and private limited liability companies, the Directive applies only to public limited companies. The Hungarian National Parliament voted on 21 June 2005 an amendment to the Hungarian Companies Act of 1997, under which limited companies will be required in the future to indicate in the company's name whether they function under the regime of private and public companies. The scope of the Second Company Law Directive has to be adapted accordingly: in Hungary, it should apply only to public limited companies ("nyilvánosan működő részvénytársaság").

Predlog spremembe 2

ČLEN 1, TOČKA 3

Člen 19, odstavek 1, pododstavek 2 (Direktiva 77/91/EGS)

Države članice lahko določijo, da velja za pridobitve v smislu prvega pododstavka pogoj, da nominalna vrednost ali, v odsotnosti le-te, računovodska vrednost

Države članice lahko določijo, da velja za pridobitve v smislu prvega pododstavka pogoj, da nominalna vrednost ali, v odsotnosti le-te, računovodska vrednost pridobljenih

pridobljenih delnic, vključno z delnicami, ki jih je podjetje že pridobilo in delnice, ki jih je pridobila oseba, ki deluje s svojim imenom, vendar v imenu družbe, ne sme presegati **10 %** vpisanega kapitala.“

delnic, vključno z delnicami, ki jih je podjetje že pridobilo in delnice, ki jih je pridobila oseba, ki deluje s svojim imenom, vendar v imenu družbe, ne sme presegati **25 %** vpisanega kapitala.“

Obrazložitev

The manipulation of share prices is countered by the specific market regulations; therefore it is not necessary to have such provisions in this directive. Restriction of the acquisition of own shares to 10 %, would limit companies ability to react to market trends.

Predlog spremembe 3

ČLEN 1, TOČKA 4

Člen 23, odstavek 1, pododstavek 2 (Direktiva 77/91/EGS)

Do transakcij lahko pride na pobudo in odgovornost upravnega ali poslovnega telesa pod poštenimi tržnimi pogoji, še zlasti v zvezi z obrestmi, ki jih podjetje prejme od tretje stranke in v zvezi z varščino, ki jo podjetje prejme od tretje stranke za posojila in akontacije iz odstavka 1. Kreditno sposobnost tretje stranke je treba primerno raziskati, družba pa mora ohranjati likvidnost in plačilno sposobnost še **naslednjih pet let**. Slednje mora biti verodostojno prikazano s podrobno analizo denarnega toka, ki temelji na podatkih iz časa odobritve transakcije.

Do transakcij lahko pride na pobudo in odgovornost upravnega ali poslovnega telesa pod poštenimi tržnimi pogoji, še zlasti v zvezi z obrestmi, ki jih podjetje prejme od tretje stranke in v zvezi z varščino, ki jo podjetje prejme od tretje stranke za posojila in akontacije iz odstavka 1. Kreditno sposobnost tretje stranke je treba primerno raziskati, družba pa mora ohranjati likvidnost in plačilno sposobnost še **vsaj v času trajanja posojila**. Slednje mora biti verodostojno prikazano s podrobno analizo denarnega toka, ki temelji na podatkih iz časa odobritve transakcije.

Obrazložitev

The amendment is necessary for the better protection of the creditor rights by extending the time period to the actual loan maturity period.

Predlog spremembe 4

ČLEN 1, TOČKA 9

Člen 39b, odstavek 1 (Direktiva 77/91/EGS)

1. Države članice morajo zagotoviti, da lahko manjšinski delničarji družbe, ki kotira na borzi, posamezno ali v skupini, od večinskega delničarja zahtevajo, da odkupi od njih delnice družbe po poštenu ceni.

1. Države članice morajo zagotoviti, da lahko manjšinski delničarji družbe, ki kotira na borzi, posamezno ali v skupini zahtevajo od **vsakega** večinskega delničarja, **v katerega lasti je vsaj 95 % vpisanega kapitala družbe**,

ki kotira na borzi, da odkupi od njih delnice družbe po pošteni ceni.

Obrazložitev

When a majority shareholder acquires such a large stake of shares it has negative impact on the market price of remaining shares and inflicts losses for the minority shareholder, however it is necessary to protect company from launching a complicated procedure to ascertain fair price with regard only to interests of minority shareholder therefore this provision shall be applied only for limited number of cases.

POSTOPEK

| | | | |
|--|---|-----------|-----------|
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