

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (89) 1201 final - SYN 135

Brussels, 20 July 1989

COMMUNICATION FROM THE COMMISSION TO THE PARLIAMENT

Common position adopted by the Council on 21 June 1989
with a view to the adoption of a company law directive
on single-member private limited-liability companies

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I. General considerations

1. In the context of the company law coordination programmes and of action in favour of small and medium-sized enterprises, the Commission submitted to the Council on 19 May 1988 a proposal for a Directive aimed at introducing the single-member company in all the Member States. The proposal is designed to make available to individual entrepreneurs a form of company or undertaking with limited liability.

2. The initial proposal was transmitted to the Council on 19 May 1988.¹ Parliament delivered its opinion on 15 March 1989.² The Economic and Social Committee delivered its opinion on 28 September 1988.³

3. On 29 May 1989⁴ the Commission submitted an amended proposal for a Directive to the Council pursuant to Article 149(3) of the Treaty.

II. Amendments adopted by Parliament on first reading

On first reading, Parliament adopted certain amendments to the provisions of the Directive and requested the Commission and the Council to incorporate those changes. In addition to the amendments concerning the

1 OJ No C 173, 2.7.1988, p. 10.

2 Doc. 5468/89 PE-RESOL 16 (not yet published in the Official Journal).

3 OJ No C 318, 12.12.1988, p. 9.

4 Doc. 7030/89 DRS 31 (not yet published in the Official Journal).

terminology used, the changes requested by Parliament, the substance of which was incorporated in the Commission's amended proposal, concerned the following points:

1. On the question of the definition of the single-member company, Parliament requested that it be stipulated that, except in exceptional circumstances, the Member States may not make the sole member liable for the obligations of the company. In view of the general nature of this problem, which affects all private limited companies irrespective of how many members they have, the Commission responded to Parliament's request by including such a stipulation in the recitals of the Directive.

2. The first company law directive of 9 March 1968¹ established the obligation on the part of companies to indicate various particulars on their letters and order forms. In line with Parliament's opinion, the amended proposal extended this obligation to the single-member company.

3. In line with Parliament's opinion, and in order to ensure consistency with the requirements laid down for the formation of a single-member company, the amended proposal required the shares to be nominative also in the case where a single-member company comes into being because all its shares come to be held by a single person.

4. In keeping with Parliament's wishes, the amended proposal no longer prohibited the powers of the sole member, in his capacity as the general meeting of the company, from being delegated. This ought to simplify the functioning of the single-member company.

5. In addition to the changes requested by Parliament, the Commission's amended proposal introduced the following changes:

Firstly, the Commission's initial proposal had provided for special arrangements applicable to legal persons which are the sole member of a private limited company. After reexamining this matter, it proved

1 OJ No L 65, 14.3.1968, p. 8.

impossible to disassociate this specific problem from that of the law governing groups in general, which has not yet been fully harmonized at European level. In line with the statements made by the Commission before Parliament, and in order not to jeopardize the adoption of this proposal for a Directive, the proposal allows the Member States to impose restrictions with regard to legal persons, as some do already, whilst abandoning for the time being any notion of coordination in this area. Likewise, certain restrictions are authorized for the eventuality that a natural person might be the sole member of several companies.

Secondly, a company having several members may become a single-member company when all its shares come to be held by a single person. The initial proposal made it compulsory, in such a case, for that fact to be recorded in the company's file or to be entered in the register, in accordance with the first company law Directive. In order to take account of the specific characteristics of certain Member States' legislation, the amended proposal allows the existence of a single-member company, instead of being disclosed in that manner, to be recorded in any other register held by the company at its head office and accessible to the public.

Thirdly, in order to take account of certain minor differences between the laws of the various Member States, the amended proposal allows the decisions taken by the single member in his capacity as the general meeting of the company to be recorded in minutes or drawn up in writing.

Lastly, certain drafting changes were made to Article 7 to clarify the extent of the Member States' powers. On the one hand, a Member State may introduce both the single-member company and the single-member undertaking at the same time. If it does so, the Directive will apply to both types of organization. On the other hand, where a Member State has introduced the single-member undertaking, it is not bound to introduce the single-member company as well. However, the Directive will in that case apply in the same way to the single-member undertaking.

III. Common position

The Council adopted as its common position within the meaning of Article 149(2)(a) of the Treaty the text of the Directive contained in Doc. 7459/89 DRS 33, PRO-COOP. 112.

That common position incorporates the substance of the changes requested by Parliament and which are included in the Commission's amended proposal. However, other changes were made for the following reasons:

1. Parliament wanted it stipulated that shares must be nominative in order to make clear the identity of the single member. However, that identity is already clearly indicated in the statutes or the instrument of constitution which have to be disclosed pursuant to Article 2(1)(a), (b) and (c) of the First Company Law Directive. However, the same transparency must be guaranteed where a company having several members becomes a single-member company because all its shares come to be held by a single person. That fact does not entail any amendment to the statutes or the instrument of constitution. For those reasons the Commission endorses the Council's common position which provides that the identity of the sole member must be entered in a register which is accessible to the public.
2. As regards the formalities prescribed specifically for single-member companies, the Commission likewise supports the idea of providing only for what is strictly necessary. However, in this connection, it is not possible to relinquish insisting upon transparency as regards contracts between the sole member and the company represented by him where such contracts go beyond the scope of current operations concluded under normal conditions.
3. In view of the fact that the time limits for transposing the directive into national law which are stipulated in the amended proposal would be difficult, or even impossible to comply with, the Commission considers that it is reasonable to align the said time limits on those stipulated for the transposition into national law of the Eleventh Directive on company law concerning disclosure requirements in respect of branches, the common position for which was adopted by the Council on 16 May 1989.

IV. Conclusion

The Commission considers that the changes indicated above are acceptable having regard to their objectives, the ways in which they improve the proposed legislation and the fact that they incorporate the bulk of the amendments requested by Parliament.

As a result, the Commission recommends that Parliament endorse the common position.