

Company law: publication and translation obligations of certain types of companies

2008/0083(COD) - 17/04/2008 - Legislative proposal

PURPOSE: to amend Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: the European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25% by the year 2012 in order to enhance the competitiveness of companies in the Community. Company law has been identified as one area that contains a high number of information obligations for companies, some of which seem outdated or excessive. These information obligations need to be reviewed in order to reduce the burdens weighing on companies within the Community to the minimum that is necessary to ensure the protection of the interests of other stakeholders.

Under the **First Company law Directive 68/151/EEC** of 9 March 1968, companies need to publish, in the national gazettes, certain information that has to be entered into the Member States' commercial registers. This is, in particular, information about the company's foundation, later changes to this information and the annual accounts that have to be published on a yearly basis. In most cases, the publication in the national gazette entails additional costs for the companies without providing real added value in times where company registries make their information available online. The objective is therefore to remove any additional publication requirements in national law that cause additional costs to the companies.

Under **Eleventh Company Law Directive 89/666/EEC** of 21 December 1989, the proposal targets the translation requirements, in national law, for documents to be filed to the branch's register. When registering a branch, companies need to file certain information contained in their file also with the register of the branch. This often leads to a double cost for companies as they not only have to ensure the translation of certain documents into the language of the Member State where the branch is situated but also have to comply with sometimes excessive requirements for certification and/or notarisation of that translation. The objective is to reduce the costs for translation and certification to the minimum.

CONTENT: the proposed measures constitute a second series of actions and an overall programme aimed at reducing the administrative burdens on companies from 25% by the year 2010 (see also [COD/2008/0084](#));

Amendment of the First Company law Directive: it sets a new minimum publication requirement on the basis of the alternative means of publication contained currently in Article 3(4) First Company law Directive. This minimum requirement takes account of the fact that the use of electronic means is becoming more and more common in all areas. The fact that the provision sets only a minimum requirement means that Member States have to provide for an electronic chronological access to the information but remain free to prescribe, in addition, the use of the additional means of publication (e.g. paper based national gazette, national or regional newspapers). However, the new second subparagraph of Article 3(4) clarifies that Member States have to make sure that the publication in any case does not lead to any specific fees being charged to the companies.

Amendment of the Eleventh Company law Directive: it maintains the current possibility, for Member States, to require the translation and certification of that translation with a view to certain documents concerning the company. It clarified that also the attestation pursuant to Article 2(2)(c) can be required in the language of the host Member State of the branch which in practice is already done by most Member States today. The second sentence then stipulates, however, that any such requirement shall be deemed fulfilled where a translation is submitted that has been certified by a person that, under the rules on certification in force in another Member State, is entitled to issue such a certificate. The attestations that have been issued in the language required by the Member State of the branch have to be accepted by the register in that state.

The proposal also clarifies that Member States, apart from the formalities described above cannot impose any other formal requirements. This provision covers in particular any requirements for notarisation of already certified documents or their legalisation, for instance by an Apostille under Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. It is, however, without prejudice to any rules requiring Apostille for the attestation on the existence of the company.