

Cross-border mergers of limited liability companies

2003/0277(COD) - 26/10/2005 - Final act

PURPOSE : to lay down provisions to facilitate cross-border mergers between various types of company with share capital governed by the laws of different Member States.

LEGISLATIVE ACT : Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

CONTENT : This Directive on cross-border mergers of companies with share capital is aimed at facilitating the carrying-out of cross-border mergers between various types of limited liability companies governed by the laws of different Member States. The Directive was adopted at first reading, with the Italian delegation voting against.

The directive will facilitate the cooperation and consolidation between companies from different Member States by reducing the difficulties encountered, at the legislative and administrative levels, by cross-border mergers of companies in the Community. It is expected to reduce costs of such operations, while guaranteeing the requisite legal certainty and enabling as many companies as possible to benefit. This Directive constitutes an important step towards the EU's efforts in taking forward the Lisbon strategy.

The key features are as follows:

- The directive will apply to mergers of limited liability companies, as defined in this Directive, formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of them are governed by the laws of different Member States.

- It 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.

- The principle that the common draft terms of cross-border merger must be approved by the general meeting of each of those companies.

- The monitoring of the completion and legality of the decision-making process in each merging company must be carried out by the national authority having jurisdiction over each of those companies, whereas monitoring of the completion and legality of the cross-border merger should be carried out by the national authority having jurisdiction over the company resulting from the cross-border merger.

- On the key issue of employee participation rights, the general principle is that the national law governing the company resulting from the cross-border merger will apply. As an exception to this general principle, the principles and procedures concerning employee participation laid down in the European company (SE) Regulation and Directives should apply if at least one of the merging companies has an average number of

employees in the six months before the publication of the draft terms of the cross-border merger that exceeds 500 and is operating under an employee participation system, or where the national law applicable to the company resulting from the crossborder merger does not either:

- provide for at least the same level of participation as operated in the relevant merging companies, measured by reference to the proportion of members of the administrative or of the supervisory organ or their committees or of the management group, which covers the profit units of the company, subject to employee representation, or
- provide for employees of establishments of the company resulting from the cross-border merger and situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the registered office of the company resulting from the cross-border merger is situated.

The threshold for the application of the European Company standard rules will be 33.3% of the total number of employees in all merging companies that must have operated under some kind of employee system.

Another important provision aims at protecting employees' rights in subsequent domestic mergers for a period of three years after the cross-border merger has taken effect.

ENTRY INTO FORCE : 15 December 2005

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