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Delegations will find attached the opinion of the Economic and Social Committee regarding the above mentioned subject.



European Economic and Social Committee

INT/780
Company law

Brussels, 27 April 2016

OPINION

of the
Economic and Social Committee
on the

**Proposal for a Directive of the European Parliament and of the Council relating to certain
aspects of company law (codification)**

COM(2015) 616 final - 2015/0283 (COD)

Rapporteur: **Jorge Pegado Liz**
Co-rapporteurs: **Roger Barker and Christophe Lefèvre**

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Rue Bellard/Bellardstraat 99 – 1040 Bruxelles/Brussel – BELGIQUE/BELGIË
Tel. +32 25469011 – Fax +32 25134893 – Internet: <http://www.eesc.europa.eu>

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On 29 April 2016 the Council decided to consult the European Economic and Social Committee, under Article 50(1) and (2)(g) of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council relating to certain aspects of company law (codification) COM(2015) 616 final – 2015/0283 (COD)

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 223 votes to 2, with 8 abstentions.

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1. Conclusions and recommendations

- 1.1 The EESC fully supports the consolidation, codification and thereby simplification of the text of the proposal relating to certain aspects of company law (COM(2015) 616 final), which is in line with what it has suggested on several occasions in its opinions.
- 1.2 Having closely examined each of the consolidated texts and each of the proposals for new codified texts, the EESC can confirm that it found no formal errors, with the exception of the minor issues mentioned in point 4.2.
- 1.3 The EESC recommends that the correlation table that appears in Annex IV be drawn up with two entries, enabling the new articles to be compared with the old articles, not just the old ones with the new ones.
- 1.4 The EESC would also have wished for a more ambitious exercise that aimed to codify aspects that are still spread across other legislative instruments, particularly those referred to in the directives listed in point 4.4.
- 1.5 When the new text is revised, the Committee calls for the proposals it has issued over the years regarding each of the directives covered by the Commission exercise, particularly in the opinions referred to in point 4.8, to be duly taken into account.

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2. Objective and purpose of the Commission proposal

2.1 The explanatory memorandum of the Commission proposal (COM(2015) 616 final of 3 December 2015) states that:

"The purpose of this proposal is to undertake a codification of Sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC), Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC), Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies, Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent."

2.2 As this is a codification exercise, the Commission stresses that "the new Directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself", which does not preclude this codification from being undertaken "in full compliance with the normal procedure for the adoption of acts of the Union." This observation justifies the EESC opinion, even if this is a "fast-track procedure (...) for the fast-track adoption of codified instruments" as provided for by "an interinstitutional agreement dated 20 December 1994" between the European Parliament, the Council and the Commission, which is still in force and which has been reinforced by the latest interinstitutional agreement concluded between those institutions¹.

2.3 The aim of this exercise of compiling, systematising and codifying European company law is to make EU standards governing this area of law easier to interpret, transpose, apply and implement.

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2bCOMPARL%2bPE-575.118%2b03%2bDOC%2bPDF%2bV0%2F%2FEN>

2.4 In many of its opinions, the EESC has suggested, recommended and called for the European legislator to work towards this goal and has always supported its endeavours. The EESC must therefore unreservedly endorse the exercise initiated by the Commission in this proposal, as this is an area where simplification will benefit everyone: businesses, workers, consumers and the public at large but also and in particular judges, lawyers, solicitors and generally speaking anyone whose profession entails the application of company law.

3. Origin and development of company law in the European Union

3.1 The legal bases of an embryonic company law can be found in Articles 48 to 66 of the original Treaty of Rome of 1957, which founded the EEC. The idea of approximating national legislation on certain aspects of company law only appeared with the Treaty signed in Maastricht on 7 February 1992, in particular in the new wording of Articles 94 to 97 (from the Single European Act) on the approximation of laws with a view to completing the single market, and in the new wording of Articles 39 to 55 EC (replacing the former Articles 48 to 66 EEC).

3.2 Thus, from the first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent ([OJ L 65, 14.3.1968, p. 8](#)), dozens of directives, regulations and recommendations have sought to "regulate" certain aspects of company law in Europe connected to the completion of the single market, either by approximating national laws or by trying to harmonise these laws, without ever purporting to create a real "unifying code" of company law in Europe.

3.3 The exercise that the Commission is undertaking with this proposal does not even aim to codify all of the directives relating to the various aspects of company law. In fact, it only deals with the issues covered by the following six directives:

- the sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC);
- the eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC);
- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies;
- Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent;

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- Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies;
 - Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.
- 3.4 This exercise was carried out on the basis of a preliminary consolidation of the text, in the 23 official languages, of directives 82/891/EEC, 89/666/EEC, 2005/56/EC, 2009/101/EC, 2011/35/EU and 2012/30/EU and the instruments amending them, with the correlation between old and new numbering appearing in a correlation table in Annex IV of the future directive.
4. **Evaluation of the proposal**
- 4.1 As pointed out above, the EESC fully supports the consolidation, codification and thereby simplification of the text resulting from this work.
- 4.2 Having closely examined each of the consolidated texts and each of the proposals for new codified texts, the EESC can confirm that it found no formal errors, with the exception of the following observations:
- the codification of recital 3 of Directive 2005/56/EC reads "specified" instead of "laid down";
 - the second paragraph of Article 10 of Council Directive 89/666/EEC has not been codified in the proposal for a directive;
 - in recitals 48, 62, 65, 66 and 80, the Commission should confirm whether the references to particular legislative texts actually correspond to the most recent measures adopted in the respective areas (e.g. the reference to the Market Abuse Directive in recital 48 should be replaced by a reference to the Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC);
 - the title of Chapter III should specify that the disclosure in question is made "to protect third parties"; if on the other hand the disclosure in question also benefits shareholders, then should Directive 2013/24/EU and Directive 2014/95/EU not also be mentioned in Article 13(f)?

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- 4.3 The EESC recommends that the correlation table that appears in Annex IV be drawn up with two entries, enabling the new articles to be compared with the old articles, not just the old ones with the new ones.
- 4.4 The EESC would also have wished for a more ambitious exercise that aimed to codify aspects that are still spread across other legislative instruments, particularly those referred to in the following directives:
- Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies;
 - Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies;
 - Directive 2004/25/EC of 21 April 2004 on takeover bids;
 - Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;
 - Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies;
 - Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents;
 - Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts;
 - Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies.
- 4.5 In the Commission work programme for 2015 (COM(2014) 910 final, Annex III, point 45), the Commission also announced the codification of Directive 2009/102 in the area of company law on single-member private limited liability companies.
- 4.6 The EESC welcomes the fact that the Commission took into account some recommendations of the working group dealing with the simplification of company law as part of the SLIM initiative on the simplification of the First and Second Company Law Directives, in Directives 2003/58/EC and 2006/68/EC.
- 4.7 The EESC has had the opportunity to draw up opinions on each of the directives covered by the Commission exercise, which have not always been wholly taken into account. The Committee would also like to see the Commission take due account, when revising the new text, of proposals which the Committee has already made over the years and which have not featured in the current exercise.

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4.8 These include:

- Opinion of 24.9.1987, [OJ C 319, 30.11.1987](#), p. 61, rapporteur: Mr Pardon;
- Opinion of 28.4.2004, [OJ C 117, 30.4.2004](#), p. 43, rapporteur: Ms Sánchez Miguel;
- Opinion of 30.5.2007, [OJ C 175, 27.7.2007](#), p. 33, rapporteur: Ms Sánchez Miguel;
- Opinion of 25.2.2009, [OJ C 218, 11.9.2009](#), p. 27, rapporteur: Ms Sánchez Miguel;
- Opinion of 15.6.2011, [OJ C 248, 25.8.2011](#), p. 118, rapporteur: Mr Pásztor;
- Opinion of 12.12.2012, [OJ C 44, 15.2.2013](#), p. 68, rapporteur: Ms Roussenova.

Brussels, 27 April 2016.

The President
of the
European Economic and Social Committee

Georges Dassis

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