Company law perspectives in the European Union

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PURPOSE : to outline the approach that the Commission intends to follow in the area of company law and corporate governance. CONTENT : this document outlines the EU company law acquis and sets out the reasons why a fresh impetus to the harmonisation of company law is needed. These include the following: - making the most of the Internal Market: the growing trend of European companies to operate cross-border in the Internal Market calls for common European company law mechanisms, inter alia, to facilitate freedom of establishment and cross-border restructuring; - integration of capital markets: dynamic securities markets are vital to Europe's economic future. This requires giving both issuers and investors the opportunity to be far more active on other EU capital markets and to have confidence that the companies they invest in have equivalent corporate governance frameworks. Listed companies want a more coherent, dynamic and responsive European legislative framework; - to maximise the benefits of modern technologies : the rapid development of new information and communication technology is affecting the way company information is stored and disseminated, as well as the way corporate life is conducted; - the forthcoming enlargement will increase the diversity of the national regulatory frameworks in the EU, underlying further the importance of a principles-based approach able to maintain a high level of legal certainty in intra-Community operations; - recent financial scandals have prompted a new debate on corporate governance. Investors are demanding more transparency and better information on companies, and are seeking to gain more influence on the way the public companies they own operate. Shareholders own companies, not management - yet far too frequently their rights have been trampled on by greedy and occasionally fraudulent corporate behaviour. A new sense of proportion and fairness is necessary. The Commission identifies the following policy objectives: 1) Strengthening shareholders rights and third parties protection must be at the core of any company law policy. Protecting the savings and pensions of millions of people and strengthening the foundations of capital markets for the long term in a context of diversified shareholding within the EU, is essential if companies are to raise capital at the lowest cost. Reform should be organised along the following lines: - initiatives should be taken with a view to enhancing shareholder rights and clarifying management responsibilities and provisions related to the protection of creditors should be modernised with a view to maintaining a high quality framework (e.g. with respect to capital maintenance and alteration); - a proper distinction should be made between categories of companies. A more stringent framework is desirable for listed companies and companies which have publicly raised capital; - modern technologies can significantly help members and third parties to exercise their rights effectively; - a limited number of measures aimed at combating fraud and abuse of legal forms. 2) Fostering efficiency and competitiveness of business. This should be promoted along the following lines: - EU initiatives in the area of company law should address a number of specific cross-border issues (e.g. cross-border mergeror transfer of seat, crossborder impediments to the exercise of shareholders rights...), where Community action may be the only way to achieve the pursued objectives; - flexibility should be available to companies as much as possible: where systems are deemed to be equivalent, maximum room should be left open to the freedom of the parties involved. The Commission sets out an Action Plan, which identifies the nature and the scope of the actions, proposes the type of regulatory instrument which should be used, and establishes clear priorities for the short, medium and long term. It discusses the following issues: - enhancing corporate governance disclosure; - strengthening shareholders rights, especially with regard to access to information; - modernising the board of directors, and minimum standards applicable to the creation, composition and role of the nomination, remuneration and audit committees; - co-ordinating the corporate governance efforts of Member States; - capital maintenance and alteration; - groups of companies, with specific reference to financial and non financial information, the implementation of a group policy and pyramids; - corporate restricting and mobility; - the European private company, the European Co-operative Society and other forms of enterprise.