

Question	DK position	Kommission report
1. Continued relevance of the Action Plan	<p>The Commission states that the overall aim of company law in the EU should be to improve the competitiveness of EU companies and to achieve better regulation. DK welcomes and supports this position. DK also states that it would be relevant to evaluate the initiatives put forward and agreed upon from 2003 to 2006.</p> <p>DK welcomes the Commission initiative of modernising and simplifying European company law. This should in general be given a higher priority than new initiatives.</p> <p><i>“One size doesn’t fit all” – listed companies:</i> Regulation should be specific for listed companies only when the purpose of the regulation relates to the fact of being listed.</p> <p><i>Capital requirements and other areas of reform:</i> DK supports the planned study on alternative capital. Reforms of a more general kind could be discussed at an EU level regardless whether they end up being carried out at an EU level or at national level. The EU could function as an alternative to the individual Member States where these general reforms are discussed.</p>	<p>42 % of all respondents addressed the question.</p> <p>Most supported the views expressed in the consultation document and the actions undertaken during the first phase of implementation of the Action Plan.</p> <p>However, opinions were shared regarding the specific measures proposed under the Action Plan:</p> <p>Many responses insisted on the importance of selfregulation and the exchange of best practices.</p> <p>A significant number of responses called upon the Commission to focus on Small and Medium Sized Enterprises (SMEs).</p> <p>In addition, some respondents questioned the relevance of the distinction between listed and non-listed companies.</p> <p>A very small minority of respondents identified obstacles encountered by companies to Act cross-border.</p>
2. Application of better regulation principles	<p>The original objective of restoring investor confidence has been fulfilled. Regulation of directors’ responsibilities and corporate governance, including a</p>	<p>41,5 % of the respondents took position</p> <p>All respondents to this question praised the views expressed in the consultation</p>

	<p>European corporate governance code, is therefore no longer necessary nor desirable. DK fully agrees with the Commission on these issues.</p> <p>The Commission points to increased shareholder democracy and increased shareholder influence as an alternative to further regulation of management. When initiatives on increased shareholder influence are aimed at situations where there is a cross-border problem to be considered, DK is supportive of the view.</p> <p>DK is not supportive of initiatives with the aim of harmonizing legislation on shareholder influence when no cross-border aspects that can justify such measures are identified</p>	<p>document on the application of better regulation principles to company law and corporate governance. The commitments to systematically consult stakeholders and to strictly apply the principles of subsidiarity and proportionality, as well as the systematic use of regulatory impact assessment received overwhelming support.</p> <p>Whilst underlining the current "regulatory fatigue" and calling for a "digestion/stabilisation period", a number of respondents pleaded for the adoption of enabling legislation. 20% of the respondents expressed views on potential other ways to improve action.</p>
<p>3. One share, one vote</p>	<p>It is the DK position that this issue will most usefully be regulated by the market itself and the principle of contractual freedom as long as there is full transparency. No restriction to contractual freedom should be initiated unless a real need to do so can be clearly demonstrated.</p> <p>DK generally questions the Commission's approach on this issue.</p>	<p>38,5 % of the respondents addressed the question</p> <p>Replies to this question were polarised into two camps, with investors being favourable and issuers rather opposed to an intervention at EU level.</p> <p>Those in favour of EU action argued that whenever there is a distortion in the relation between financial ownership and voting power, the position of dominant shareholders might be cemented and financial investment in the company might be discouraged.</p> <p>As to the instrument to be used opinions were split</p>

		<p>between a potential directive (44,8 % in favour) and a potential recommendation (41,7 % in favour).</p> <p>Even respondents in favour of an intervention at EU level often specified that non-voting preferential shares should be exempted from EU intervention.</p> <p>A majority of the replies opposed to an intervention at EU level stemmed from the Scandinavian countries. The main arguments used were that (i) it is not demonstrated that the <i>one share one vote</i> system leads to better company performance, and (ii) freedom of contract and respect for national specificities should be guaranteed, as long as there is transparency on the distribution of voting rights across shareholders.</p>
4. Rights of shareholders	<p>DK is supportive of initiatives increasing shareholder influence and making it more attractive for shareholders to invest cross-border and thereby help improve the competitiveness of companies. In this respect, it is, however, important to consider the administrative burdens that accompany some of the initiatives.</p>	<p>43 % of the respondents addressed the question.</p> <p>A majority considered that an EU action in the field of shareholders' rights would bring significant added value. However, there were differences of views depending on which rights should be addressed at EU level. By far, the strongest support was expressed for the establishment of a mandatory special investigation right of shareholders.</p> <p>Those respondents who were opposed to introducing additional rules at EU level mainly took the view that the current national and EU legislation would already</p>

		provide for a sufficient protection of shareholders' interests.
5. Disclosure by investors of their voting policy	DK could support a study with the aim of establishing whether there is a need for such an initiative on an EU-level. Nevertheless, it is important to bear in mind the administrative burdens that accompany such an initiative in the study and compare these with the added value of such an initiative.	<p>44 % of all respondents addressed the issue.</p> <p>A significant proportion of respondents insisted on the need to impose transparency and disclosure obligations on institutional investors. They considered that an EU instrument is needed to harmonise requirements throughout the EU.</p> <p>Respondents who opposed an intervention at EU level did so for a variety of reasons. While certain respondents considered that such matters are to be left to the contractual arrangements between institutional investors and their underlying beneficiaries, others are doubtful of the added-value of disclosure. Lastly, some respondents question the feasibility of any action at EU level because of the variety of ownership structures existing in the EU and the difficulty of devising a definition of 'institutional investor' which could be successfully applied in all Member States</p> <p>Views were split on the appropriate EU instrument to address the voting policies of institutional investors: directive (28,3% in favour), a regulation (10% in favour) and a recommendation (23,3 % in favour).</p>
6. Directors responsibilities / Enhanced transparency of legal entities.	Investor confidence has been restored with a number of initiatives in the period of 2003-2006. Based on this and because of the significant	<p>40,3 % of the respondents addressed the question.</p> <p>Concerning <i>wrongful trading rules</i>, a vast majority (73,8%)</p>

	<p>differences in national traditions and cultures in this specific area, this issue should not be addressed any further on an EU level unless studies show a concrete and significant need thereof.</p> <p>Regulation on <i>wrongful trading</i> is most appropriately left to national legislation.</p> <p>Regulation on <i>directors' disqualification</i> at an EU level could bring added value. There is a need to address this issue. A possibility could be the exchange of information within certain limits between Member States.</p> <p><i>Enhanced transparency</i> has shown to be associated with significant costs for the companies. Transparency should therefore only be enhanced when it does not place unjust burdens on the companies. It is therefore important to identify a concrete and significant need for transparency by way of a study before any further initiatives are brought Forward.</p>	<p>opposed any EU initiative. The opponents mostly based their argumentation on the existing detailed national regulations.</p> <p><i>Directors disqualification:</i> A strong majority of respondents (70%) opposed the adoption of any new EU legislation on the basis of the existing national legislative frameworks. In contrast, a quarter of the respondents (24 %) supported a potential EU harmonisation. They considered that an EU initiative would create a level playing field and ensure greater equal treatment of directors. Furthermore, the protection of shareholders and creditors could be increased.</p> <p><i>Enhanced transparency:</i> Many respondents from the private sector have expressed opposition toward new EU legislation aimed at introducing other transparency requirements for corporate and legal entities. However, the importance of increased transparency as a safeguard against misuse of corporate vehicles or legal arrangements for fraud, money laundering and other financial crimes is widely acknowledged. Many respondents, particularly from the public and consultancy sector, as well as academics, supported the adoption of enhanced transparency requirements, as those would be beneficial for the fight against financial crime.</p>
7. Transfer of a company's registered office	DK generally supports initiatives that improve the	42,6% of respondents addressed the question

	<p>possibility of EU companies structuring themselves across borders.</p> <p>The ruling C 411/03 Sevic Systems AG renews the question of transfer of seat across borders. It must be considered whether the right for companies to transfer seat between Member States is already established by the Treaty. Regardless whether the right to transfer the seat is already established or not there is a need for a directive that harmonizes the necessary protection of the mentioned stakeholders and provides for a formal procedure for the transfer.</p>	<p>An overwhelming majority (79,6%) considered that there is still a need for a directive on the transfer of registered office.</p> <p>Many of the respondents mentioned that the existing measures still do not provide for a straightforward transfer of the registered office (the transfer of registered office is only possible through a conversion into an SE or a cross-border merger) and several respondents also emphasised that there is still uncertainty on the legal and tax consequences of transfer under present law and jurisprudence of the European Court of Justice on the freedom of establishment. Therefore, enhanced certainty is needed</p>
8. Choice of board structure	<p>An EU initiative on the choice between a harmonized monistic and dualistic type of board structure will lead to great inflexibility for the companies compared to the existing possibilities in the Member States. Whether or not such a choice should be given to companies should be left to Member States to decide which, contrary to an EU initiative, can take into consideration the specific traditions and cultures of the current systems. Furthermore, there does not seem to be a demand in DK for such a possibility. Should it, regardless of the disadvantages in relation to flexibility, be considered to put forward an initiative, a recommendation would be the appropriate instrument.</p>	<p>57,4 percent of the respondents addressed the issue.</p> <p>Views were split. Whilst 37,5 % supported the possibility for companies to have the choice of board structure, only few took position on the best way to achieve this or provided indications as to whether action at EU level is necessary. A similar proportion of respondents (38,1%) opposed any EU initiative.</p> <p>The opponents to any EU initiative based their opinion on the application of the subsidiarity principle.</p> <p>One third of the proponents of an EU initiative took position on the best way to</p>

		<p>achieve the needed flexibility. Opinions were divided: some respondents considered that it is for Member States to act, others that an impulse should be given at EU level in the form either of a recommendation or of a principles-based directive.</p>
9. Squeeze out and sell out rights	<p>Before introducing legislation in this area, it is necessary to examine the issue further.</p>	<p>39,2 % of the respondents addressed the issue.</p> <p>50% of respondents opposed the introduction of additional EU rules on a squeeze out right. 37,5% of the respondents supported it.</p> <p>Most of the opponents took the view that the existing rules in the takeover bids directive and those existing in national legislations provide for satisfactory solutions. However, those who supported the adoption of additional rules considered that the takeover bids directive only covers part of the problem as it only refers to situations following a public offer.</p> <p>Views were split amongst the proponents of an EU initiative as to whether it should be limited to listed companies or not.</p>
10. Groups and pyramids	<p>Groups naturally have a cross-border aspect in many situations. However, this does not by itself mean that there is added value in harmonizing existing legislation.</p> <p>Should there be interest in an initiative from a larger group of Member States; a study, with the aim of identifying</p>	<p>29 % of the respondents addressed the issue.</p> <p>67,5 % were opposed to the adoption of EU rules.</p> <p>24,9 % of the respondents to the consultation addressed the issue of abusive pyramids. 71% of the respondents considered that no action was advisable or that the subject</p>

	<p>practical difficulties, should be launched before any concrete measures are introduced. The question of pyramids is related to the question of proportionality of capital and control and is relevant to the study hereof.</p>	<p>should be dealt with by the forthcoming study on shareholder democracy and that in any case an intervention at EU level would be justified only with regard to ensuring full transparency on cross-border pyramidal groups.</p>
<p>11. European Company Statute</p>	<p>The need for legal forms of enterprises on a European level should be viewed in connection with the general level of harmonization of European company law.</p> <p>If the trend of EU company law is to have competition on legislation and less harmonization there could be a need for an EU platform as an alternative offer to the business community. This alternative could be aimed specifically at larger companies above a certain size.</p> <p>To a large extent the European company is regulated by 28 different regulatory systems, depending on the State in which the company is registered. It should be considered to improve the regulation towards a company form that is regulated supranationally to a greater extent. This would provide the business community with a legal instrument with more legal certainty and thereby more practical usefulness. It would, however, also be relevant to consider issues of other areas than company law when improving the statute of the European company. More specifically, it would be</p>	<p>38 % of the respondents addressed the question.</p> <p>A majority of them considered it premature to assess the usefulness of an SE in practice and suggested that more experience be gained before considering any revisions of the Regulation on the statute of the European Company.</p> <p>Still about 40% of the respondents considered the European Company Statute to be very useful or partly useful.</p> <p>Approximately one third of the respondents considered that amendments should be brought to the regulation. The respondents who had some experience with the European Company identified practical problems with the application of the SE Regulation which should be clarified or modified (see report).</p>

	<p>desirable to modify article 7 so that it is not required for the company to have the registered office and the head office in the same state.</p>	
<p>12. European Private Company (EPC)</p>	<p>SMEs do business at a cross-border level. We should aim to be providing these companies with a useful alternative tool to improve their possibility to act crossborder.</p> <p>It is the DK position that a European Private company could be a genuine alternative to existing legislation for the smaller companies with a less burdensome and more flexible regulation. As with the European company, the aim should be to have a supranational aspect in as many areas of the company law as possible.</p> <p>The Cross-border merger directive is adopted and the transfer of registered office directive will most likely follow. These directives cover both national public and private limited liability companies and the usefulness of the European company in the current version will therefore be very limited.</p>	<p>41,8 % of the respondents addressed the question.</p> <p>A strong majority of the respondents (63,9%) was in favour of a possible proposal for a European Company Statute (EPC) as a tool providing advantages especially to the private companies, which may not be able to benefit of the European Company Statute.</p> <p>A minority of the opponents (25,2%) mentioned the lack of interest in the industry in such corporate form. They also considered that before introducing a new European form the practical application of the existing measures should be assessed and the need for yet another European corporate form further examined.</p> <p>There was a consistency of views among the respondents in favour of the EPC that the Statute for private companies should provide for a uniform, genuinely supranational form with as few references to the national laws as possible.</p>
<p>13. European Foundation Statute</p>	<p>The difficulty in finding a common terminology on various types of enterprises/entities given the regulatory differences in Member States has previously proven to be a major obstacle to this kind of legal form. Especially regarding foundations this problem will be significant</p>	<p>55% of all respondents addressed the question.</p> <p>The foundation sector unanimously urged the Commission to carry out the feasibility study on a European Foundation Statute.</p> <p>Many respondents</p>

	<p>and it is unlikely that a common frame of reference can be reached.</p> <p>We can already see that due to these obstacles, there does not seem to be any need for an examination of the feasibility of a European Foundation statute.</p>	<p>highlighted that foundations and founders are increasingly affected by the globalisation of the economy and a growing number of foundations operate across borders. However, the current environment for cross-border giving and cross-border operations lags behind.</p> <p>A relatively low number of respondents to the consultation from outside the foundation sector have expressed views on this issue. More than half of them were sceptical as to the usefulness of such an instrument or would prefer other solutions to address the foundations' requests.</p>
<p>14. Modernisation and simplification of European Company Law</p>	<p>Better regulation, including transparency in and around the legislative process and impact assessments of initiatives, is a Danish priority in general and within the company law area specifically.</p> <p>To focus our efforts and ensure progress, DK has set a target to reduce the administrative burdens on businesses by up to 25 % in 2010.</p> <p>Therefore, DK welcomes the Commission initiative to use the common EU methodology to measure administrative burdens in a pilot project now and in further measurements afterwards. In fact, we would like to see the methodology put to work in the area of company law, given the high percentages of burdens from EU regulation in this sector.</p>	<p>43,4 % of the respondents addressed the issue.</p> <p>A strong majority of the respondents (60,8%) supported the principle or the objective of simplification. Most of these respondents called for simplification or consolidation of European Company Law.</p> <p>A significant number of respondents called for additional information on the simplification, consolidation and recasting techniques. However, most stakeholders considered a potential recasting exercise as inappropriate, mostly for the following reasons: (1) the added value of such non-ending exercise is highly questionable in comparison with the huge work necessary; (2) company law users refer to national transposition</p>

	<p>Furthermore, DK would like to see quantitative reduction targets set in specific sectors of EU regulation before the end of 2006.</p> <p>On a more specific note regarding better regulation in the area of company law, it would be desirable to set clear objectives of EU proposals and have these objectives made more specific than today before a directive or any other initiative is negotiated.</p> <p><i>Legal instruments:</i> The method of regulating should be reconsidered. Generally, it is the DK position that EU company law should focus on areas where a cross-border activity of investors and companies justifies harmonization. It could be relevant to make a more frequent use of a regulation instead of a directive when this is in line with principles of proportionality and subsidiarity. In areas associated with significant administrative burdens the use of softlaw and options is preferable. In relation to recommendations it is important that these are used where the purpose is just that – to recommend</p> <p><i>Simplification:</i> The already adopted legislation should be evaluated and simplified, specifically in relation to the burdens it imposes on businesses compared to the advantages of the legislation. Based on this evaluation, parts of existing</p>	<p>acts rather than the EU legislation;</p> <p>(3) such exercise may imply re-opening delicate compromises and balances and;</p> <p>(4) company law does not stand still and therefore further amendments would be needed.</p>
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legislation could be modified or even withdrawn. When simplifying legislation, however, it is important to be clear about the objective. DK would like to see a fast and effective procedure to carry out simplifications at EU level.

Private equity funds:

The burden of regulation could very well be at its breaking point. The costs of compliance with the increasing demands is considerable and, more worrying, the benefits in form of greater transparency and enhanced investor confidence does not necessarily match the costs involved.

The surge of private equity funds and their ability to provide capital as an alternative to traditional stock exchanges may justify special attention by the EU. Considerations should be given to investigate this phenomenon on a pan-European basis. A cross-border level study is therefore desirable.