

Recent developments in and prospects for company law

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The European Parliament adopted a resolution based on the own-initiative report drafted by on recent developments and prospects in relation to company law.

General aspects: Parliament called on the Commission to ensure that the measures aimed at modernisation in the field of company law and corporate governance were consistent with measures in related sectors, such as financial services, industrial policy, social policy and corporate social responsibility. It stressed the importance of taking into account the case-law of the Court of Justice on the principle of freedom of establishment, and also asked the Commission to take the European social model into consideration when deciding on further measures for the development of company law. This also involved the participation of employees.

Better regulation and simplification: Parliament highlighted the importance of better regulation in order to provide a more effective legislative framework. It suggested choosing instruments that placed less of a burden on companies and left them as much flexibility as possible, as well as comprehensive impact assessment in respect of any new legislative initiative. EC company law directives in force should not be discussed: they should be simplified only in exceptional and duly justified cases, when they were not dealing with very sensitive matters or are not the result of difficult compromises, in order not to have an adverse effect on the companies concerned.

Small and medium-sized enterprises: Parliament called on the Commission to examine the SME dimension when assessing the impact of legislative proposals in the field of company law and to ensure that the needs of SMEs are properly and systematically taken into account, and it stressed that the barriers faced by SMEs in terms of the administrative burden must be removed.

Corporate governance: Parliament regretted that the Commission had not developed a clear vision of the governance of European businesses but seemed to be taking measures on disparate aspects on an ad hoc basis. It asked the Commission to act on its resolution of 21 April 2004. Corporate governance was not only about the relationship between shareholders and management: other stakeholders within the company were also important and should be able to contribute to decisions on the strategy of companies. In particular, that there should be room for the provision of information to, and consultation of, employees. Parliament expressed doubts about the need for a European initiative in the field of the special investigation right of shareholders, since this directly affects the separation of competences between directors and shareholders, which is a topic typically addressed by national corporate laws.

Company law: Parliament asked the Commission to do the following, inter alia:

-to propose measures to enhance the cross-border availability of information regarding the disqualification of directors;

-to reconsider a European initiative in the field of wrongful trading – there was no need for one, since there were already relevant regulations in the Member States;

-to submit a proposal for the differentiation of obligations to disclose share-holding levels. Parliament would welcome a differentiation which provided for the following percentage steps: 3%, 5%, 10%, 15% and 20%, plus a notification obligation for every percentage point above 20%;

-to lay down clear rules governing transitional periods, i.e. the "decent interval" after which active members of the management board who wish, on leaving the board, to transfer to the supervisory board (in the dualistic system) or the non-executive board (in the monistic system), may do so;

-to resolve legislative issues, such as the independence of directors, by legislative means (directives) rather than by recommendations, so that the public and the legislature are involved and the resulting rules reflect actual practice;

-to be alert to conflicts of interests and the disproportional accumulation of information and influence by some large players in the chain of intermediaries and advisors involved in the exercise of shareholders' voting rights in companies;

-to ensure that companies are given the choice between different governance systems, including the one-tier and two-tier systems, without there being any need to adopt provisions defining the powers and obligations of a company's governing bodies;

-to examine the possibilities for revision of the rules in the Statute for a European company on the formation of such companies, with a view to simplifying those rules and adjusting them in line with market requirements. Parliament strongly deplored the fact that the Commission had withdrawn the two proposals for a regulation on a Statute for a European association and for a regulation on a Statute for a European mutual society;

-to present a proposal on the European private company in order to meet the needs of SMEs;

-to present a proposal concerning the Fourteenth Company Law Directive on the cross-border transfer of the registered office of limited companies;

-to pay greater attention to the issue of delisting and to submit a legislative proposal for future harmonisation at EU level. "Going private" should be made possible in future with the minimum of bureaucratic effort, with particular consideration being given to safeguarding the financial interests of the shareholders;

-to involve Parliament more effectively in discussions concerning international and European accounting standards and to reinforce the definition of a European approach based on the best practices and traditions in the Member States, instead of blindly following the traditions of US auditing;

Finally, Parliament asked the Commission to propose measures for greater transparency regarding institutional investors.