

**COMMISSION CONSULTATION ON  
'CROSS-BORDER TRANSFER OF COMPANIES' REGISTERED OFFICES'**

**UNICE RESPONSE**

**I. GENERAL COMMENTS**

UNICE welcomes the European Commission consultation on the above subject, whose objectives is to enable companies to transfer their registered office from a Member States where they are registered to another Member States, under an appropriate procedure providing legal certainty.

Such a proposal is considered by UNICE a priority in the area of Company Law in order to ensure a real freedom of movement for companies in the Internal Market.

Transfer of seat in the EU has not been, so far, the subject of any harmonisation nor coordination and, any initiative in this area must encourage companies to make use of the facilities provided by the Internal Market. In this context, we strongly oppose provisions which would lead to the import/export of co-determination worker participation regimes (see answer to question 15).

**II. RESPONSE TO THE QUESTIONNAIRE**

- 1. *The Directive should cover all forms of limited company, the salient features of which are understood throughout the Member States to be the fact that they have legal personality and separate assets, which alone serve to cover their debts.***

UNICE welcomes the proposed scope for this Directive. Public and private limited companies should in any case be covered by the Directive. This is not essential but desirable for other forms of limited companies, such as collectives.

- 2. *The decision to transfer the registered office to another Member State should be taken by the general meeting, in accordance with the necessary rules and procedures for amending the company's memorandum and articles of association.***

UNICE agrees with this proposal but also believes that companies should have the possibility to provide for specific rules for taking such a decision in their memoranda.

- 3. *The general meeting should take the decision on the basis of a transfer proposal covering the form, name, registered office, the memorandum and articles of association planned for the company in the host Member State, the planned timetable and the rights granted to members or measures proposed for them.***

UNICE agrees with this proposal.

- 4. *The transfer proposal should be publicised appropriately.***

UNICE agrees with this proposal.

- 5. *Members, creditors and, where they exist, employee representatives should be given sufficient time to examine the transfer proposal.***

UNICE cannot agree at all with this proposal. Any participation of employees should follow the respective national law of the home country. European rules are not acceptable (please see reply to question 15).

- 6. *If necessary, the decision to transfer the registered office to another Member State should be accompanied by an alteration of the company's structures and assets in order to comply with the substantive and formal requirements for registration and the granting of legal personality in the host Member State.***

The question is not clear. If it is meant that the host Member State can require the immigrating company to transfer also the real seat, then it is not to be accepted.

- 7. *Member States could decide to take specific measures to protect creditors and minority shareholders opposed to the transfer.***

UNICE agrees with this proposal. When a company is transferring its seat to another country creditors and minority shareholders do need special protection. But the protection has to be in a well-balanced relation to the companies right to move inside the internal market.

- 8. *The home Member State should verify the legality of the decision to transfer the registered office to another Member State.***

Such verification would be limited strictly to whether or not the decision to transfer the registered office to another Member State has been taken in compliance with the formal requirements of the law of the Home Member State governing such decisions.

- 9. *The host Member State should verify that the company transferring its registered office meets the substantive and formal requirements for registration and the granting of legal personality under its national law. If appropriate, it should check that the amendments to the memorandum and articles of association are sufficient.***

UNICE completely agrees with this proposal.

- 10. The company should remain registered in its home Member State until such time as it is registered in the host Member State.**

UNICE completely agrees with this proposal.

- 11. Registration in the host Member State should result in the company's losing legal personality under the law of its home Member State and being removed from the register there.**

UNICE completely agrees with this proposal.

- 12. The transfer of the registered office should be entered in the register of both the home Member State and the host Member State.**

UNICE completely agrees with this proposal.

- 13. The transfer of the registered office should not entail the company's being wound up in the home Member State.**

UNICE completely agrees with this proposal.

- 14. The transfer of the registered office should be tax-neutral as laid down by Directive 90/434 applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.**

UNICE completely agrees with this proposal.

- 15. Employee participation should be governed by the national law of the host Member State. However, where it is already provided for by law or agreement in a more firmly entrenched form for a company wishing to transfer its registered office, it should be maintained or negotiated. Each home Member State is free to adopt its own measures governing these negotiations.**

UNICE strongly disagrees with this proposal according to which if employee participation is already provided for by law or agreement in a more firmly entrenched form for a company wishing to transfer its registered office, it should be maintained or negotiated. Employee participation should be governed by host Member State legislation. UNICE has largely expressed its opinion on this matter when adopting its position on the 10<sup>th</sup> company law Directive on cross-border mergers.

A guarantee for not changing controversial national codetermination standards is in contradiction with the principles of the internal market and the jurisdiction of the EU Court of Justice. The respect for different traditions and cultures forbids imposing foreign systems of participation. Instead the home country principle should be respected.

**16 Do you have any general comments on this outline by the Directorate-General for the Internal Market? (Please keep to no more than ten lines, as the Commission will read only the first ten lines.)**

UNICE is of the strong opinion that nearly 50 years after the Rome Treaty has become effective, the abolition of mobility restrictions for companies within the internal market is overdue. Excessive local standards should not be set in stone but should compete with other national models to foster convergence.

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