Basic information

2004/0256(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC) Repealed by 2011/0011(COD) **Subject** 3.45.01 Company law 3.45.03 Financial management of undertakings, business loans, accounting	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	KAUPPI Piia-Noora (PPE-DE)	20/01/2005

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	STARKEVIČIŪTĖ Margarita (ALDE)	07/03/2005

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2747	2006-07-24
Competitiveness (Internal Market, Industry, Research and Space)	2694	2005-11-28

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	

Key events

Date	Event	Reference	Summary
29/10/2004	Legislative proposal published	COM(2004)0730	Summary
10/01/2005	Committee referral announced in Parliament, 1st reading		
28/11/2005	Debate in Council		Summary

23/02/2006	Vote in committee, 1st reading		Summary
01/03/2006	Committee report tabled for plenary, 1st reading	A6-0050/2006	
14/03/2006	Decision by Parliament, 1st reading	T6-0073/2006	Summary
14/03/2006	Results of vote in Parliament		
24/07/2006	Act adopted by Council after Parliament's 1st reading		
06/09/2006	Final act signed		
06/09/2006	End of procedure in Parliament		
25/09/2006	Final act published in Official Journal		

Technical information

Procedure reference	2004/0256(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2011/0011(COD)
Legal basis	EC Treaty (after Amsterdam) EC 044-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/25050

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	ECON	PE360.011	18/07/2005	
Amendments tabled in committee		PE365.118	19/12/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0050/2006	01/03/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0073/2006	14/03/2006	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03608/2/2006	06/09/2006	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2004)0730	29/10/2004	Summary

Commission response to text adopted in plenary	SP(2006)1725	19/04/2006	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0843/2005 OJ C 294 25.11.2005, p. 0001-0003	13/07/2005	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2006/0068
OJ L 264 25.09.2006, p. 0032-0036 Summary

Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC)

2004/0256(COD) - 14/03/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Piia-Noora **KAUPPI** (EPP-ED, FI) making dome amendments which eased the regulatory burden on companies. (Please see the document of 23/02/2006.) Parliament followed the rapporteur's opinion that red tape and some information requirements needed to be reduced. In particular, it eliminated the sell-out and squeeze-out rights from the scope of the directive. Those rights are designed to protect minority shareholders in case of a successful bid and the consequent change in the ownership of the company's capital. In fact, squeeze-out rights oblige the successful bidder to acquire the shares of minority shareholders who have not accepted the bid. Sell-out rights enable minority shareholders to force majority shareholder to purchase their shares, after such a successful bid. Nevertheless, Parliament thought that these rights did not reduce the regulatory burden, as the scope of the proposal requires. In addition:

- a new recital states that Member States are encouraged, in accordance with paragraph 34 of the Interinstitutional Agreement on better law-making, to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between the Directive and the transposition measures, and to make them public.

- Parliament deleted the requirement for the company to inform all shareholders of the reasons which lead it to restrict or withdraw the right of pre-exemption, as well as deleting the exemption for administrative or management body from having to present to the general meeting a written report when restricting or withdrawing the right of pre-emption.

- Member States must transpose the Directive within 18 months of its entry into force rather than by 31 December 2006 as the Commission proposed.

Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC)

2004/0256(COD) - 06/09/2006 - Final act

PURPOSE: to update and modernise Directive 77/91/EEC.

LEGISLATIVE ACT: Directive 2006/68/EC of the European Parliament and of the Council amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital.

CONTENT: the purpose of this Directive is to amend the second Council Directive 77/91/EEC on public limited liability companies and the maintenance and alteration of their capital. The amendment is being done on the back of a modernisation programme, which seeks to promote business efficiency and competitiveness, without reducing the protection offered to shareholders and creditors.

The new provisions inserted into Directive 77/91/EEC are as follows:

- Allowing public limited liability companies to allot shares without requiring them to obtain a special expert valuation. The right of minority shareholders to require a valuation will, however, remain.

- Allowing public limited liability companies to acquire their own shares up to the limit of the company's distributable reserves. The period for which such an acquisition may be authorised has been increased in a bid to guarantee better flexibility and to reduce the administrative burden on companies.

- Allowing public limited liability companies to grant financial assistance for the acquisition of their shares by a third party – up to a limit of the company's distributable reserves. This allows for increased flexibility vis-à-vis changes in the ownership structure of the share capital of companies. In the interest of protecting both shareholders and third parties this provision is subject to various safeguards.

- Allowing creditors to resort, under certain conditions, to judicial or administrative proceedings where their claims are at stake as a result of reduced capital in a public limited liability company.

- To help prevent market abuse, the Member States are asked to take account of related Community legislation on: insider dealing; buy-back programmes and stabilisation of financial instruments; accepted market practices; the definition of insider information in relation to derivatives on commodities; the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

ENTRY INTO FORCE: 15 October 2006.

TRANSPOSITION: 15 April 2008.

Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC)

2004/0256(COD) - 29/10/2004 - Legislative proposal

PURPOSE : to facilitate capital related measures taken in public limited liability companies.

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

CONTENT : this proposal is being presented to the European Parliament and the Council within the context of the fourth phase of the Simplification of the Legislation on the Internal Market, or SLIM process. Its main purpose is to seek a simplification of procedures and provisions in a bid to streamline European business efficiency and competitiveness, whilst at the same time protecting shareholders and creditors across Europe. The Second Company Law Directive was adopted in 1976. Its aim was, and has been, to co-ordinate national provisions applicable to public limited liability companies relating to the formation of companies, minimum share capital requirements, shareholder distribution, capital increase and capital reduction. The overall purpose of the Directive is to establish the right conditions to ensure that a company's capital is being correctly maintained in the interests of creditors. A further aim is to protect minority shareholder.

In order to streamline the Directive in line with the SLIM process the Commission proposes amending Directive in order to:

- Eliminate, under certain conditions, reporting requirements - such as share issuance for non-cash consideration, exclusion of pre-emptive rights;

- Facilitate company acquisitions of its own shares.

- Facilitate financial acquisition of its shares by a third party. And,

- Facilitate the streamlining of ownership in a company's share capital.

All of the aforementioned measures should help provide a basic harmonised legal procedure for creditors, under certain circumstances, in the context of capital reduction. Its eventual implementation will help modernise public limited liability companies and help them remain both efficient and competitive in the ever-evolving markets.

Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC)

2004/0256(COD) - 28/11/2005

The Council agreed on a general approach, pending the European Parliament's opinion at first reading, on a draft directive aimed at facilitating and simplifying capital related measures in public limited liability companies.

The directive will enable Member States, under certain conditions, to eliminate specific reporting requirements; to facilitate changes in share ownership and to provide harmonised legal procedures for creditors in the context of capital reduction.

The directive, which will amend directive 77/91/EEC, seeks to ensure that the capital of a company is maintained in the interest of creditors, while protecting the rights of minority shareholders.