Public limited liability companies: mergers and divisions

2007/0035(COD) - 06/03/2007 - Legislative proposal

PURPOSE: to align the provisions of Council Directives 78/855/EEC and 82/891/EEC on the expert report on the draft terms of merger or division with the corresponding rule in Article 8 of Directive 2005/56/EC.

PROPOSED ACT: Directive of the European Parliament and of the Council

CONTENT: on 14 November 2006, the Commission presented a Strategic Review of Better Regulation in the EU (see COM (2006)0689), including a proposal for a target to reduce the administrative burdens on businesses by 25% by 2012.

Ten concrete proposals for "fast track action" were identified in the Action Programme for reducing administrative burdens in the EU (COM(2007)0023), based on broad stakeholder consultation and suggestions from Member States and Commission experts. The "fast track actions" aim at significantly reducing administrative burdens on businesses through minor legislative changes without challenging the level of protection or the original purpose of the legislation.

One of these "fast track action" proposals relates to Council Directive 78/855/EEC concerning mergers of public limited liability companies and Council Directive 82/891/EEC concerning the division of public limited liability companies. The aim of this proposal is to remove unnecessary administrative burdens on businesses by giving shareholders the direct possibility to renounce the written expert report on the draft terms of merger or division, if they so desire. This will bring the two directives in line with the current requirements in the Tenth Company Law Directive (Directive 2005/56/EC on cross-border mergers of limited liability companies) (see COD/2003/0277).

Consultations with the Commission's Advisory Group on Corporate Governance and Company Law have confirmed that this requirement of Council Directive 78/855/EEC concerning the expert report on the draft terms of mergers is excessive. As it has already been recognised in the context of the adoption of Directive 2005/56/EC, this requirement becomes an unnecessary formality where the shareholders of all companies involved in the merger do not consider such a report necessary.

Furthermore, the Commission has received positive responses to the presentation of its Action Programme, including the fast track proposal related to Company Law. A few responses have underlined concerns about transparency and shareholder protection. These concerns have been taken into account in the current proposal. It seems therefore appropriate to align the provisions of Council Directives 78/855/EEC and 82/891/EEC with the exemption contained in Directive 2005/56/EC.