

CCBE comments on the proposal for a Directive relating to certain aspects of company law (codification)

18/03/2016

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE welcomes the importance the Commission attaches to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens. It notes that no changes of substance may be made to the instruments affected by codification and that an accelerated procedure may be used for the fast-track adoption of codification instruments on this basis.

The CCBE has identified the following provisions of the proposed Directive where it thinks a minor adjustment should be made to the text to ensure that no changes of substance are made or where it has a query about the approach adopted. It would welcome the opportunity to discuss these provisions.

— Recital 48: We suppose that this does not refer to Regulation 596/2014 because the new Recital 48 reflects Recital 13 of Directive 2012/30/EU, which, as a matter of course, does not refer to a posterior Regulation. However, we are of the opinion that the recital 48 should refer to Regulation 596/2014.

— Recital 54: The wording has been changed slightly and now refers to “relations between the companies concerned by a merger”. We do not think this accurately reflects Recital 10 of Directive 2011/35/EU and suggest it instead be “relations between companies involved in a merger”. In French, the word used in both Recital 10 of Directive 2011/35/EU and the Proposal is (*sociétés*) “*intéressées*” (the Proposal adds the words : “*par une fusion*”). We suggest that “*sociétés intéressées par une fusion*” should be replaced by “*sociétés parties à une fusion*”.

— Article 3(e): In the English version the comma is in the wrong place. Either the commas should be removed (as in the original text) or the comma should come after “appointing” (not after “the procedure for”). In French, there are no commas.

— Article 7 :

- Articles 7.1 and 7.2 concern, respectively, the scope of Section 2 and the validity of the obligations entered into by the company. Both provisions are not linked and were two distinct articles in Directive 2009/101/EC (Articles 1 and 8). We are not sure why these provisions have been merged in one article.

- In addition, it is not clear why the titles of Article 1 of Directive 2009/101/EC (“Scope” - in French “Champ d’application”) and Article 8 of Directive 2009/101/EC (“Validity of obligations entered into by the company” - in French: “Validité des engagements de la société”) have been changed into “General provisions and joint and several liability” - in French: “Dispositions générales et responsabilité conjointe et solidaire”. In our opinion, the “old” titles described the contents of these provisions more adequately.

- Article 79: in line 3 it should say “shall” (not must) – to fit with all the other places where the word “must” has been changed to “shall”.
- Article 16101: In the English version this should be Article 101. (The French version says Article 101.)
- Article 118: In the English version there should be a colon after ““company” means” in line 1 of (1). There is a colon in the French version.
- Article 132(2): in line 3 the word “in” (in the original text) has been changed to “within”. The French wording is – a“(…) pendant la période de six mois précédant (…)”. We think there is a risk that the change in English would change the meaning. We think it should be changed back to “in”.
- Article 134: We are not sure why this has been included. We would have thought that the review should have been carried out in 2012 (i.e. 5 years after 15 December 2007).
- Article 135(3): We think line 4 should read “they shall subject those operations” (not they shall subject operation”). Although the wording copies Directive 82/891/EEC it is not good English and does not really make sense. Our suggested wording follows the wording in Article 135(1) and (2). In French, the same point applies. We suggest it should be “*ces opérations*” instead of “*cette opération*”.
- Article 153(1)(f): Please confirm that the reference to “Chapter III of Title I” is correct.
- Article 160: This does not include a provision corresponding to Article 26(5) of Directive 82/891/EEC. We are not sure why not.
- Article 162(3): The wording has been changed from referring to “the matters covered by this Directive” to “the functioning of the system of interconnection of registers”. We think the new wording is narrower than the original wording. For example, it might be thought not to cover processing of personal data. We think a wider formulation, for example by reference to the relevant part of the Directive, would be preferable.
- Article 164: In the original Directive (2012/17/EU) it was clear that this reference to a committee was limited to matters relating to interconnection. We are not sure that that is now clear and think further wording should be added to make this clear.
- Annex I, p. 2: in the enumeration of the provisions which refer to Annex I, Article 86(2) could be added.