

Mergers and divisions: reporting and documentation requirements

2008/0182(COD) - 22/04/2009 - Text adopted by Parliament, 1st reading/single reading

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.