

Mergers and divisions: reporting and documentation requirements

2008/0182(COD) - 16/09/2009 - Final act

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.