Cross-border mergers of limited liability companies

2003/0277(COD) - 25/11/2004 - ${summary.subTitle}

Pending the European Parliament's opinion at first reading, the Council agreed by a large majority on a general approach on a Directive on cross-border mergers of limited liability companies. The Italian delegation voted against. The Danish and the French delegations entered a parliamentary scrutiny reservation.

The agreement was reached on the basis of an amended Presidency compromise package. The key features of the agreed text as modified by the Council are:

- The Directive will apply to limited liability companies, encompassing the types of companies falling within the scope of the Council Directive 68/151/EEC, as well as those types of companies which meet the criteria of a definition very similar to the one contained in the Commission proposal. Member States agreed to exclude from the scope of the Directive undertakings for collective investment in transferable securities within the meaning of Article 1 of Directive 85/611/EEC(UCITS Directive) and on a provision allowing Member States to decide whether or not to apply this Directive to cross-border mergers involving a cooperative society even in the cases where the latter fall within the definition of limited liability company. The agreement also includes a provision making clear that the possibility for two or more companies to carry out a cross-border merger shall depend upon whether such companies are allowed to merge under the national law of all Member States involved.

- The text agreed provides for the possibility for Member States to apply certain provisions and formalities applying to domestic mergers to transnational mergers in a manner which takes into account the cross-border nature of such mergers. In addition, Member States will have the possibility to adopt specific provisions regarding the protection of minority members of a merging company, who have opposed the cross-border merger.

- The establishment of a minimum content of the common draft terms of cross-border merger for each of the companies concerned in the various Member States while leaving the companies free to agree on other items.