

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Legal Affairs*

**2008/0182(COD)**

26.2.2009

## **AMENDMENTS 13 - 32**

**Draft report**  
**Renate Weber**  
(PE416.662v01-00)

on 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

Proposal for a directive – amending act  
(COM(2008)0576 – C6-0330/2008 – 2008/0182(COD))



**Amendment 13**  
**Ieke van den Burg**

**Proposal for a directive – amending act**  
**Recital 6**

*Text proposed by the Commission*

(6) An independent expert report as provided for under Directive 77/91/EEC is often not needed where an expert report has to be drawn up also under the rules of Directive 78/855/EEC and the Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies. Member States should therefore have the possibility to dispense companies from the reporting requirement under the Second Directive in these cases or to provide that both reports may be established by the same expert.

*Amendment*

(6) An independent expert report as provided for under Directive 77/91/EEC is often not needed where an expert report has to be drawn up also under the rules of Directive 78/855/EEC and the Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies. Member States should therefore have the possibility to dispense companies from the reporting requirement under the Second Directive in these cases or to provide that both reports may be established by the same expert.

***Any modification should be without prejudice to the systems of protection of the interests of creditors of the companies involved as well as to any rules aimed at ensuring the provision of information to the employees of the companies involved.***

Or. en

**Amendment 14**  
**Renate Weber**

**Proposal for a directive – amending act**  
**Article 1 – point 2**  
Directive 78/855/EEC  
Article 6

*Text proposed by the Commission*

In Article 6, the following ***paragraph is*** added:  
Such publication shall not be required from

*Amendment*

In Article 6, the following ***paragraphs shall be*** added:  
"Such publication shall not be required

a company if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its **own or on any other** Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

from a company if, for a continuous period beginning **at least** one month before the day fixed for the general meeting **which is to decide on the draft terms of merger**, it makes available the draft terms of **such** merger on its Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site.

***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."***

Or. en

#### *Justification*

*This amendment aims at supplementing the original AM 3 in the draft report by adding a provision allowing Member States to provide for the solutions to temporary disruptions to the website and central electronic platform.*

#### **Amendment 15 Pervenche Berès**

**Proposal for a directive – amending act**  
**Article 1 – point 2**  
Directive 78/855/CEE  
Article 6 – point 2

#### *Text proposed by the Commission*

Such publication shall not be required from a company if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it

#### *Amendment*

Such publication shall not be required from a company if, for a continuous period beginning **at least** one month before the day fixed for the general meeting, it makes

makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 of Directive 68/151/EEC, ***without prejudice to other existing forms of publication which Member States may maintain providing they are clearly defined and based on objective conditions***. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. FR

#### *Justification*

*La mise en oeuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3 de la 1ère directive 68/151/CEE. Le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne. L'amendement déposé vise à assurer la cohérence entre la position adoptée par le Parlement européen le 19 novembre 2008 et le texte ci-visé.*

#### **Amendment 16**

**Jacques Toubon, Jean-Paul Gauzès, Georgios Papastamkos**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 2**

Directive 78/855/EEC

Article 6

#### *Text proposed by the Commission*

***Such publication shall not be required from a company if, for a continuous period beginning not later than one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this***

#### *Amendment*

***"A company may, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the draft terms of merger, also make available the draft terms of such merger on its Internet site. Where a company makes use of this possibility it***

possibility it shall publish a reference that gives access to that Internet site **on the central electronic platform referred to in Article 3(4)** of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

shall publish a reference that gives access to that Internet site **in accordance with Article 3** of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. en

### *Justification*

*This amendment aims to ensure that this directive does not enter in contradiction with the position which will be taken in Article 3 of Directive 68/151/EEC. Indeed, the European Parliament took a position in its resolution of 19 November 2008 adopted in 1st reading which allows the coexistence of the central electronic platform with additional obligation of publications.*

### **Amendment 17**

**Janelly Fourtou, Marielle De Sarnez**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 2**

Directive 78/855/EEC

Article 6 – point 2

#### *Text proposed by the Commission*

Such publication shall not be required from a company if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

#### *Amendment*

Such publication shall not be required from a company if, for a continuous period beginning **at least** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC, **without prejudice to additional publication arrangements which may be required by Member States**. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

*Justification*

*La mise en œuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3, paragraphe 4, de la 1ère directive 68/151/CEE. Cette directive fait l'objet d'une procédure législative qui n'est toujours pas achevée. Cependant, le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne.*

**Amendment 18**  
**Renate Weber**

**Proposal for a directive – amending act**  
**Article 1 – point 5 (c)**  
Directive 78/855/EEC  
Paragraph 4

*Text proposed by the Commission*

"4. A company shall not be required to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it makes them available on its Internet site.

**Paragraph 3 shall not apply if** the Internet site **gives shareholders** the possibility to save an electronic copy of **the** documents **referred to in paragraph 1**, throughout the period referred to in **paragraph 1**."

*Amendment*

"4. A company shall not be required to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning **at least** one month before the day fixed for the general meeting **which is to decide on the draft terms of merger**, it makes them available on its Internet site. **Where a company avails itself of this possibility**, the Internet site **shall permit the downloading and saving of** an electronic copy of **those** documents, throughout the period referred to in **this paragraph**.

**Member States may determine the consequences of temporary disruption of access to the Internet site caused by technical or other factors.**

**This paragraph shall be without prejudice to paragraph 3.**"





*Text proposed by the Commission*

*Amendment*

**(a) The introductory phrase is replaced by the following:** **deleted**

**"Member States shall not require approval of a merger pursuant to Article 24 by the general meeting if the following conditions are fulfilled:"**

Or. fr

*Justification*

*Cet amendement permet de maintenir la version actuellement en vigueur du texte de la 3ème directive 78/855/CEE relatif au régime optionnel de la procédure simplifiée dans les cas de fusion réalisée par une société mère détenant une filiale à 100 % ou de 90 à 99%. Cette procédure simplifiée dispense d'obtenir l'approbation de l'assemblée générale de chacune des sociétés qui fusionnent. La coordination exigée par les dispositions de l'article 44 g) du Traité n'étant pas synonyme d'harmonisation, il convient au nom du respect de la diversité des traditions juridiques de ne pas imposer aux Etats membres qui ne la souhaitent pas cette procédure simplifiée.*

**Amendment 21**  
**Klaus-Heiner Lehne**

**Proposal for a directive – amending act**  
**Article 1 – point 10**  
Directive 78/855/EEC  
Articles 26 and 27

*Text proposed by the Commission*

*Amendment*

10. **Articles 26 and 27** are replaced by the following:

10. **Article 27 is** replaced by the following:

**Article 26**

**"Articles 24 and 25 shall apply to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the**

*acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.*

Article 27

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States shall not require approval of the merger by the general meeting of the acquiring company if the conditions set out in Article 8 (a), (b) and (c) are fulfilled."

Article 27

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States shall not require approval of the merger by the general meeting of the acquiring company if the conditions set out in Article 8 (a), (b) and (c) are fulfilled."

Or. de

**Amendment 22**  
**Klaus-Heiner Lehne**

**Proposal for a directive – amending act**  
**Article 1 – point 12**  
Directive 78/855/EEC  
Article 29

*Text proposed by the Commission*

**12. Article 29 is replaced by the following**

**"Article 29**

***Articles 27 and 28 shall apply to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if 90 % or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company."***

*Amendment*

***deleted***

**Amendment 23**  
**Renate Weber**

**Proposal for a directive – amending act**  
**Article 2 – point 1**  
Directive 82/891/EEC  
Article 4

*Text proposed by the Commission*

In Article 4, the following *paragraph is* added:

"Such publication shall not be required from a company if, for a continuous period beginning *not later than* one month before the day *fixed for* the general meeting, it makes available the draft terms of division on its *own or on any other* Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 (4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of division on the Internet site."

*Amendment*

In Article 4, the following *paragraphs shall be* added:

"Such publication shall not be required from a company if, for a continuous period beginning *at least* one month before the day *of* the general meeting *which is to decide on the draft terms of division*, it makes available the draft terms of division on its Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 (4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of division on the Internet site.

*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."*

*Justification*

*This amendment aims at supplementing the original AM 8 in the draft report by adding a provision allowing Member States to provide for the solutions to temporary disruptions to the*

*website and central electronic platform.*

**Amendment 24**  
**Pervenche Berès**

**Proposal for a directive – amending act**  
**Article 2 – point 1**  
Directive 82/891/CEE  
Article 4 – point 2

*Text proposed by the Commission*

Such publication shall not be required from a company if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

*Amendment*

Such publication shall not be required from a company if, for a continuous period beginning **at least** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 of Directive 68/151/EEC, **without prejudice to other existing forms of publication which Member States may maintain providing they are clearly defined and based on objective conditions.** That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. fr

*Justification*

*La mise en oeuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3 de la 1ère directive 68/151/CEE. Le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne. L'amendement déposé vise à assurer la cohérence entre la position adoptée par le Parlement européen le 19 novembre 2008 et le texte ci-visé.*

## Amendment 25

Jacques Toubon, Jean-Paul Gauzès, Georgios Papastamkos

### Proposal for a directive – amending act

#### Article 2 – point 1

Directive 82/891/EEC

Article 4

#### *Text proposed by the Commission*

"**Such publication shall not be required from a company if**, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, **it makes** available the draft terms of division on its **own or on any other** Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site **on the central electronic platform referred to in Article 3 (4)** of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of division on the Internet site."

#### *Amendment*

"A company **may**, for a continuous period beginning **at least** one month before the day fixed for the general meeting **which is to decide on the draft terms of division, also make** available the draft terms of **such** division on its Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site **in accordance with Article 3** of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of division on the Internet site."

Or. en

#### *Justification*

*This amendment aims to ensure that this directive does not enter in contradiction with the position which will be taken in Article 3 of Directive 68/151/EEC. Indeed, the European Parliament took a position in its resolution of 19 November 2008 adopted in 1st reading which allows the coexistence of the central electronic platform with additional obligation of publications.*

## Amendment 26

Janelly Fourtou, Marielle De Sarnez

### Proposal for a directive – amending act

#### Article 2 – point 1

Directive 82/891/EEC

Article 4 – point 2

#### *Text proposed by the Commission*

Such publication shall not be required from

AM\771621EN.doc

#### *Amendment*

Such publication shall not be required from

13/19

PE420.211v02-00

a company if, for a continuous period beginning *not later than* one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

a company if, for a continuous period beginning *at least* one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC, *without prejudice to additional publication arrangements which may be required by Member States*. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. fr

#### *Justification*

*La mise en œuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3, paragraphe 4, de la 1ère directive 68/151/CEE. Cette directive fait l'objet d'une procédure législative qui n'est toujours pas achevée. Cependant, le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne.*

#### **Amendment 27** **Renate Weber**

**Proposal for a directive – amending act**  
**Article 2 – point 5 – point b**  
Directive 82/891/EEC  
Paragraph 3

#### *Text proposed by the Commission*

"Where a shareholder has consented to the use, by the company, of electronic means for conveying information, *the company may provide the copies* by electronic mail."

#### *Amendment*

"Where a shareholder has consented to the use, by the company, of electronic means for conveying information, *copies may be provided* by electronic mail. *However, paper copies shall be provided at the shareholder's request.*"

*Justification*

*Consistency with similar amendment concerning Directive 78/855/EEC.*

**Amendment 28**  
**Renate Weber**

**Proposal for a directive – amending act**  
**Article 2 – point 5 (c)**  
Directive 82/891/EEC  
Paragraph 4

*Text proposed by the Commission*

"4. A company shall not be required to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning ***not later than*** one month before the day ***fixed for*** the general meeting, it makes them available on its Internet site.

***Paragraph 3 shall not apply if the Internet site gives shareholders the possibility to save an electronic copy of the documents referred to in paragraph 1, throughout the period referred to in paragraph 1.***"

*Amendment*

"4. A company shall not be required to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning ***at least*** one month before the day ***of*** the general meeting ***which is to decide on the draft terms of division***, it makes them available on its Internet site. ***Where a company makes use of this possibility***, the Internet site ***shall permit the downloading and saving of*** an electronic copy of ***those*** documents, throughout the period referred to in ***this paragraph***.

***Member States may determine the consequences of temporary disruption of access to the Internet site caused by technical or other factors.***

***This paragraph shall be without prejudice to paragraph 3.***"

*Justification*

*Consistency with similar amendment concerning Directive 78/855/EEC. It also adds a provision allowing Member States to provide for the solutions to temporary disruptions to the website.*

**Amendment 29**  
**Renate Weber**

**Proposal for a directive – amending act**

**Article 3 – point 1**

Directive 2005/56/EC

Article 6 – paragraph 1

*Text proposed by the Commission*

In Article 6(1), the following *subparagraph is* added:

"A publication in accordance with the first subparagraph shall not be required from a company if, for a continuous period beginning *not later than* one month before the day *fixed for* the general meeting, the company makes available the draft terms of merger on its *own or on any other* Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 (4) of Directive 68/151/EEC. The reference shall include the date of the publication of the draft terms of merger on the Internet site."

*Amendment*

In Article 6(1), the following *subparagraphs shall be* added:

"A publication in accordance with the first subparagraph shall not be required from a company if, for a continuous period beginning *at least* one month before the day *of* the general meeting *which is to decide on the common draft terms of cross-border merger*, the company makes available the *common* draft terms of *such* merger on its Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 (4) of Directive 68/151/EEC. The reference shall include the date of the publication of the *common* draft terms of *cross-border* merger on the Internet site.

*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."*

Or. en

*Justification*

*This amendment aims at supplementing the original AM 9 in the draft report by adding a*



*provision allowing Member States to provide for the solutions to temporary disruptions to the website and central electronic platform.*

**Amendment 30**  
**Pervenche Berès**

**Proposal for a directive – amending act**

**Article 3 – point 1**

Directive 2005/56/CE

Article 6 – paragraph 1 – point 2

*Text proposed by the Commission*

Such publication shall not be required from a company if, for a continuous period beginning ***not later than*** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

*Amendment*

Such publication shall not be required from a company if, for a continuous period beginning ***at least*** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3 of Directive 68/151/EEC, ***without prejudice to other existing forms of publication which Member States may maintain providing they are clearly defined and based on objective conditions.*** That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. fr

*Justification*

*La mise en oeuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3 de la 1ère directive 68/151/CEE. Le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne. L'amendement déposé vise à assurer la cohérence entre la position adoptée par le Parlement européen le 19 novembre 2008 et le texte ci-visé.*

## Amendment 31

Jacques Toubon, Jean-Paul Gauzès, Georgios Papastamkos

### Proposal for a directive – amending act

#### Article 3 – point 1

Directive 2005/56/EC

Article 6 – paragraph 1

#### *Text proposed by the Commission*

"A **publication in accordance with the first subparagraph shall not be required from a company if**, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, **the company makes** available the draft terms of merger on **its own or on any other** Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site **on the central electronic platform referred to in Article 3 (4)** of Directive 68/151/EEC. The reference shall include the date of the publication of the draft terms of merger on the Internet site."

#### *Amendment*

"A company **may**, for a continuous period beginning **at least** one month before the day fixed for the general meeting **which is to decide on the draft terms of merger, also make** available the draft terms of **such** merger on its Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site **in accordance with Article 3** of Directive 68/151/EEC. The reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. en

#### *Justification*

*This amendment aims to ensure that this directive does not enter in contradiction with the position which will be taken in Article 3 of Directive 68/151/EEC. Indeed, the European Parliament took a position in its resolution of 19 November 2008 adopted in 1st reading which allows the coexistence of the central electronic platform with additional obligation of publications.*

## Amendment 32

Janelly Fourtou, Marielle De Sarnez

### Proposal for a directive – amending act

#### Article 3 – point 1

Directive 2005/56/CE

Article 6 – paragraph 1 – point 2

*Text proposed by the Commission*

Such publication shall not be required from a company if, for a continuous period beginning **not later than** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

*Amendment*

Such publication shall not be required from a company if, for a continuous period beginning **at least** one month before the day fixed for the general meeting, it makes available the draft terms of merger on its own or on any other Internet site. Where a company makes use of this possibility it shall publish a reference that gives access to that Internet site on the central electronic platform referred to in Article 3(4) of Directive 68/151/EEC, **without prejudice to additional publication arrangements which may have been required by Member States**. That reference shall include the date of the publication of the draft terms of merger on the Internet site."

Or. fr

*Justification*

*La mise en oeuvre de la plate-forme électronique centrale est prévue dans le "premier paquet simplification" et notamment à l'article 3, paragraphe 4, de la 1ère directive 68/151/CEE. Cette directive fait l'objet d'une procédure législative qui n'est toujours pas achevée. Cependant, le Parlement européen dans sa résolution du 19 novembre 2008 a adopté en première lecture une position claire permettant la coexistence de cette plate-forme avec des obligations additionnelles de publication dans le respect notamment des traditions juridiques diverses d'information du public et de l'accès inégalitaire au réseau interne au sein de l'Union européenne.*