

| Basic information | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <p>2003/0239(CNS)</p> <p>CNS - Consultation procedure Directive</p> | Procedure completed |
| <p>Companies of different Member States: taxation of mergers, divisions, transfers of assets, exchanges of shares (amend. Directive 90/434/EC)</p> <p>Repealed by 2008/0158(CNS)</p> <p>Subject</p> <p>2.60.04 Economic concentration, mergers, takeover bids, holding companies 3.45.04 Company taxation</p> | |

| Key players | | | | |
|-------------------------------|-----------------------------------------------|--|-----------------------------------------------|------------------|
| European Parliament | Committee responsible | | Rapporteur | Appointed |
| | ECON Economic and Monetary Affairs | | KARAS Othmar (PPE-DE) | 22/10/2003 |
| | Committee for opinion | | Rapporteur for opinion | Appointed |
| | JURI Legal Affairs and Internal Market | | The committee decided not to give an opinion. | |
| Council of the European Union | Council configuration | | Meetings | Date |
| | Economic and Financial Affairs ECOFIN | | 2638 | 2005-02-17 |
| | Economic and Financial Affairs ECOFIN | | 2628 | 2004-12-07 |
| European Commission | Commission DG | | Commissioner | |
| | Taxation and Customs Union | | | |

| Key events | | | |
|------------|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------|
| Date | Event | Reference | Summary |
| 17/10/2003 | Legislative proposal published | COM(2003)0613  | Summary |
| 05/11/2003 | Committee referral announced in Parliament | | |
| 24/02/2004 | Vote in committee | | Summary |
| 24/02/2004 | Committee report tabled for plenary, 1st reading/single reading | A5-0121/2004 | |

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|------------|---------------------------------------------------------|-------------------------------------------------------------------------------------|---------|
| 10/03/2004 | Decision by Parliament | T5-0159/2004 | Summary |
| 10/03/2004 | Results of vote in Parliament |  | |
| 17/02/2005 | Act adopted by Council after consultation of Parliament | | |
| 17/02/2005 | End of procedure in Parliament | | |
| 04/03/2005 | Final act published in Official Journal | | |

| Technical information | |
|----------------------------|--------------------------------------------|
| Procedure reference | 2003/0239(CNS) |
| Procedure type | CNS - Consultation procedure |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| Amendments and repeals | Repealed by 2008/0158(CNS) |
| Legal basis | EC Treaty (after Amsterdam) EC 094 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | ECON/5/20266 |

| Documentation gateway | | | | |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-------------------------|-------------------------|
| European Parliament | | | | |
| Document type | Committee | Reference | Date | Summary |
| Committee report tabled for plenary, 1st reading/single reading | | A5-0121/2004 | 24/02/2004 | |
| Text adopted by Parliament, 1st reading/single reading | | T5-0159/2004 OJ C 102 28.04.2004, p. 0518-0569 E | 10/03/2004 | Summary |
| European Commission | | | | |
| Document type | Reference | Date | Summary | |
| Legislative proposal | COM(2003)0613  | 17/10/2003 | Summary | |
| Other institutions and bodies | | | | |
| Institution/body | Document type | Reference | Date | Summary |
| EESC | Economic and Social Committee: opinion, report | CES0312/2004 OJ C 110 30.04.2004, p. 0030-0033 | 25/02/2004 | |

| Additional information | | |
|------------------------|--|--|
| | | |

| Source | Document | Date |
|---------------------|----------|------|
| European Commission | EUR-Lex | |

| Final act |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Directive 2005/0019 OJ L 058 04.03.2005, p. 0019-0027 Summary |

Companies of different Member States: taxation of mergers, divisions, transfers of assets, exchanges of shares (amend. Directive 90/434/EC)

2003/0239(CNS) - 17/02/2005 - Final act

PURPOSE : to amend the Merger Regulation with respect to company taxation on restructuring.

LEGISLATIVE ACT : Council Directive 2005/19/EC amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

CONTENT : the Council adopted a Directive aimed at improving the system of taxation for companies of different Member States applicable to mergers, divisions, transfers of assets and exchanges of shares, thus confirming the agreement reached at its meeting on 7 December 2004.

The Directive is intended to contribute to the elimination of obstacles to the functioning of the internal market by amending Directive 90/434/EEC on the EU's common system of taxation.

The new provisions of the Directive concern:

- the extension of the scope to cover types of division where the company transferring branches of activity is not dissolved;
- the extension of the scope to cover entities which carry out cross-border activities in the Community;
- the addition of public limited-liability companies (Societas Europaea or SE) and cooperative societies (SCE) to the list of European companies under the scope of the Directive;
- the possibility for Member States not to apply provisions of the Directive when taxing a direct or indirect shareholder of certain corporate taxpayers;
- non taxation of persons having an interest in the shareholder on the occasion of restructuring transactions;
- clarification of the application of the rules to operations regarding conversion of branches into subsidiaries;
- amendment of the definition of exchange of shares;
- amendment of the scope of a provision regarding the countering of tax avoidance and tax evasion.

DATE OF TRANSPOSITION :

- regarding the transfer of the registered office of an SE or of an SCE, and with the entry (a) in the Annex to this Directive by 1 January 2006.
- all other provisions by 1 January 2007.

Companies of different Member States: taxation of mergers, divisions, transfers of assets, exchanges of shares (amend. Directive 90/434/EC)

2003/0239(CNS) - 17/10/2003 - Legislative proposal

PURPOSE : to amend the Merger Regulation with respect to company taxation on restructuring. PROPOSED ACT : Council Directive CONTENT : Directive 90/434/EEC ('the Merger Directive') already provides for a solution in certain cases to the cross-border obstacle created by high tax costs linked to business restructuring. This proposal aims to improve the scope of the Directive and the methods provided for the deferral of taxation, while at the same time safeguarding the financial interests of the Member States. Industry is still often subject to high tax costs and international double taxation when entering into business restructuring in which companies of different Member States are involved. The Commission's goal is to eliminate these obstacles to the proper functioning of the internal market found in the Member States tax regimes. Eventually, removing the various tax obstacles to cross-border economic activity in the Internal Market would require the introduction of a common consolidated tax base for the EU-wide activities of

companies. However, as long as this objective is not yet achieved, specifically targeted measures are needed to address the most pressing practical tax problems of internationally active companies. The following changes are the main ones proposed: - the inclusion within the scope of the Merger Directive of a new type of transaction, known as split-off. The new transaction to be covered is a special type of division. The split-off operation is a limited or partial division since the transferring company continues to exist. It transfers part of its assets and liabilities constituting one or more branches of activity. In exchange, the receiving company issues securities representing its capital. These securities are transferred to the shareholders of the transferring company. There is a definition of the concept of "partial division"; - in the case of the split-off, the tax deferral regime, as provided in Article 4 of the Directive, will apply; - the coverage of the Merger Directive is improved by the extension of the list of entities annexed to the Directive, to cover new named legal types. The Statutes of the SE and of the SCE have been recently adopted, and the benefits of the Merger Directive will be applicable to them. Thus, the annex to the Directive will include the companies that will in future be run under these new legal types. In addition, some of the new entities proposed for inclusion in the list raise a particular technical problem in relation to double taxation. The proposal discusses the following entities; - the Merger Directive will cover the conversion of a branch into a subsidiary; - there are provisions linking the Merger Directive to the Parent-Subsidiary Directive: where the receiving company has a "sufficient holding" according to the conditions of the Parent-Subsidiary Directive, the Merger Directive should allow a similar tax concession to be granted in the case of a merger or division; - the concept of "holding" in the Merger Directive is made consistent with that of the Parent- Subsidiary Directive. In addition, any amendment of this subject in the Merger Directive will be made consistent with the amendments introduced in the Parent- Subsidiary Directive, where the minimum threshold to be considered as a parent company or as a subsidiary is being proposed to be lowered from 25 to 10%; - there are provisions to prevent double taxation in certain circumstances where there is a transfer of assets; - where the acquiring company obtains a holding in another company by paying a fair market price, and this company has to transfer to the shareholders securities representing its capital, a new provision ensures that the acquiring company values the shares received according to their real value at the time of the exchange of shares. This provision will avoid economic double taxation. The proposed Directive shall cover exchange of shares where the majority of the voting rights is acquired by a company resident in a Member State from a shareholder resident in a state which is not a member of the EU. A new title is being added to the Directive to provide for the tax regime that would apply in the case of a transfer of the registered office of the SE and of the SCE. The applicable tax rules will be neutral from the point of view of competition while safeguarding the financial interests of the State where the company is resident before transferring its registered office. Moreover, a specific provision will provide that no taxes can be imposed on the shareholders linked to the change of residence of the company. This provision gives expression to the EC Treaty obligations concerning the freedom of establishment. Capital gains arising out of the subsequent transfer of the securities may be taxable.

Companies of different Member States: taxation of mergers, divisions, transfers of assets, exchanges of shares (amend. Directive 90/434/EC)

2003/0239(CNS) - 10/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Othmar KARAS (EPP-ED, A) and made some amendments to the proposal. (Please see the document dated 24/02/04.)