Follow up to the European Parliament resolution with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats, adopted by the Commission on 18 April 2012

1. **Rapporteur:** Evelyn REGNER (S&D/AT)

2. **EP reference number:** A7-0008/2012 / P7_TA-PROV(2012)0019

3. **Date of adoption of the resolution:** 2 February 2012

4. **Subject:** 14th company law directive on the cross-border transfer of company seats

5. **Competent Parliamentary Committee:** Committee on Legal affairs (JURI)

6. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution presents recommendations to the Commission as regards the necessity and the content of a directive on the cross-border transfer of company seats. It is the latest in a series of Parliament's requests to the Commission to come forward with a legislative proposal on the issue[1]. The previous resolution with recommendations to the Commission dates from the previous legislature in 2009. This resolution was considered necessary, as the Commission has not yet adopted a proposal as requested by the European Parliament and the current parliament should have a chance to pronounce itself on the issue.

The recommendations in the resolution concern the scope of the directive, the effects of a cross-border transfer, transparency and information rules prior to the transfer decision, the decision process (by shareholders), the verification of the legality of the transfer, protective measures and employees' rights.

The two most **controversial issues** linked to the project are (a) the employees' participation and (b) the separation between a company's registered office and its administrative seat. The resolution takes a neutral position on these questions.

a) While emphasising employees' rights, the report remains silent about which existing Directive the rules should be modelled on.

b) In the same way, with regard to the separation of seats, the resolution merely states that the directive should provide for an appropriate solution to the question.

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[1] Resolution of 4 July 2006 on the recent developments and prospects in relation to company law;

Resolution of 25 October 2007 on the European Private Company and the Fourteenth Company Law Directive on the transfer of the company seat;

Resolution of 10 March 2009 with recommendation to the Commission on the cross-border transfer of the registered office of the company;

Resolution of 23 November 2010 on civil law, family law and private international law aspects of the Action Plan implementing the Stockholm programme.

Both questions were debated during the committee process and the end result is a compromise between S&D advocating stricter rules in favour of employees and not allowing separation of seats, and EPP supporting more liberal views.

7. Response to requests and overview of action taken, or intended to be taken, by the Commission:

The Commission delivered an Impact Assessment on the matter in 2007 that showed no evidence on the economic added value that the Directive would bring, given that the existing legal framework already allows for the mobility of companies (e.g. directive on cross-border mergers of companies that allows a company to set up a subsidiary in another Member State and subsequently to merge with that new company). Following the Impact Assessment, it was decided not to present a legislative proposal on this matter.

The issue of companies' cross-border mobility, including – but not limited to – that of a Directive on the cross-border transfer of companies' registered offices, is an integral part of the Commission's reflections on the future of the EU Company Law. The Commission launched a public consultation on 20 February 2012 containing detailed questions on the need and conditions for a possible directive, as well as its possible effects. The Commission's reflections on future action regarding the cross-border transfer of registered offices should be finalised in the course of this year.
