

Corporate Governance Newsletter - March 2007

Corporate Governance Forum

The European Corporate Governance Forum held its last meeting on February 16. Agenda items included the issue of proportionality of capital and control (new term for “one share one vote”), preparation of the Forum’s annual report, updates on several Commission initiatives and monitoring of the comply-and-explain principle.

At the same time the Forum has set up a special working group to deal with the proportionality principle, the aim being that this group should prepare a discussion paper for the forum. The paper will be based on the results of the recently conducted Commission study and should contain an objective review and assessment of that study.

Links: http://ec.europa.eu/internal_market/company/docs/ecgforum/agenda-16-02-07_en.pdf (agenda)

Directive on the cross-border transfer of registered seat (14th company law directive)

The Commission is currently conducting the obligatory regulatory impact assessments to underline the economic benefit of the directive. As the final stage in this process, in April, the initiative has to be justified in front of a high-ranking quality audit board. In an effort to ensure a positive outcome from this process, former internal draft proposals for a 14th company law directive have been revised. The proposal could be launched within the German presidency before the end of June.

As far as workers participation provisions are concerned, these are expected to be similar to the “SE provisions”. According to the Commission “there will be no revolutionary change” in this regard.

Shareholders’ rights directive

The shareholder rights directive was adopted by the European Parliament at the first reading on 15 February. Its final adoption by the council is expected soon. The directive does not foster the “one-share-one-vote principle”. Nor does it set up incentives to strengthen long-term shareholdings or any other labour-related mechanisms.

Link: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0042+0+DOC+XML+V0//EN#BKMD-2> (consolidated version)

Simplification initiative

In the context of the Commission’s simplification initiative, Commissioner Mc Creevy has announced that further work will also focus on the company law directives. One item on the Commission’s recasting agenda seems to relate to the SE directive, and specifically to the possibility to locate the head office and registered office in different places.

This initiative has to be observed very carefully because it could be used to water down social standards.

Links: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=52005DC0535 (commission communication on simplification)
http://ec.europa.eu/enterprise/regulation/better_regulation/simplification.htm
(background information from the Commission)

European Private Company (EPC)

On 2 February the European Parliament voted on a resolution to support the statute of an EPC. Central to the resolution is the desire to devise a harmonised statute for the European private company without too many references to national law. The parliamentary resolution also deals – cautiously – with the participation question. A more precise statement regarding employee rights would be welcome. This resolution aims to step up the pressure on the Commission to launch an EPC proposal.

At the same time the Commission is in the early stages of conducting the regulatory impact assessment on the EPC. The Commission proposal on this is not to be expected before the beginning of 2008. (See also Newsletter 11/2006)

Links: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0023+0+DOC+XML+V0//EN> (text of the resolution)

Volkswagengesetz before the ECJ

On 13 February the Advocate-General presented his opinion in the Volkswagen case (C-112/05). He reached the conclusion that the Volkswagengesetz represents an infringement of EC law – especially the principle of free movement of capital (Art. 56 EC Treaty). In particular the Advocate-General stressed three provisions of the Volkswagengesetz which are in breach of EC law, the first of these being the right of the government to appoint members of the Volkswagen supervisory board. The second infringement relates to the limitation of voting rights to 20 % of the share capital and the third to the increase to 80 % of the share capital represented for adoption of resolutions at the general meeting.

Moreover, the Advocate-General sees no possibility to justify these restrictions on the grounds of public interest. Nor, in his view, is it possible to justify the restrictions of Volkswagengesetz by reference to the workers' interests because their interests are already safeguarded by the Mitbestimmungsgesetz (para 100 of the opinion).

link: <http://curia.europa.eu/en/actu/communiqués/cp07/aff/cp070014en.pdf> (ECJ Press release)