

TWELFTH COUNCIL COMPANY LAW DIRECTIVE of 21 December 1989 on single-member private limited-liability companies (89/667/EEC)

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 (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies and 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, Directives 68/151/EEC (4) and 78/660/EEC (5), as last amended by the Act of Accession of Spain and Portugal, and Directive 83/349/EEC (6), as amended by the Act of Accession of Spain and Portugal, on disclosure, the validity of commitments, nullity, annual accounts and consolidated accounts, apply to all share capital companies; whereas Directives 77/91/EEC (7) and 78/855/EEC (8), as last amended by the Act of Accession of Spain and Portugal, and Directive 82/891/EEC (9) on formation and capital, mergers and divisions apply only to public limited-liability companies;

Whereas the small and medium-sized enterprises (SME) action programme (10) was approved by the Council in its Resolution of 3 November 1986;

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

OJ No C 291, 20. 11. 1989, p. 53.

Whereas it is important to provide 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 his undertaking;

Whereas a private limited-liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder; whereas, pending the coordination of national provisions on the laws relating to groups, Member States may lay down certain special provisions and penalties 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 sole aim of this provision is to take account of the differences which currently exist in certain national laws; whereas, for that purpose, Member States may in specific cases lay down restrictions on the use of single-member companies or remove the limits on the liabilities of sole members; whereas Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly to ensure that the subscribed capital is paid;

Whereas the fact that all the shares have come to be held by a single shareholder and the identity of the single member must be disclosed by an entry in a register accessible to the public;

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

Whereas contracts between a sole member and his company as represented by him must likewise be recorded in writing, insofar as such contracts do not relate to current operations concluded under normal conditions,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

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:

- in Germany:

Gesellschaft mit beschränkter Haftung,

- in Belgium:

Societe privee a responsabilite limitee/de besloten vennootschap met beperkte aansprakelijkheid,

- in Denmark:

Anpartsselskaber,

- in Spain:

Sociedad de responsabilidad limitada,

- in France:

Societe a responsabilite limitee,

- in Greece:

Etaireia periorismenis efthynis,

- in Ireland:

Private company limited by shares or by guarantee,

- in Italy:

Societa a responsabilita limitata,

- in Luxembourg:

Societe a responsabilite limitee,

- in the Netherlands:

Besloten vennootschap met beperkte aansprakelijkheid,

- in Portugal:

Sociedade por quotas,

- in the United Kingdom:

Private company limited by shares or by guarantee.

#### Article 2

1. A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company).

2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or sanctions for cases where:

(a) a natural person is the sole member of several companies;

(b) a single-member company or any other legal person is the sole member of a 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, together with the identity of the sole member, must 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 kept by the company and accessible to the public.

#### 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 his company as represented by him shall be recorded in minutes or drawn up in writing.

2. Member States need not apply paragraph 1 to current operations concluded under normal conditions.

#### Article 6

Where a Member State allows single-member companies as defined by Article 2 (1) in the case of public limited companies as well, this Directive shall apply.

#### Article 7

A Member State need not allow the formation of single-member companies where its legislation provides that an individual entrepreneur may set up an undertaking the liability of which 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

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1992. They shall inform the Commission thereof.

2. Member States may provide that, in the case of companies already in existence on 1 January 1992, this Directive shall not apply until 1 January 1993.

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

#### Article 9

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1989.

For the Council

The President

E. CRESSON

(1) OJ No C 173, 2. 7. 1988, p. 10.(2) OJ No C 96, 17. 4. 1989, p. 92 and(3) OJ No C 318, 12. 12. 1988, p. 9.(4) OJ No L 65, 14. 3. 1968, p. 8.(5) OJ No L 222, 14. 8. 1978, p. 11.(6) OJ No L 193, 18. 7. 1983, p. 1.(7) OJ No L 26, 30. 1. 1977, p. 1.(8) OJ No L 295, 20. 10. 1978, p. 36.(9) OJ No L 378, 31. 12. 1982, p. 47.

(10) OJ No C 287, 14. 11. 1986, p. 1.