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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.6.2008
COM(2008) 344 final

2008/0109 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

in the area of company law on single-member private limited-liability companies

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies³. The new Directive will supersede the various acts incorporated in it⁴; 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.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 89/667/CEE and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⊗ In the area of company law ⊗ on single-member private limited-liability companies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:



- (1) Twelfth Council Company Law Directive 89/667/ EEC of 21 December 1989 on single-member private limited-liability companies³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Directive should be codified.
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↓ 89/667/EEC Recital 1

- (2) Certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies and firms within the meaning of the second paragraph of Article 48 of the Treaty should be coordinated with a view to making such safeguards equivalent throughout the Community.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 395, 30.12.1989, p. 40 Directive as last amended by Directive 2006/99/CE (OJ L 363, 20.12.2006, p. 137).

⁴ See Annex II, Part A.

↓ 89/667/EEC Recital 2 (adapted)

- (3) In this field, [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 throughout the Community⁵, [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 companies⁶ and [Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts⁷, on disclosure, the validity of commitments, nullity, annual accounts and consolidated accounts, apply to all share capital companies. However, [Second Council Directive 77/91/EEC of 13 December 1976] 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, 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 equivalent⁸, [Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies⁹, and [Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies¹⁰, on formation and capital, mergers and divisions, apply only to public limited-liability companies.

↓ 89/667/EEC Recital 5 (adapted)

- (4) A legal instrument [is] required [allowing] the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States, which, in exceptional circumstances, require that entrepreneur to be liable for the obligations of his undertaking.

↓ 89/667/EEC Recital 6 (adapted)

- (5) A private limited-liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder. Pending the coordination of national provisions on the laws relating to groups, Member States may lay down certain special provisions and penalties for cases where a natural person is the sole member of several companies or where a single-member company or any other legal person is the sole member of a company. The sole aim of this provision is to take account of the differences which

⁵ OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2006/99/EC.

⁶ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2006/99/EC.

⁷ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/99/EC.

⁸ OJ L 26, 30.1.1977, p. 1. Directive as last amended by Directive 2006/99/EC.

⁹ OJ L 295, 20.10.1978, p. 36. Directive as last amended by Directive 2007/63/EC of the European Parliament and of the Council (OJ L 300, 17.11.2007, p. 47).

¹⁰ OJ L 378, 31.12.1982, p. 47. Directive as amended by Directive 2007/63/EC.

exist in certain national laws. For that purpose, Member States may in specific cases lay down restrictions on the use of single-member companies or remove the limits on the liabilities of sole members. Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly to ensure that the subscribed capital is paid.

↓ 89/667/EEC Recital 7

- (6) The fact that all the shares have come to be held by a single shareholder and the identity of the single member must be disclosed by an entry in a register accessible to the public.
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↓ 89/667/EEC Recital 8 (adapted)

- (7) Decisions taken by the sole member exercising the powers of the general meeting must be recorded in writing.
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↓ 89/667/EEC Recital 9

- (8) Contracts between a sole member and his company as represented by him must likewise be recorded in writing, insofar as such contracts do not relate to current operations concluded under normal conditions.
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↓

- (9) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B,
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↓ 89/667/EEC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of company listed in Annex I.

↓ 89/667/EEC

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).

2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or sanctions for cases where:

- (a) a natural person is the sole member of several companies; or
 - (b) a single-member company or any other legal person is the sole member of a company.
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↓ 89/667/EEC (adapted)

Article 3

Where a company becomes a single-member company because all its shares come to be 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 as referred to in 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.

↓ 89/667/EEC

Article 4

- 1. The sole member shall exercise the powers of the general meeting of the company.
- 2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes or drawn up in writing.

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.

Article 6

Where a Member State allows single-member companies as defined by Article 2(1) in the case of public limited companies as well, this Directive shall apply.

↓ 89/667/EEC (adapted)

Article 7

A Member State need not allow the formation of single-member companies where its legislation provides that an individual entrepreneur may set up an undertaking the liability of

which is limited to a sum \boxtimes dedicated $\langle\boxtimes$ to a stated activity, on condition that safeguards are laid down for such undertakings which are equivalent to those imposed by this Directive or by any other Community provisions applicable to the companies referred to in Article 1.

Article 8

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.



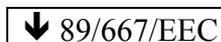
Article 9

Directive 89/667/EEC, as amended by the Acts listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 10

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.



Article 11

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]



ANNEX I

↓ 89/667/EEC Art. 1 (adapted)

⊗ Types of companies referred to in Article 1 ⊗

– *Belgium:*

Société privée à responsabilité limitée / besloten vennootschap met beperkte aansprakelijkheid;

↓ 2006/99/CE Art. 1 and Annex pt A.4 (adapted)

– *Bulgaria:*

Дружество с ограничена отговорност, акционерно дружество;

↓ 2003 Act of Accession, Art. 20 and Annex II, p. 340

– *the Czech Republic:*

Společnost s ručením omezeným;

↓ Corrigendum 89/667/EEC (OJ L 232, 2.9.1999, p. 34)

– *Denmark:*

Anpartsselskaber;

↓ 89/667/EEC

– *Germany:*

Gesellschaft mit beschränkter Haftung;

↓ 2003 Act of Accession, Art. 20 and Annex II, p. 340

– *Estonia:*

Aktsiaselts, osäühing;

↓ 89/667/EEC

– *Ireland:*

Private company limited by shares or by guarantee;

↓ Corrigendum 89/667/EEC
(OJ L 232, 2.9.1999, p. 34)

– *Greece:*

Εταιρεία περιορισμένης ευθύνης;

↓ 89/667/EEC

– *Spain:*

– Sociedad de responsabilidad limitada;

– *France*

Société à responsabilité limitée;

– *Italy*

Società a responsabilità limitata;

↓ 2003 Act of Accession, Art. 20
and Annex II, p. 340

– *Cyprus:*

Ιδιωτική εταιρεία περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

– *Latvia:*

Sabiedrība ar ierobežotu atbildību;

– *Lithuania:*

Uždaroji akcinė bendrovė;

↓ 89/667/EEC

– *Luxembourg:*

Société à responsabilité limitée;

↓ 2003 Act of Accession, Art. 20
and Annex II, p. 340

– *Hungary:*

Korlátolt felelősségű társaság, részvénytársaság;

– *Malta:*

Kumpanija privata/Private limited liability company;

↓ 89/667/EEC

– *the Netherlands:*

Besloten vennootschap met beperkte aansprakelijkheid;

↓ 1994 Act of Accession, Art. 29
and Annex 1

– *Austria:*

Aktiengesellschaft, Gesellschaft mit beschränkter Haftung;

↓ 2003 Act of accession, Art. 20
and Annex II, p. 340

– *Poland:*

Spółka z ograniczoną odpowiedzialnością;

↓ 89/667/EEC

– *Portugal:*

Sociedade por quotas;

↓ 2006/99/EC Art. 1 and Annex
pt A.4 (adapted)

– *Romania:*

Societate cu răspundere limitată;

↓ 2003 Act of Accession, Art. 20
and Annex II, p. 340

– *Slovenia:*

Družba z omejeno odgovornostjo;

– *Slovakia:*

Spoločnosť s ručením obmedzeným;

↓ 1994 Act of Accession, Art. 29
and Annex 1

– *Finland:*

Osakeyhtiö/aktiebolag;

– *in Sweden:*

Aktiebolag;

↓ 89/667/EEC

– *the United Kingdom:*

Private company limited by shares or by guarantee.



ANNEX II

Part A

Repealed Directive with list of its successive amendments (referred to in Article 9)

Council Directive 89/667/EEC
(OJ L 395, 30.12.1989, p. 40)

Annex I, point XI.A of the 1994 Act of Accession
(OJ C 241, 29.8.1994, p.194)

Annex II, point 4.A of the 2003 Act of Accession
(OJ L 236, 23.9.2003, p. 338)

Council Directive 2006/99/EC
(OJ L 363, 20.12.2006, p. 137)

Only point A.4 of the Annex

Part B

List of time-limits for transposition into national law and application (referred to in Article 9)

| Directive | Time-limit for transposition | Date of application |
|------------|------------------------------|--|
| 89/667/EEC | 31 December 1991 | 1 January 1993 in the case of companies already in existence on 1 January 1992 |
| 2006/99/EC | 1 January 2007 | |

ANNEX III

CORRELATION TABLE

| Directive 89/667/EEC | This Directive |
|----------------------------------|-----------------|
| Article 1 introductory words | Article 1 |
| Article 1, first to 27th indents | Annex I |
| Articles 2 to 7 | Articles 2 to 7 |
| Article 8(1) | - |
| Article 8(2) | - |
| Article 8(3) | Article 8 |
| - | Article 9 |
| - | Article 10 |
| Article 9 | Article 11 |
| - | Annex I |
| - | Annex II |
| - | Annex III |