



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Employment and Social Affairs

2011/2046(INI)

27.9.2011

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on a 14th company law directive on the cross-border transfer of company seats
(2011/2046(INI))

Rapporteur: Philippe Boulland

(Initiative – Rule 42 of the Rules of Procedure)

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SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible:

– to incorporate the following suggestions in its motion for a resolution:

- A. whereas the Commission's 2007 impact assessment does not cover the implications for social and employment policies, apart from the involvement of employees;
- B. whereas the Statute for a European Company and the Statute for a European Cooperative Society provide for the transfer of company seats in accordance with specific, binding rules on the involvement of employees, in line with Directive 2001/86/EC, and whereas the employee participation procedures laid down in European company law directives must be as coherent and effective as possible;
- C. whereas the Court of Justice has adopted certain approaches towards freedom of establishment of undertakings, in the *Daily Mail*¹, *Centros*², *Überseering*³ and *Cartesio*⁴ cases,
 1. Emphasises that Articles 49 and 54 of the Treaty on the Functioning of the European Union guarantee freedom of establishment for all companies and firms; observes that cross-border company migration is one of the crucial elements in the completion of the internal market; notes the lack of consistency in legislation on transfers and on procedures for transferring the registered office or real head office of an existing company or firm incorporated under national law from one Member State to another, within the single market, and the associated risks in terms of employment, as well as the administrative difficulties, the costs generated, the social implications and the lack of legal certainty;
 2. Is in favour of EU legislation on the transfer of company seats, provided that this does not jeopardise the achievement of the objectives set out in Article 9 of the Treaty on the Functioning of the European Union or restrict the right of involvement of employees;
 3. Calls for transfers of seat to maintain the continuity of the legal personality of the company or firm concerned, in order to ensure its proper functioning;
 4. Calls for transfers of seat to be guided by the principle of flexicurity in the interests of a more flexible market which accords better with the interests of workers and is free of obstacles but in which the rights of workers are respected and they are protected against dismissal;
 5. Expects the proposed directive to prevent abuses as referred to in Directive 2001/86/EC and fraud, caused in particular by the setting-up of "mailbox companies", and to protect the interests, and guarantee the existing rights, of creditors (particularly in the event of

¹ Judgment of 27 September 1988 in Case 81/87 *Daily Mail* [1988] ECR 5483.

² Judgment of 9 March 1999 in Case C-212/97 *Centros* [1999] ECR I-1459.

³ Judgment of 5 November 2002 in Case C-208/00 *Überseering* [2002] ECR I-9919.

⁴ Judgment of 16 December 2008 in Case C-210/06 *Cartesio* [2008] ECR I-9641.

insolvency of a company or firm), minority shareholders and employees, while preserving at least the existing balance in the governance of undertakings; observes that a cross-border transfer of the seat of a company or firm should not result in its dismantlement or any other interruption or loss of its legal personality;

6. Encourages Member States to arrange for the legality of transfers to be monitored by a competent authority which, in particular, adjudicates on compliance with the obligations of all stakeholders;
7. Sets out below a series of recommendations concerning binding conditions that must be satisfied if a 14th company law directive is to ensure the involvement of employees during and after the transfer of company seats;
8. Calls for Directive 2001/86/EC to become the main legal basis for transfers of seat, bearing in mind the provisions of labour law;
 - to include the following recommendations in the annex to its motion for a resolution:
9. Recommendation 1: the Commission should submit an impact assessment covering the implications of a directive on the transfer of company seats as regards the achievement of the objectives set out in Article 9 of the Treaty on the Functioning of the European Union; that impact assessment should be published, at the latest, at the same time as the proposal for a 14th company law directive;
10. Recommendation 2: EU legislation on the transfer of the registered office of a company or firm must include the following elements in order to guarantee the right of participation and the cohesion of employees, and must retain the protection and guarantees afforded to their representatives, during and after the transfer, for reasons of efficiency and legal certainty:
 - legislative provisions on the right of involvement of employees should be in line with those set out in Directive 2001/86/EC regarding the involvement of employees, particularly where a company or firm is established by means of transformation, in order to ensure the coherence of employee participation procedures in connection with the application of European company law directives;
 - in addition, the management body should consult shareholders and employees about the legal and economic implications of the transfer by means of a report fully setting out and justifying the consequences for shareholders and employees, presented in good time and at least one month before the general meeting definitively decides whether or not to approve the proposed transfer; particulars of the consultation on the report, including the transfer plan, must be accessible free of charge for all workers and their representatives;
 - the company's rights and obligations – deriving from legislation, accepted practice and individual employment contracts or employment relationships – in respect of working conditions in the home Member State, as well as the activities of the bodies representing workers, should continue to apply during the transfer of the seat and following its registration in the host Member State;

- if the transfer entails a change in the structure of the company or firm, central management should – on its own initiative or in response to a written request by a number of workers decided by the social partners – take a decision to alter the composition of the bodies representing workers;
- where collective redundancies are inevitable as a result of the transfer of a company's seat, the provisions of Directive 98/59/EC should apply;
- the transfer of a company's seat should be subject to its ability to demonstrate compliance with the provisions on employees' rights;
- the Member States should provide for effective legal remedies, with suspensive effect in relation to the transfer of the seat, for employees and their representatives so that employers can be forced to discharge their obligations at national and European level towards employees should they fail to do so;
- the legislation of the host Member State should apply, except where it specifically provides for a lower level of employee involvement and joint decision-making.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.9.2011
Result of final vote	+: 40 -: 1 0: 5
Members present for the final vote	Regina Bastos, Edit Bauer, Pervenche Berès, Mara Bizzotto, Philippe Boulland, Milan Cabrnoch, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Tadeusz Cymański, Frédéric Daerden, Proinsias De Rossa, Frank Engel, Sari Essayah, Richard Falbr, Ilda Figueiredo, Marian Harkin, Roger Helmer, Nadja Hirsch, Liisa Jaakonsaari, Danuta Jazłowiecka, Martin Kastler, Ádám Kósa, Patrick Le Hyaric, Veronica Lope Fontagné, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Siiri Oviir, Rovana Plumb, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu
Substitute(s) present for the final vote	Raffaele Baldassarre, Jelko Kacin, Ria Oomen-Ruijten, Antigoni Papadopoulou, Evelyn Regner, Emilie Turunen, Cecilia Wikström, Tatjana Ždanoka