Cross-border mergers of limited liability companies

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The committee adopted the report by Klaus-Heiner LEHNE (EPP-ED , DE) amending the proposal under the 1st reading of the codecision procedure. Many of the key amendments were based on the agreement reached within the Council in November 2004:

- **Article 1** was amended to provide a clearer definition of cross-border mergers. MEPs added that the directive shall also apply to such mergers where the law of at least one of the Member States concerned allows a cash payment in excess of 10% of the nominal value. Member States should be able to exempt cooperative societies from the scope of the directive. Furthermore, the directive should not apply to undertakings for collective investments in transferable securities (UCITS);

- **Article 2** was amended to clarify the principle that each undertaking involved in a merger remains subject to its national merger laws insofar as the directive does not provide otherwise. Moreover, Member States should be specifically allowed to adopt provisions to protect minority members who have opposed the cross-border merger;

- **Article 3** : the committee introduced additional requirements for information which must be contained in the common draft terms of cross-border mergers, such as the effects of the merger on employment, the opinions expressed by the employees concerned or their representatives, etc. Moreover, the management or administrative organ of each of the merging companies should be specifically required to draw up a report - to be made available to the members, the employees and their representatives - explaining the implications of the merger for members, creditors and employees;

- **Article 14** was substantially amended as follows: although in principle a company created by a cross-border merger is subject to the employee participation regime of the state in which the new company is based, this principle shall not apply where the national law concerned fails to provide for at least the same level of participation as operated in the relevant merging companies or does not provide for employees of establishments of the new company situated in other Member States the same entitlement to exercise participation rights as employees in the state in which the company is based. This principle shall also not apply where at least one of the merging companies has more than 500 employees. A special Negotiating Body will be set up to determine a model for employee participation in the above cases. If no agreement is reached, the standard rules shall apply, under which the most far-reaching participation model of the merging companies is introduced in the new company, providing at least a third of employees in total enjoy participation prior to the merger. Member States may, in cases where standard rules apply, limit the proportion of employee representatives in the administrative organ of the new company to one-third. The participation rights of employees in the new company shall be protected in cases of subsequent domestic mergers within three years of the cross-border merger;

- the Commission shall review the directive within 5 years.