Cross-borders transfers of company seats

2008/2196(INL) - 10/03/2009 - Text adopted by Parliament, single reading

The European Parliament adopted by 608 votes to 51, with 13 abstentions, a resolution with recommendations to the Commission on the cross-border transfer of the registered office of a company (Initiative – Rule 39 of the Rules of Procedure).

Undertakings can currently transfer their seat only either by dissolution and establishing a new legal entity in the Member State of destination, or by establishing a new legal entity in the Member State of destination and then merging both undertakings. The resolution notes that this procedure involves administrative obstacles, costs and social consequences and offers no legal certainty.

Therefore, Parliament calls on the Commission to **submit to Parliament by 31 March 2009, a legislative proposal** for a directive laying down measures for coordinating Member States' national legislation in order to facilitate the cross-border transfer within the Community of the registered office of a company formed in accordance with the legislation of a Member State ("14th Company Law Directive").

Parliament proposes that reference be made in the new directive to Directive 94/45/EC and Directive 2005 /56/EC, in order to guarantee the coherence and substantive nature of **employee participation procedures** in the application of EU company law directives.

Parliament also takes the view that a transfer of a company's seat must be preceded by the issuing of a **transfer plan and a report** explaining and justifying the legal and economic aspects and any consequences of the transfer for shareholders and employees. It points out that the transfer plan and the report must be made available in good time to all those involved.

According to MEPs, a transfer of a company seat should be **tax-neutral** and the exchange of information and mutual assistance between tax authorities be improved.

Parliament calls for **transparency** in the application of the new directive in the Member States and therefore proposes a reporting requirement for Member States vis-à-vis the Commission whereby undertakings transferring their registered office under the directive must be entered in a European companies register. It points out that, in the interests of better law-making, **excessive information ("overkill") must be avoided** when the reporting requirement is transposed into national law, provided that sufficient information is guaranteed.

The European Parliament requests the Commission to put forward a proposal for a directive that should contain the following elements:

Recommendation 1 (effects of a cross-border transfer of the registered office): cross-border transfers of registered offices shall not give rise to the winding-up of the company concerned or to any interruption or loss of its legal personality. Furthermore, the transfer shall not circumvent legal, social and fiscal conditions.

Recommendation 2 (transfer procedure within the company): the management or board of a company planning a transfer shall be required to draw up a transfer proposal. The proposal shall cover, inter alia: (i) the legal form, name and registered office of the company in the home Member State and the envisaged legal form, name and registered office of the company in the host Member State; (ii) the memorandum and articles of association envisaged for the company in the host Member State; (iii) the timetable envisaged for the transfer; (iv) the date from which the transactions of the company intending to transfer

its registered office will be treated for accounting purposes as being located in the host Member State; (v) the rights guaranteed to the company's members, employees and creditors or the relevant measures proposed; (vi) if the company is managed on the basis of employee participation and if the national legislation of the host Member States does not impose such a scheme, information on the procedures whereby the arrangements for employee participation are determined.

The transfer proposal shall be submitted to the members and employee representatives of the company for examination within an appropriate period prior to the date of the company's meeting of shareholders. A report should be drawn up, explaining and justifying the proposal's legal and economic aspects and indicating the consequences for the company's members, creditors and employees.

Recommendation 3 (transfer decision by meeting of the shareholders): the shareholders' meeting shall approve the transfer proposal in accordance with the arrangements laid down and by the majority required to amend the memorandum and articles of association under the legislation applicable to the company in its home Member State. If the company is managed on the basis of employee participation, the shareholders' meeting may make completion of the transfer conditional on its expressly approving the arrangements for employee participation.

Recommendation 4 (administrative transfer procedure and verification): the home Member State shall verify the legality of the transfer procedure in accordance with its legislation. The competent authority designated by the home Member State shall issue a certificate conclusively declaring that all the acts and formalities required have been completed.

Recommendation 5 (employee participation): employee participation shall be governed by the legislation of the host Member State . However, the legislation of the host Member State shall not be applicable where the host Member State does not provide for at least the same level of participation as operated in the company in the home Member State.

Recommendation 6 (third parties concerned by the transfer): any company against which proceedings for winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought shall not be allowed to undertake a cross-border transfer of its registered office within the Community.