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REPORT

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
(COM(2008)0576 – C6-0330/2008 – 2008/0182(COD))

Committee on Legal Affairs

Rapporteur: Renate Weber

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind 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 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

(COM(2008)0576 – C6-0330/2008 – 2008/0182(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0576),
 - having regard to Article 251(2) and Article 44(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0330/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0247/2009),
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.

Amendment 1

Proposal for a directive – amending act

Citation 1

Text proposed by the Commission

Having regard to the Treaty establishing the European Community, and in particular Article 44(2) thereof,

Amendment

Having regard to the Treaty establishing the European Community, and in particular Article 44(2), **point (g)** thereof,

Justification

The legal basis should be Article 44(2)(g) of the TEC (see also: Directive 2007/63/EC).

Amendment 2

Proposal for a directive – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) 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.

Justification

Explanation of amendment to Directive 2005/56/EC.

Amendment 3

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

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.

(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.

Amendment 4

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 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

In Article 6, 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 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 *own* Internet site *in full or by way of reference or hyperlink or, if it has no Internet site of its own, 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.

Member States may however require that draft terms of mergers and/or of a reference giving access to the Internet site be published in any other form of publication existing in the Member States, provided that it is well defined and based on objective conditions, particularly in the interests of legal certainty and information security and having regard to the availability of access to the Internet and Member States' practice.

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."

Amendment 5

Proposal for a directive – amending act

Article 1 – point 5 – point b

Directive 78/855/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, copies may be provided 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

It should be made clear that the shareholder has a possibility to choose whether he wants to obtain electronic or paper copies of documents that are often lengthy and burdensome to print or use in electronic version only.

Amendment 6

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.

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*.

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*."

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

This amendment aims at supplementing the original AM 6 in the draft report by adding a provision allowing Member States to provide for the solutions to temporary disruptions to the website.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 9 – point a

Directive 78/855/EEC

Article 25

Text proposed by the Commission

Amendment

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

"Member States shall not *apply Article 7 to operations referred to in Article 24* if the following conditions are fulfilled:"

Justification

The amendment makes it clear that in case of simplified mergers the approval of the general meeting of each of the merging companies should not be required by Member States. In other words, what was currently MS option should become mandatory.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 10

Directive 78/855/EEC

Articles 26 and 27

Text proposed by the Commission

10. **Articles 26 and 27** are 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."

Amendment

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

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."

Amendment 9

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

Amendment

deleted

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 10

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 *own* Internet site *in full or by way of reference or hyperlink or, if it has no Internet site of its own, 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.

Member States may however require that draft terms of division and/or of a reference giving access to the Internet site be published in any other form of publication existing in the Member States, provided that it is well defined and based on objective conditions, particularly in the

interests of legal certainty and information security and having regard to the availability of access to the Internet and Member States' practice.

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."

Amendment 11

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 12

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 13

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

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**

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."

decide on the common draft terms of cross-border merger, the company makes available the *common* draft terms of *such* merger on its *own* Internet site *in full or by way of reference or hyperlink or, if it has no Internet site of its own, 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 *common* draft terms of *cross-border* merger on the Internet site.

Member States may however require that common draft terms of cross-border merger and/or of a reference giving access to the Internet site be published in any other form of publication existing in the Member States, provided that it is well defined and based on objective conditions, particularly in the interests of legal certainty and information security and having regard to the availability of access to the Internet and Member States' practice.

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."

Amendment 14

Proposal for a directive – amending act

Article 3 – point 2

Directive 2005/56/EEC

Article 15 – paragraph 2

Text proposed by the Commission

Amendment

2. In Article 15, paragraph 2 is replaced by the following:

deleted

"2. Where a cross-border merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires, in accordance with Directive 78/855/EEC."

Justification

The only change compared to Directive 2005/56/EC is adding "in accordance with Directive 78/855/EEC". This addition is not necessary and creates confusion. It is clear that national law sets the requirement and that this is done in accordance with provisions of the Directive.

Amendment 15

Proposal for a directive – amending act Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Review clause

Five years after the date laid down in Article 5(1), the Commission shall review the functioning of this Directive, 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 to the European Parliament and the Council, accompanied, if necessary, by proposals for its further amendment.

Justification

The Commission indicated in the Impact Assessment that five years after the transposition of the amendments the effect of the measures should be evaluated. This monitoring and evaluation commitment should be reflected in the text.

Amendment 16

**Proposal for a directive – amending act
Article 5 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **30 June 2011** 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.

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **30 June 2013** 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.

Justification

It is necessary that sufficient time is allowed between the central electronic platform is successfully established and becomes a mandatory tool under the pending proposal to amend Article 3(4) of the 1 CLD and the implementation of the obligation to publish a link and a reference.

EXPLANATORY STATEMENT

The proposal

The objective of the Commission proposal is to contribute to enhancing the competitiveness of EU companies by reducing administrative burdens imposed under Company Law Directives ("CLD") where this can be done without major negative impact on other stakeholders. The proposal focuses on the 3rd and 6th CLD (respectively, Council Directives 78/855/EEC and 82/891/EEC) concerning domestic mergers and divisions of public limited liability companies. In addition, the Commission proposed to align Directive 2005/56/EC concerning cross-border mergers with changes made to the domestic merger regime. Furthermore, some amendments are proposed to the 2nd CLD (Council Directive 77/91/EC).

The 3rd and 6th CLD currently contain a number of detailed reporting requirements that companies involved in a merger or a division have to comply with and which impose considerable costs on them. In certain situations, those requirements are doubled by requirements set out in 2nd CLD. The means provided for in the Directives to inform shareholders were designed 30 years and do not take into account technological possibilities offered today. This leads to unnecessary costs for the companies. Finally, changes in other Directives during last years and in particular amendments made to the 2nd CLD in the area of creditor protection have lead to certain inconsistencies between different Directives.

General observations

Your rapporteur welcomes the Commission proposal and supports the general objective of reducing the administrative burden imposed on the companies. However, the rapporteur sees also the need to ensure that in the implementation process the various options designed for this purpose are effectively used in order to give effect to the reduction of the administrative burden and to use the potential of the simplification of the requirements to its full extent. It should be observed that the effective reduction of burdens will depend on the implementation and on the choices of options made by the Member States, companies and shareholders themselves. The rapporteur is also of the opinion that a careful balance should be stroked between the possible gains for the companies and the protection of other stakeholders, in particular the shareholders. This is particularly important in the whole context of the recent amendments made to CLD, which are characterised by punctual approach, fragmentary treatment and frequent amendments. This means that there is no time to evaluate the effects of changes made to the Directives, given their frequency and transposition deadlines.

Specific considerations

1. Legal basis

The legal basis for the proposal should be Article 44(2)(g) TEC, as indicated in the Commission explanatory memorandum to the proposal.

2. Simplification and alignment

The rapporteur supports the efforts to align, to the extent possible, provisions of Directives amended by the current proposal.

This considers in particular:

- consistent amendment of the 3rd CLD and the 6th CLD when it refers to the possibility of a unanimous waiver of the obligation to draw up the management report concerning the draft terms of merger by the shareholders and holders of other securities giving right to vote;
- alignment of the provisions of Directive 2005/56/EC with the recent changes to the 3rd and 6th CLD concerning the disclosure of the draft terms of mergers is welcomed;
- elimination of duplication of requirements for experts' reports under the 6th and 2nd CLD;
- adaptation of provisions of the 3rd and 6th CLD to 2nd CLD with respect to creditors protection.

3. Publication

The rapporteur agrees with the consistent introduction of an alternative to the publication mechanism of the 1st Directive (Council Directive 68/151/EEC) in the 3rd, 6th and 10th Directives. This alternative should be however limited to the companies own website. It seems a natural and obvious place for the shareholder and/or creditor to look at the company's website in search of documents and information concerning it. It should be emphasized that this possibility combined with the obligation to publish on the central electronic platform a reference and a link will only provide a viable reduction of publication requirement if the central electronic platform will successfully become a mandatory tool as a result of the pending Commission proposal to amend Article 3(4) of the 1st CLD (COM(2008)33). The outcome of this proposal is still unknown.

In this context the concerns about the implementation deadlines of the Directive under the current proposal and of the amendment of Article 3(4) of the 1st CLD should also be stressed. It is necessary that sufficient time is allowed between the central electronic platform is established and the implementation of the obligation to publish a link and a reference. Nevertheless, the rapporteur supports the introduction of that publishing obligation, which ensures transparency. It should also ensure certainty as to the date of publication (i.e., the date of the website publication) which would also have to be provided on the central electronic platform.

4. Access to documents

Many provisions of the 3rd and 6th CLD were designed to protect the rights of shareholders. Any reduction in obligations for companies should therefore take into account the interest of

the shareholders in obtaining information. When the question is asked about the means to inform shareholders the accessibility for shareholders and possible access costs should be considered. For this reason your rapporteur believes that the reduction of costs by the companies by making documents accessible on-line should be combined with the protection of the interest of shareholders to obtain documents in the preferred form on their request.

11.3.2009

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

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 (COM(2008)0576 – C6-0330/2008 – 2008/0182(COD))

Rapporteur: Gay Mitchell

SHORT JUSTIFICATION

The rapporteur welcomes the proposal from the Commission for a directive to simplify reporting requirements for mergers and divisions of certain European businesses. Such initiatives which aim at reducing undue administrative burdens to European businesses are particularly well-received in the context of the current market conditions, when European firms' efficiency and global competitiveness are of particular importance.

Although the solutions proposed by the Commission in this directive do not constitute a major legislative overhaul, they do represent small steps in the right direction. In fact, the rapporteur is particularly pleased to see that the proposal takes into account the Parliament's sentiment expressed in a resolution adopted on 21 May 2008, which contained a preference in principle for limited-scope, concrete simplification measures instead of a total or partial repeal of the EU company law directives¹.

The resolution from 21 May 2008 also highlighted the importance of duly taking into account the interest of all stakeholders. The measures proposed by the Commission are also looked upon favourably in this context, because the impact assessment and the subsequent legislative solutions focus on reducing the administrative burden while protecting stakeholders' interests. Therefore, the proposed directive is in line with the greater simplification exercise undertaken by the Commission and supported by the Parliament.

The rapporteur also recognizes that mergers and divisions involving parent and their subsidiary companies are particular cases of these business operations where the reporting burden could and should be lessened throughout the EU. Hence, the rapporteur supports

¹ "Simplified business environment for companies in the areas of company law, accounting and auditing" (2007/2254(INI)).

transforming the current Member States' option to grant exceptions from certain administrative obligations in parent-subsidiary mergers and divisions into an EU-wide requirement.

Similarly, the "double reporting" requirement arising from firms' compliance both with the Third and Sixth Directives¹ and with the Second Directive² seems an excessive administrative burden. Hence, allowing the Member States to repeal it constitutes a positive development.

The rapporteur also endorses adjusting the current reporting rules in order to allow European businesses to utilize modern information technology for reporting purposes. We live in an ever more technologically savvy Community and its laws should reflect this shift. The employment of these new tools will not only cut businesses' administrative costs but is also environment-friendly.

It should be noted that the rapporteur appreciates the comprehensiveness of the impact assessment on this topic. Despite containing a few far-fetched approximations that shall necessarily cause quantitative inaccuracies, the document provides an apt qualitative justification for the legislative solutions proposed by the Commission. The rapporteur hopes that the Commission will maintain this high standard of analysis and improve data accuracy where possible for all future simplification proposals.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act

Article 1 – point 2

Directive 78/855/EEC

Article 6 – paragraph 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

Amendment

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 ***Internet site in full or by way of reference or hyperlink*** or, ***if it has no Internet site of its own***, on any other Internet site . Where a company makes use of this possibility it shall publish a reference that gives access to that Internet

¹ Council Directives 78/855/EEC and 82/891/EEC, respectively.

² Council Directive 77/91/EEC.

reference shall include the date of the publication of the draft terms of merger on the Internet site.

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 make provision for the temporary disruption, due to a technical or other reason, of access to the Internet site where the information is posted or to the central electronic platform.

Justification

Member States should be encouraged to take provisions that clarify to what extent a technical disruption of services on the internet site where information is made accessible can be interpreted as negligent behaviour that would be against reporting and documentation requirements.

If a company has its own Internet site, failure to publish the information on it could lead to shareholder misunderstanding or disinformation.

Amendment 2

Proposal for a directive – amending act

Article 1 – point 5 – point b

Directive 78/855/EEC

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

Without prejudice to the provisions of subparagraph 1, where a shareholder has consented to the use, by the company, of electronic means for conveying information, copies may be provided by electronic mail.

Justification

To prevent shareholders thinking that they can no longer request a paper copy, since this would involve shifting the company's responsibilities onto the shareholders.

Amendment 3

Proposal for a directive – amending act

Article 1 – point 5 – point c

Directive 78/855/EEC

Article 11 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

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. ***Member States may make provision for the temporary disruption, due to a technical or other reason, of access to the Internet site where the information is posted or the central electronic platform.***

Justification

Member States should be encouraged to take provisions that clarify to what extent a technical disruption of services on the internet site where information is made accessible can be interpreted as negligent behaviour that would be against reporting and documentation requirements.

Amendment 4

Proposal for a directive – amending act

Article 2 – point 1

Directive 82/891/EEC

Article 4 – paragraph 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 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

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 ***Internet site in full or by way of reference or hyperlink*** or, ***if it has no Internet site of its own***, 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.
Member States may make provision for the temporary disruption, due to a technical or other reason, of access to the Internet site where the information is posted or the central electronic platform.

Justification

Member States should be encouraged to take provisions that clarify to what extent a technical disruption of services on the internet site where information is made accessible can be interpreted as negligent behaviour that would be against reporting and documentation requirements.

If a company has its own Internet site, failure to publish the information on it could lead to shareholder misunderstanding or disinformation.

Amendment 5

Proposal for a directive – amending act

Article 2 – point 5 – point b

Directive 82/891/EEC

Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

Without prejudice to the provisions of subparagraph 1, where a shareholder has consented to the use, by the company, of electronic means for conveying information, copies may be provided by electronic mail.

Justification

To prevent shareholders thinking that they can no longer request a paper copy, since this would involve shifting the company's responsibilities onto the shareholders.

Amendment 6

Proposal for a directive – amending act

Article 2 – point 5 – point c

Directive 82/891/EEC

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

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. ***Member States may make provision for the temporary disruption, due to a technical or other reason, of access to the Internet site where the information is posted or the central electronic platform.***

Justification

Member States should be encouraged to take provisions that clarify to what extent a technical disruption of services on the internet site where information is made accessible can be interpreted as negligent behaviour that would be against reporting and documentation requirements.

Amendment 7

Proposal for a directive – amending act

Article 3 – point 1

Directive 2005/56/EC

Article 6 – paragraph 1 – subparagraph 2

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 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 ***Internet site in full or by way of reference or hyperlink*** or, ***if it has no Internet site of 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. ***Member States may make provision for***

the temporary disruption, due to a technical or other reason, of access to the Internet site where the information is posted or the central electronic platform.

Justification

Member States should be encouraged to take provisions that clarify to what extent a technical disruption of services on the internet site where information is made accessible can be interpreted as negligent behaviour that would be against reporting and documentation requirements.

If a company has its own Internet site, failure to publish the information on it could lead to shareholder misunderstanding or disinformation.

PROCEDURE

Title	Reporting and documentation requirements in the case of merger and divisions
References	COM(2008)0576 – C6-0330/2008 – 2008/0182(COD)
Committee responsible	JURI
Opinion by Date announced in plenary	ECON 9.10.2008
Rapporteur Date appointed	Gay Mitchell 22.10.2008
Discussed in committee	20.1.2009 11.2.2009
Date adopted	9.3.2009
Result of final vote	+: 30 -: 0 0: 1
Members present for the final vote	Paolo Bartolozzi, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Kurt Joachim Lauk, Hans-Peter Martin, Gay Mitchell, Sirpa Pietikäinen, John Purvis, Bernhard Rapkay, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Cornelis Visser
Substitute(s) present for the final vote	Harald Ettl, Margaritis Schinas, Eva-Riitta Siitonen

PROCEDURE

Title	Reporting and documentation requirements in the case of merger and divisions
References	COM(2008)0576 – C6-0330/2008 – 2008/0182(COD)
Date submitted to Parliament	24.9.2008
Committee responsible Date announced in plenary	JURI 9.10.2008
Committee(s) asked for opinion(s) Date announced in plenary	ECON 9.10.2008
Rapporteur(s) Date appointed	Renate Weber 3.11.2008
Discussed in committee	19.1.2009 11.2.2009
Date adopted	31.3.2009
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Klaus-Heiner Lehne, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Nicole Fontaine, Georgios Papastamkos, Jacques Toubon, Renate Weber