

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 591 final -SYN 135

Brussels, 29 November 1989

Re-examined proposal for a
Council Directive on company law
concerning
single-member private limited companies

(Presented by the Commission to the Council
on the basis of Article 149, 2d of the EEC Treaty)

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Explanatory notes

1. The Commission sent the Council the proposal for the abovementioned directive on 19 May 1989¹.
2. The European Parliament and the Economic and Social Committee gave their respective opinions on 28 September 1988² and 15 March 1989³.
3. The Commission sent the Council an amended proposal on 29 May 1989, incorporating the substance of the changes requested by Parliament⁴.
4. The Council adopted a common position on 21 June 1989⁵, for which the Council stated its reasons⁶ and on which the Commission made its observations⁷.
5. The European Parliament gave it a second reading under the cooperation procedure on 11 October 1989 and voted in favour of three amendments⁸.
6. The Commission can accept one of these amendments, namely amendment 3 which represents an intermediate position between the amended proposal and the Council's common position. The amended proposal would not have

1 OJ C 173, 2.7.1988, p.10.

2 OJ C 318, 12.12.1988, p.9.

3 OJ C 96, 17.4.1989, p.90.

4 OJ C 152, 20.6.1989, p. 10.

5 Council Document 7459/89 of 20.6.1989.

6 Council Document 7459/89 Add. 1 of 28.6.1989.

7 SEC(89)1201 final - SYN 135 of 20.7.1989.

8 EP Document A3-43/89, Minutes of the sitting of 11 October 1989 (Min. 26 II), p. 22.

permitted the conclusion of contracts between the sole member and the company he represents unless, firstly, the contract was in writing or recorded in writing, and, secondly, the possibility of such contracts was provided for in the statutes. The common position does not impose the second condition, and does not impose the requirement of writing in the case of current transactions concluded under normal conditions. The amendment accepts that the need for writing should be limited in this way, but insists that such operations must be expressly permitted by the statutes, which seems acceptable.

7. The Commission has rejected amendments 1 and 2. In the first amendment, Parliament proposes that shares in single-member companies must be nominative. Although this principle was originally included in the Commission's proposal and supported by Parliament, in its communication to Parliament the Commission decided to accept the Council's common position. This is because the only purpose of such a requirement is to indicate the identity of the shareholder. Since this identity is already shown in the company's statutes - which must be made public by virtue of the First Directive when the company is originally formed as a single-member company and by virtue of Article 3 of the common position in all other cases - this requirement is superfluous.

According to the second amendment, when a company becomes a single-member company after its formation because all its shares have come to be held by a single shareholder, this fact must be stated on the company's letters and order forms.

The requirement that a company must state on its letters and order forms that it is a single-member company was, at first reading, proposed by Parliament in a quite general way, both for companies originally formed as single-member companies and for those that become so later. This idea was incorporated in the Commission's amended proposal (Article 2a). However, the objections raised by the Council, to the effect that this extremely bureaucratic and expensive requirement would be contrary to the directive's objective of creating conditions more favourable to small businesses, has been taken into account. Moreover, to show this information on the company's stationery does not provide any safeguard for creditors. Since liability is limited to the company's assets, the essential point for creditors is that the accounting directives are fully applied, and provision is made for this irrespective of the number of shareholders.

Re-examined proposal for a Council Directive on company law concerning single-member private limited companies ⁽¹⁾

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[Submitted by the Commission to the Council pursuant to Article 149 (2) (d) of the EEC Treaty on 4 December 1989]

(90/C 30/06)

⁽¹⁾ OJ No C 173, 2.7. 1988, p. 10.

COMMON POSITION OF THE COUNCIL

Article 5

1. Contracts between the sole member and his company as represented by him shall be recorded in minutes or drawn up in writing.
2. Member States need not apply paragraph 1 to current operations concluded under normal conditions.

RE-EXAMINED PROPOSAL BY THE COMMISSION

Article 5

1. *A contract between the sole member and the company represented by him may be concluded only if provision to that effect is made in the statutes or the instrument of incorporation.*
2. *Contracts between the sole member and his company as represented by him shall be recorded in minutes or drawn up in writing.*
3. *Member States need not apply the above paragraphs to current operations concluded under normal conditions.*

The recitals and the remaining articles remain unchanged.

ANNEX

AMENDMENTS PROPOSED BY THE EUROPEAN PARLIAMENT BUT REJECTED BY THE COMMISSION

COMMON POSITION OF THE COUNCIL

TEXT AMENDED BY PARLIAMENT

AMENDMENT No 1

Article 2

1. A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company).

Article 2

A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company). *Shares in such a company shall be nominative.*

COMMON POSITION OF THE COUNCIL

TEXT AMENDED BY PARLIAMENT

AMENDMENT No 2

Article 3

Where a company becomes a single-member company because all its shares are held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register within the meaning of Article 3 (1) and (2) of Directive 68/151/EEC or be entered in a register kept by the company and accessible to the public.

Article 3

Where a company becomes a single-member company because all its shares are held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register within the meaning of Article 3(1) and (2) of Directive 68/151/EEC or be entered in a register kept by the company and accessible to the public, *an attendant consequence of this being the obligation to convert the shares into nominative shares. The fact that all the shares are held by a single person shall also be recorded on the paper used by the company for its correspondence.*