

# Procedure file

| Basic information                                                                                       |                                       |
|---------------------------------------------------------------------------------------------------------|---------------------------------------|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Directive                             | 2007/0035(COD)<br>Procedure completed |
| Public limited liability companies: mergers and divisions                                               |                                       |
| Subject<br>3.45.01 Company law<br>3.45.08 Business environment, reduction of the administrative burdens |                                       |

| Key players                   |                                                                      |                                               |            |
|-------------------------------|----------------------------------------------------------------------|-----------------------------------------------|------------|
| European Parliament           | Committee responsible                                                | Rapporteur                                    | Appointed  |
|                               | <b>JURI</b> Legal Affairs                                            |                                               | 10/04/2007 |
|                               |                                                                      | PPE-DE <a href="#">KAUPPI Piia-Noora</a>      |            |
|                               | Committee for opinion                                                | Rapporteur for opinion                        | Appointed  |
|                               | <b>ECON</b> Economic and Monetary Affairs                            | The committee decided not to give an opinion. |            |
| Council of the European Union | Council configuration                                                | Meeting                                       | Date       |
|                               | <a href="#">Agriculture and Fisheries</a>                            | <a href="#">2825</a>                          | 22/10/2007 |
| European Commission           | Commission DG                                                        | Commissioner                                  |            |
|                               | <a href="#">Internal Market, Industry, Entrepreneurship and SMEs</a> | VERHEUGEN Günter                              |            |

| Key events |                                                         |                                                                                       |         |
|------------|---------------------------------------------------------|---------------------------------------------------------------------------------------|---------|
| 24/01/2007 | Additional information                                  |                                                                                       | Summary |
| 06/03/2007 | Legislative proposal published                          | <a href="#">COM(2007)0091</a>                                                         | Summary |
| 29/03/2007 | Committee referral announced in Parliament, 1st reading |                                                                                       |         |
| 26/06/2007 | Vote in committee, 1st reading                          |                                                                                       | Summary |
| 27/06/2007 | Committee report tabled for plenary, 1st reading        | <a href="#">A6-0252/2007</a>                                                          |         |
| 11/07/2007 | Results of vote in Parliament                           |  |         |
| 11/07/2007 | Decision by Parliament, 1st reading                     | <a href="#">T6-0329/2007</a>                                                          | Summary |
| 22/10/2007 | Act adopted by Council after Parliament's 1st reading   |                                                                                       |         |
| 13/11/2007 | Final act signed                                        |                                                                                       |         |
| 13/11/2007 | End of procedure in Parliament                          |                                                                                       |         |

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|------------|-----------------------------------------|--|--|
| 17/11/2007 | Final act published in Official Journal |  |  |
|------------|-----------------------------------------|--|--|

| Technical information      |                                                                |
|----------------------------|----------------------------------------------------------------|
| Procedure reference        | 2007/0035(COD)                                                 |
| Procedure type             | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype          | Legislation                                                    |
| Legislative instrument     | Directive                                                      |
| Legal basis                | EC Treaty (after Amsterdam) EC 044-p2                          |
| Stage reached in procedure | Procedure completed                                            |
| Committee dossier          | JURI/6/46898                                                   |

| Documentation gateway                                           |  |                                |            |     |         |
|-----------------------------------------------------------------|--|--------------------------------|------------|-----|---------|
| Legislative proposal                                            |  | <a href="#">COM(2007)0091</a>  | 06/03/2007 | EC  | Summary |
| Document attached to the procedure                              |  | <a href="#">SEC(2007)0298</a>  | 06/03/2007 | EC  |         |
| Document attached to the procedure                              |  | <a href="#">SEC(2007)0300</a>  | 06/03/2007 | EC  |         |
| Economic and Social Committee: opinion, report                  |  | <a href="#">CES0796/2007</a>   | 30/05/2007 | ESC |         |
| Committee draft report                                          |  | <a href="#">PE388.714</a>      | 11/06/2007 | EP  |         |
| Amendments tabled in committee                                  |  | <a href="#">PE390.596</a>      | 12/06/2007 | EP  |         |
| Committee report tabled for plenary, 1st reading/single reading |  | <a href="#">A6-0252/2007</a>   | 27/06/2007 | EP  |         |
| Text adopted by Parliament, 1st reading/single reading          |  | <a href="#">T6-0329/2007</a>   | 11/07/2007 | EP  | Summary |
| Commission response to text adopted in plenary                  |  | <a href="#">SP(2007)4170</a>   | 29/08/2007 | EC  |         |
| Draft final act                                                 |  | <a href="#">03641/2007/LEX</a> | 13/11/2007 | CSL |         |

| Additional information |                         |
|------------------------|-------------------------|
| National parliaments   | <a href="#">IPEX</a>    |
| European Commission    | <a href="#">EUR-Lex</a> |

| Final act                                                                                 |
|-------------------------------------------------------------------------------------------|
| <a href="#">Directive 2007/63</a><br><a href="#">OJ L 300 17.11.2007, p. 0047</a> Summary |

## Public limited liability companies: mergers and divisions

The Commission presents a communication on an Action Plan for reducing administrative burdens in the European Union.

The Action Plan is an immediate response to the June 2006 European Council conclusions and the November 2006 Better Regulation Package. Cutting red tape by a quarter in the entire EU could increase EU GDP by EUR 150 billion according to the Commission. The Action Plan also calls on all Member States to embark on similar exercises at national level as the majority of the administrative burdens still originate in national legislation.

In the short term action will be taken in the ten following concrete fields, reducing paperwork for amongst others farmers and transport companies:

1. making information requirements voluntary for stockholders in case of merger and division;

2. reducing the reporting obligations for farmers, collectors or processors of energy crops in order to receive support;
3. easing the requirements of proof for receiving export funds for agricultural produce;
4. reducing the frequency of certain agricultural statistics to once a year;
5. lowering the number of statistical questions posed to businesses in the information society;
6. removing outdated documentation obligations for transport companies within the EU;
7. introducing electronic registers for the exchange of data in the transport sector, thereby reducing administrative burdens;
8. simplifying administrative procedures and information obligations in the maritime sector;
9. exempting small businesses like local butchers and bakers from certain hazard analyses in the field of food hygiene, without lowering standards, by taking a more proportionate approach and applying less burdensome requirements on small butchers, bakers etc compared to large supermarkets, without affecting the safety and health considerations imposed by the regulation;
10. simplifying administrative requirements for certain fishing vessels.

This Action Plan is not aimed at undermining the policy objectives or the level of ambition which have been set in EU legislation. It rather represents an important effort to streamline, modernise and make less burdensome the way in which policy objectives are implemented. In close cooperation with Member States, the Commission will thoroughly analyse information obligations that constitute the source of red tape. The analysis will cover obligations in EC legislation as well as the national measures used to implement them. All obligations will be attributed a price tag indicating how much time and money businesses spend complying with them, with a view to reducing requirements that are obsolete, contradictory etc.

The Commission is encouraged by the fact that in 2006 seventeen Member States, up from eleven the previous year, have decided to measure and reduce administrative burdens and that a further two are testing the methodology. The action plan would foresee that by 2009 all Member States would have completed the measurements in the key national and regional priority areas. The Commission has identified the following 13 priority areas concerning Community legislation which should be addressed:

1. company law
2. pharmaceutical legislation
3. working environment/ employment relations
4. tax law/VAT
5. statistics
6. agriculture and agricultural subsidies
7. food Safety
8. transport
9. fisheries
10. financial services
11. environment
12. cohesion policy
13. public procurement

The Action Plan will require strong commitment from Member States and the legislator. The Spring 2007 European Council is, therefore, requested to:

- endorse the Action Programme for Reducing Administrative burdens set out in this Communication, including the priority areas chosen, the proposed methodology, principles for reducing burdens, the list of fast track actions and the organisational structure;
- invite Member States to support the Commission with the measurement of administrative burdens associated with Community legislation and transposition as set out in this Communication;
- set a joint reduction target for administrative burdens, caused by EC and national legislation of 25% overall, to be achieved by 2012. To facilitate the attainment of this objective a 25% reduction target should also be set specifically for administrative burdens related to EC legislation and its transposition. This target will subsequently be differentiated across the priority areas on the basis of the results of the Action Programme;
- invite Member States to set administrative burden reduction targets at national level by October 2008, at the latest, and to report on the measurement and reduction of administrative burdens annually in their national Growth and Jobs Strategy progress reports, starting in October 2007;
- call upon the Council and the European Parliament to give special priority to the measures set out in Annex III once the Commission has made the corresponding proposals, with a view to adoption as soon as possible, in 2007.

The overall 25 % reduction target is a joint objective, which can only be attained on the basis of a shared responsibility and a common endeavour by the Member States and the European Institutions. It is important that all parties involved in this process take appropriate and quick action, so that the political objective can be translated into operational measures.

## Public limited liability companies: mergers and divisions

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**PURPOSE:** to align the provisions of Council Directives 78/855/EEC and 82/891/EEC on the expert report on the draft terms of merger or division with the corresponding rule in Article 8 of Directive 2005/56/EC.

**PROPOSED ACT:** Directive of the European Parliament and of the Council

**CONTENT:** on 14 November 2006, the Commission presented a Strategic Review of Better Regulation in the EU (see COM (2006)0689), including a proposal for a target to reduce the administrative burdens on businesses by 25% by 2012.

Ten concrete proposals for "fast track action" were identified in the Action Programme for reducing administrative burdens in the EU (COM(2007)0023), based on broad stakeholder consultation and suggestions from Member States and Commission experts. The "fast track actions" aim at significantly reducing administrative burdens on businesses through minor legislative changes without challenging the level of protection or the original purpose of the legislation.

One of these "fast track action" proposals relates to Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited liability companies. The aim of this proposal is to remove unnecessary administrative burdens on businesses by giving shareholders the direct possibility to renounce the written expert report on the draft terms of merger or division, if they so desire. This will bring the two directives in line with the current requirements in the Tenth Company Law Directive (Directive 2005/56/EC on cross-border mergers of limited liability companies) (see [COD/2003/0277](#)).

Consultations with the Commission's Advisory Group on Corporate Governance and Company Law have confirmed that this requirement of Council Directive 78/855/EEC concerning the expert report on the draft terms of mergers is excessive. As it has already been recognised in the context of the adoption of Directive 2005/56/EC, this requirement becomes an unnecessary formality where the shareholders of all companies involved in the merger do not consider such a report necessary.

Furthermore, the Commission has received positive responses to the presentation of its Action Programme, including the fast track proposal related to Company Law. A few responses have underlined concerns about transparency and shareholder protection. These concerns have been taken into account in the current proposal. It seems therefore appropriate to align the provisions of Council Directives 78/855/EEC and 82/891/EEC with the exemption contained in Directive 2005/56/EC.

## Public limited liability companies: mergers and divisions

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By adopting the report by Piia-Noora KAUPP (EPP-ED, FIN), the Committee on Legal Affairs approved, subject to amendments at first reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited companies as regards the requirement for an independent expert's report on the occasion of a merger or a division. The committee supports the Commission in its aim of easing domestic mergers or divisions. The amendments concern the issue of shareholder protection. MEPs also proposed to set the transposition date to 31 December 2008 (as opposed to 31 July 2008 as was proposed by the Commission).

## Public limited liability companies: mergers and divisions

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By adopting a legislative report by Piia-Noora KAUPPI (EPP-ED, FIN), the European Parliament approved a directive concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited companies as regards the requirement for an independent expert's report on the occasion of a merger or a division.

The House supports the Commission in its aim of easing domestic mergers or divisions. The amendments concern the issue of shareholder protection. MEPs also propose to set the transposition date to 31 December 2008 (as opposed to 31 July 2008 as was proposed by the Commission).

## Public limited liability companies: mergers and divisions

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**PURPOSE:** to reduce the administrative burden arising from the information requirements stemming from Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited liability companies in the event of a merger or division.

**LEGISLATIVE ACT:** Directive 2007/63/EC of the European Parliament and of the Council amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

**CONTENT:** the Council adopted in first reading, following agreement with the European Parliament, a directive amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

The amendment to the two above-mentioned directives consists in a simplification, in line with Directive 2005/56/EC on cross-border mergers of limited liability companies which provides for an exemption from the obligation to have the draft terms of merger examined by independent experts and a report drawn up by such experts for the shareholders of the companies involved in the merger, if all the shareholders agree that such a report is not needed.

**ENTRY INTO FORCE:** 07/12/2007

**TRANSPOSITION:** 30/12/2008