



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.3.2007
SEC(2007) 300

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

Impact assessment Summary

[COM(2007) 91 final]
[SEC(2007) 298]

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Impact Assessment accompanying the proposal for a Directive of the European Parliament and of the Council amending 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 as regards the requirement for an independent expert's report on the occasion of a merger or a division

Executive Summary

The proposal this Impact Assessment accompanies is part of the wide ranging administrative burden reduction exercise. Council Directive 78/855/EEC and Council Directive 82/891/EEC state that if a public limited liability company is subject to a merger or a division, one or more experts must be appointed or approved by a judicial or administrative authority and act on behalf of but independent from each of the merging companies (or the dividing company), in order to examine the draft terms of the merger/division. They have to produce a written report that explains the terms of the merger or division and the method that is used for calculating the share-exchange ratio and submit it to the shareholders of each of the relevant companies. With regards to mergers the requirement of producing this report is currently mandatory which means that even in cases where all the shareholders do not require this information it has to be produced. With regards to division Member States may permit the non-application of the provisions if all the shareholders and the holders of other securities giving the right to vote have so agreed. It is proposed to convert this option into a general rule.

According to estimates available from countries that have already carried out their national administrative burden measurement exercises, the annual administrative costs of producing these reports are considerable, in particular for SMEs. According to figures from the Danish measurement of administrative burdens, the cost of this requirement is approximately EUR 3.500 for every merger or division. The current requirements entail that financial and other resources may be misallocated if these reports are produced even in cases in which there is no need for them. Those resources could be employed more purposefully elsewhere. The impact assessment, therefore, considered the following three options:

Option 1 No-Policy Change.

Option 2 Abolition of the requirements unless shareholders ask for it.

Option 3 Abolition of the requirements in cases where all the shareholders agree that it is not needed.

Whereas both option 2 and 3 would reduce the burdens on businesses, option 3 provides a higher level of transparency and protection of shareholders while also bringing the requirements in line with those of the Tenth Company Law Directive¹.

¹ Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.