

P6_TA(2007)0023

The European private company statute

European Parliament resolution with recommendations to the Commission on the European private company statute (2006/2013(INI))

The European Parliament,

- having regard to Article 192, second paragraph, of the EC Treaty,
 - having regard to Rules 39 and 45 of its Rules of Procedure,
 - having regard to the communication from the Commission to the Council and the European Parliament of 21 May 2003 entitled 'Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward' (COM(2003)0284),
 - having regard to the public hearing held by the Commission on the future priorities of the action plan to modernise company law and corporate governance and the outcome thereof,
 - having regard to the report of the Committee on Legal Affairs (A6-0434/2006),
- A. whereas the condition in Rule 39(2), that no proposal should be in preparation, is duly fulfilled,
- B. whereas the public hearing held in the European Parliament's Committee on Legal Affairs on 22 June 2006 underscored the need for a European Private Company as a legal form for small and medium-sized undertakings engaged in cross-border business,
- C. whereas it should be possible for one or more natural or legal persons who do not necessarily reside in a Member State to establish a European Private Company (EPC) on Community territory, in accordance with Community law and procedure which will have to be set out in a regulation,
- D. whereas an EPC should possess legal personality and its liability for debts to creditors should be limited to its assets,
- E. whereas the EPC offers companies an additional, voluntary option, alongside national company forms, in terms of how they may constitute themselves,
- F. whereas the EPC should be able to choose between a monistic or dualistic structure,
- G. whereas the EPC should be registered in the country in which its seat is located, in the appropriate register in accordance with the national provisions enacted pursuant to Directive 68/151/EEC, with a business address at which service may be validly effected, taking into account mechanisms for verifying the substantive correctness and authenticity of the constitutive instrument,

- H. whereas the relevant *acquis communautaire* providing for cross-border information, consultation and participation rights of employees as well as safeguarding pre-existing employee participation rights (Directives 94/45/EC and 2005/56/EC) should be fully preserved, and whereas consequently the conversion of a company with employee co-determination, information and consultation rights into an EPC should not result in the loss of those existing rights,
1. Requests the Commission to submit to Parliament during 2007, on the basis of Article 308 of the EC Treaty, a legislative proposal on the Statute for a European Private Company and requests that this proposal be drawn up within the framework of interinstitutional deliberations and in accordance with the detailed recommendations set out in the Annex hereto;
 2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
 3. Considers that the requested proposal will not have any financial implications;
 4. Instructs its President to forward this resolution and the annexed detailed recommendations to the Council and the Commission and to the parliaments and governments of the Member States.

ANNEX

DETAILED RECOMMENDATIONS ON THE CONTENT OF THE REQUESTED PROPOSAL

Recommendation 1 (Community law as the basis for the form of company)

The European Parliament takes the view that an EPC Statute should be based as far as possible on rules of Community law and should thus dispense with references to national law: it should therefore be conceived as a uniform and definitive statute. The company law provisions of the regulation on the statute for a European Private Company should therefore apply exclusively, and the areas of law regulated in that regulation should be withdrawn from the jurisdiction of Member States. This applies with regard to a company's legal status, legal capacity and capacity to act, its formation, modification of its articles of association, its conversion and dissolution, and its name or business name, the organisational structure, the representative powers of company bodies, the acquisition and loss of membership and the rights and duties associated therewith, and the liability of the company, of the executive directors, of the members of its bodies and of its members in respect of the company's obligations, as well as minimum standards concerning the duties of management vis-à-vis the company; moreover, the Statute should include provisions on the way in which the company bodies operate, voting majorities, the consultation of members and conditions governing the purchase and sale of shares in the company; it should be possible for such provisions to be framed individually, in accordance with the company's needs. In other areas the Statute should in principle apply, and any rules going beyond it should apply only in a subsidiary manner, in the following order of precedence: other rules of Community law; provisions governing comparable types of company in the Member State in which the company has its registered office. The relevant types of company in the respective Member States should be listed in an Annex.

Recommendation 2 (procedures for formation)

The European Parliament takes the view that it should be possible for a European Private Company to be formed *ex nihilo*, or on the basis of an existing company, or following a merger between companies or in the context of a common subsidiary. In addition, it must be possible to convert a European Private Company into a European Company.

Recommendation 3 (capital stock)

The European Parliament takes the view that the capital stock of the EPC should be divided into shares with a specific nominal value; that members' shares should be rounded off to the nearest euro; that the minimum capital should be EUR 10 000 or the equivalent in another currency at the time of registration; and that the minimum capital which determines the liability of members would not necessarily have to be paid up.

Recommendation 4 (organisation)

The European Parliament proposes that the EPC should have at least one executive director, that the first executive directors should be appointed by decision of the members or in the articles of association, and that no person who has been prohibited by decision of a court or administrative authority of a Member State from occupying a position comparable to that of executive director should assume or occupy that position.

Recommendation 5 (content of articles of association)

The European Parliament proposes that the articles of association should contain the following information: the legal form and business name of the company; the duration of the company's life, if limited; the business object; the registered office of the company; the company capital; the body or bodies entitled to represent the company vis-à-vis third parties and in court; and the contribution to be made by each member in respect of the company shares held by him or her.

Recommendation 6 (liability of the executive director)

The European Parliament takes the view that the executive director or directors of the EPC must be liable either individually or jointly and severally vis-à-vis the company for all acts committed contrary to any provisions of civil and criminal law which are applicable to the company;

Recommendation 7 (liability of executive directors and members in the event of a reduction in net worth)

The European Parliament takes the view that the company bodies should be jointly and severally liable for loss and/or damage incurred by the EPC on account of its assets having been depleted, for the benefit of a company body, a member or a person closely associated with one of these, through acts of the company; that the recipient of an unwarranted payment by the company should be responsible for refunding it; that liability should arise only if the act was not in the recognised interests of the EPC; that liability should not arise, in particular, if the EPC is integrated within a group following a consistent policy and any disadvantages are offset by the advantages of its belonging to a group; and that the liability of the executive directors or members under other legal provisions should not be thereby affected.

Recommendation 8 (annexes to the regulation)

The European Parliament proposes that the regulation should contain the following annexes:

- (a) model articles of association which members may adopt wholly or in part;
- (b) for every Member State, the types of company with which the EPC is equated in respect of areas not covered by the regulation, in particular the implementation of accounting, penal, social and labour law provisions;
- (c) the designations of the company bodies in the various official languages of the European Union.

Recommendation 9 (annual accounts)

The European Parliament considers that the EPC should be subject to the harmonised accounting provisions (as contained in Directives 78/660/EEC¹ and 83/349/EEC²) which apply in each Member State to the equivalent type of company.

Recommendation 10 (conversion)

The European Parliament takes the view that: an EPC must be able to merge³, change its registered office, split and change into a European Company⁴, as far as possible in accordance with Community law which has already been harmonised; in the absence of any relevant Community law, the provisions of the Member States which apply to comparable legal forms in the relevant Member State should apply; in this connection, rules on codetermination in the Member State in which the head office is located should apply in parallel to Community law; it must also be possible for national companies to convert into EPCs, with existing employee rights being maintained; this also applies to the re-conversion of an EPC into a national legal form.

Recommendation 11 (dissolution, liquidation, insolvency and suspension of payments)

The European Parliament considers that the executive directors of an EPC must be obliged to apply for the initiation of insolvency proceedings without undue delay, and at the latest three weeks after a state of insolvency arises; that they should be directly and jointly and severally liable in the event of a dereliction of this duty vis-à-vis creditors who thereby incur losses; that furthermore, in respect of dissolution, liquidation, insolvency or the suspension of payments and comparable procedures, EPCs should be subject to the provisions applicable to companies to which they are equated in each Member State through this regulation; and that the regulations in force in the Member State where the company's head office is located should apply where insolvency is concerned.

¹ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 2006/46/EC of the European Parliament and of the Council (OJ L 224, 16.8.2006, p. 1).

² Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1). Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

³ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

⁴ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1). Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).