

Consultation on EU Company Law Framework

February 24, 2012

The European Commission recently launched an in-depth consultation designed to review the EU company law framework with an emphasis on developing it for the future in light of the current economic, social and political climate. Comment is sought on the objectives and scope of EU company law, codification of the existing law, cross-border mobility, corporate groups and the capital maintenance regime.

On 20 February 2012, the European Commission launched an in-depth consultation (Consultation) concerning the development of EU company law. Matters on which views are sought include the objectives and scope of EU company law, codification of the existing law, cross-border mobility, corporate groups and the capital maintenance regime. The Consultation is designed to allow wide public participation to reveal and identify the strengths and weaknesses of existing legislation and the scope of desired amendments.

The European Commission believes that EU company law is essential to protect, and provide legal certainty to, shareholders, creditors and other stakeholders throughout the EU Member States. As such, it plays a key role in creating and maintaining the single market. Currently, EU company law consists of three regulations enabling the establishment of European Companies (SEs), European Economic Interest Groups (EEIGs) and European Cooperative Societies (SCEs), together with 15 directives which harmonise fundamental company rules across all EU Member States. Legal concepts, including takeover bids, mergers and divisions, shareholder rights, financial reporting and public company maintenance of capital, have been harmonised across the economic area, with a view to facilitate cross-border trade.

However, in order to keep up with today's challenges, EU company law, like all other EU legislation, must be adapted and evolved in line with the changing social, economic and political landscape. With the growing prevalence of international and internet commerce, the existing framework has come under scrutiny.

Issues Addressed in the Consultation

The Consultation is designed to review the EU company law framework with an emphasis on developing it for the future in light of the current economic, social and political climate. The following issues raised by the Consultation have emerged from a "reflection process" started in 2010 and a report published by the European Commission Reflection Group on the future of EU company law in April 2011:

- Objectives and scope of EU company law – The Consultation questions the aim of EU company law and whether the existing rules are adequate. Modernisation through new areas of harmonisation and shareholder protection by moving away from a public-private company distinction, and refocusing on a listed-unlisted company distinction, is specifically considered.
- Codification – The piecemeal existing regulatory framework is not very accessible, and there is a risk of gaps and inconsistencies arising. Codifying the numerous company law regulations and directives into either a single document or a few key instruments is considered.
- EU legal entities – The Consultation asks respondents to give their views on the advantages and shortcomings of SE, EEIG and SCE legal entities. Also, the advisability of considering other forms is explored, with specific mention of the prospective European Model Company Act as an alternative to harmonization.
- Societas Privata Europaea (SPE) statute – With EU Member States unable to achieve consensus on the SPE statute, small- and medium-sized businesses (SMEs) remain unsupported at the EU level. The Consultation queries whether alternative means to support European SMEs engaged in cross-border trade should be pursued.
- Cross-border transfer of a company's registered office – At present only SEs and SCEs can perform a transfer of the company's registered office to a different country while maintaining the company's legal personality. The Consultation invites comment on whether cross-border transfers of any company's registered office should be facilitated, and what conditions and consequences should be attached.
- Cross-border mergers and divisions – The Consultation requests feedback on the introduction of regulation relating to cross-border divisions, and the increased harmonisation of regulation relating to cross-border mergers, at the EU level.
- Groups of companies – Although previous attempts to introduce EU-wide group company regulation have failed, the Reflection Group indicated that this concept deserved to be revisited in relation to accessibility of investor information for listed companies. As such, the Consultation seeks views on whether there is need for EU intervention in dealing with sets of companies under a single source of management or control.
- Capital regime – The Consultation asks whether the existing minimum legal capital and capital maintenance rules should be updated. In 2008, a study into the feasibility of alternatives to the current EU capital maintenance regime indicated that no immediate changes were required. Feedback from the Consultation should determine whether this position has changed.

The Future

The Consultation period is due to end on 14 May 2012, and the European Commission is expected to analyse the findings and publish a statement outlining them in the summer of 2012. Any follow-up initiative is expected to be announced in late 2012 in tandem with corporate governance proposals emerging from the 2011 public consultation of corporate governance issues.

The Consultation is a consistent continuation of the reflection process launched in 2010, and the European Commission believes that whilst the autonomy and legal identity of each Member State should be preserved, EU company law is necessary to promote international business development within the European Union. Therefore, it is also important to view any EU company law changes from a corporate governance and social responsibility perspective, as well as from a legal standpoint. Should this be the case, a well-developed EU regulatory framework will overcome the challenges presented, paving the way for companies in the European Union to flourish.

Keo Shaw, a trainee solicitor in London, also contributed to this article.

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