

Panel discussion: "Groups of companies and the current European Company Law framework"

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I am here to present briefly two important proposals on groups of companies.

The first proposal (chapter 4.1 of the report) is that :

The Commission should consider to adopt a recommendation recognising the interest of the group.

This is subject to evidence that it would be a benefit to take action at the EU level.

The second proposal (chapter 4.2 of the report) is that :

A Directive should require Member States to provide for a simplified company template for single-member companies for both individual entrepreneurs and holding companies.

If such a company is part of a group, appropriate rules should be developed to safeguard the interests of the subsidiary and its creditors.

1. The interest of the group

Before critics pour on me like rain in London, or I should rather say rain coming from London and may be from some other European places, I would like to indicate what the proposal is not.

The proposal is not a « law on groups »

The proposal is not a new 9th Company Law Directive on group relations. Let me be clear. It is not a *Konzernrecht*.

On the contrary, the proposal focuses on one point, and only one point: to increase the flexibility of management of groups both at the subsidiary level and at the parent level.

The report builds on previous work from the Winter Group (2000)

The Winter group proposed to allow a parent company to adopt and implement a co-ordinated group policy. So, as you can see, there is nothing revolutionary in our own proposal. In the last 10 years, nothing has been made at the EU level on this recommendation. However, integration between economies in Europe is deeper than 10 years ago.

The content of the proposal

The basic content of the proposal is that the managers of a subsidiary would be authorised to take into account in their decisions the interest of the group.

The rule would be more precise. The standard of the “interest of the group” would allow the directors of the subsidiary to take a decision in the interests of the group.

The directors would be allowed to do so even if it is unclear that the decision is in the interests of the subsidiary provided that the subsidiary (3 conditions)

would be compensated in the future

(or)

that it can be reasonably expected that it will be compensated in the future

(or)

that some benefit may be received in the future by virtue of being part of the group.

The rule would provide more clarity to directors of the subsidiary as to which transaction they can approve. It would act as a safe-harbour against liability for the managers of both the subsidiary and the parent.

The report does not anticipate major changes in many Member States from an EU recognition of the "interest of the group"

The recommendation builds on existing Member States legal theory (the Nordic Member States, France and the "Rozenblum" doctrine, "Nimox" in the Netherlands, Hungary). Therefore, changes would be minimal in many Member States.

In countries which have an existing law on groups, such as Germany, Hungary or Portugal, the recognition of the interest of the group would not affect « contractual groups » (*Vertraglicher Konzern*). However, it would impact factual groups (*Faktischer Konzern*).

The report sees several arguments in favour of EU action on this topic

First, not all Member States provide this flexibility. Therefore, the recognition of the interest of the group would provide a minimum flexibility for groups EU wide. This should be a basic right recognized in the EU for parent companies.

Second, the proposal would reduce legal costs since there would be a similar approach EU wide and less need to analyse national specificities. National differences in judicial interpretation would remain, obviously, but would be more limited than today.

The scope of the rule

The rule would apply in a national Member State and in a EU cross-border context.

The issue of appropriate safeguards for creditors and for minority shareholders has not been dealt with by the report. This is very complex issue and should be considered at a later stage if the proposal has support.

The report recognises that there is a lack of empirical evidence to support the introduction of such a rule at the EU level. However, the reflection group thinks that the question of the recognition of interest of the group is important enough to be open for debate.

The question is therefore whether there is an interest in this proposal but this is for the audience to provide an input.

2. The simplified single member company

A second proposal is to create a simplified single member company template which could be used for entrepreneurs and wholly-owned subsidiaries in all Member States. Once again, the idea is to provide more flexibility for groups or individuals entrepreneurs.

This single member company would simplify the legal structure and reduce legal costs for cross-border groups. It would allow them to set up subsidiaries with the same legal structure across Europe.

This would be realised by a Directive requiring all Member States to make available a private company template for a single parent shareholder company. A Simplified Company Charter would be included as an Annex to the Directive.

The structure of this company would be limited to harmonised rules on key issues. The governance of the company would be very simplified. For instance, there would be no general meetings and no board of directors.

Here are two important proposals from the report. I thank you for your attention and I leave now the floor to Francesco Chiappetta, General Counsel of the Pirelli Group and Chairman of BusinessEurope Company Law Working Group.