

Charlie McCREEVY

European Commissioner for Internal Market and Services

**Company law and corporate
governance today**

~~Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort~~

5th European Corporate Governance and Company Law
Conference

Berlin, 28 June 2007

President, Ladies and Gentlemen,

It is a pleasure for me to be here in Berlin for the opening of this conference. The conference follows what I think can by now be called a European tradition. This tradition was started by the Dutch Presidency in 2004 to provide a forum for discussing current EU topics in the fields of company law and corporate governance. It is important to take the time, at regular intervals, to step back and have a general exchange on the policy options in the European Union. So I am grateful to the BDI and the German government for continuing the tradition and organising this event today. The impressive list of participants shows it has become an important diary event for experts in the field.

In your invitation, you pose the question whether the EU legal framework is still appropriate in an increasingly mobile environment. You identify, in particular, the possible proposals for a directive on the transfer of the registered office, for a statute for a European Private Company and the current discussion on "one share – one vote". I will address all these issues in seeking to answer your question. I would also like to mention an area which will be a Commission priority over the coming months – namely simplification of company law, accounting and auditing.

In considering each of these areas, the key questions we need to have in mind are could we, and should we, do more to offer companies in Europe the best conditions to perform and compete in a global market? Taking into account the existing regulatory framework, do we need additional measures to facilitate company mobility? In particular, do we have the right rules for small and medium sized EU companies to face global competition?

Cross-border transfer of company's seat

The EU has recently adopted the Services Directive and the Directive on cross-border mergers. Once transposed in full, they should facilitate the free provision of cross-border services and cross-border restructuring. The full effect of these new rules has not yet been seen in practice.

But there are also some unresolved issues concerning the cross-border transfer of a company's seat and stakeholders seek more legal certainty in that respect. The Commission had envisaged submitting a proposal for a directive this year.

However, our preparatory work has led me to the conclusion that we should not rush forward with legislation. If we are to propose legislation, we must be sure there is a reasonable chance of a result with added value for business. The economic case is not as obvious or as clear-cut as it may seem and Member States currently follow very different approaches to which they are strongly attached.

Moreover, the Court of Justice will soon take a decision in a case that could provide us with new insights on the current legal situation in Europe. As you know, the Court has already in the past delivered fundamental judgments in the area of company mobility. I am therefore convinced that we should wait for the outcome of this case which is likely to bring more clarity into this complicated matter. We expect the judgement to be delivered in the autumn of this year.

European Private Company Statute

For small and medium enterprises the debate about the European Private Company Statute – the EPC - is of great importance. I know that it has very strong support in Germany. The proponents of such a European statute insist that it would make the setting up and the running of cross-border businesses much easier and cheaper. It is also argued that a European statute would facilitate access to foreign markets and make it easier for companies, notably from the Eastern European Member States, to integrate into the European economy.

The European Parliament attaches great importance to this project and has called upon the Commission to make a legislative proposal. I have no doubt that Mr Lehne will remind us of this request in a few minutes.

I agree that the concept of a uniform European statute for SMEs looks very appealing at first glance. But we should not forget the long discussions on the European Company Statute, the SE. These discussions have clearly shown that even a very appealing concept with wide support cannot easily be translated into a workable European legal form. The devil lies in the detail. The Commission has often been criticised for making grand proposals based on theoretical problems delivering little by way of practical results. This is one of the reasons why the EU is out of touch with its citizens.

This is not my style. I am a pragmatic man who wants to be judged on practical results. This is why I have decided to study the issue further before submitting a proposal. I have asked my services to collect all evidence necessary for a detailed economic impact analysis in order to assess factually whether there is a real case for the European Private Company Statute (EPC) and whether solutions are available that would work in practice.

We should also make sure that the EPC would be of interest to companies from all over Europe, and not only from certain Member States.

That is why I would like to know more about all stakeholders' views on the content of the possible statute. The Commission will therefore be listening very carefully to today's debate on this point.

Proportionality between capital and control

Let me now turn to the question of the proportionality between capital and control in listed companies. Or, as it is also known, the question of "one share, one vote".

This is a hotly debated topic these days, and I have played a part in stimulating this debate. The keenly awaited external study we commissioned last year has now been published and provides useful factual information. Previously, we didn't have a clear picture of what the real situation was in Europe and how it affected European listed companies.

Now, all the facts and arguments are on the table. And the picture is not clear cut. The contents of the report will be presented to you later today. But I can already say one thing: even on the side of investors, there is no systematic call for imposing the one share, one vote principle!

I am truly open-minded as to our future work. I have therefore instructed my services to examine, with the same open mind, the question of whether there is a need for Commission action in this field and if so, which issues should be addressed. An impact assessment to this end is under preparation. The impact will assess the options in a balanced way. We have been listening to the views expressed from all sides. They will be taken properly into account.

Simplification

Finally, I would like to address one issue which is not listed amongst the topics you will debate today. In answering the question the BDI posed on whether the EU framework is still relevant and appropriate, I think we must look critically at whether our existing rules for EU companies are still fit for purpose. This is one of the Commission's priorities for the ongoing Single Market Review. We have also promised to cut red tape for business. It is particularly relevant in the area of company law. In the EU, adopted legislation is often regarded as sacrosanct. It can take years to adopt. Those involved are understandably reluctant to risk re-opening hard-won compromises.

Nonetheless, Member States revisit the overall framework of their company laws from time to time to check it remains relevant for the modern reality of business. The EU needs to do the same. For example, it is right to pose the question whether the EU should not focus mainly on cross-border situations. Is there a real need for EU rules on domestic mergers? Is the cross-border dimension already adequately addressed in the Tenth Company law Directive on cross-border mergers? I am convinced we need to reduce the level of detail of our current rules which stem from the 70s and 80s and are certainly showing their age.

In accounting and auditing, I see a particular need to reduce costs for SMEs. Quality of accounting and auditing must be maintained, and even improved in the EU. But the existing rules are often way too burdensome, especially for SMEs. I am sure we can cut red tape, without endangering our high standards.

The Commission's recent proposal on reducing reporting requirements for mergers or divisions which was fast-tracked is now well on the way to being adopted. Within the next few days, I will set out further more substantial ideas on how we can further simplify the business environment for European companies. The Communication will form the basis for a thorough discussion, over the next few months, with the European Parliament, the Member States and the stakeholders on the objectives and the scope of our simplification initiative. The Commission looks forward to working constructively with the Portuguese Presidency in this area.

The Commission is taking very seriously its commitments on better regulation. We are really starting to "walk the talk". I am personally strongly committed to this. Consultation with stakeholders is a crucial aspect of better regulation. That is why we will be listening carefully to your views and the debates which will take place today.

Thank you very much for your attention.