

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive 2008/0182(COD)	Procedure completed
Mergers and divisions: reporting and documentation requirements Amending Directive 2005/56/EC, Cross-border mergers Directive 2003/0277(COD)	
Subject 2.60.04 Economic concentration, mergers, takeover bids, holding companies 3.45.08 Business environment, reduction of the administrative burdens	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		03/11/2008
		ALDE WEBER Renate	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs		22/10/2008
		PPE-DE MITCHELL Gay	
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	2957	27/07/2009
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	MCCREEVY Charlie	

Key events			
24/09/2008	Legislative proposal published	COM(2008)0576	Summary
09/10/2008	Committee referral announced in Parliament, 1st reading		
31/03/2009	Vote in committee, 1st reading		Summary
06/04/2009	Committee report tabled for plenary, 1st reading	A6-0247/2009	
22/04/2009	Results of vote in Parliament		
22/04/2009	Debate in Parliament		
22/04/2009	Decision by Parliament, 1st reading	T6-0250/2009	Summary

27/07/2009	Act adopted by Council after Parliament's 1st reading		
16/09/2009	Final act signed		
16/09/2009	End of procedure in Parliament		
02/10/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0182(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2005/56/EC, Cross-border mergers Directive 2003/0277(COD)
Legal basis	EC Treaty (after Amsterdam) EC 044-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/67796

Documentation gateway

Legislative proposal		COM(2008)0576	24/09/2008	EC	Summary
Document attached to the procedure		SEC(2008)2486	24/09/2008	EC	
Document attached to the procedure		SEC(2008)2487	24/09/2008	EC	
Committee draft report		PE416.662	23/01/2009	EP	
Economic and Social Committee: opinion, report		CES0332/2009	25/02/2009	ESC	
Amendments tabled in committee		PE420.211	26/02/2009	EP	
Committee opinion	ECON	PE418.080	11/03/2009	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0247/2009	06/04/2009	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0250/2009	22/04/2009	EP	Summary
Commission response to text adopted in plenary		SP(2009)3507	25/06/2009	EC	
Draft final act		03644/2009/LEX	16/09/2009	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2009/109](#)
[OJ L 259 02.10.2009, p. 0014](#) Summary

Mergers and divisions: reporting and documentation requirements

PURPOSE: to reduce administrative burdens imposed under the European Company Law Directives on public limited liability companies that deal with the modalities of domestic mergers and divisions.

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

CONTENT: the European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25% by the year 2012 in order to enhance the competitiveness of companies in the Community. Company law has been identified as one area that contains a high number of information obligations for companies, some of which seem outdated or excessive.

The Commission adopted, in July 2007, a [communication](#) setting out its proposals for simplifying the areas of company law, accounting and auditing. Furthermore, in March 2007 and April 2008, two fast-track proposals were presented by the Commission in order to achieve a rapid reduction of administrative burdens through minor changes of the EU acquis. The [first](#) one was adopted in November 2007. The [second](#) proposal that takes up certain elements considered in the July 2007 Communication is still under consideration in the European Parliament and the Council.

The objective of the initiative is to complement these two measures and to contribute to enhancing the competitiveness of EU companies by reducing administrative burdens imposed under the European Company Law Directives where this can be done without major negative impact on other stakeholders. The initiative focuses on the Third Directive (Council Directive 78/855/EEC) concerning mergers of public limited liability companies and the Sixth Directive (Council Directive 82/891/EEC) concerning the division of public limited liability companies that deal with the modalities of domestic mergers and divisions.

The Third and the Sixth Directives currently contain a number of detailed reporting requirements that companies involved in a merger/division have to comply with and which impose considerable costs on them. In certain situations, the conjunction with the Second Directive can lead to a further increase in costs. Furthermore, the means provided for in the directives to inform shareholders about the details of the transactions were designed 30 years ago and therefore do not take into account today's technological possibilities. This leads to unnecessary costs and an excessive use of paper that can be avoided. Lastly, changes in other directives during the last years and in particular to the Second Directive in the area of creditor protection have led to certain inconsistencies between the different directives.

The current proposal aims notably at:

- reducing the reporting requirements of companies in the case of mergers and divisions, in particular where shareholders decide that certain reports are not needed and in the context of so-called "simplified" mergers and divisions between parent companies and their subsidiaries;
- avoiding double reporting where reporting requirements also result from other EU rules;
- introducing the possibility for companies to use the Internet and electronic mail in order to publish the draft terms of merger or division and to provide shareholders with the documentation required.

The Commission considers that the total potential burden savings of these measures is estimated to be as high as ?172 million per year.

Mergers and divisions: reporting and documentation requirements

The Committee on Legal Affairs adopted the report by Renate WEBER (ALDE, RO) amending, under the first reading of codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of merger and divisions.

The main amendments are as follows:

-the legal basis should be Article 44(2)(g) of the Treaty;

-disclosure requirements concerning draft terms of merger in cross-border mergers under Directive 2005/56/EC should be similar to those applicable to domestic mergers and divisions under Directives 78/855/EEC and 82/891/EEC;

-the committee made some amendments regarding the publication of the draft terms of merger, and draft terms of division, which may be published on an Internet site. It specified that Member States may determine the consequences of temporary disruption of access to the Internet site and temporary disruption of the central electronic platform, caused by technical or other factors. Access to the Internet site via the central electronic platform shall be free of charge;

-it should be made clear that the shareholder has an option to choose whether he wants to obtain electronic or paper copies of documents that are often lengthy and burdensome to print or use in electronic version only;

-in case of simplified mergers the approval of the general meeting of each of the merging companies should not be required by Member States. This becomes a mandatory requirement rather than an option available to Member States;

-a new review clause states that the Commission shall review the functioning of the Directive in 5 years, and in particular its effects on the reduction of administrative burdens on companies, in the light of experience acquired in its application, and shall present a report, accompanied, if necessary, by proposals for its further amendment.

-lastly, the date of transposition should be by 30 June 2013 rather than 30 June 2011.

Mergers and divisions: reporting and documentation requirements

The European Parliament adopted by 652 votes to 7, with 22 abstentions, a legislative resolution amending, under the first reading of

codecision procedure, the proposal for a directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of merger and divisions.

The main amendments are as follows:

- the legal basis should be Article 44(2)(g) of the Treaty;
- Company or other websites offer, in certain cases, an alternative to the publication using the companies registers. Member States will be able to designate those other Internet sites which companies may use free of charge for such publication, such as websites of business associations or chambers of commerce or the central electronic platform referred to in Article 3 of the First Council Directive of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of certain companies, with a view to making such safeguards equivalent throughout the Community. Where there is the possibility to use company websites or other Internet sites for the publication of the draft terms of mergers and division and of other documents that have to be made available to shareholders and creditors in the process, guarantees related to the security of the site and the authenticity of the documents should be met;
- disclosure requirements concerning draft terms of merger in cross-border mergers under Directive 2005/56/EC should be similar to those applicable to domestic mergers and divisions under Directives 78/855/EEC and 82/891/EEC;
- Member States must be able to provide that there is no need for the extensive reporting or information requirements related to certain merger or division of companies, if all the shareholders of the companies involved in the merger or division agree that they may be dispensed with. Any modification of Directives 78/855/EEC and 82/891/EEC allowing such agreement by shareholders should be without prejudice to the systems of protection of the interests of creditors of the companies involved as well as to rules aimed at ensuring the provision of necessary information to the employees of the companies involved and to public authorities, such as tax authorities, controlling the merger or division in accordance with existing Community legislation;
- Mergers between parent companies and their subsidiaries have a reduced economic impact on shareholders and creditors where the holding of the parent company amounts to 90 percent or more of the shares or other securities conferring the right to vote of the subsidiary . The same applies to certain divisions, in particular when companies are split in new companies that are owned by the shareholders in the proportion to their rights in the company being divided. In these cases, the reporting requirements deriving from Directives 78/855/EEC and 82/891/EEC will therefore be reduced;
- lastly, a new review clause states that the Commission shall review the functioning of the Directive in 5 years, and in particular its effects on the reduction of administrative burdens on companies, in the light of experience acquired in its application, and shall present a report, accompanied, if necessary, by proposals for its further amendment.

Mergers and divisions: reporting and documentation requirements

PURPOSE: to reduce administrative burdens relating in particular to publication and documentation obligations of public limited liability companies within the Community.

LEGISLATIVE ACT: Directive 2009/109/EC of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

CONTENT: the Council adopted, by qualified majority, this Directive simplifying the rules on reporting and documentation requirements in the event of mergers and divisions of EU companies, following an agreement with the European Parliament in first reading. The German and Austrian delegations voted against.

The European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25 % by the year 2012 in order to enhance the competitiveness of companies in the Community. Therefore, in this context, it is appropriate to review those obligations and, where appropriate, to reduce the administrative burdens weighing on companies within the Community to the minimum needed.

The Directive is aimed at reducing costs relating to mergers or divisions by limiting detailed reporting requirements, as well as by allowing companies to provide the necessary information to shareholders or third parties by electronic means, instead of convening general meetings. It modifies Directive 78/855/EEC on mergers (Third Company Law Directive) and Directive 82/891/EEC on divisions of companies (Sixth Company Law Directive).

It also introduces the necessary adjustments to Directive 2005/56/EC on cross-border mergers and Directive 77/91/EEC as regards safeguards relating to the company's capital, in line with the modifications to the Third and Sixth Company Law Directives.

The main amendments are as follows:

- company websites or other websites offer, in certain cases, an alternative to publication via the companies registers. Under the new Directive, Member States should be able to designate those other websites which companies may use free of charge for such publication, such as websites of business associations or chambers of commerce or the central electronic platform referred to in First Council Directive 68/151/EEC on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies with a view to making such safeguards equivalent throughout the Community. Where the possibility exists of using company or other websites for publication of draft terms of merger and/or division and of other documents that have to be made available to shareholders and creditors in the process, guarantees relating to the security of the website and the authenticity of the documents should be met;
- disclosure requirements concerning draft terms of merger in cross-border mergers under Directive 2005/56/EC should be similar to those applicable to domestic mergers and divisions under Directives 78/855/EEC and 82/891/EEC;
- Member States must be able to provide that there is no need for the extensive reporting or information requirements related to certain merger or division of companies, if all the shareholders of the companies involved in the merger or division agree that they may be dispensed with. Any modification of Directives 78/855/EEC and 82/891/EEC allowing such agreement by shareholders should be

without prejudice to the systems of protection of the interests of creditors of the companies involved as well as to rules aimed at ensuring the provision of necessary information to the employees of the companies involved and to public authorities, such as tax authorities, controlling the merger or division in accordance with existing Community legislation;

- an independent expert's report as provided for under Directive 77/91/EEC is often not needed where an independent expert's report protecting the interests of shareholders or creditors also has to be drawn up in the context of the merger or the division. Member States should therefore have the possibility in such cases of dispensing companies from the reporting requirement under Directive 77/91/EEC or of providing that both reports may be drawn up by the same expert;
- mergers between parent companies and their subsidiaries have a reduced economic impact on shareholders and creditors where the holding of the parent company amounts to 90 percent or more of the shares or other securities conferring the right to vote of the subsidiary. The same applies to certain divisions, in particular when companies are split in new companies that are owned by the shareholders in the proportion to their rights in the company being divided. In these cases, the reporting requirements deriving from Directives 78/855/EEC and 82/891/EEC will therefore be reduced.

Review: five years after the date of transposition, the Commission shall review the functioning of those provisions of Directives 77/91/EEC, 78/855/EEC, 82/891/EEC and 2005/56/EC which are amended or added by this Directive, and in particular their effects on the reduction of administrative burdens on companies, in the light of experience acquired in their application, and shall present a report to the European Parliament and the Council, accompanied if necessary by proposals for further amendments of those directives.

ENTRY INTO FORCE: 22/10/2009.

TRANSPOSITION: 30/06/2011.