

DIRECTIVES

DIRECTIVE 2007/63/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 November 2007

amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(2)(g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Community policies on better regulation, in particular those set out in the two Communications from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled respectively 'A strategic review of Better Regulation in the European Union', of 14 November 2006, and 'Action Programme for Reducing Administrative Burdens in the European Union', of 24 January 2007, stress the importance of reducing the administrative burdens imposed on enterprises by existing legislation as a crucial element for improving the competitiveness of such enterprises and for achieving the objectives of the Lisbon agenda.

(2) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies ⁽³⁾ provides for an exemption from the obligation to have the draft terms of merger examined by independent experts and a report drawn up by such experts for the shareholders

of the companies involved in the merger, if all the shareholders agree that such a report is not needed.

(3) Council Directive 78/855/EEC ⁽⁴⁾ concerning mergers of public limited liability companies does not contain any similar exemption in respect of the draft terms of merger, while Council Directive 82/891/EEC ⁽⁵⁾ concerning the division of public limited liability companies leaves it to the Member States whether or not to provide for such an exemption in respect of the draft terms of division.

(4) There is no reason to require such an examination by an independent expert for the shareholders if all the shareholders agree that it may be dispensed with. Any modification of Directives 78/855/EEC and 82/891/EEC allowing such agreement by shareholders should be without prejudice to the systems of protection of the interests of creditors of the companies involved, to be established by Member States in accordance with those Directives, as well as to any rules aimed at ensuring the provision of information to the employees of the companies involved.

(5) Directives 78/855/EEC and 82/891/EEC should therefore be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to amend Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

⁽¹⁾ OJ C 175, 27.7.2007, p. 33.

⁽²⁾ Opinion of the European Parliament of 11 July 2007 (not yet published in the Official Journal) and Council Decision of 22 October 2007.

⁽³⁾ OJ L 310, 25.11.2005, p. 1.

⁽⁴⁾ Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies (OJ L 295, 20.10.1978, p. 36). Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

⁽⁵⁾ Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (OJ L 378, 31.12.1982, p. 47).

Article 2

Directive 78/855/EEC is hereby amended as follows:

1. in Article 10, the following paragraph shall be added:

‘4. Neither an examination of the draft terms of merger nor an expert report shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.’;

2. in Article 11(1), point (e) shall be replaced by the following:

‘(e) where applicable, the reports provided for in Article 10.’.

Article 3

Directive 82/891/EEC is hereby amended as follows:

1. in Article 9(1), point (e) shall be replaced by the following:

‘(e) where applicable, the reports provided for in Article 8.’;

2. Article 10 shall be replaced by the following:

‘Article 10

1. Neither an examination of the draft terms of division nor an expert report as provided for in Article 8(1) shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

2. Member States may permit the non-application of Article 7 and Article 9(1)(c) and (d) if all the shareholders

and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.’.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2008. They shall forthwith communicate to the Commission the text of these measures and a correlation table between them and this Directive.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at Strasbourg, 13 November 2007.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

M. LOBO ANTUNES