Speech

Future Developments of the European Company Law and the Internal Market

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Commissioner McCreevy, Honourable Members,
Ladies and Gentlemen,

Welcome to the House of German Business!
I am both very happy and proud that the BDI is hosting the 5th **European Company Law and Corporate Governance Conference**.

The 5th meeting is being held in Berlin, after The Hague, Luxembourg, London and Helsinki. I am very grateful that this conference is held under the auspices of the Federal Minister of Justice, Ms Zypries.

And it is an honour to welcome such an eminent cast of speakers and guests.

Commissioner McCreevy, I am looking forward to hearing about your policy approach in the coming months.

I also welcome the honourable members of the European Parliament and the delegates

of Member States and regional governments. The German Bundestag is present, as are many scholars from European universities.

We have experts and high-ranking representatives from both the business and the legal communities as well as the members of the press. I am also pleased to welcome all of you.

All in all we come from 27 different European countries. An excellent mixture for fruitful discussions!

In preparing today's conference, we had a look at the DG Internal Market's website.

(Herr Thumann: Abkürzung bekannt, Directorate General)

What struck us is the motto at the top of every page:

The EU Single Market –
Fewer barriers, more opportunities!

Sometimes, I get the impression that people are afraid to say this sentence, let alone to

put it into practice. The truth is: what business needs is just that: Fewer barriers. More opportunities. What we ask for is full mobility for companies and freedom of contract.

Full mobility is an important issue indeed.

The vision of Europe without barriers has become reality in many respects: It is now possible to sell products freely between Lisbon and Tallinn. A huge step forward for all of us! A huge step forward for **products!**

However: For companies, barriers remain high.

What do we need to bring about a Europe without barriers for **companies**? Where it is as easy to move from Vilnius to Nice as it already is from Utrecht to Amsterdam?

We need an **effective and stable legal framework**, providing clear rules.

This is why we have put the idea of a directive on the transfer of seat on the agenda. And why we are making a case for not scrapping some of the existing rules. We need instruments which are
tailor–made for the Internal Market.

The European Private Company could be a truly European label for enterprises. This is what we call “enabling law”: Enabling laws create instruments which put companies in a position to benefit fully from the freedoms enshrined in the Treaty.

Our second main demand is **Freedom of Contract**. This basic principle of free societies should also apply wherever possible to company law.

Companies vary in many respects:
their ownership structure, their financial needs, their sources of capital and their markets are different.

Company law should provide for instruments that enable companies to adapt to these needs. And not in a “one-size-fits-all” fashion. Only then will they be able to perform effectively.

This is the essence of better regulation: We need rules that are tailor-made. The shortest skirt is not the best one for every occasion. Businesses are not simply asking for fewer rules, they are asking for fitting rules.

Let me take an example: **The right to choose freely between the board structures.**

To decide to be run by a one-tier board or a two-tier board means to widen the range of options considerably from a corporate governance point of view. It would not only improve the freedom of contract. It would also foster the level playing field in Europe.

It would be helpful if this initiative, once in the Company Law Action Plan of 2003, could be taken a step further.

Commissioner McCreevy, I have got to know you as a business-focused man.

We are grateful to you that you take and defend the view that EU rules have to serve business, not the other way round. Three issues illustrate our fundamental needs:

1st of all, **company mobility**
2nd, **the European Private Company**
3rd, **one share – one vote**
(Pause)

The first one is **company mobility.**
What springs to mind is, of course, the proposal for the so-called **14th** Company Law Directive on the transfer of seat.

Unfortunately, Commissioner McCreevy, you did not bring it with you to Berlin.

Whatever the reasons for this delay, let there be no doubt: Business still needs the 14th Company Law Directive!

It will *enable* enterprises to change their place of registration without having first to wind down the whole company.

This **reduces** barriers.
This **increases** mobility.
This **creates** opportunities…
This **is** the Single Market!

Certainly, there may be voices which warn the Commission against the adoption of the proposal. There will always be resistance against the completion of the Internal Market.

We are also convinced of the usefulness of impact assessments. However, in the area of enabling law, it may sometimes be difficult to put a precise price tag on a proposal.

Instead, let me ask: What would the 14th Company Law Directive actually achieve?

The Treaty already gives companies the right to transfer their seat. The Directive does not create this freedom, but it puts it in **concrete terms.**

It fills out the legal gaps which remain despite the Court rulings. It will thus create legal certainty for the market, for creditors, members and workers.

And the Directive is about the freedom to change *the place of register*. It is not about moving the place of business abroad. It is not about closing down factories!

Whoever claims that should do his homework and study a bit of company law.
We look forward to welcoming the proposal during the early stages of the Portuguese term of office. *(Pause)*

Ladies and Gentlemen,

Let me now turn to a second piece of enabling legislation. This is the statute for a **European Private Company or EPC**.

For a long time already, European business has been asking for such a statute. It is a tool for the market which will be particularly useful for setting-up and running small and medium sized enterprises.

We currently see three advantages of a statute. The first advantage is for companies that operate in a number of Member States.
I myself own a group of companies established in quite a few countries.
Each time we set up a new company
we have to ask and pay for expensive external advice. And this continues throughout the lifetime of this company in its day-to-day running. A simple, uniform EPC would make life much easier for us and for the thousands of companies in a similar situation.

The second benefit of the EPC is that it gives companies a European label.
Operations in various Member States become easier, as there will be no foreign-company bias.

We hope that markets would view an EPC with much more trust than they view unknown company forms from other Member States.
This advantage is of real practical relevance.

And thirdly, it is also a tool of integrating Europe even further.

The EPC allows both new and old Member States to develop and foster together a common European body of case law and doctrine.

In order to work, the EPC should fulfil a few conditions: It should avoid the mistakes of the SE.

What does this mean?

The EPC should refrain from referring to national company law. It should rather offer a uniform set of company law rules.

A consequence would be that an EPC would be the same animal all over Europe and not 27 different ones.

More contentious issues such as labour law, social policy and tax aspects could be left to domestic law.

Finally, the EPC is an optional instrument. Nobody will ever be forced to make use of it. It is purely enabling. It respects freedom of contract.

Let me sum this up:
There is a need in the market for the European Private Company and the EU can satisfy it without creating any additional bureaucracy.

This will improve the business environment. A perfect and hands-on example of better regulation!

Ladies and Gentlemen,
I have already touched upon the first two expert panels. The third one will deal with the question of **proportionality of ownership and control**.

Or as we used to say: “one share – one vote”.

This sounds nice. In democratic societies all voters are equal. “One man - one woman -, one vote”.

However, we have to remind ourselves that a company is not a state. Analogies in this field will always be fragmentary and thus flawed. From a business perspective, a company and its owners should be free to make use of their contractual freedom as far as legally possible.

If there are control-enhancing mechanisms, they should be transparent to all market participants. And once this is achieved, let the market decide which model is the most attractive!

It is therefore with great interest that we look to the presentation and discussion of the study on proportionality carried out by ISS (*Institutional Shareholder Services*, Abk. bei Zuhörern bekannt wie BASF), Shearman & Sterling and the European Corporate Governance Institute, later this afternoon.

Ladies and Gentlemen,

let me take a little bit more of your precious time to briefly give you one more aspect:

It is about the **upcoming communication on the simplification of company law and accounting rules.** This could become an important milestone in the development of EU company law.

Commissioner McCreevy, rest reassured: Europe's business community is in favour of deleting obsolete and burdensome obligations!

The same cannot be said, however, when it comes to abolishing Directives which set enabling rules or are a condition to them.

Simplification is something very positive as far as it is not reduced to a simplistic rolling back of the achievements of the Single Market.

Let me take an example:

The Directive on national mergers, the so-called 3rd Directive. The Commission might suggest scrapping it.

What does the 3rd Directive actually do?

It sets the rules applicable to mergers in national contexts. But the Directive on cross-

border mergers, the recently adopted 10th Directive, relies on the mechanisms put in place by the former one.

Abolishing this 3rd Directive only makes life more difficult for companies active throughout Europe as it would sooner or later create 27 different national regimes and a cross-border one. It would be a kind of *disabling* legislation.

I can see no added value of such an exercise.

The same is true about abolishing the 2nd Company Law Directive which sets harmonised capital rules for public limited companies all over the EU.

Deleting it would only undermine the European capital market as public limited companies would no longer be comparable to one another.

Yet at the same time, our companies have to cope with ever more rules, for example in the

area of market abuse, transparency, reporting. All these rules are justified by the legislator by the existence of a harmonised EU capital market.

Sacrificing the 2nd Company Law Directive on the altar of simplification would contradict the burdensome EU initiatives in the field of capital market regulation. From our point of view it is either the one or the other.

And it would only mean to destroy the very basis of such a harmonised EU capital market. It would also diminish the level playing field in Europe.

Ladies and Gentlemen,

to sum up the questions to be answered are:

Do we still want to reduce barriers?
Do we still want to create opportunities?
Do we still want to complete the Single Market?

Now, having said all that, I am pretty sure that the Commissioner is impatient to tell us something more about the current state of affairs and possible future initiatives.

Commissioner McCreevy, the floor is yours.