

## Basic information

**2003/0277(COD)**

COD - Ordinary legislative procedure (ex-codecision procedure)  
Directive

Cross-border mergers of limited liability companies

Repealed by [2015/0283\(COD\)](#)

Amended by [2008/0182\(COD\)](#)

Amended by [2011/0038\(COD\)](#)

Amended by [2012/0150\(COD\)](#)

Amended by [2016/0362\(COD\)](#)

### Subject

2.60.04 Economic concentration, mergers, takeover bids, holding companies

Procedure completed

## Key players

European Parliament

### Committee responsible

**JURI**

Legal Affairs

### Rapporteur

LEHNE Klaus-Heiner (PPE-DE)

### Appointed

14/09/2004

### Former committee responsible

**JURI**

Legal Affairs and Internal Market

### Former rapporteur

ROTHLEY Willi (PSE)

### Appointed

01/12/2003

### Committee for opinion

**ECON**

Economic and Monetary Affairs

### Rapporteur for opinion

The committee decided not to give an opinion.

### Appointed

23/09/2004

**EMPL**

Employment and Social Affairs

LANGENDRIES Raymond (PPE-DE)

27/10/2004

**IMCO**

Internal Market and Consumer Protection

The committee decided not to give an opinion.

### Former committee for opinion

**ECON**

Economic and Monetary Affairs

### Former rapporteur for opinion

RIIS-JØRGENSEN Karin (ELDR)

### Appointed

02/12/2003

**EMPL**

Employment and Social Affairs

MENRAD Winfried (PPE-DE)

14/01/2004

Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Competitiveness (Internal Market, Industry, Research and Space)	2624	2004-11-25
	Agriculture and Fisheries	2677	2005-09-19
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Financial Stability, Financial Services and Capital Markets Union		

Key events			
Date	Event	Reference	Summary
18/11/2003	Legislative proposal published	COM(2003)0703 	Summary
03/12/2003	Committee referral announced in Parliament, 1st reading		
16/09/2004	Committee referral announced in Parliament, 1st reading		
25/11/2004	Debate in Council		Summary
31/03/2005	Vote in committee, 1st reading		Summary
11/04/2005	Committee report tabled for plenary, 1st reading		
25/04/2005	Committee report tabled for plenary, 1st reading	A6-0089/2005	
10/05/2005	Decision by Parliament, 1st reading	T6-0166/2005	Summary
10/05/2005	Results of vote in Parliament		
19/09/2005	Act adopted by Council after Parliament's 1st reading		
26/10/2005	Final act signed		
26/10/2005	End of procedure in Parliament		
25/11/2005	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2003/0277(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Repealed by <a href="#">2015/0283(COD)</a> Amended by <a href="#">2008/0182(COD)</a> Amended by <a href="#">2011/0038(COD)</a> Amended by <a href="#">2012/0150(COD)</a> Amended by <a href="#">2016/0362(COD)</a>
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 044-p1

<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	JURI/6/21114 JURI/5/20415

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee opinion	<span style="border: 1px solid red; padding: 2px;">EMPL</span>	PE350.206	16/03/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0089/2005	25/04/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0166/2005 OJ C 092 20.04.2006, p. 0020-0080 E	10/05/2005	<a href="#">Summary</a>
<b>Council of the EU</b>				
Document type	Reference	Date	Summary	
Draft final act	03632/5/2005	26/10/2005		
<b>European Commission</b>				
Document type	Reference	Date	Summary	
Legislative proposal	COM(2003)0703 	18/11/2003	<a href="#">Summary</a>	
Commission response to text adopted in plenary	SP(2005)2482	16/06/2005		
Follow-up document	SEC(2007)1707 	12/12/2007	<a href="#">Summary</a>	
<b>Other institutions and bodies</b>				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0664/2004 OJ C 117 30.04.2004, p. 0043-0048	28/04/2004	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act

## Cross-border mergers of limited liability companies

2003/0277(COD) - 18/11/2003 - Legislative proposal

**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. **PROPOSED ACT** : Directive of the European Parliament and of the Council. **CONTENT** : at present, mergers between commercial companies in different Member States are possible only if the companies wishing to merge are established in certain Member States. In other Member States, the differences between the national laws applicable to each of the companies are such that the companies have to resort to complex and costly legal arrangements. These arrangements often complicate the operation and are not always implemented with all the requisite transparency and legal certainty. They result, moreover, as a rule in the acquired companies being wound up - a very expensive operation. The main points of the proposal are as follows: - the scope of the Directive includes all companies with share capital and covers small and medium-sized enterprises, which stand to benefit because of their smaller size and lower capitalisation compared with large enterprises and for which, for the same reasons, the European Company Statute does not provide a satisfactory solution; - the basic principle underlying the cross-border merger procedure is that -save as otherwise provided by the Directive for reasons to do with the cross-border nature of the merger - the procedure is governed in each Member State by the principles and rules applicable to mergers between companies governed exclusively by the law of that State (domestic mergers). The aim is to approximate the cross-border merger procedure with the domestic merger procedures with which operators are already familiar through use. In order to take account of the cross-border aspects, the principle of the application of national law is incorporated - but no more than is strictly necessary - via provisions based on the relevant principles and rules already laid down for the formation of an SE; - protection under national law is also afforded to the interests of creditors, debenture holders, the holders of securities other than shares, minority shareholders and employees, as regards rights other than those related to participation in the company, vis-à-vis each of the merging companies; - employee participation - the overriding fear concerning cross-border mergers was that the process might be hijacked by companies which, faced with having to live with employee participation, might try to circumvent it by means of such a merger. The proposal provides that the cross-border merger remains subject, with regard to rights other than those of participation in the acquiring company or in the new company created by the cross-border merger, to the relevant provisions applicable in the Member States, as harmonised by Council Directive 2001/23/EC, Directive 2002/14/EC and Directives 94/45/EC and 97/74/EC. By virtue of these provisions, the change of employer resulting from the merger operation must have no effect on the contract of employment or employment relationship in force at the time of the merger, which is automatically transferred to the new owner. Likewise protected after the merger are all acquired rights of employees agreed under a collective agreement, and their rights to old-age, invalidity or survivor's benefits under statutory social security schemes. There are special provisions where the protection of acquired rights of participation is put at risk by the merger. This is relevant only in a situation where one of the merging companies has a participation regime, be it compulsory or voluntary and the law of the Member State where the company created by merger is to be incorporated does not impose compulsory employee participation. Accordingly, it is only if the merging companies fail to reach a negotiated solution, that the participation system which best protects the acquired rights of the workers and which already exists in one of the merging companies is extended to the company created by merger; - the proposal lists the points that have to be included in the draft terms of cross-border merger; - it deals with publication of the draft terms of cross-border merger and the information that must be furnished; - the proposal also lays down provisions on the date on which the cross-border merger takes effect and the disclosure that must be effected upon completion of a cross-border merger. After the date on which a cross-border merger takes effect, it is no longer possible to declare the merger null and void, the aim being to ensure absolute certainty for all third parties affected by the merger in the various Member States concerned. It would be highly dangerous for third parties subject to the laws of different Member States to be faced with the nullity of an operation after all the checks in each Member State had been carried out conclusively.

## Cross-border mergers of limited liability companies

2003/0277(COD) - 10/05/2005 - Text adopted by Parliament, 1st reading/single reading

By approving a report by Klaus-Heiner LEHNE (EPP-ED, DE), Parliament agreed on the general principle of the application of national law for mergers between companies of different Member States.

MEPs backed, with a number of amendments, a Commission proposal to facilitate cross-border mergers between EU companies with share capital. (Please refer to the summary dated 31/03/2005).

## 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

DATE OF TRANSPOSITION : 15 December 2007

## **Cross-border mergers of limited liability companies**

2003/0277(COD) - 12/12/2007 - Follow-up document

This Commission staff working document concerns the impact assessment on the impact assessment on the Directive on the cross-border transfer of registered office.

As the law stands in most Member States, moving a registered office would typically imply the winding-up of the company in Member State A and its re-incorporation in Member State B. Given the high costs involved, the time involved and the related administrative burden, with sometimes more than 35 procedural steps to overcome, this hardly ever occurs and European companies are, in practice, deprived of the possibility of moving their place of registration within the EU.

Some Community measures, in particular the European Company Statute and the European Cooperative Society, already grant the right of transfer of registered office, however, this possibility is available only to companies established as Societas Europea (SE) or a European Cooperative Society. The practice to date has shown that not many companies decide to transfer their registered office on the basis of the SE Statute.

This impact assessment reviews the nature and scope of the problems raised by the absence of cross-border transfers of companies' registered offices within the EU and identifies policy options to address the situation at EU level.

The twin objectives of any initiative on this matter should be to improve the efficiency and competitive position of European companies by providing them with the possibility of transferring their registered office more easily and, hence, choose a legal environment that best suits their business needs, while at the same time guaranteeing the effective protection of the interests of the main stakeholders in respect of the transfer.

The report looks at different options which could further the achievement of these objectives. Firstly, the 'no action' option is examined. In particular, the possible impact of existing legislation and legislation about to enter into force, notably Directive 2005/56/EC on cross-border mergers which will enter into force on 16 December 2007 and the possible European Private Company Statute, is assessed. The impact assessment focuses on whether the time, costs and procedures required to complete the transfer of registered office would be substantially different from those required to carry out such transfer through a cross-border merger operation under the existing cross-border merger directive. Possible developments in the Community case law are also examined, in particular the currently pending case which concerns a transfer of registered office and whose outcome might affect the scope and content of a possible EU measure.

'No action' option would involve proposing Community action to facilitate the transfer of the registered office.

As for the nature of the instrument, the assessment considers four main options which are also compared with the 'no action' option.

**Option 1** considers action by the Member States, i.e. signature of the convention on mutual recognition of companies. **Option 2:** envisages a nonbinding and flexible instrument, i.e. a recommendation. The last two options concern the adoption of a binding Community instrument, a directive (**option 3**) or a regulation (**option 4**).

From the comparison of the different possible options the assessment concludes that 'no action' option or a directive would be suitable to achieve of the policy objectives. However, when the proportionality test is applied, it is not clear that adopting a directive would represent the least onerous way of achieving the objectives set. Since the practical effect of the existing legislation on cross-border mobility (i.e. the cross-border merger directive) is not yet known and that the issue of the transfer of the registered office might be clarified by the Court of Justice in the near future, the assessment concludes that it might be more appropriate to wait until the impacts of those developments can be fully assessed and the need and scope for any EU action better defined.

## Cross-border mergers of limited liability companies

2003/0277(COD) - 25/11/2004

Pending the European Parliament's opinion at first reading, the Council agreed by a large majority on a general approach on a Directive on cross-border mergers of limited liability companies. The Italian delegation voted against. The Danish and the French delegations entered a parliamentary scrutiny reservation.

The agreement was reached on the basis of an amended Presidency compromise package. The key features of the agreed text as modified by the Council are:

- The Directive will apply to limited liability companies, encompassing the types of companies falling within the scope of the Council Directive 68/151/EEC, as well as those types of companies which meet the criteria of a definition very similar to the one contained in the Commission proposal. Member States agreed to exclude from the scope of the Directive undertakings for collective investment in transferable securities within the meaning of Article 1 of Directive 85/611/EEC(UCITS Directive) and on a provision allowing Member States to decide whether or not to apply this Directive to cross-border mergers involving a cooperative society even in the cases where the latter fall within the definition of limited liability company. The agreement also includes a provision making clear that the possibility for two or more companies to carry out a cross-border merger shall depend upon whether such companies are allowed to merge under the national law of all Member States involved.
- The text agreed 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.