

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 193 final - SYN 135

Brussels, 24 May 1989

AMENDED PROPOSAL FOR A TWELFTH COUNCIL DIRECTIVE  
ON COMPANY LAW  
CONCERNING  
SINGLE-MEMBER PRIVATE LIMITED COMPANIES

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(presented by the Commission pursuant to the  
third paragraph of Article 149 of the EEC Treaty)

Com 1983 f.

EXPLANATORY MEMORANDUM

I. General considerations

On 19 May 1988, the Commission transmitted to the Council its proposal for a Twelfth Council Directive on company law concerning single-member private limited companies<sup>(1)</sup>. The Economic and Social Committee gave its opinion on 28 September 1988<sup>(2)</sup>, and Parliament did so on 15 March 1989.

Acting on the basis of Article 149(3) of the Treaty, and taking account of the two opinions referred to above, the Commission has adopted this amended proposal for a Directive.

II. Commentary on the individual articles

Article 2

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 is responding to Parliament's request by including such a stipulation in the recitals of the Directive.

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 re-examining this

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(1) Doc. COM(88) 101 final; OJ No C 173, 2.7.1988, p. 10.  
(2) OJ No C 318, 12.12.1988, p. 9

matter, it has proved impossible to dissociate this specific problem from that of the law governing groups in general, 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.

The first company law Directive 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 extends this obligation to indicating, where appropriate, that the company is a single-member company.

### Article 3

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 file or 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.

In line with Parliament's opinion, and in order to ensure consistency with the requirements laid down by the last sentence of Article 2(1) for the formation of a single-member company, the amended proposal requires 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.

Article 4

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

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.

Article 5

The amendments made to the text are based on the ideas referred to in the previous paragraph.

Article 7

The amended wording of this article is intended merely 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.

Amended proposal for a Twelfth Council Directive on company law  
concerning  
single-member private limited companies

INITIAL PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 of the Treaty should be coordinated with a view to making such safeguards equivalent throughout the Community;

Whereas in this field Council Directives 68/151/EEC,<sup>1</sup> 78/660/EEC<sup>2</sup> and 83/349/EEC<sup>3</sup> concerning disclosure, the validity of

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament

Having regard to the opinion of the Economic and Social Committee,

Unchanged

Unchanged

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

2 OJ No L 222, 14.8.1978, p. 11.

3 OJ No L 193, 18.7.1983, p. 1.

commitments, nullity, annual accounts and consolidated accounts apply to all companies, while Council Directives 77/91/EEC,<sup>1</sup> 78/855/EEC<sup>2</sup> and 82/891/EEC<sup>3</sup> on formation and capital, mergers and divisions apply only to public limited companies;

Whereas the SME action programme was Unchanged  
approved by the Council on 3 November 1986

Whereas reforms in the legislation of Unchanged  
certain Member States in the last few years, permitting single-member private limited companies, have created divergences between the laws of the Member States;

Whereas it is important to provide a legal instrument allowing for limitation of the liability of the individual entrepreneur throughout the Community;

Whereas it is important to provide by means of this Directive a legal instrument 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 the company;

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1 OJ No L 26, 30.1.1977, p. 1.

2 OJ No L 295, 20.10.1978, p. 36.

3 OJ No L 378, 31.12.1982, p. 42.

Whereas a private limited company may be a single-member company from the time it is formed, or may become so because its shares have come to be held by a single shareholder; the shares of a single-member company should be nominative and certain conditions should be established for companies with a legal person as their sole member;

Whereas the fact all the shares have come to be held by a single shareholder should be disclosed;

Whereas decisions taken by the sole member in his capacity as general meeting should be recorded in writing;

Whereas agreements between the sole member and the company should likewise be recorded in writing,

Whereas a private limited company may be a single-member company from the time it is formed, or may become so because its shares have come to be held by a single shareholder; the shares of a single-member company should be nominative, and the Member States may, until such time as their laws are coordinated, lay down certain special provisions 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;

Whereas the fact that all the shares have come to be held by a single shareholder should be disclosed by means of entry in a register accessible to the public;

Whereas the letters and the order forms of the company should indicate that it is a single-member company;

Unchanged

Whereas contracts between the sole member and the company should likewise be recorded in writing,

HAS ADOPTED THIS DIRECTIVE:

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Article One

Article One

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

Unchanged

- in Belgium:

la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid,

- in Denmark:

anpartsselskaber,

- in Germany:

die Gesellschaft mit beschränkter Haftung,

- in Spain:

la sociedad de responsabilidad limitada,

- in France:

la société à responsabilité limitée

- in Greece:

- in Ireland:

the private company limited by shares or by guarantee,

- in Italy:

la società a responsabilità limitata,



- in Luxembourg:  
la société à responsabilité limitée,
  
- in the Netherlands:  
de besloten vennootschap met beperkte  
aansprakelijkheid,
  
- in Portugal:  
a sociedade por quotas,
  
- in the United Kingdom:  
the private company limited by shares  
or by guarantee.

Article 2

1. A company may have a sole member, either when it is formed or when all the shares come to be held by a single person (single-member company). Shares in such a company shall be nominative.

2. A single-member company whose sole member is a legal person may not be the sole member of another company.

3. Where the sole member is a legal person, Member States shall provide that either:

(a) the legal person has unlimited liability for the company's obligations arising during the period of the person's sole membership. However, Member States may provide that where a legal person becomes a sole member, because all the shares come to be held by a single person, that liability is not incurred unless another member has not been found within one year,

or

Article 2

1. Unchanged

2. The Member States may, until such time as their laws relating to groups are coordinated, lay down special provisions 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.

Deleted

(b) a minimum capital is fixed for the single-member company and both the company and the sole member are companies which at their balance sheet dates do not exceed the limits of two of the three criteria in Article 27 of Directive 78/660/EEC. If one of the companies exceeds the limits and the situation is not regularized in the year following the balance sheet date, the sole member shall have unlimited liability for the obligations of the single-member company arising after the balance sheet date.

#### Article 2a

The letters and order forms referred to in Article 4 of Directive 68/151/EEC shall also indicate that the company is a single-member company.

#### Article 3

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact shall be recorded in the file or entered in the register within the meaning of Article 3(1) and (2) of Directive 68/151/EEC.

#### Article 3

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact shall 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 held by the company and accessible to the public. The shares shall, if they are not already such, be converted into nominative shares.

Article 4

1. The sole member shall exercise the powers of the general meeting of the company and may not delegate them.

2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes.

Article 5

1. Agreements between the sole member and the company shall be drawn up in writing.

2. The possibility of any agreement between the sole member and the company represented by that member must be provided for in the statutes or instrument of incorporation of the company.

Article 6

Where a Member State allows the formation of a single member public limited company, the rules of this Directive shall apply.

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 the company shall be recorded in minutes or drawn up in writing.

2. The possibility of any contract between the sole member and the company represented by that member must be provided for in the statutes or instrument of incorporation of the company.

Article 6

Unchanged

Article 7

A Member State may decide not to apply this Directive where its legislation provides that an individual businessman may set up an undertaking whose liability is limited to a sum devoted to a stated activity, on condition that safeguards are laid down for such undertakings which are equivalent to those imposed by Community law on the companies to which this Directive applies.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1990. They shall inform the Commission thereof.

2. Member States may provide that in the case of companies already in existence on 1 January 1990 this Directive shall not apply until 1 January 1991.

Article 7

A Member State may decide not to allow the formation of a single-member company where its legislation provides that an individual businessman may set up an undertaking whose liability is limited to a sum devoted 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

Unchanged

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

Article 9

Article 9

This Directive is addressed to the Member States. Unchanged