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REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited companies as regards the requirement for an independent expert's report on the occasion of a merger or a division (COM(2007)0091 – C6-0082/2007 – 2007/0035(COD))

Committee on Legal Affairs

Rapporteur: Piia-Noora Kauppi

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited companies as regards the requirement for an independent expert's report on the occasion of a merger or a division
(COM(2007)0091 – C6-0082/2007 – 2007/0035(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0091),
 - having regard to Article 251(2) and Article 44(2)(g) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0082/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0252/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 2

(2) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies provides for an exemption from the obligation to have the draft terms of merger examined by an independent expert and to have a report established by that expert, if all the shareholders agree that such a report is not needed.

(2) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies provides for an exemption from the obligation to have the draft terms of merger examined by an independent expert and to have a report established by that expert *for the shareholders*, if all the shareholders agree that such a report is not needed.

Amendment 2
RECITAL 4

(4) There is no reason to require such an examination by an independent expert if all the shareholders agree that it may be dispensed with.

(4) There is no reason to require such an examination by an independent expert **for the shareholders** if all the shareholders agree that it 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, to be established by Member States in accordance with those Directives, as well as to any rules aimed at ensuring the provision of information to the employees of the companies involved.**

Justification

The Amendment takes on board the ECON opinion (by letter of 12.06.2007, with Geda reference 309925).

Amendment 3
ARTICLE 3, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 **July** 2008 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 **December** 2008 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

EXPLANATORY STATEMENT

The rapporteur supports the Commission in its aim of easing domestic mergers or divisions. The proposal is part of the wide ranging administrative burden reduction exercise contributing to the goals of the Lisbon strategy, in particular the improvement of economic growth and the creation of more and better jobs, by freeing up and redirecting business resources and thus enhancing the competitiveness of the EU's economies.

Council Directive 78/855/EEC and Council Directive 82/891/EEC, state that one or more experts, acting independent but on behalf of each of the merging public limited liability companies or the dividing public limited liability company, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger or division and draw up a written report to the shareholders. This report must explain the draft terms of merger or division and their legal and economic ground, especially the method(s) used to calculate the share exchange ratio proposed.

In case of a merger this report is mandatory according to Directive 78/855/EEC. Under Directive 82/891/EEC concerning divisions the report is mandatory if the Member State in question has not used the option to permit non-application of the provision requiring the report if all the shareholders and the holders of other securities giving the right to vote of the companies involved in the division have so agreed. The costs of these reports are estimated to approximately EUR 3.500 per merger or division, according to figures from the Danish measurement exercise. In particular when SMEs with a limited number of shareholders who are involved in the management are concerned, this report gains no additional information.

Among the available options of (1) abolition of the requirement unless shareholders ask for it and (2) abolition of the requirement in cases where all the shareholders agree that it is not needed, the second option balances the interests in question at best.

Both options might lead to benefits for companies not in need for these reports by making them voluntarily. In case where a report is needed and useful no information will be lost compared to the current situation. Option 2 provides a higher level of shareholder protection than option 1, whilst because of the limited number of shareholders the burden of opting-out is quite low. Furthermore, option 2 brings the Directives in line with Article 8 (4) of the Directive 2005/56/EC of the European Parliament and of the Council on cross-border mergers of limited liability companies.

The rapporteur therefore fully agrees with the Commission proposal. She emphasises that the provisions subject to the amendments by the proposed Directive concern only the field of shareholder protection. Other interests, e.g. creditor protection, are not affected.

PROCEDURE

Title	Mergers and divisions of public limited liability companies
References	COM(2007)0091 - C6-0082/2007 - 2007/0035(COD)
Date submitted to Parliament	6.3.2007
Committee responsible Date announced in plenary	JURI 29.3.2007
Committee(s) asked for opinion(s) Date announced in plenary	ECON 29.3.2007
Not delivering opinion Date of decision	ECON
Rapporteur(s) Date appointed	Piia-Noora Kauppi 10.4.2007
Date adopted	26.6.2007
Result of final vote	+: 17 -: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Manuel Medina Ortega, Hartmut Nassauer, Francesco Enrico Speroni, Gary Titley, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Jean-Paul Gauzès, Kurt Lechner, Gabriele Stauner, Jacques Toubon