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COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a directive of the European Parliament and the Council simplifying the rules of the Third and the Sixth Company law Directives

Impact assessment

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1. INTRODUCTION

1.1. The EU acquis in company law

The EU company law directives establish disclosure requirements for limited-liability companies and for the branches of these companies that are established in another Member State (First and Eleventh Directive), set minimum requirements concerning the capital of public limited-liability companies (Second Directive) and concerning the procedures for domestic mergers and divisions (Third and Sixth Directives) and for cross-border mergers (Tenth Directive). Furthermore, the Twelfth Company law Directive introduced the possibility to found limited-liability companies with a single member and more recent directives dealt with the procedure to follow in the case of a takeover bid (Takeover bid Directive) and with shareholder voting (Shareholders' rights Directive).

Those directives that were adopted between the 1960s and the 1980s have been updated several times in order to adapt them to new developments.[1] However, none of these amendments touched on the scope or the basic content of the directives concerned. They have remained fundamentally unchanged since their adoption.

1.2. Commission initiative to simplify company law

In July 2007, the Commission launched an initiative for a broad simplification exercise in the areas of company law, accounting and auditing. On 10 July 2007, it adopted a communication ("the Communication") setting out its ideas.[2]

The Communication outlined two options for the simplification of the company law *acquis*:

Option 1 considered keeping only the directives that cover cross-border issues. It proposed, therefore, the repeal of the directives on companies' capital (Second Directive), domestic mergers and divisions (Third and Sixth Directive), and single member companies (Twelfth Directive).

Option 2 limited the exercise to some key simplification measures related to specific provisions of the directives. This limited approach would also give possibility to review e.g. the rules on the documentation of a merger or a division (management reports, expert reports, etc.) or the creditor protection rules of the directives.

The simplification initiative in company law is a key contribution to the wider Better Regulation/Simplification agenda, in particular the initiative to reduce administrative

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1 In the context of the fourth phase of the Simplification of the Legislation on the Internal Market Process (SLIM), the First and Second Company law Directives were modernised; furthermore, the Tenth Company law Directive on cross border mergers and the Directive on the exercise of certain rights of shareholders were adopted.

2 Communication from the Commission on a simplified business environment for companies in the areas of company law accounting and auditing (COM(2007)394, not published in the Official Journal); available on DG MARKT's website at http://ec.europa.eu/internal_market/company/simplification/index_en.htm

burdens weighing on European companies. The proposals deriving from this initiative are foreseen in the Simplification Rolling Programme for adoption by the Commission in 2008.[3]

1.3. Context - Reduction of administrative burdens

Unnecessary and disproportionate administrative costs severely hamper economic activity. In 2005, the Commission therefore launched an Action Programme for measuring administrative costs and reducing administrative burdens in order to improve the business environment for EU companies and to make the EU economies fit to meet the challenges of a more competitive global business environment in which they have to operate.[4]

The Action Programme was endorsed by the Spring European Council in March 2007[5]. The European Council underlined that reducing administrative burdens is important with a view to boosting Europe's economy, especially given the potential benefits this can bring for small and medium-sized enterprises (SMEs). It stressed that a strong joint effort of the European Union and the Member States is necessary to reduce administrative burdens within the EU.

A key part of the Action Programme consisted of a large-scale measurement of administrative costs incurred by businesses in meeting legal obligations to provide information. This baseline measurement is carried out by the consortium Deloitte/Capgemini/Ramboll on behalf of the Commission and covers obligations stemming from EU legislation and from national measures transposing that legislation. The methodology used is based on the ‘EU Standard Cost Model’, inspired by different variants of the Standard Cost Model (SCM) currently used for measurements at national level by a number of Member States.[6] The EU measurement focuses on the thirteen areas with the most burdensome information obligations ("priority areas"), which included, among others, the area of company law, accounting and auditing. The results of the entire measurement exercise will be delivered by the end of 2008. However, company law/accounting/auditing was designated as a pilot in that exercise, given that national measurements carried out in the years until 2006 and the results of the stakeholder consultation had identified that area as one of the most burdensome areas of the EU acquis. Therefore, the final measurement results in these areas were made available already at the end of June 2008.

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3 "Second progress report on the strategy for simplifying the regulatory environment", Annex 1, Revision of the company law, accounting and auditing acquis (COM(2008)33, not published in the Official Journal, p. 23)

4 See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "A strategic review of Better Regulation in the European Union" (COM(2006)689 final, OJ C 78, 11.4.2007, p. 9). For more detailed information on the programme see the website of DG ENTR: http://ec.europa.eu/enterprise/admin-burdens-reduction/home_en.htm

5 Presidency Conclusions of the Brussels European Council - doc. 7224/07 Concl 1

6 The measurement has been conducted in the Czech Republic, Finland, France, Ireland, Poland and Spain. Furthermore, existing data from Member States that which have already conducted baseline measurements where used (Netherlands, Denmark, UK and Germany). The data for the other Member States were obtained by way of extrapolation.

For the same reason, a first proposal for a directive modifying the Third and the Sixth Company law Directives was included in the first package of "fast track" proposals adopted by the Commission in March 2007. This proposal aimed at repealing the requirement for an expert report in the context of a merger or a division of public limited companies where all shareholders of the companies concerned renounce to the need for such a report. The directive was adopted by the European Parliament and the Council on 13 November 2007.[7]

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The content of the July Communication was submitted to the debate by the European Parliament, the Council and stakeholders.

On 22 November 2007, the Competitiveness Council adopted conclusions welcoming the simplification initiative in broad terms and stressed the importance of reducing administrative burdens in order to improve the competitiveness of companies. The Council called on the Commission to expedite consideration of responses to its Communication and, where appropriate and preferably before the end of 2008, bring forward proposals, accompanied by impact assessments.[8]

On 21 May 2008, a report was adopted by the European Parliament which expresses general support for the simplification exercise but rejects the idea of a (partial) repeal of the EU company law acquis and indicates preference in principle, on the side of the Parliament, for limited simplification measures (option 2 of the Communication). The European Parliament further recalls that the interests of all stakeholders, including investors, owners, creditors and employees, as well as the principles of subsidiarity and proportionality, must be duly taken into account.[9]

In addition, the Communication invited Member State and EEA governments along with stakeholders to submit comments on the proposals in writing by mid-October 2007. Contributions from eighteen Member State governments, one EEA country and 110 stakeholders, including European bodies and associations, originated from 23 countries in total, of which 22 Member States, were submitted. A report on the reactions received is available on the website of the Directorate-General for Internal Market and Services (DG MARKT) at http://ec.europa.eu/internal_market/company/simplification/index_en.htm.[10]

Among those who reacted to the Communication, option 2 (limited simplification) was clearly preferred to option 1 (repeal/partial repeal). The main argument put forward was that these directives provide legal certainty and that their repeal would rather cause additional costs than lead to savings for companies. However, about three quarters of

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7 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, OJ L300, 17.11.2007, p. 47.

8 Council document 15222/07 DRS 48

9 Report A6-0101/2008

10 See also Annex 1 to this Impact Assessment.

those who took a position on the question whether individual simplification measures should be proposed supported the idea. They considered that the Company Law Directives are in some parts overly descriptive and restrict the flexibility of Member States and companies beyond what is really necessary.

Furthermore, the High Level Group of Independent Stakeholders[11] was consulted alongside the work of the consortium that carries out the large-scale measurement of administrative costs. In February 2008, it gave a positive opinion on a second package of fast track proposals in company law that included proposals for modifications of the First and the Eleventh Company law Directives[12]. In two further meetings, it discussed further reduction possibilities in company law, accounting and auditing and adopted its final opinion on 10 July 2008. In this opinion, the group welcomes the efforts by the Commission to review the reporting requirements in these two directives and calls upon the Commission to present ambitious legislative proposals which realize as much as possible the reduction potential identified for these two directives whilst protecting both shareholders' and creditors' interest.

The proposals that should follow-up the results of the communication and of the measurement were entered into the agenda planning of DG Internal Market and Services under reference no. 2006/MARKT/044.

In April 2008, a Steering Group was formed to monitor the progress of the impact assessment of the present proposal. The Steering Group was made up of representatives of the several Directorates-General who responded to the invitation of DG Internal Market and Services to join the Steering Committee (the Legal Service, DG Employment, Social Affairs and Equal Opportunities and DG for Enterprise and Industry) and included a representative of the Secretariat-General.

The Group met twice to evaluate the advance of the impact assessment, to provide guidance and drafting contributions and to approve the final document.

The Impact Assessment report was examined by the Impact Assessment Quality Board on 2 July 2008. Following the Board's opinion, several changes were made to this Impact Assessment, in particular, the following: The assessment of burden reductions has been complemented using figures from the consortium that were only made available in the course of the month of July. Some estimations in the Impact Assessment report have also been amended following further scrutiny of the assumptions and estimations presented by the consortium. Section 3 has been extended with an explanation of how the data from the measurement is calculated in general. This is supplemented throughout the document with further explanations of how some of the individual estimations have been calculated. The comments of the High Level Group of Independent Stakeholders have been inserted in section 2. Section 3 includes now an explanation of which reduction

11 See Commission working document "Reducing administrative burdens in the European Union 2007 progress report and 2008 outlook", COM(2008)35;
For details on the High Level Group of Independent Stakeholders see the website of DG ENTR at http://ec.europa.eu/enterprise/regulation/better_regulation/high_level_group_is_en_version.htm

12 Proposal for a Directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies, COM(2008)194, not yet published in the Official Journal

suggestions in the measurement report are not covered in the Impact Assessment report. Comments on the support from stakeholders, including national differences in this regard, have also been inserted in section 3 and throughout the document. Section 4.1 has been extended with an explanation of why an initiative is particularly important for SME's. Further clarity as to the baseline scenario in section 7.1 has been provided. Moreover, sub-option (2) has been inserted in section 7.1.2 and sub-option (1) has been inserted in section 7.1.3. In section 7.6, an estimate of to what extent the envisaged reductions contribute to the global 25% reduction target has been inserted.

3. MAIN SOURCES OF INFORMATION USED

The main source of information on which this impact assessment is based is the large scale measurement of administrative costs, carried out by the consortium which delivered its report on 30 June 2008. Furthermore, the consortium provided some additional information about the reduction potential of possible simplification measures in an additional report of 31 July 2008.[13]

In the measurement report, the total administrative costs deriving from the EU rules on company law (including accounting and auditing) are estimated at a total of 22.74 bn €/year. 84.9% of these costs derive from the obligations of the Fourth Company law Directive[14] and another 4% from the Seventh Company law Directive[15]. About 11% (2.5 bn €) are linked to the company law directives that do not deal with accounting and auditing matters. According to the report by the consortium, about 25% of these are so called "business as usual costs" that would arise even in the absence of legislation. For the accounting directives, these "business as usual costs" are estimated to lie at 40%. This means that the overall administrative burdens in the area of company law can roughly be estimated at about 1.88 bn €/year, and in the area of accounting at roughly 12.13 bn €/year.

The estimates in the report by the consortium are made using the EU Standard Cost Model. The basic principle in the model is to calculate, on the basis of interviews with companies, the costs per occurrence (one type of occurrence could for instance be preparing draft terms of merger) and multiplying with the total (average) number of occurrences in that Member State per year. Then the total costs per Member State per year are summoned. The consortium has applied this method in 6 Member States[16],

13 Although these two reports have been delivered as final versions, minor adjustments in the version that will ultimately be published, at this stage, cannot be excluded.

14 Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11, last amended by Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, OJ L 224, 16.8.2006, p. 1) (.

15 Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1, last amended by Directive 2004/46/EC).

16 These Member States are the Czech Republic, Finland, France, Ireland, Poland and Spain.

reused data in another five Member States[17] where national measurements had already been carried out, and extrapolated figures from the remaining 16 Member States using a method of categorising the Member States in groups depending on criteria related to e.g. average wage rates, average size of companies and total number of companies.

The sometimes considerable differences, in the report, in administrative costs of different countries can, at least partially, be explained by the differences in these criteria. To this end, the measurement report groups the Member States in three groups:

- Large and established economies with high populations, high GDP, mainly limited liability companies and relatively high wages (e.g. FR, DE, UK)
- Smaller (mostly western European) economies with high wages, a generally highly educated labour force and a fairly high GDP (e.g. FI); and
- Emerging (mostly Eastern European) economies with above average growth in GDP, below average wages and relatively low administrative costs (e.g. CZ, PL, BG)

Another explanation is that in the four countries where the national data were taken over for the purpose of the present measurement, the information obligations are not always defined in the same way as in the measurement by the consortium. Where this is the case with a view to a certain information obligation, this is indicated in the following, and where appropriate, these figures are not taken into account with a view to calculating the total costs or potential savings.

The figures and other information provided by the consortium have been complemented by information on national procedures directly requested from the Member States.

Furthermore, also the summary report on the reactions to the July 2007 Communication gives indications on where, in particular, the companies themselves see possibilities for facilitating their lives. Therefore, this information serves as a further basis for this impact assessment. In this context it should be noted that the reactions received and reflected in the impact assessment seem to be influenced to a significant extent by the geographical origin of the respondents. As set out in the summary report on the reactions to the Communication, around 20% of the reactions derived from UK stakeholders and another 20% from German stakeholders. French stakeholders represented about 12% of the total respondents. Whereas a clear majority of UK respondents and respondents from the Nordic countries strongly supported wide reaching simplification measures, French stakeholders and, at least in the area of company law, also a number of German stakeholders were more hesitant. The same is true for the (fewer) respondents from countries like Belgium and Austria. A possible explanation for these trends is that stakeholders in Member States that have been part of the negotiations on these directives are closer to their system and therefore, see less a need for a change than stakeholders from Member States that joined the EU later and were confronted with the directives only at the moment of their accession. From this point of view it would have been interesting to have more reactions from the new Member States, which, unfortunately,

[17] These Member States are Denmark, Germany, the Netherlands, the United Kingdom and, to a limited extent, Austria.

however was not the case. Another factor seems to be that the current high level of harmonisation is useful for international groups of companies that are obviously more present in France and Germany than in smaller Member States.

As to the number of public limited-liability companies concerned, the 2006 survey of the European Companies' Registers Forum[18] provides figures that are used in order to complement the information provided by the measurement.

The impact assessment covers all reduction proposals that the consortium puts forward in its report, with the exception of the proposal to abolish the requirement for holding a general meeting in the acquiring company. This proposal was put forward by the Commission in its July 2007 Communication and rejected by two third of the respondents who reacted to this proposal.

4. PROBLEM DEFINITION

The Third and the Sixth Company law Directives belong to those company law directives that were adopted about 30 years ago. A number of rules contained in these directives no longer seem to match with the technological developments and with today's business environment. In addition, some requirements in these Directives seem to imply costs for at least certain companies that are clearly disproportionate to the purpose pursued by the rules, leaving too little flexibility to Member States and companies to adapt the requirements to their situation. Also some rules seem to be incoherent with more recent rules in other company law directives. Therefore, simplification measures concerning the Third and the Sixth Company law Directives going beyond the 2007 fast track modification were proposed in the July 2007 Commission Communication. When the second fast track package was prepared in March 2008, these proposals were not included in the list as they were not considered as suitable for a fast track procedure. They do not aim at minor legislative changes but at a general update and review of the requirements of these directives.

4.1. The directives on domestic mergers and divisions in today's business environment

The Third and the Sixth Company law Directives apply to mergers and divisions of those public limited-liability companies notified by the Member State in accordance with Article 1 of the Third Directive.

In order to ensure an appropriate protection of shareholders of these public limited-liability companies in the case of a (domestic) merger or division, the directives establish certain information and publication duties that the companies involved have to comply with. In addition, the directives contain rules for the protection of the companies'

[18] European Commerce Registers Forum Survey 2006, http://www.ecrforum.org/section/8/index.html. The Forum is an organism that has been established in order to enhance cooperation between companies' registers in Europe.

creditors. The rights of the employees of the companies involved in the operation are dealt with by separate EU rules[19].

Despite the restriction of the directives' scope to public limited-liability companies, almost all 21 Member States that replied to questions asked by DG MARKT applied the same or similar rules to mergers and divisions of private limited-liability companies, in particular with a view to the reporting requirements established in the directives (see Annex 2). However, in about half of these Member States members of private limited-liability companies have the possibility to renounce (by unanimity) these reports.

Reporting requirements are particularly burdensome for small enterprises. As stressed in the Commission's Small Business Act of 25 June 2008[20], rules should therefore be designed according to the "Think Small First" principle and ensure that exemptions for small enterprises are in place, in order to make their lives easier.

In their current form, the Third and the Sixth Directives do not seem to match with this objective. They regulate the information obligations towards the companies' shareholders in a very detailed way and leave little flexibility to Member States and companies to adapt these requirements e.g. to the size of the companies concerned and the number of their shareholders. The result is that in some cases the costs of complying with the requirements seem disproportionate to the purpose pursued. Furthermore, the ways in which information is to be provided (e.g. making documents available at the companies' registered offices, possibility of requesting paper copies) seem rather old fashioned from today's point of view and are not in line with the methods applied by more recent directives, such as e.g. the Shareholders' Rights Directive[21]. Finally, the directives do not take account of modifications that have been made, in the recent past, to other EU acts which contain similar or related provisions, such as the Second Company law Directive on the capital of public limited-liability companies that was modified in 2006[22] and the Transparency Directive that was adopted in 2004[23].

From the reactions received to the Communication and the preliminary results of the measurement of administrative burdens, it can be concluded that a review of these Directives should look in particular at the following issues:

– <u>Reporting requirements in the context of a planned merger or division:</u> the current rules in the directives seem very detailed and leave Member States and companies

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[19] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16

[20] Communication from the Commission: "Implementing the Community Lisbon programme: Think Small First - A Small Business Act for Europe, COM(2008) 394, pages 7/8

[21] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184, 14.7.2007, p. 17

[22] Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital, OJ L 264, 25.9.2006, p. 32

[23] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004, p. 38

little flexibility as to the appropriateness and the contents of the different reports. Furthermore, the fact that also the Second Company law Directive plays a role in the process leads to cases of double reporting in particular in the context of divisions;

– Publication and documentation duties: the ways by which documents have to be published and/or made available to shareholders is rather old fashioned and creates unnecessary costs; and

– The protection of creditors in the context of the directives: Here, a recent modification of a parallel rule in the Second Company law Directive has led to certain inconsistencies within EU law.

4.2. Reporting requirements in the context of a planned merger or division

Under the Third and the Sixth Company Law Directives, companies that prepare a merger or a division are subject to a number of reporting requirements. These reports are meant to inform shareholders about the legal modalities of the operation, the economic background and the underlying facts and data that led the management of the companies involved to propose a certain share exchange ratio.

The rules in the Third and Sixth Directives determine in a relatively detailed way what reports are required and from whom. Thus, a **detailed written report** explaining the draft terms of the operation and setting out the legal and economic grounds[24] is required from the management or administrative bodies of the companies involved, a **report of an independent expert** is needed in order to assess in particular whether the proposed share exchange ratio is fair and reasonable[25] and an **accounting statement** has to be drawn up if the latest annual accounts relate to a financial year that ended more than 6 months before the date of the draft terms of merger or division[26]. Furthermore, in the case of a division where both an expert report under the Second Company law Directive and an expert report on the draft terms of division are required, the Sixth Directive only allows Member States to provide that both reports can be established by the same expert[27]; there is no **exemption** from either of these reporting requirements granted under any of the two directives.

4.2.1. Detailed written report on the draft terms of merger/division by the management

The draft terms of merger/division form the legal basis of the merger/division and are normally drawn up by the administrative or management bodies of each of the companies involved in the merger/division with the help of external experts (lawyers, M&A specialists), and are to be published in the manner prescribed by the national law.[28]

In order to explain the content of this legal document to the shareholders, the company's management has to draw up a detailed written report to the general meeting where it also has to set out the legal and economic grounds for the merger/division, in particular the

[24] Article 9 Third Directive, Article 7 Sixth Directive
[25] Article 10 Third Directive, Article 8 Sixth Directive
[26] Article 11(1)(c) Third Directive, Article 9(1)(c) Sixth Directive
[27] Article 8(3) Sixth Directive
[28] Art. 5(1), Art. 6 Third Directive; Art. 3(1), Art. 4 Sixth Directive

basis for the exchange ratio and the criterion for the allocation of shares.[29] This report, in most cases, is produced in-house so the costs for the company are relatively limited.

According to the measurement report the average cost of the detailed written report in the EU is 3,304 € for mergers and 10,079 € for divisions. However, these figures include big differences between the Member States. Disregarding some extreme figures from Germany and United Kingdom would make the average cost in the EU 689 € for mergers and 7,799 € for divisions.[30] The latter differences in costs seem mainly related to the question whether the help of external experts is used or not.

The measurement report indicates that for **mergers**, the total administrative costs (including external and internal costs) of requiring the detailed written report in the EU amount to around 7.79 mio €/year. 25% are estimated to be so-called "business as usual costs", so that the administrative burden is estimated to lie around 5.84 mio €/year.

With a view to **divisions**, the corresponding total costs are about 7.98 mio €/year, but this figure only covers 23 Member States.[31] Assuming the costs of divisions, in the missing four Member States, are about the same as for mergers the total costs for divisions can be estimated to 8.89 mio €/year, and the administrative burden 6.67 mio €/year.

As further discussed below in sections 4.2.2. and 7.1., the question is whether the requirement of the management report is really necessary in all cases, or if more flexible requirements would make better regulation.

4.2.2. Independent expert report

An additional document that the administrative or management bodies of each of the companies involved have to submit to their shareholders is a report by an independent expert on the draft terms of merger/division.

While the report by the management fulfils mainly an explanatory function, the expert report must look at the substance of the economic decisions that have been taken in the draft terms of merger/division having a direct impact on the situation of the shareholders. The requirement that the report has to be established by an independent expert (normally an auditor) serves to ensure that the shareholders are provided with an objective basis for the decision on the merger/division that they have to take in the general meeting.

Given the need to employ an independent expert, the costs linked to this report are considerably higher than that of the report by the management. These costs consist mainly of the external costs (fees to be paid to the expert) but also internal costs are

[29] Art. 9(1) Third Directive; Art. 7(1) Sixth Directive

[30] The UK figure for divisions is 21 € (UK) and the DE figure for both mergers and divisions is 68,005 € per incident. It is unknown to what extent these extreme figures are the result of differences in the method of measurement in the UK and DE national measurements compared to the measurement made by the Consortium. In general the average total costs per management report are between 250 and 1,750 € for mergers and between 3,000 and 19,000 € for divisions.

[31] The missing MS are DK, HU, IE and NL.

created by the need to appoint the expert and to provide him with the necessary information.[32]

According to the consortium the average cost of the expert report in the EU is 41,774 € for mergers and 42,829 € for divisions. Again, these figures include big differences between the Member States. Disregarding some extreme figures from Netherlands and United Kingdom would reduce the average cost to 19,432 € for divisions.[33]

The measurement report estimates that for **mergers** the total costs in the EU are estimated to be 330.86 mio €/year and the administrative burden 248.15 mio €/year.

For **divisions**, the corresponding total costs in the EU are estimated to be 108.23 mio €/year and the administrative burden 81.17 mio €/year.[34]

Despite of the different functions of the management report on one hand and the expert report on the other, there are obviously overlaps between the two reports. Both reports are required to elaborate on the draft terms of merger/division, especially the share exchange ratio and any special valuation difficulties which have arisen.

For instance in the case of mergers between **smaller public limited-liability companies** with a limited number of shareholders and limited assets, an expert report might not be necessary. The situation might be sufficiently transparent on the basis of the written report of the management alone. The same goes for divisions of small public limited-liability companies.

In other situations, an expert report might be necessary but not an additional written report by the management, as, in order to evaluate the draft terms of merger or division, the expert report normally will need to describe also the content of the draft terms more precisely.

There even might be situations where neither of the two reports is necessary, for instance if all shareholders are also managing directors in the company and therefore already have all relevant knowledge.

Despite these possible overlaps between the two reports, and possible cases of redundancy, the Third and the Sixth Directives do not provide any possibility for exemption from any of the requirements. The only flexibility in this respect was introduced by Directive 2007/63/EC[35] that provided that no expert report needs to be established where all shareholders renounce it. This rule was copied from the more recent

32 Based on figures from the six Member States where the consortium has made a measurement themselves the external costs account for around 97% of the total costs of an expert report.

33 The figures from NL and UK are 22.50 € and 623,749 € respectively (both taken from the national measurements).

34 The total figure from the consortium is 105,600,583 €, but this figure does not include DK. Assuming the costs from DK are the same as for mergers the total costs in EU are 108,227,116 €.

35 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 was published in the Official, OJ L 300 of 17 November 2007, p. 47.

Directive on cross-border mergers[36] and has to be transposed by the Member States by 31 December 2008.

The rules of the Third and the Sixth Company law Directives also do not take into account the flexibility introduced in 2006 into the Second Company law Directive as regards the expert valuation of a contribution in kind[37]. This modification allows Member States to grant an exemption from the requirement for an expert report in three cases: (1) where the contribution in kind consists of transferable securities traded on a regulated market, (2) where it consist of other assets that have already been subject to a fair value evaluation by an independent expert less than six months before the relevant date, and (3) where the fair value of the contribution is derived by individual asset from the audited statutory accounts of the previous financial year.

The modification of the Second Directive had to be transposed by the Member States by 15 April 2008. However, by 15 August, only 20 Member States had notified the transposition to the Commission, and it seems as if only very few of them have made use of this option concerning the expert report.

4.2.3. Accounting statement

Where the last annual accounts are older than six months at the moment where the draft terms of merger/division are drawn up, the management of each of the companies –listed and unlisted- involved also has to prepare an accounting statement. For this statement the management has to use the same method and layout as for the annual balance sheet. The statement, however, does not need to be audited.

The accounting statement is one of the documents which currently need to be provided to the shareholders at the company's registered office one month ahead of the general meeting deciding on the merger/division and sent to every shareholder, who requests it, free of charge.[38] This applies in principle both to mergers/divisions by way of normal procedure and to the different cases of simplified mergers/divisions.[39]

The consortium seems to have measured only three of the information obligations in the Third and Sixth Directive where the preparation and disclosure to the shareholders of an accounting statement is relevant, namely the two main provisions and one of the simplified procedures for divisions.[40]

As regards **mergers** the consortium estimates that the costs of making available to the shareholders the different documents concerned amount to 3.49 mio €/year in the EU[41],

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36 Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, OJ L310, 25.11.2005, p. 1.

37 See Art. 10a of Directive 77/91/EC, introduced by Art. 1(2) of Directive 2006/68/EC

38 Art. 11(1) and (3) Third Directive and Art. 9(1) and (3) Sixth Directive. The other documents that need to be made available to the shareholders are the draft terms of merger/division, the annual accounts and reports of the merging/dividing companies for the preceding three financial years, the detailed written report by management and the independent expert's report.

39 See Art. 8(b), 24, 25(b) and 27(b) Third Directive and Art. 6(b) and Art. 20(b) Sixth Directive.

40 Only Art. 11(1) and (3) Third Directive and Art. 6(b) and 9(1) and (3) have been measured, but not Art. 8(b), 24, 25(b) and 27(b) Third Directive and Art. 20(b) Sixth Directive.

41 Data missing from DK.

apparently only counting the number of occurrences of normal procedure mergers. There are no "business as usual costs" in this case.

The consortium assumes that 30% of the measured costs relate to producing the accounting statement and making it available to the shareholders afterwards. Given that the accounting statement can be extracted from the accounting system, does not require an audit and requires less pages to be copied etc. than the three financial reports, the assumption of 30 % of the measured costs seems to be acceptable.

If one applies this 30 % assumption to the measurement made by the consortium the cost savings that could be made in the EU if the accounting statement was not required at all can be estimated at about 1.05 mio €/year for normal procedure mergers. On top of this come the cost savings related to the simplified mergers regulated by Art. 8(b), 24, 25(b) or 27(b) Third Directive.

As regards **divisions** the consortium estimates that the costs of making available to the shareholders the different documents concerned amount to 0.24 mio €/year, only counting, however, the number of occurrences of divisions carried out in the normal procedure. On top of this come, total costs of about 0.51 mio €/year regarding simplified divisions according to Art. 6(b) Sixth Directive. These costs are based on data from the 14 Member States[42] where a general meeting, under certain conditions, only is required in the dividing company.

If one applies the 30 % assumption referred to above the total cost savings in the EU would be around 0.23 mio €/year for these two types of division. No figures are available regarding simplified divisions where the recipient companies together hold all the shares of the company being divided and therefore only general meetings in the recipient companies are required.[43]

The objective of the requirement for an accounting statement is to provide the shareholders of listed and unlisted companies with an update on the assets and liabilities of the companies involved. However, the six months' deadline seems a bit arbitrary as events influencing the financial situation of the company can arise any time and are not necessarily more likely five months after the annual accounts have been issued than two months after that date. Furthermore, as indicated above, in cases e.g. where all shareholders are involved in the management of the company the statement may not bring much added value for them.

Finally, the rule in the Third and the Sixth Directives on the accounting statement does not take account of the half yearly financial statements that have to be prepared by listed companies under the rules of the Transparency Directive[44]. Where such half-yearly statements have to be prepared, the necessary financial information is already updated in a six months' rhythm so that the establishment of an additional accounting statement on the occasion of a planned merger or division does not seem necessary. At least in this respect, the current rules of the Third and the Sixth Directives therefore create unnecessary administrative burden.

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42 These are: AT, CZ, FI, FR, EL, IE, IT, LT, LU, NL, SI, ES, SE and UK.

43 Art. 20(b) Sixth Directive

44 Art. 5 Directive 2004/109/EC

4.2.4. Double reporting in the case of an increase in capital or setting up of a new company linked to division of companies

An independent expert report has to be drawn up, under the rules of the Second Company law Directive, when shares are issued for consideration other than in cash both in the context of setting up a company and in the context of a capital increase in a company.[45]

On the basis of that report, shareholders can verify whether the value of the non-cash consideration corresponds to that of the shares issued in exchange. The purpose of these rules is, therefore, to avoid the danger of overvaluation (either of property or claims) to the detriment of the company and to protect the interests of shareholders and creditors.[46]

Member States have the possibility to provide for an exemption from the reporting requirement both where a new company is set up by merger and where the capital is increased in the course of **a merger or a public offer** for the purchase or exchange of shares.[47] The reason for these possibilities is that, both in the case of a merger and of an exchange offer, the respective directives (the Third Company Law Directive and the Takeover bids Directive) provide for a report which, although its scope is larger, has to include the information normally contained in the expert report.[48]

However, the EU rules do not offer a similar exemption possibility in the case of setting up a new company or an increase of capital linked to a **division** of a company, although the Sixth Directive contains the same rules on the expert report to be established as the Third Directive. Instead, under the rules of the Sixth Company Law Directive, Member States only have the possibility to provide that the report on the division and the report on the consideration in kind may be drawn up by the same expert.[49] This situation seems to be inconsistent and unnecessary burdensome at least in those cases where the report under the Sixth Directive is indeed established.[50]

It should be noted that the consortium ranks the obligation to establish an expert report in the comparable case of a merger and the duty to have an expert report under the Second Directive fifth and eighth in the top 10 of most burdensome information obligations in company law.

The consortium estimates the costs and also the burdens of requiring an expert report under the Second Directive in the context of divisions at about 66 mio €. This figure, however, is based on the erroneous assumption that one expert report drawn up under the Sixth Directive will always be accompanied by one expert report under the Second

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45 Art. 27(2), (3), Art. 10 Second Directive, Art. 10 Third Directive

46 Cf. AG Tesauro, Case C-83/91 (Wienand Meilicke), European Court reports 1992, I-4871, para 14, 19.

47 Art. 27(3) Second Directive

48 cf. Articles. 5, 9, 10 Third Directive; in the case of a takeover the report is the offer document, Art. 6(3) Takeover bids Directive (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142, 30.4.2004, p. 12)

49 Articles 8(3) and 22(4) Sixth Directive

50 Any measure in this area should therefore be seen in the context of possible measures concerning the reporting requirements in the Third and Sixth Directives.

Directive.[51] Moreover, the cost estimate from the consortium does not take into account the expert report for considerations other than in cash where the subscribed capital is increased in the course of a division.[52]

It seems, therefore, more appropriate to calculate the total costs/burdens in this context on the basis of an estimated average cost per expert report under the Second Directive and to multiply this average with an estimate of the number of occurrences.

According to the figures provided by the consortium , the average cost per occurrence in the EU when requiring an expert report for contributions in kind is 16,700 € in the context of setting up new companies and 11,180 € in the context of capital increases. Since, in the context of divisions, it is far more common to set up new companies than to increase the capital of existing companies, a rough estimate of the average cost per occurrence in the EU can be set to around 15,000 €.

The measurement report estimates that around 4,331 draft terms of divisions of public limited liability companies are produced in the EU per year.[53] However, for Denmark the consortium comes to very high figures as some of them are counted multiple times. Based on an estimate by the Danish Commerce and Companies Agency (DCCA) the Danish figure is rather 327 than 2,806 making the total number of draft terms of divisions 1,852 in the EU per year. Since most, but not all, occasions of draft terms of divisions lead to the division taking place, the number of divisions of public limited companies in the EU can be estimated to be around 1,800/year.

According to an estimate provided by the DCCA, about half of all divisions of public limited liability companies in Denmark are carried out either by way of setting up new public limited liability companies or increasing the capital of existing companies that act as recipients for the assets and liabilities of the company dividing. Taking into account that, in Denmark, divisions often involve private companies as recipient companies that do not fall under the requirements of the Second Directive, it can be assumed that this 50% assumption marks the lower end of the possible range for the whole EU.

It would lead to assuming about 900 occurrence in the EU per year and thus to costs of around 13.5 mio €/year. In an alternative scenario where it is assumed that 1,300 cases of double reporting of this kind occur per year in the EU the estimated costs would lie around 19.5 mio €, so that the total range of costs/burdens can be set around a level of between 13.5 mio € and 19.5 mio €/year.

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51 On the one hand the two expert reports need not have anything to do with each other (for instance if the recipient companies of a division of a public limited liability company are private companies, or if the recipient companies are existing public limited companies and they do not increase their capital as a consequence of the division; in that case an expert report under the Sixth Directive is required but no expert report is required under the Second Directive). On the other hand one expert report drawn up under the rules of the Sixth Directive might necessitate several expert reports under the Second Directive (for instance if several new public limited companies are set up as a consequence of the division).

52 Art. 27 (2) of the Second Directive.

53 The consortium's figure is 4,327 but data is missing from IE and LT. Looking at the figures from other information obligations e.g. "Disclosure of division" suggests that the figures from these two Member States should be 0 and 4.

No matter whether the latter estimate is used or the consortiums estimate is used as a basis, these figures show that, apart from the argument of consistency, the current situation also can create considerable costs that appear to be a typical example of an administrative burden. In a modern business environment, double reporting should be avoided to the extent possible as it creates additional costs for companies without providing real added value to shareholders and creditors.

4.2.5. Simplified mergers and divisions between parent companies and subsidiaries

The current rules of the Third and the Sixth Directives already give Member States the possibility to facilitate mergers and divisions between parent companies and their subsidiaries and, therefore, to reduce the administrative costs linked to these operations. These possibilities are, firstly, the possibility to grant an exemption from the requirement to hold a general meeting in certain cases. Secondly, in certain cases, also the requirements concerning the documentation to be provided to the shareholders of some or all of the companies involved can be reduced.

The problem for the companies is that both according to the information in the report from the consortium and that provided by the Member States (see Annex 3) only a few of the 27 Member States make full use of the possibilities described above (called in the following "simplified mergers and divisions").[54]

Average costs on mergers and divisions could in most Member States be substantially reduced if companies were given the right to make use of the exemption possibilities concerning simplified mergers and divisions.

Based on the information from the consortium, the following example shows some of the differences in requirements and costs due to the implementation or non-implementation of the simplified procedures:

Contrary to Spain, France has not implemented the simplified merger procedure in Art. 28 Third Directive according to which amongst others the obligations “Detailed written report on merger” and “Experts' report on merger” are, under certain conditions, not required. Partly as a result of this, in Spain, for every 100 draft terms of merger there are only five detailed written reports being drawn up and five expert reports, whereas in France 96 and 71 reports respectively are established. As shown in sections 4.2.1. and 4.2.2., the average cost, in the EU, of a detailed written report is 3,304 €, and 41,774 € in the case of an expert report (in relation to mergers).

There can be different reasons for the choice of Member States not to grant the exemptions: one can be a concern that minority shareholders are not adequately protected, another one can lie in the ownership structure of companies in that country (if mainly dispersed ownership some of the exemption possibilities will not be relevant).

The concern that minority shareholders may not be adequately protected, however, seems exaggerated, since the exemption possibilities also provide for minority protection rules (see the conditions set out in Annex 3, point 1).

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[54] It seems as if only SK and UK make full use of all exemption possibilities (Art. 24-29 Third Directive and Art. 20 Sixth Directive).

4.3. Publication and documentation duties

4.3.1. Publication of the draft terms of merger/division and of the merger/division itself

The text of the draft terms of merger/division has to be disclosed in accordance with the mechanisms provided for under the First Company law Directive: the draft terms therefore have to be filed with the companies register and published in the Member State's national gazette or on a central electronic platform.[55] The same applies to a merger or a division that have taken place.[56]

On 17 April 2008, the Commission adopted a proposal that aims at reducing the administrative costs linked to the disclosure regime of the First Company law Directive. If this proposal is adopted by the European Parliament and the Council, also the costs of a merger and a division will be reduced. The measurement report provides figures on the future savings with a view to the obligation to publish the fact that a merger/division has taken place. These are estimated at about 1.7 mio €/year.[57] Concerning the publication of the draft terms of merger/division, only figures that also include the drawing up of the draft terms are provided. The total costs of drawing up the draft terms and publishing them are estimated at about 1.9 mio €/year[58]. The total future savings from the Commission proposal of April 2008, in the area of mergers and divisions can therefore roughly be estimated at between 2 and 3 mio €/year.

However, not only the way in which the publication has to take place but also the use of the obligation, for the companies, **to file the draft terms of merger/division with the companies' register** can be questioned. The nature of the information contained in the draft terms is different from the other information that has to be kept in the company's file (like name, address and names of persons entitled to represent the company): Once the decision on the merger/division has been taken and the deadline for contesting the operation has expired, the public interest in that document seems to be limited. This temporary information need could also be satisfied by a publication of the draft terms of merger/division on a generally accessible website.

The situation is somewhat different with a view to the **filing of the merger/division itself**: The two directives explicitly link a number of legal consequences to the merger and the division (transfer of assets and liabilities, end of the existence of the acquired company/company to be divided). These are significant, long term effects, so that it seems appropriate to maintain the existing disclosure regime in this respect.

Whereas the filing costs for this latter information, therefore, seem unavoidable, the costs caused by the obligation to file also the *draft* terms of merger/division do not appear justified. Even once the additional costs currently caused by the publication obligation

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55 Art. 6 Third Directive, Art. 4 Sixth Directive and Art. 6(1) of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, OJ L310, 25.11.205, p. 1

56 Art. 18 Third Directive, Art. 16 Sixth Directive

57 About 1.57 mio € for mergers and 137,000 € for divisions.

58 About 1.74 mio € for mergers and about 170,000 € for divisions. The difference in costs can be explained by the different number of occurrences of the two types of events.

under the First Directive have been removed, the filing of the draft terms of merger/division with the register will still cause costs to companies in most Member States. Annex 4 shows that in ten out of the sixteen Member States that have answered the question, companies are charged a fee for the publication of draft terms of merger/division. In six of the sixteen Member States no fee is charged. For those Member States that charge a fee the fee varies from 1 € (in Germany) to 289 € (in Greece). In average the fee is around 105 €. For the nine Member States with specific information on the size of the fee the total costs are 0.44 mio €/year for mergers and 0.04 mio €/year for divisions. On this basis it can be estimated that the total costs in the EU of filing draft terms are about 1.39 mio €/year for mergers and 0.09 mio €/year for divisions, or 1.48 mio €/year for mergers and divisions taken together.[59]

4.3.2. Documentation to be made available to shareholders ahead of the general meeting

As mentioned above under section 4.2.3., at least one month before the general meeting which is to decide about the merger/division, shareholders have to be given the possibility to inspect certain documents at the place of the registered office (the draft terms of merger/division, the reports and the statement referred to under points 4.2.1, 4.2.2 and 4.2.3, and the annual accounts and annual reports of the merging companies (respectively: the companies involved in the division) for the preceding three financial years) and to receive free copies of these documents at their request.

This information requirement does not take into account the technological developments and today's business environment. Nowadays, share ownership in public limited-liability companies is increasingly dispersed, in particular where companies are listed on a regulated market. The Impact Assessment that was drawn up, in 2006, for the Commission proposal for a Directive on certain rights of shareholders in listed companies[60] showed that in 2004, on average, about one third of shares in companies listed in the EU were held by non resident shareholders and that the tendency during the last years has been towards a fast increase of cross-border ownership for EU listed companies.[61] It seems obvious that for foreign investors the possibility to consult documents at the place of the company's registered office is almost worthless. But also for non-listed companies that are likely to have a more homogeneous ownership structure such on the spot consultation possibilities no longer seem appropriate.

This conclusion is supported by anecdotal evidence that copies of the annual reports, for example, are requested only by a minority of shareholders. However, despite the low demand from the side of their shareholders, companies have to produce a considerable

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59 The Member States on which no information is available are: BG, FI, HU, LU, LV, NL, PL, PT, RO, SI and ES. It is assumed that in 62.5 % (=10/16) of these Member States the average EU fee applies and that in the other Member States no fee applies. For FR, there is information that there is a fee of 3-4 € per line but no information on the average number of lines. Therefore, the average EU fee of 105 € is also used as an estimate in FR.

60 Directive 2007/36/EC, see footnote 21.
The impact assessment on this proposal can be found on DG MARKT's website at http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm

61 SEC(2006)181, pages 8 and 48, http://ec.europa.eu/internal_market/company/docs/shareholders/comm_native_sec_2006_0181_en.pdf

number of paper copies of the three reports in advance in order to be able to meet possible requests without delaying the process. In the case of cross-border mergers[62] copies may even have to be provided in different languages.

In order to illustrate the problem, the example set out in Annex 5 shows the documentation that was made available in the context of a recent merger between two large insurance groups, on the basis of the current rules of the Third Directive. The total costs for the printing of about 22,000 copies of the last three annual reports and 14,800 copies of the last quarterly financial statements, the storing, mailing and, finally, the destruction of redundant copies amounted, in that case, to about 800,000 €. Although this example is obviously not representative for the average merger in the EU, it shows what consequences the current rules can have.

The production of high numbers of copies that are, in the end, not requested by shareholders does not seem acceptable from an environmental point of view either. However, if a company does not want to risk delaying the process it is almost impossible not to produce the copies before requests from shareholders are actually received.

As mentioned above under section 4.2.3, the consortium has measured only three of the information obligations in the Third and Sixth Directive where the inspection and making available of documents ahead of the general meeting is relevant.

As regards **mergers,** the consortium estimates that the costs and burdens of making available to the shareholders the different documents concerned amount to 3.49 mio €/year in the EU[63], only counting the number of occurrences of normal procedure mergers. On top of this come, therefore, the costs related to simplified mergers[64] for which however, no figures are available. The amount referred to above can therefore be considered as a minimum average amount.

As regards **divisions,** the consortium estimates that the costs and burdens of making available to the shareholders the different documents concerned amount to 0.24 mio €/year, only counting the number of occurrences of normal procedure divisions. On top of this come, therefore, total costs of 0.51 mio €/year regarding simplified divisions in those 14 Member States[65] where a general meeting only is required in the dividing company.[66] This leads to a total of 0.75 mio €/year for divisions.

One has to add to this, finally, the costs related to divisions where the recipient companies together hold all the shares of the company being divided and therefore only general meetings in the recipient companies are required.[67] On these costs no figures are available so that, again, the total amount referred to above can be regarded as a minimum average amount.

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62 Through the reference, in Article 6(2) of Directive 2005/56/EC, to "additional requirements imposed by the Member State to which the company concerned is subject", the national rules on documentation requirements deriving from the provisions of the Third and the Sixth Directive for domestic mergers and divisions will normally apply also in the context of cross-border mergers.

63 Data missing from DK.

64 Those under Art. 8(b), 24, 25(b) and 27(b) Third Directive.

65 These are: AT, CZ, FI, FR, EL, IE, IT, LT, LU, NL, SI, ES, SE and UK.

66 Art. 6(b) Sixth Directive

67 Art. 20(b) Sixth Directive

This means that the total administrative burdens for mergers/divisions in this context amount at least to 4.24 mio €/year.

4.4. Protection of creditors

Creditor protection rules in the Third and the Sixth Directives were created on the basis of the concept that had already been used, a few years earlier, for the Second Directive on the capital of public limited-liability companies.

Directive 2006/68/EC modifying the Second Directive modernised the creditor protection rule applicable in case of a reduction in capital[68]. The procedure for protecting creditors whose claim antedate the publication of the decision on the reduction was specified more in detail. It was also clarified that these creditors have to show credibly that their claims are being jeopardised by the capital reduction if they want to obtain security.

This change so far has not been reflected in the parallel provisions in the Third and the Sixth Directives which does, at this stage, not seem to lead to problems in practice but creates an unnecessary incoherence in the rules of these three directives.

5. SUBSIDIARITY

Action at EU level is necessary to the extent that the obligations that impose administrative burdens derive from EU directives. Under those conditions, the reduction of administrative burden requires the modification of the EU rules. Action at EU level is therefore justified.

6. OBJECTIVES

The objective of the initiative is to enhance the competitiveness of EU companies by reducing administrative burdens caused by the rules of the Third and the Sixth Directives where this can be done without jeopardising the interests of other stakeholders.

In particular, this initiative aims at:

- Reducing reporting requirements at EU level in the context of mergers and divisions, in order to provide Member States and companies with more flexibility to decide which reports are really needed in each specific case;

- Removing rules that lead to double reporting and, therefore cause unnecessary costs to companies;

- Adapting rules on publication and information duties to the technological developments, also with a view to general environmental considerations; and

- Ensuring coherence between the rules of the Third and the Sixth Directives on one hand and recent changes to the rest of the Company law acquis on the other hand, in

[68] Article 32 Second Directive, as modified by Art. 1(9) of Directive 2006/68/EC

particular as concerns the creditor protection rules in the Third, the Sixth and the Second Directive.

7. POLICY OPTIONS AND ANALYSIS

This section examines different policy options that could be chosen in order to reduce administrative burdens, i.e., the respective merits of doing nothing, reducing the requirements in the directives and, possibly, preventing Member States from imposing certain requirements on companies (full harmonisation). These options are discussed and measured against the following pre-defined criteria:

(a) Reduction of companies' administrative burdens: Information obligations create internal and external costs to the company (e.g. fees and remunerations for external experts etc). Where the companies would not incur the same costs without the information obligation these costs are administrative burdens. These burdens prevent companies from using their capital for purposes that are directly related to their business and, therefore, reduce the competitiveness of these companies.

(b) Impact on the rights of resident and non-resident shareholders: The majority of rules in the Third and the Sixth Directives are designed to protect shareholders, and in particular minority shareholders. Any reduction in obligations for companies therefore needs to be weighed against the interest of the shareholders in obtaining this information. Where the question is at stake how to provide information (e.g. in paper or electronically, through the company or through central bodies) in particular the accessibility for shareholders and possible access costs have to be taken into account.

(c) Impact on creditors and other stakeholders (e.g. employees): Mergers and divisions have an impact also on stakeholders like creditors and employees. Any proposal for measures therefore has to take into account the possible impact on these parties.

(d) Environmental impact: Reporting and information requirements that rely on paper based solutions have a negative environmental impact and should therefore be replaced by electronic solutions where this is possible and appropriate. This approach is also in line with the Sustainable Development Strategy of the EU, by reducing the use of resources at the production and by reducing waste.[69]

(e) Consistency with other directives: For the sake of clarity and legal certainty, the rules on domestic mergers and divisions should be in line with related rules, such as those on cross-border mergers, and take account of changes that have been made to these rules in the last years.

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69 See e.g. Communication from the Commission to the Council and the European Parliament - Towards a Thematic Strategy on the Sustainable Use of Natural Resources (COM(2003)572 final), available at: http://ec.europa.eu/environment/natres/index.htm

7.1. Reporting requirements – measures targeting all public limited-liability companies

7.1.1. Option 1: No policy change

Based on the estimations above, the average administrative burdens of the current situation where all three reports have to be provided to shareholders lie at around 255.04 mio €/year for mergers and 88.06 mio €/year for divisions.[70] These estimations do not take account yet of the modification introduced by Directive 2007/63/EC with a view to the independent expert report as this directive has to be transposed only by 31 December 2008. With a view to this modification, the consortium assumes that 66 % of all micro and small companies and 25 % of all larger companies will make use of the waiver introduced by Directive 2007/63/EC. On the basis of this assumption, the transposition of that modification would lead to burden reductions of 128.17 mio €/year for mergers and 41.92 mio €/year for divisions, or 170.09 mio €/year in total.[71] The total yearly administrative burdens of the reporting requirements should therefore be reduced to about 126.87 mio €/year in the context of mergers and 46.14 mio € in the context of divisions.

Apart from situations covered by this new exemption, the production of the reports remains mandatory. Given that there are also no indications for developments that would render this production less costly than is the case today, option 1 would mean that, after 31 December 2008, these costs would remain unchanged.

7.1.2. Option 2: Introduce the possibility, for shareholders, to renounce the written report of the management and the accounting statement

(1) Waiver by unanimity

As just indicated, Directive 2007/63/EC modified the Third and the Sixth Directives by aligning them with the rule in Directive 2005/56/EC on cross-border mergers which says that no expert report has to be established where all shareholders renounce it. Option 2 would imply extending this rule to the written report of the management and the accounting statement.

The modification, by Directive 2007/63/EC, reflects the Roman law principle "Volenti non fit iniuria" which means that there is no need to force protection on someone who does not consider this protection necessary. Extending this rule to the requirements for the written report by the management and the accounting statement seems only logical. It should also be noted that about half of the Member States that provided DG MARKT with information already apply this possibility of a waiver in the case of mergers and divisions of private limited-liability companies.

Creditors and other stakeholders would not be affected by this change. The rules establishing the reporting requirements are designed for the protection of the

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[70] Total costs minus 25% "business as usual costs".

[71] According to the consortium 65% of all companies are micro or small companies and 35% are larger companies. The calculation is then e.g. for mergers: 330,860,951*(65%*66%+35%*25%) = cost saving of 170,889,681. Subtracting 25% for business as usual costs gives burden reduction.

shareholders, not of the creditors (see point 4.4) or the employees (the protection of employees is dealt with by separate EU acts[72]) who enjoy protection under different rules. Consequently, whereas the draft terms of merger/division are publicly available, the directives provide that the report of the management and the accounting statement only have to be accessible to the shareholders.

With a view to the **written report by the management**, the administrative burden reduction of such a modification can be estimated to lie at 3.02 mio €/year for mergers and another 3.45 mio €/year for divisions, under the same assumption as above.

With a view to the **accounting statement**, the administrative burden reduction is currently estimated at 0.54 mio €/year for mergers and 0.12 mio €/year for divisions, on the basis of the same assumption (but might be higher, cf. section 4.2.3).

The total administrative burden savings under option 2 can therefore be estimated to be 7.12 mio €/year, that come on top of the 170.09 mio €/year arrived at under option 1.

(2) Waiver by majority

In its report, the consortium proposes to introduce a waiver by majority decision of the shareholders represented at the general meeting. Despite the need to call a separate general meeting to decide on the waiver, the consortium estimates that this scenario could imply additional savings of 1.01 mio €/year compared to a decision by unanimity. However, the calculation does not seem to take account of the costs that are caused where the general meeting is called but the majority is not reached.

7.1.3. Option 3: Restrict reporting requirements to larger or to listed companies

(1) Restricting the reporting requirements to medium-sized and large companies

This option would imply an exemption, from the reporting requirement, for micro entities and small companies. Micro and small entities are defined as follows:

	Micro	Small	Medium	Large
Net turnover (€)	≤ 1 000 000	≤ 8 800 000	≤ 35 000 000	> 35 000 000
Balance sheet total (€)	≤ 500 000	≤ 4 400 000	≤ 17 500 000	> 17 500 000
Number of employees	≤ 10	≤ 50	≤ 250	> 250

The consortium estimates the total potential of this proposal for reducing administrative burdens at about 166.56 mio €/year for mergers and another 55.65 mio €/year with a view to divisions or 222.21 mio €/year in total for mergers and divisions, i.e. 52.12 mio € above the 170.09 mio € arrived at under option 1.

(2) Restricting the reporting requirements to listed companies

[72] See footnote 19.

One possibility for reducing the current requirements would be to limit the reporting obligations to listed companies. Such a limitation can be found in a number of EU rules dealing with transparency and information and reporting duties (e.g. Transparency Directive, Shareholders' rights Directive, Prospectus Directive). Such a restriction could be justified with the fact that a company that uses the stock exchange in order to raise funds from a broad public can also be made subject to stricter requirements than a non-listed public limited liability company.

According to information from the Federation of European Stock Exchanges (FESE), the number of companies based in the EU that had shares listed at EU FESE members, in May 2008, was 8,488. These are 1.3% of the total number of public limited-liability companies in the EU which, on the basis of the figures provided by the European Registries Forum[73], can be estimated at about 650,000.

The potential cost reduction under this option, however, can be estimated to lie below the 99% that the above figures suggest. In the case of listed companies, the reporting can be expected to be more complicated and therefore, on average, more expensive than in the case of unlisted ones. However, even if a reduction potential of only 80% of the total costs was assumed, this option could reduce the total administrative burden of these requirements by, on average, a further 101.5 mio €/year with a view to mergers and 36.9 mio €/year with a view to divisions, compared to option 1.[74]

7.1.4. Option 4: Repeal the reporting requirements in the directives

Option 4 implies deleting the reporting requirements from the directives. This means that it would be left to Member States whether and which reporting obligations they impose on their companies. This option takes account of the fact that, even where Member States decide to require certain reports, it is easier for them to define cases in which these reports are not needed (limited size of the companies involved, and in particular of the company to be acquired, limited number of shareholders etc.), on the basis of the specifics of the country concerned, taking into account that the Third and the Sixth Directives deal with purely domestic mergers/divisions.

This option could reduce the burdens linked to EU requirements in that area to zero and therefore lead to further burden reductions of about 126.87 mio €/year in the context of mergers and 46.14 mio €/year in the context of divisions, compared to option 1[75]. However, due to the need to protect shareholders at least under certain circumstances it seems likely that at least some Member States would maintain certain reporting requirements at national level.

7.1.5. Comparing the options

Option 1 would not lead to any further reduction in administrative burden and would therefore not meet the objective set out under point 6.

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73 See Annex 5. No figures were available for BE, BG, DE, GR, HU and SE.

74 These figures are calculated on the basis of the figures calculated above under Option 1: No policy change. Merger: 126.87 mio*80%. Division: 46.14 mio*80%.

75 The figures calculated refer to the calculation made under Option 1 above.

Under all other options, firstly the requirement to set up an accounting statement should be abolished where the company has set up a half-yearly financial statement under the Transparency Directive. This is a change that merely adapts the requirements of the Third and the Sixth Directives to take account of the Transparency Directive.

For the rest, option 4 is likely to achieve the most substantial savings. However, as demonstrated under point 4.2, the reports fulfil a useful function in providing shareholders with the necessary information. Repealing them entirely could have as a consequence that shareholders in future will not dispose any more of the information they need in order to take an informed decision about the merger or the division. Furthermore, given the need for some information this measure is likely to create 27 regimes of information obligations with still another regime – that of the Tenth Directive – applying to cross-border mergers. This can be problematic in particular for non resident shareholders. This is the reason why out of the slight majority of stakeholders who supported a modification of the provisions of the Third and the Sixth Directives in their reaction to the July 2007 Communication, one third made their support conditional upon the shareholders agreeing to waiving the report[76].

The same argument applies, in principle, in the case of the second scenario of option 3. However, under this option there would be a harmonised system at least for listed companies, which are more likely to have an international shareholder base than non listed ones. The argument that one can nevertheless put forward against this option is that in the case of listed companies the shareholders have at least one indication as to the value of that company (even if the share price obviously does not exactly mirror the company's value but can, in certain cases, be influenced by other factors). Shareholders of unlisted companies do normally not have a comparable indication of the company's value which would help them to judge the appropriateness of the share exchange ratio themselves. One can therefore argue that they need, in this respect, even more protection than holders of listed shares.

The first scenario of option 3 takes this, at least partially, into account. Furthermore, micro and small companies that are targeted in that scenario typically do not have a significant cross-border activity so that the impact on non-resident shareholders and the coherence with the rules for cross-border mergers play a minor role. However, the definition of these categories is based on criteria that are not related to the number and the situation of the shareholders. Whereas the accounting directives, from which the idea of such segmentation is taken, target all stakeholders, the reports in the Third and the Sixth Directive are specifically meant for the shareholders. Not taking their situation into account when defining an exemption in this context, therefore, seems questionable.

Option 2, in its first alternative, avoids any negative impact on the interests of the shareholders while achieving some savings for the companies involved. The second alternative would reduce the protection in particular for those shareholders that are

[76] See DG MARKT's summary report (footnote 10). Only 40% out of the 129 total reactions to the communication took a position on the question with a view to the report by the management, and only one third of all respondents took a position with a view to the accounting statement.

prevented from voting in the general meeting. Furthermore, as set out above the likelihood that substantial additional savings will be made seems doubtful.

The differences between the options are summarised in the table below:[77]

Figure 1: Comparison of options

		Reduction of companies' admin burdens	Impact on resident shareholders	Impact on non resident shareholders	Impact on other stakeholders (creditors, employees)	Environ mental impact	Consistency with other directives*
Option 1: No policy change		+ (170.09 mio €/year)O	O	O	O	O	O
Option 2: Possibility for shareholders to renounce to the management report and the accounting statement	Waiver by unanimity	+ (177.21 mio €/year)	O	O	O	O	O
	Waiver by majority decision	+ (up to 178.22 mio €/year)	O	O	O	O	O
Option 3:	Exemption of micros and small companies	+ (222.2 mio €/year)	-	O	O	O	O
	Only listed companies	++ (308.49 mio €/year)	- -	-	O	O	-
Option 4: Repeal the reporting requirements in the directives		++ (up to 343.1 mio €/year)	- -	- -	O	O	- -

* in particular with Cross-border mergers Directive

"O": No change "+": Positive impact "-": Negative impact

Option 2 is therefore the preferred option.

77 Note that the "no policy change" option forms a dynamic baseline as through the transposition of Directive 2007/63/EC the 170.09 mio €/year savings indicated will be made in future even without further action. The cost reductions for the other options are calculated by adding to these 170.09 mio €/year the additional expected savings.

7.2. Reporting requirements – measures with a view to companies that are set up or increase their capital in the context of a merger or division

7.2.1. Option 1: No policy change

This option implies that Member States, in the case of mergers or public offers, would continue to have the possibility to exempt companies from the requirement to have an independent expert report established pursuant to the Second Directive, but that they would not have such possibility in the context of divisions.

The current costs of that obligation would therefore remain unchanged.

7.2.2. Option 2: Introduce a Member State option to grant an exemption from the reporting requirement under the Second Directive in the case of a division

Under this option, an exemption would be introduced, with a view to divisions, for those cases where there otherwise would be double reporting, i.e. where the report under the Sixth Directive is effectively drawn up (and not waived as proposed above). The total costs and burdens of the report under the Second Directive when linked to a division have been estimated above under section 4.2.4, to lie at between 13.5 and 19.5 mio €.

This leads to a potential burden reduction of an exemption from this requirement of between 6.75 and 19.5 mio €/year, depending on whether only half the Member States or all of them make use of this option.

On the basis of the assumption used above, that 66% of all small companies and 25% of larger companies would waive the report under the Sixth Directive, the burden reduction potential of this measure can be estimated roughly to lie between 3.26 and 9.43 mio €.

7.2.3. Option 3: Introduce a mandatory exemption from the reporting requirement under the Second Directive in the case of a merger, a public offer and a division

This option implies replacing the current Member States' option to exempt companies from the reporting requirement by a mandatory exemption in the case of a merger or a public offer, and to extend this mandatory exemption to the case of a division.

This means that in all cases where an expert report is established in the course of the setting up of new companies or of capital increases that are linked to a merger, public offer or division, in future no expert report under the Second Directive would have to be established. According to the estimations set out above, this could lead to savings of more than 9.43 mio €/year.

7.2.4. Comparing the options

Option 1 would maintain the current inconsistency of the different rules and therefore does not seem appropriate.

Option 2 risks leading to less burden reduction as compared to option 3, in case not all Member States make use of the possibilities offered by the EU rules. However, in their reactions to the 2007 Communication many of those stakeholders that opposed a full exemption argued that the two reports do not serve the same purposes and that their content could therefore differ, depending on the way a Member State has implemented the different directives. Also many of those that supported the proposal in principle expressed themselves in favour of leaving it to the Member States to decide what reporting requirements to impose in this context.[78]

With a view to this possibility to "fine tune" the different reports it seems more appropriate to choose option 2.

Figure 2: Comparison of options

	Reduction of companies' admin burdens	Impact on shareholders	Impact on other stakeholders (creditors, employees)	Environmental impact	Consistency with other directives*
Option 1: No policy change	O	O	O	O	O
Option 2: Introduce a Member State option in the case of a division	+ (between 3.26 and 9.43 mio €/year)	O	O	O	+
Option 3: Introduce a mandatory exemption in the case of a merger, a public offer and a division	++ (more than 9.43 mio €/year)	O / - **	O	O	+

* in particular with the rules on domestic mergers and on takeovers

** depending on the way of transposition of the different reporting requirements by the Member States

"O": No change "+": Positive impact "-": Negative impact

Option 2 is therefore the preferred option.

7.3. Reporting requirements – measures concerning simplified mergers and divisions between parent companies and subsidiaries

7.3.1. Option 1: No policy change

The rules in the Third and the Sixth Directives on simplified mergers and divisions have been in place since these directives were first adopted. It is therefore not likely that Member States will change their current systems without action at EU level. This means that, under this option, the current costs that are linked to the fact that a number of Member States have not made use of the possibilities offered by the directives will probably remain unchanged.

7.3.2. Option 2: Removing the Member State options as regards simplified mergers and divisions

This change would make it clearer that the EU supports simplified procedures for these kind of mergers, under the conditions provided for in the directives. The directives would

78 One third of the total respondents took a position on this question, and 55% of them supported an exemption at least as a Member State option.

no longer empower Member States not to allow for the use of simplified procedures. However, given that the directives, in general, only provide for minimum harmonisation, Member States would nonetheless still be free to set stricter requirements at national level and therefore, to maintain the current information obligations. For the same reason as in the case of option 1, it is not very likely that such a change of the directives would have a major impact at the level of the Member States.

The same considerations apply where this option would be combined with a non-binding recommendation to Member States to allow for simplified mergers: Member States would not be obliged to review the system they have been used to for a long time and would therefore not be very likely to do so.

7.3.3. Option 3: Ensuring that Member States have to grant the possibility of simplified mergers/divisions

Option 3 implies granting the exemptions that are currently provided for in the directives in the form of Member States options (see point 4.2.5) to the companies covered by the directives and thus, preventing Member States from requiring a general meeting and/or certain reports where the conditions for a simplified merger/division are fulfilled.

Data from the consortium shows that in five of the Member States that made full use of the exemption possibilities for mergers (Italy, Lithuania, Luxembourg, Poland and Slovakia) these measures have led to total savings of about 24 mio €/year.[79] Of these, the data indicates that about 90% are due to the exemption from the reporting requirements that in the whole EU currently, in total, lead to costs of about 457.04 mio €/year (see above, point 7.1.1).

According to the measurement report the number of Member States that have <u>not</u> made use of the exemption possibilities concerning the reporting requirements in case of merger is fourteen as regards the possibility of exemption where the acquiring company owns more than 90 % of the acquired company and eleven as regards the possibility of exemption when the acquiring company owns the acquired company by 100 %[80]. For the other exemption possibilities the number of Member States that have not made use hereof varies between eleven and fourteen.[81]

Italy, Lithuania, Luxembourg, Poland and Slovakia account for 1,308 of the 11,432 draft terms of merger that are estimated to occur per year in the EU.[82] Member States that have

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[79] The exemption possibilities are the ones set out in Art. 24-29 Third Directive.

[80] Art. 28 and 24 Third Directive

[81] 11 Member States have not made use of the possibility offered by Art. 25 not to require a general meeting in the acquiring company when there is 100 % ownership. 12 Member States have not made use of the possibility offered by Art. 27 not to require a general meeting in the acquiring company when there is more than 90 % ownership. Respectively 11 and 14 Member States have not made use of the possibilities offered by Art. 26 and 29 to include in the calculation of the "more than 90 %" or 100 % ownership persons holding shares in their own names but on behalf of the company, thereby extending the scope of the exemption possibilities in Art. 24, 25, 27 and 28.

[82] The measurement report's total figure of 20,887 is corrected with a view to Denmark and Slovenia. The DK figure is corrected from 10,209 to 752 based on an estimate by the Danish

not transposed the exemption possibility concerning the reporting requirements where the acquiring company owns the acquired company by more than 90 % account for 7,989 of the draft terms of merger, whereas Member States that have not transposed the exemption possibility concerning the reporting requirements where the acquiring company owns the acquired company by 100 % account for 3,917 of the draft terms of merger. Assuming that companies would make use of these two types of exemptions to the same extent the figures correspond roughly to a situation where 5,953 of the 11,432 draft terms of merger in the EU occur in Member States that have not transposed any of the exemption possibilities concerning the reporting requirements.

Assuming that the (potential) cost savings per merger of using the exemptions are on average the same in the two groups of Member States compared, and that the percentage of mergers potentially qualifying as simplified mergers are on average also the same, a rough estimate of the potential cost savings of this option that would imply that all Member States provide for the merger exemptions could be set at around 109.23 mio €/year.[83] However, the data from the consortium indicates that, in the Member States that currently do not make use of the simplified merger procedures involving exemptions from the reporting requirements, the costs of establishing an expert report are 85.3% higher than the average costs of such reports in Italy, Lithuania, Luxembourg, Poland and Slovakia. Therefore the total cost savings of making the exemptions mandatory is more likely to be around 188.43 mio €/year than 109.23 mio €/year.[84] Since cost savings from not having to draw up the management report and the expert report are estimated to include 25% business as usual costs, the administrative burden reduction of this option can roughly be estimated to around 147.21 mio €/year.[85] On top of this come potential savings related to the simplified division procedure.[86] As this exemption possibility only regards the general meeting in the company being divided in cases where the recipient companies hold all the shares in the company being divided, the potential burden savings can be expected to be much lower than for mergers. At this stage, there is incomplete information on the use of the exemption possibility for divisions. Assuming that the proportion of Member States that do not currently use the exemption possibility account for about the same proportion of divisions as was the case for mergers, and taking into account that divisions do not seem to occur as often as mergers and that the saving potential of not holding a general meeting is only around 10 % compared to a situation where also reporting is not required, a rough estimate of the potential savings for the simplified division procedure would lie around 6.28 mio €/year.[87]

Commerce and Companies Agency. Data from SI is missing but based on the data on "Disclosure of merger" the number of draft terms of merger have been set to 2 for SI.

83 24 mio*(5,953/1,308) = 109.23 mio €.

84 (85%*109.23)*1.853+(15%*109.23) = 188.43

85 Data from the consortium indicates that 87.5% of the costs from exempting from the simplified merger procedures originate from the two reports. Business as usual costs can therefore be estimated to lie around 41.22 mio €/year (188.43*87.5%*25%), and the total burden reduction can be estimated to lie around 147.21 mio €/year (188.43-41.22).

86 Art. 20 Sixth Directive

87 According to the information from the Member States presented in Annex 3 only 4 out of the 14 Member States that have answered this question have made use of the exemption possibility. But since these 14 Member States only account for about 1/3 of the total number of draft terms of

This leads to a rough estimate of the total burden savings potential of around 153.49 mio €/year for this option. The precise savings will depend on to what extent the ownership structure of companies in the Member States currently not using the exemptions allows for using the procedures.

For the shareholders, no negative impact is to be expected with a view to those exemptions that are granted under the condition that the "acquiring" company (in the case of a merger) or the recipient companies (in the case of a division) already own **all** of the shares of the company to be merged/divided before the operation. Through the ownership in that latter company the "acquiring"/recipient companies were already before the merger/division economically carrying the risk of their subsidiary. Consequently, it is not likely that there will be a real impact of the merger on the value of the shares of these companies.

In the case of a merger where the acquiring company holds **90% (or more)** of the shares of the company to be acquired, option 3 formally leads to a reduction of some of the current measures protecting also the minority shareholders (no need to hold a general meeting, reduced reporting requirements). However, the safeguards built in by the exemption rules of the directives (right of a minority that holds a 5% share in the company to request a general meeting, exemption from the requirement to provide the necessary reports to the shareholders of the company to be acquired only where these shareholders are granted a sell out right) protect the rights of the minority in an appropriate way, considering in particular that this minority can never be large enough to block the merger in a general meeting. Therefore, also in this scenario a significant negative impact on the (minority) shareholders is not likely.

Also for the creditors, option 3 would not imply a significant negative impact. As already set out under point 7.1.2., the rules targeted by the exemptions are designed for the protection of the shareholders, not of the creditors that enjoy protection under different rules of the directives.

Among the reactions to the 2007 communication, only 37 out of a total of 128 took a position on the proposal to repeal the requirement for a general meeting in these

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divisions it is uncertain how many of the total number of draft terms of division the Member States that have not used the exemption account for. According to the measurement report 20,887 draft terms of merger and 4,327 draft terms of division occur in the EU per year. However, after correcting misleading figures from Denmark the figures are rather 11,432 and 1,852 respectively. Since there are always at least two existing companies participating in a merger whereas for divisions in most cases only one existing company participate the ratio between mergers and divisions in the EU can roughly be set to around 3/1. This leads to a rough estimate of the potential savings of around 188.43/(10*3) = 6.28 mio €/year for the simplified division procedure. There are no "business as usual costs", so the figure is both the cost reduction and the administrative burden reduction.

situations. Out of these, about 58% supported this proposal with a view to 100% subsidiaries and about 55% with a view to 90% subsidiaries.[88]

7.3.4. *Comparing the options*

Option 1 is not likely to lead to any change in the costs for companies, compared to the current situation. Also under option 2, Member States would, in principle, be free to keep their current rules. Only option 3, therefore, is likely to achieve a real reduction in costs and burdens compared to the current situation.

Figure 3: Comparison of options

	Reduction of companies' admin burdens	Impact on shareholders' rights	Impact on other stakeholders (e.g. creditors, employees)	Environmental impact	Consistency with other directives
Option 1: No policy change	○	○	○	○	○
Option 2: exclude these cases from the directives	○	○	○	○	○
Option 3: Ensuring that Member States have to grant the possibility of simplified mergers/divisions	+ (153.49 mio €/year)	○	○	○	○

"○": No change "+": Positive impact "-": Negative impact

Option 3 is therefore the preferred option.

7.4. Publication and documentation duties

This problem was not raised in the 2007 Communication but brought to the Commission's attention by respondents as an additional point that should be addressed.

7.4.1. *Option 1: No policy change*

As set out above under section 4.3.1., the costs for publishing the draft terms of merger/division would be reduced by about 1 mio €/year if the modification to the First Directive that was proposed on 17 April 2007[89] is adopted by the Council and the Parliament.

Apart from these savings, the costs that companies currently incur in order to make available the documentation to their shareholders at the registered office of the company and to provide them with copies would remain unchanged under this option.

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88 The supportive comments came in particular from many companies and companies' associations whereas in particular certain chambers of commerce were critical about the proposal and would prefer to keep the current flexibility for Member States on this issue.

89 COM(2008)194

7.4.2. Option 2: Use a central Internet site for publishing the information

This option consists in providing that a central website should be used in order to publish the draft terms of mergers/division and the other documents to be made available to shareholders for a certain period.

One possibility within this option is to use the central electronic website that has already been established in the context of the Transparency Directive[90]. However, this directive only applies to listed companies and, consequently, in a number of Member States the central storage mechanism is run by the stock exchange. Therefore, for this option that would apply to all public limited-liability companies a separate website would have to be established which probably should be run by the companies' register.

With a view to the **draft terms of merger/division** this option would not imply a major change compared to the current situation where these documents have to be entered into the company's file. In times of electronic company files the question where the document is stored electronically should have no major impact on the costs created by the process (and charged to the company).

With a view to **the other documents to be made available to the shareholders**, the company's internal costs for compiling the information would remain the same as under option 1 whereas the costs for giving shareholders access to them at the registered office would be replaced by those for putting them on the central website which is likely to charge companies a fee for this service. It is difficult to estimate the difference between these two processes but in any case the difference can be expected to be minor, especially as the publication on the website might necessitate the creation of a protected zone where companies do not want to make these documents accessible to the wider public but only to their shareholders.

Therefore, such a publication on a central website would in first place help to save the costs linked to the provision of paper copies to shareholders. The total costs and burdens of the documentation requirement have been estimated to be at least 4.24 mio €/year (see point 4.3.2.). Looking at the example that has been given it seems appropriate to assume that the larger part of these costs is due to the production etc of paper copies. These latter costs and therefore the burden savings potential under this option can, therefore, be estimated to be at least around 3.5 mio €/year.

From the users' point of view, an electronic availability of these other documents would even facilitate the access to the information compared to the current situation, in particular for those shareholders who are not resident in the vicinity of the company's registered office[91]. Now, those shareholders normally need to ask the company to provide them with copies of the documents and have to wait for these copies to be sent to them.

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90 Central Storage Mechanism, Art. 21(2) Transparency Directive.

91 The Commission Communication "Preparing Europe's digital future – i2010 Mid-Term Review" of 17 April 2008 (COM(2008) 199 final) find that more than half of EU citizens nowadays use the Internet regularly (i.e. at least once a week), with 80% of the households that use the Internet regularly having migrated already to a broad band connection.

However, there is a risk that under this option certain costs could be caused to shareholders. Firstly, the body running the central electronic platform might charge access costs to users as it is the case, with some registers, with a view to information contained in the company's file. Furthermore, those shareholders who prefer to work on paper documents would have to print the documents that sometimes can reach sizeable volumes (in particular annual reports of some public limited-liability companies). Nevertheless, it will normally neither be necessary to print all documents nor to print them in their entirety. Instead, printing can be restricted to those documents and those parts of them that the shareholder is really interested in. This would limit printing costs and have, at the same time, a favourable effect on the environment.

7.4.3. Option 3: Use the company's or another Internet site for publishing the information

Option 3 implies giving companies the possibility to replace the current obligations by making the draft terms of merger/division available to the shareholders on the company's own website (or on any other website), provided that the central electronic platform which is used to notify the changes made to the register contains a link to that website. As for the other documents to be made available to the shareholders the option implies granting companies the right to make available the documents on their Internet site instead of complying with the current obligations.

A general obligation to maintain a website does not exist in EU company law so far.[92] According to ESTAT, in 2007, 18% of all businesses in the EU ran an extranet. This figure, however, includes also the smallest unlimited liability companies that do not fall within the scope of the directives.[93] Imposing the use of a website in the context of the Third and the Sixth Directives would create new administrative burdens on those companies that so far do not have an Internet site. This does not seem appropriate.

Instead, companies, under this option, with a view to the **draft terms of merger/division** should be given the choice between the existing publication in the registers and publication on their own Internet site or any other site.

Where companies do not run a website but would need to publish information on the registers' internet site, potential savings would be the same as under option 2. However, where the company has a website, additional savings would be possible since the costs arising at the register should be reduced as the register in future only would have to publish the fact that draft terms of merger/division of the companies concerned are available, and establish the link with the website where these draft terms are published.

With a view to the other documents to be made available to shareholders, additional savings, compared to option 2, are possible under this option as no fees would have to be

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92 The Shareholders' rights Directive that is to be transposed by summer 2009 introduced such an obligation only with a view to companies whose shares are listed on a regulated market.

93 As an example, in Germany 87% of all companies between 50 and 249 employees had a website in 2007 (source: Statistisches Bundesamt, Wirtschaft und Statistik 12/2007, p. 1203). Also this number includes both private and unlimited and limited-liability companies.

paid to the body running the central website. As in option 2, these potential savings can be estimated to be at least around 3.5 mio €/year.

The burden savings potential under this option can therefore be estimated to lie above the 3.5 mio €/year assumed in the case of option 2.

From the users' point of view, as under option 2, the electronic availability of the information should rather facilitate the access to the information compared to the current situation. However, in the case where the company's own Internet site can be used there would be a guarantee that access is for free whereas the register (or a central electronic platform) might charge a fee in case the information has to be accessed via its website.

7.4.4. Comparing the options

In terms of coherence of Community legislation, both, options 2 and 3, compared to option 1, have the advantage of adapting the information mechanisms under the Third and the Sixth Directives to those used in more recent directives. Both these options also offer advantages in terms of accessibility to the users, as shown above. However, in the case of option 3 the risk that shareholders will incur additional costs for the access to the information is reduced, compared to option 2.

In terms of administrative burdens, option 1 will leave the current burdens for companies untouched (apart from the savings that should be achieved via the modification of the First Directive that is under way, see above). Option 2 requires the setting up of a new infrastructure, the costs of which are likely to be passed on to the companies. Option 3 offers a higher degree of flexibility and, therefore, seems preferable with a view to the objective of reducing administrative burdens.

Figure 4: Comparison of options

	Reduction of companies' admin burdens	Accessibility to shareholders/users	Access costs for shareholders/users	Environmental impact	Consistency with other directives
Option 1: No policy change	O	O	O	O	O
Option 2: Central electronic platform	+ (3.5 mio €)	+	- -	+	+
Option 3: Internet site with link	+ (> 3.5 mio €)	+	-	+	+

"O": No change "+": Positive impact "-": Negative impact

Option 3 is therefore the preferred option.

7.5. Protection of creditors

7.5.1. Option 1: No policy change

Since the recent modification of the Second Directive that had to be transposed by 15 April 2008, the creditor protection rules under that directive have been clarified in the sense that Member States need to provide for the possibility for creditors to obtain securities for their claims only if they can credibly show that an operation concerning the capital of the company jeopardises their rights. The Third and the Sixth Directives that contain similar rules are less clear concerning the burden of proof in this context.

Under option 1, these rules would remain unchanged. This means that there would continue to be a difference between the wording regarding the creditor protection regime under the Second Directive on one hand and the Third and the Sixth Directives on the other, with the risk that transposition of these different rules into national law will differ.

7.5.2. Option 2: Adapt creditor protection rules to the provision in the modernised Second Directive

This option entails adapting the rules in the Third and the Sixth Directives in the revised provision on creditor protection in the Second Directive, and in particular to clarify that securities have to be provided only where the creditor can show credibly that his claims are jeopardised.

This solution was proposed in the 2007 Communication. 36 out of 128 respondents took a position on this proposal, and 70% of these respondents supported it.

7.5.3. Option 3: Repeal the creditor protection rules in the directives

This option would entail deleting the current provisions on creditor protection from the directives.

However, as shown above the reporting requirements of the directives are exclusively directed at the protection of the shareholders. Repealing the provisions dealing with the companies' creditors would therefore imply leaving it entirely to the Member States to decide whether and how they want to provide for the protection of creditors.

7.5.4. Comparing the options

Option 3 would remove creditor protection rules entirely from the directives. This would constitute a profound change to the objectives of the two directives. Furthermore, it is difficult to justify why the EU should protect the shareholders of merging and dividing companies but not take account of the interests of the creditors of these companies.

The change proposed in option 2 does not entail a material change to the current provision but only a clarification of its content. As option 1, also option 2 is therefore not likely to have a major impact on company’s costs and burdens. However, potential legal uncertainty as to the burden of proof would be removed. Furthermore, this option ensures coherence between the different legal acts in the area of EU company law.

Figure 5: Comparison of options				
	Reduction of companies' admin burdens	Impact on creditors	Impact on other stakeholders (e.g.. employees)	Consistency with other directives
Option 1: No policy change	O	O	O	O
Option 2: Adapt to the provision in the modernised Second Directive	O	O	O	+
Option 3: Repeal the creditor protection rules	O	-	O	-

"O": No change "+": Positive impact "-": Negative impact

Option 2 is therefore the preferred option.

7.6. Conclusion

On the basis of the predefined criteria and the considerations set out in the previous sections, the recommended options can be summarised as follows:

Figure 6: Summary					
	Reduction of companies' admin burdens	Impact on shareholders	Impact on other stakeholders (e.g. creditors, employees)	Environmen-tal impact	Consistency with other directives
Possibility for shareholders to renounce to the written report of the management and the accounting statement	+ (7.12 mio €/year)*	O	O	O	O
Introduce a Member State option regarding the expert report under the 2nd Directive in case of a division	+ (3.26 – 9.43 mio. €/year)	O	O	O	+
Ensuring that companies have the possibility of a simplified merger/division	+ (153.49 mio €/year)	O	O	O	O
Allow for publication via Internet site, accessible via a link on a central electronic platform	+ (> 3.5 mio €/year)	+/-**	O	+	+
Adapt creditor protection rules to modernised provisions in 2nd Directive	O	O	O	O	+

* Savings measured against the dynamic baseline "No policy change"

** While accessibility is improved, shareholders may incur some (limited) costs under this option.

"O": No change "+": Positive impact "-": Negative impact

The overall savings of the recommended options in terms of administrative burdens can be estimated, on the basis of the information available at this stage, at about 172 mio €/year. On the basis of the figures set out in Section 3 above, this means that the implementation of these measures would lead to a reduction in administrative burdens by about 9.15% as far as the area of company law is concerned and by about 1.23% if the total administrative burdens in the areas of company law, accounting and auditing are taken as a basis.

However, taking into account the methodology of the measurement, and in particular the fact that the figures for 16 Member States have been arrived at by way of extrapolation, these estimates obviously can only give a rough indication as to the size of the savings that will ultimately be made. Furthermore, as indicated in Section 4.1, a considerable number of Member States apply the same or similar rules to mergers and divisions where private limited-liability companies are involved. Although these operations do not fall within the scope of the directives and therefore, of this impact assessment, additional savings should arise in that area at Member State level once the simplification measures proposed in this impact assessment are implemented.

8. MONITORING AND EVALUATION

Five years after the transposition of the amendments, the effect of the measures should be evaluated.

This evaluation should look, in particular at the following questions:

- Whether and to what extent the overall costs of companies have been reduced in the context of mergers and divisions;
- Whether the information provided to shareholders and other stakeholders in the course of the process is considered sufficient; and
- Whether the recommended Member States' option with a view to the reporting requirement under the Second Company law Directive in the case of mergers and divisions provides useful results or whether a mandatory exemption should be considered.

ANNEX 1

EUROPEAN COMMISSION
Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE

SYNTHESIS OF THE REACTIONS RECEIVED TO THE

COMMISSION COMMUNICATION ON A SIMPLIFIED BUSINESS ENVIRONMENT FOR COMPANIES IN THE AREAS OF COMPANY LAW, ACCOUNTING AND AUDITING (COM(2007)394)

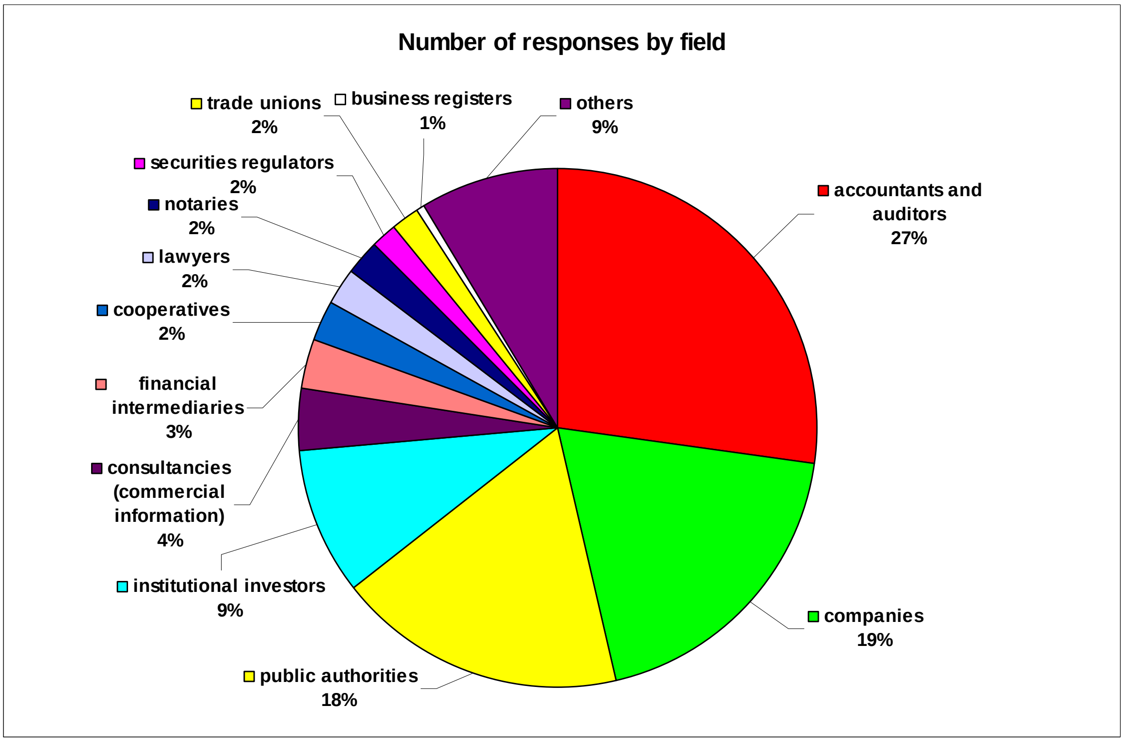
THE INTERNAL MARKET AND SERVICES DIRECTORATE-GENERAL

DECEMBER 2007

On 10 July 2007, the Commission adopted its communication on a simplified business environment for companies in the areas of company law, accounting and auditing. In this communication, the Commission set out its proposals for reducing administrative burdens and adapting the acquis in these areas to the needs of today's businesses.

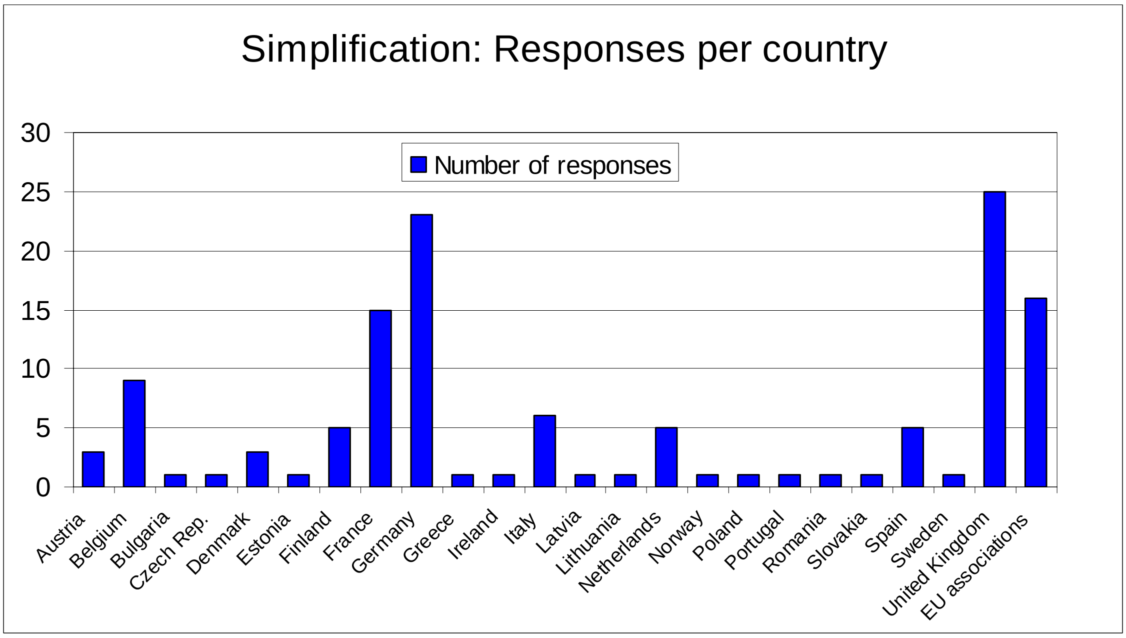
On 22 November, the Competitiveness Council adopted Council conclusions[94] welcoming the Commission initiative and calling on the Commission to expedite consideration of responses to its communication and, where appropriate and preferably before the end of 2008, bring forward proposals, based on impact assessments. The Legal Affairs Committee of the European Parliament is currently working on a report on the communication to be adopted early in 2008.

In addition, 18 Member States' governments, the government of one EEA country and 110 stakeholders reacted to the invitation, in the communication, to submit comments on the proposals in writing, by mid-October 2007.



These contributions from governments and stakeholders originated from 23 countries in total, including 22 Member States. A number of contributions were also submitted by European bodies and associations.

94 Council document 15222/07 DRS 48



DG MARKT would like to thank the interested parties who sent in written opinions for their contributions.

This report summarises the reactions that DG MARKT received to the communication and the main comments made. It does not provide detailed statistical data, but rather seeks to present a qualitative assessment of the contributions received. It also does not represent any indication as to what follow-up could be given, by the Commission, to the July communication.

1. EXECUTIVE SUMMARY

A clear majority of those that reacted to the proposal to repeal certain company law directives did not support it. The main argument put forward was that these directives provide legal certainty and that their repeal would rather cause additional costs than lead to savings for companies.

However, about three quarters of those who took a position on the question whether individual simplification measures should be proposed supported the idea. They considered that the Company Law Directives are in some parts overly descriptive and restrict the flexibility of Member States and companies beyond what is really necessarily. There was, in particular, overwhelming support for the proposals to abolish the requirement to publish details contained in the register in the national gazette (First Company law Directive) and to oblige Member States authorities to accept certified translations prepared and accepted in another Member State (Eleventh Company law Directive). On the proposal to reduce, at EU level, the reporting requirements in the case of domestic mergers and divisions, there was a slight majority supporting this idea, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents. The majority of respondents supported, however, also the idea to streamline the creditor protection rules in these cases with the recent modification of the Second Company law Directive and to reduce the requirements for mergers with 90% or wholly owned subsidiaries.

Concerning the proposals put forward in the communication in the areas of accounting and auditing there was clear support from respondents for the proposal to introduce a Member State option to exempt micro-entities from the scope of the accounting directives. The proposal to extend the transition period to the status of SME to five years met some scepticism. However, a period of three years was considered acceptable. A slight majority of respondents disagreed with the potential relief from publication requirement for small entities. Also the idea to allow unlimited liability medium-sized companies to follow the rules for small companies met support whereas respondents were split over the proposal to take the same measure with a view to management-owned companies. Finally, the proposals for more minor simplification measures for all companies were supported in respect of audit exemptions under specific circumstances, a clarification of the IAS Regulation as well as the deletion of certain disclosure requirements.

2. GENERAL REMARKS

Respondents in general welcomed the initiative to address the issue of administrative burdens for companies, and in particular small and medium-sized ones. A number of respondents, however, stressed that any simplification should take full account of the advantages of harmonisation and that thorough impact assessments should be established in order to support individual simplification proposals.

In the area of company law, reactions to the proposals seemed to be influenced mainly by geographical origin and less by the sector the respondents belonged to. However, this was not the case for the proposals concerning accounting and auditing where support came in particular from companies and, in many instances, from investors and public authorities whereas the reactions from the side of the accounting and auditing profession and from consultancies to these proposals were often critical.

3. OPTION 1: PLACING THE FOCUS ON CROSS-BORDER PROBLEMS (SECTION 3.1.1 OF THE COMMUNICATION)

In the communication, reducing the acquis in EU company law to those legal acts that aim at solving specific cross-border problems was proposed as one possible way forward in company law. Under this option, it was therefore suggested to repeal directives such as the Third, the Sixth, the Twelfth and – subject to the outcome of the ongoing outside study on the current capital maintenance system – the Second Company law Directive.

About half of the respondents took a position on this option 1. Of those respondents, about one third expressed themselves in favour of the proposal whereas two thirds opposed it.

Those who supported the proposal pointed out in particular that EU company law in its current form is too inflexible and hinders regulatory competition. A number of these respondents, however, preferred taking a by case-by-case approach: the directives should be judged one by one and article by article in order to establish whether the provisions are relevant to the effective functioning of the single market.

This approach was reflected in the views expressed on the different directives mentioned in the Commission communication: about a quarter of those respondents who took a position on the Third and the Sixth Directive were in favour of repealing these directives whereas only one fifth considered that the Second Directive should be repealed. However, about two fifths of the respondents either asked for a repeal of the Twelfth Directive or indicated that they could accept such repeal.

Those respondents that expressed themselves against option 1 stressed in particular the positive effects of harmonisation. In their view, there are instances when it is valid to impose minimum standards which apply only at the domestic level, thus ensuring at least a partial level playing field throughout the EU. In particular, the repeal of enabling legislation is seen as counterproductive. Furthermore, they consider that the reduction in legal certainty caused by the repeal of the directives will cause new costs to companies that will outweigh the savings. Additional costs will, in their view, also be created for the other stakeholders if they have to deal again with 27 different legal systems in the future. This is likely to have a harmful effect on the confidence, in particular, of non-resident shareholders and creditors. Some respondents who opposed option 1 also took the view that the practical effect of such measures would be limited as Member States will not necessarily make use of the new flexibility.

With a view to **the Third and the Sixth Company law Directives**, opponents to the proposal of repealing the directives believe that the directives' transparency requirements create cross-border benefits and stressed that these directives form the basis for the Tenth Company law Directive on cross-border mergers. One respondent also recalled that the harmonisation of the transmission of rights and obligations in the directives has advantages for companies (e.g. patents of the merging companies in all Member States are automatically transferred to the acquiring or recipient company). Those that supported a repeal of these directives often considered these directives as outdated, in particular after the adoption of the Directive on cross-border mergers, or found the rules much too detailed and considered that they unduly restrict the flexibility of Member States and companies.

On the **Second Company law Directive**, most respondents took the view that the outcome of the outside study commissioned by the Commission in 2006 should be awaited before taking further action. On the substance, a number of respondents, however, considered that the rules of the directive are overly restrictive, impose excessive burdens on companies and do not achieve its objective to protect, in particular, the creditors of the company. Today financial mechanisms are much more sophisticated than at the time of the adoption of the directive. In order to increase the flexibility, one respondent proposed to introduce a Member States' option to allow for real non-par value shares. The large majority of those respondents who expressed a view on the Second Directive opposed the proposal of repealing the directive, mainly for the reason that the provisions provide for the necessary protection to investors and creditors, that the provisions on distributions to shareholders are important in order to preserve company and shareholder value and because pre-emption rights are considered as an important mechanism to protect shareholder rights. The latter right was considered important even by many of those respondents who, in general, favoured repealing the directive.

Most respondents considered the possibility to establish single-member companies important. Those respondents that nevertheless supported a repeal of the **Twelfth Company law Directive** mainly took this view because they considered that today this principle is established in all Member States so that EU intervention is not necessary any more. At the same time, some of them regarded the formal requirements contained in the directive (registration requirement, obligation to take decisions in writing and to conclude written contracts between the company and the member) as unnecessarily burdensome. Those respondents that expressed themselves in favour of maintaining the directive stressed the enabling character of the directive and the risk that the national legal systems will diverge after its repeal which would be particularly harmful for companies that have 100% subsidiaries in other Member States.

4. Option 2: More principle-based, less detailed regulation (section 3.1.2. and Annex 2 to the communication)

The second option offered in the communication consisted in the proposal to simplify at least parts of the Third, the Sixth and probably also the Second Company law Directives as these directives, in their current form, leave Member States little flexibility to adapt their respective national systems to the evolving needs of businesses and stakeholders in general.

Just over half of the total replies took a position on this option. Almost three quarters of those who expressed a view were generally in favour of or, at least, could accept adopting individual simplification measures as a second best option after repealing some of the directives. Those who chose this option believe that there are provisions in the company law directives that are truly obsolete and have no real effect and should be repealed or amended. Simplification measures however should be examined and justified on a case by case basis.

Some respondents objected to the proposals under option 2 not because they did not see the need to simplify EU company law but because they expressed the concern that individual simplification measures might render the legal texts and the procedures more complex and costly than this is currently the case. They commented that it is very hard to set up a common technical method for simplification. Therefore if the repeal of the directives does not gain sufficient support, they would prefer not to amend the directives at all.

4.1. Reporting requirements under the Third and the Sixth Company law Directives

Not all respondents who generally support option 2 commented on the individual simplification measures set out in the annexes of the communication. Among those who did comment there is a slight majority in favour of the detailed proposals to amend or repeal the reporting requirements in the Directives, with the exception of the proposal concerning the independent expert report which is opposed by a majority of respondents.

Those respondents who are in favour of changing the rules on the reporting requirements (the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement) consider that it would be better to leave it to the Member States to fit the respective information obligations in their legal system. At Community level it would be sufficient and more appropriate to set out an obligation to provide for adequate, transparent and objective information to shareholders covering not only the economic and legal justification for the operation but also its financial terms and the valuation of the share exchange. However, the way by which such information is to be provided, in the view of these respondents, can be left to the Member States to decide.

Half of those respondents who expressed themselves in favour of amending the rules on the reporting requirements are in favour of abolishing the requirement of drawing up the respective reports or statements only where shareholders renounce to them. Most of these respondents suggest that this decision would have to be taken by unanimity.

According to some respondents, the possibility of differentiating between listed and unlisted companies regarding the reporting requirements could also be considered. While it is essential to keep the requirements to protect the shareholders of listed companies, the by-laws of unlisted companies in their view may set out different requirements.

A number of respondents who oppose changing the legislation stress the importance of the written report of the management on the draft terms of a merger or a division, the independent expert report and the accounting statement in ensuring the transparency of the operation and in the protection of shareholders' interests. In their view, these reports provide important information for the shareholders and facilitate understanding of the motivations and the financial arrangements of the merger or the division.

Regarding more substantial changes, a significant number of respondents mention that shifting from ex-ante information to ex-post liability may be costly and lessens the efficiency of shareholder protection. In particular, the cross-border enforcement of claims for damages is difficult. Some point out that such a change would reduce the positive impacts of the provisions of the Transparency Directive and the Shareholders' rights Directive facilitating cross-border voting.

Some respondents indicated that mergers or divisions are rare events in companies' lives and that therefore the related reports do not constitute a relevant cost factor. Accordingly the proposed modifications would not result in significant cost-savings for the company.

4.1.1. Written report by the management in case of a merger or a division

Slightly more than half of those who expressed a view on this question support the proposal to amend the requirement on the written report or to leave it to the Member States to decide if they require a report by the management explaining the draft terms of the merger or the division and setting out their legal and economic grounds.

Most respondents who are in favour of amending the provision believe that the requirement of the written report of the management should remain as it stands but shareholders should be given the right to renounce to it. Most respondents suggest that this decision would have to be taken by unanimity.

Some suggest that shareholders should also be given the right to waive the management report in the case of a cross-border merger (Directive 2005/56/EC).

4.1.2. Independent expert report

Almost three fifths of the respondents who addressed this question took a position against abolishing or substantially amending the requirement for an independent expert report in a case of a merger or a division. Most of them referred to the recently adopted Directive 2007/63/EC amending the Third Company law Directive on mergers and the Sixth Company law Directive on divisions. This amendment grants an exemption under the requirement of the independent expert report if all shareholders renounce to it.

Most respondents argue that shareholders have a legitimate interest to be informed about the reasons and effects of the merger or the division, including the valuation of the share exchange ratio. The report ensures transparency and is indispensable to enable shareholders to take a well-informed decision at the general meeting.

A few of those respondents who are in favour of amending the requirement of an independent expert report consider that the report may be abolished if a clear point of reference exists for fixing the exchange ratio, as e.g. the stock price of listed shares, similarly as this is provided for in Directive 2006/68/EC amending the Second Company law Directive.

4.1.3. Financial statement

Slightly more than half of the respondents also expressed themselves in favour of the proposal to amend the provisions on the accounting statement that has to be drawn up in the case of a merger or a division. These respondents who supported the abolition of the statement consider the requirement for an accounting statement in all cases where annual reports are older than 6 months excessive. They believe it could be left to market forces to decide if such a statement is necessary. Some suggest that directors should be allowed to certify, in their written report, the amount of net assets and the net result for the relevant period and possibly other items on and off the balance sheet that were decisive in the setting of the share exchange ratio.

Several respondents consider keeping the requirement for a financial statement but allowing shareholders to renounce to it. The decision, in their view, would have to be taken unanimously.

The respondents who oppose the proposal underline the statement's role in shareholder protection. They claim that it is an important means for the shareholders to judge if the proposed exchange ratio is appropriate.

4.1.4. Double reporting requirement in the case of a division

Relatively few respondents – less than one third - expressed a view on the proposal to abolish a double reporting requirement in the Sixth Company law Directive. The Directive allows Member States only to provide that the report on consideration in kind (Second Directive) and the expert report on the draft terms of division may be drawn up by the same expert. They cannot grant an exemption from the double reporting requirement.

A minority of respondents opposed the modification of the provisions for the reason that the expert report under the Second Directive and a report on the draft terms of the division under the Sixth Directive have different objectives. In their view the former requires objective measurement while the assessment of the share exchange ratio aims at ensuring that the exchange ratio is appropriate.

The majority of respondents, however, supported the proposal of granting an exemption to companies from one of the reporting requirements and underlined that even if the two reports do not serve the same purpose, measuring the value of the contribution in kind is a precondition for the assessment of the share exchange ratio. Therefore the report on the draft terms of the division may be sufficient. Producing only one report could bring about cost savings to the company.

4.2. Protection of creditors under the Third and the Sixth Directives

Two thirds of the respondents who expressed a view on this question agree that the creditor protection rules in the Third and the Sixth Directives should be aligned with the provisions of the Second Directive as amended by Directive 2006/68/EC.

Those who support the proposal to require creditors to credibly demonstrate to the administrative or judicial authority that, in the event of a merger or a division, their interest is at stake, emphasise the importance of increased coherence of EU company law provisions.

Some respondents in the minority suggest waiting to see how the amendment of the Second Directive is applied in practice. One respondent considers that the provisions in the Second Directive are stricter and give less leeway to Member States than the rules of the Third and the Sixth Directives.

4.3. Protection of shareholders of the acquiring/recipient company in the Third and the Sixth Directives

Less than one third of the respondents commented on the proposal to give Member States the right to determine the conditions that have to be fulfilled if the acquiring/recipient company does not wish to hold a general meeting to decide upon the merger or the division.

Two thirds of those who responded to the question believe that the respective rules should remain subject to EU law. Many argue that holding a general meeting is essential to ensure shareholders' rights and to reasonably limit directors' liability since the resulting company does not only take over assets but also liabilities.

The minority in favour of the proposal consider that the general meeting should be discharged of duties that are parts of the day-to-day management of the company. It would reduce transaction costs for companies.

However, a slight majority of the respondents who gave a reply to the question agreed that some flexibility should exist at least in the cases of the transfer of the assets of a wholly owned subsidiary and of the acquisition of a subsidiary whose parent company already holds 90 % of the shares.

5. ADDITIONAL SIMPLIFICATION MEASURES IN COMPANY LAW (SECTION 3.2 AND ANNEX 3 TO THE COMMUNICATION)

Alongside with both options presented in the paper for company law, a number of individual simplification measures were proposed, in order to reduce administrative burdens that are linked to certain directives whose usefulness as such was not put into question by the communication.

5.1. National gazette

In particular, it was proposed with a view to the **First Company law Directive** to abolish the requirement to publish information in the national gazettes that also has to be entered into the Member States' commercial registers, to the extent that the publication in the national gazette entails additional costs for the companies.

This proposal was supported by an overwhelming majority of respondents. A number of them stressed, however, that in this case the electronic register should provide a daily transaction lists. Some respondents furthermore, took the view that the requirement for publication in the national gazette should only be deleted from the directive. It should then be left to Member States to decide whether they want to impose such an obligation at national level. The minority of respondents that opposed the proposal mainly put forward the arguments that the current system functions well, that the electronic registers are not sufficiently developed yet to provide an equivalent service, that costs caused to companies by this requirement are relatively minor or that they oppose individual simplification measures in general (see above under point 4).

5.2. Certified Translations

The second proposal contained in this section of the communication referred to the possibility, for Member States, to request translations in the context of the establishment of a branch under the **Eleventh Company Law Directive**.

A very broad majority of respondents agreed with the proposal to oblige Member States to accept certified translations to the extent that they are accepted by the judicial or administrative authorities of the Member State where they were established. Those respondents stressed that Member States' laws sometimes impose excessive requirements, such as for notarisation. However, many respondents emphasised the importance of guaranteeing that the translation is reliable which would be the case if it is certified in a way accepted by the other Member States' authorities. The few respondents that objected to the proposal referred for example to the differences in certification procedures in the Member States or opposed individual simplification measures in general (see above under point 4).

5.3. Registered office of a European Company

A clear majority of respondents also supported the proposal to adapt Article 7 of the **Statute for a European Company (SE)** concerning the company's registered office to the "Überseering" jurisprudence of the European Court of Justice. These respondents considered that the change would give European Companies more flexibility in structuring their operations. Some respondents drew the attention to the fact that a practical interest of the company in having its registered office in another Member State than the administration can in particular exist where the administrations of different companies of one group are concentrated in one place in order to reduce the administrative expenses. Those respondents that opposed the proposal put forward in particular that the current rule provides more transparency and that the "Überseering" judgment only applies directly to companies under national law, or considered the proposal not to be a priority, in view of the limited number of SEs up to date.

6. ACCOUNTING AND AUDITING (SECTION 4 AND ANNEX 4 TO THE COMMUNICATION)

In the areas of accounting and auditing, five different measures had been identified in the communication that aim at reducing the administrative burdens, notably for small and medium-sized entities, while maintaining the goal to keep and improve accounting and auditing quality in the EU.

Each single measure is summarised in identical order as it appeared in the Commission Communication with no prejudgement whether or not and how to pursue these in the future.

6.1. Introduction of "Micro entities"

The Commission proposed to introduce a new category of so called micro entities in the Fourth Directive, which could be optionally exempted by Member States from the accounting directives. Micro entities are tentatively defined as entities with:

- less than ten employees,
- balance sheet total below 500,000 EUR, and
- turnover below 1,000,000 EUR.

The proposal to introduce the micro entities definition into the Fourth Directive was welcomed by a majority of those respondents that commented on the issue (about 80% of the total number of respondents). Nine respondents stated that the tentative figures defining the thresholds for micro-entities should be higher, seven wished them to be lower.

Those respondents that welcomed the proposal considered it a major reduction of administrative burden for those entities, which will encourage new start-ups through removal of disincentives to incorporation. Support was the strongest amongst public authorities and companies where more than four fifths expressed themselves in favour of the proposal. There were also comments suggesting that the thresholds for the micro entities should be as high as currently defined by Article 11 of the Fourth Directive for small companies. Those that opposed the proposal, primarily accountants and auditors, took the view that, despite the possibility of Member States to maintain equivalent requirements at their level, it would lead to an abolition of bookkeeping and preparation of accounting data in general for those entities.

6.2. Trespassing the thresholds for SMEs

Under this topic three issues were discussed:

- to prolong the two-year period in Article 12 of the Fourth Directive to five years;
- to implement a one year period for those entities ceasing to exceed the thresholds instead of the existing two years period (Article 12); and
- to change the general procedure on how to amend and update the thresholds.

Around 60% of respondents commented on the first issue and about 40% on the second one. Amongst these respondents, a slight majority were against the proposed changes; however, replies coming from companies were almost unanimously in favour. A major concern of the opponents was that an exceptionally bad year in terms of financial thresholds of Article 11 could result in a 5 year switch to the small companies' accounting regime (as a consequence of combining the two proposed changes). In their view, this effect was likely to lead to abuse. However, more than one fifth of these opponents would agree if the prolongation was limited to a period of 3 years. Some also suggested that it should be made a Member States' option.

Only 30% of the responses took a view on the last question concerning the change of procedure to amend and update the thresholds. However, almost four fifths of these were rather positive, expressing a broad agreement that the current process needs to be streamlined. Supporters were in favour of periodic updates with some kind of reference or indexation, e.g. according to the percentage of inflation rate.

Opponents argued that the threshold criteria are politically important and therefore should not be decided purely on technical grounds.

6.3. Relief from publication requirement for small entities

Around three quarters of all respondents commented on the issue with a majority expressing themselves against the proposed change. The strongest support for the proposal was expressed by companies with three quarters of them pleading in favour. The most vocal opponents were information providers (consultancies) who use the financial data in order to feed their databases.

Supporters of the proposal stressed that in the present situation mainly the competitors of small businesses benefit from the availability of information. Opponents took the view that publication is not expensive, especially taking into account electronic possibilities such as XBRL. They also highlighted that the proposal would lead to a decrease in transparency and reliability with potential counterproductive results like the increase in credit costs. It was also stressed that the publication requirement is seen as a consequence of the limited liability status which requires that some information is provided to the stakeholders of the companies.

6.4. Extension of exemption for companies without particular external user

6.4.1. Management owned companies

Little more than half of respondents provided comments on the proposal to allow medium-size companies whose managers are at the same time their owners to follow the same regime as the one applying to small companies. Their views were split evenly. However, among the companies, a majority of four fifths supported the proposal.

Opponents to the issue stressed the interests of stakeholders and the overall importance to maintain medium-sized enterprises transparent. The risk based approach was also criticised as being vague and creating a new, unnecessary category of companies. Technical problems of enforcement were raised as well, pointing out for example to the lack of ownership databases.

6.4.2. Unlimited liability medium companies

Almost half of respondents commented on the proposal to render the regime for small companies also applicable to unlimited liability medium-sized companies, and about two thirds of these expressed themselves in favour. The strongest support came from companies that were almost unanimous in their positive assessment of the proposal.

Some of the supporters even suggested extending the scope of the exemption to all unlimited liability companies instead of restricting it to medium-sized companies.

Opponents stressed the information needs of stakeholders.

6.5. Simplification for all companies

6.5.1. Full use of Article 57 – audit exemptions under specific circumstances

Almost half of the respondents took a position on this proposal. A large majority of two thirds were fully or rather supportive. Respondents from Member States which have made use of Article 57 generally provided a positive feed back. Respondents mainly supported the sole exemption of statutory audit, even though concerns were put forward concerning the risk of further concentration of the audit market into the hands of big players. Some put forward that given existing consolidation audit techniques, the benefits of the proposed measures might not live up to the expectations. Some supported consistency of auditing practice with consolidation requirements (IFRS). A number of respondents urged the Commission to investigate why only a few Member States have so far implemented the options in extant Article 57 in their jurisdiction, and call for further impact assessment.

6.5.2. Clarification of the relationship between the IAS regulation and the Seventh Directive

About 40% of respondents commented on the proposal to clarify the relationship between the IAS regulation and the Seventh Directive, and in particular that parent companies with immaterial subsidiaries do not need to prepare IFRS consolidated financial statements. These respondents were strongly in favour with companies being unanimously positive.

Supporters encouraged also further clarifications of the IAS Regulation, e.g. whether listed companies that do not form a group should follow IFRS, and addressed more detailed questions on the interlinkage between the IAS regulation and national accounting regimes.

6.5.3. Consolidation requirement for personal holdings

Less than one fifth of respondents elaborate on this issue, with a majority of these being in favour.

6.5.4. Abolition of deferred tax accounting

This issue attracted the attention of about 40% of the respondents, with a clear majority of them being in favour; all companies supported the proposal.

Some commented that it is unclear whether the proposal is referring just to SMEs (as stated in the last sentence of the respective paragraph of the Communication) or to all companies as referred to in the title. Therefore those, who read it as restricted to SMEs, advocated for relief to be granted to all companies for their separate and consolidated accounts. Others would prefer this becoming a Member State option.

Opponents claimed that deferred taxes contain useful information and stressed that in any case there is already an option for Member States to allow for abridged notes without deferred tax disclosures for small companies. Others suggested differentiating this measure in the way that there should be a mandatory abolition for small companies, but a requirement for full consideration (accounts and disclosures) for medium-sized and large companies.

6.5.5. Formation expenses

The proposal to repeal the requirement for disclosure of an explanation of formation expenses attracted attention of about 40% of the respondents, out of whom an overwhelming majority showed to be in favour. The strongest support comes from companies and from public authorities.

Proponents favoured an even stronger reduction of disclosure duties, such as the repeal of statements about auditors' fees, statements about derivative financial instruments (both for medium-sized companies) and statements regarding financial instruments stated at fair value (for small companies only).

Opponents argue that information about formation expenses is valuable. Some pointed out that exemption possibilities exist already for small companies (at Member State level).

6.5.6. Breakdown of net turnover into categories of activity and geographical markets

This issue was addressed by more than 40% of the respondents. Around three quarters were in favour, including almost all companies.

The arguments put forward corresponded to those set out with a view to the formation expenses (see point 6.5.5), with the reservation that large companies should continue to disclose.

7. ADDITIONAL SUGGESTIONS

7.1. Company law

In the Commission communication, it was emphasised that the list of measures proposed therein was not considered to be exhaustive, and the Commission invited stakeholders to submit additional suggestions for possible simplification measures. This invitation was seized by some of the respondents.

One respondent proposed to distinguish, in company law, better between listed and non listed companies, as this is the case already for the EU securities markets legislation: for non-listed company the rules could be much less detailed and more principle based and a bottom-up approach (”think small first”) should apply. For listed companies, more complex circumstances would have to be addressed so that for these companies the rules could have a grater level of detail.

With a view to the Third and the Sixth Directive, two respondents proposed to remove the current requirement to make available the last three annual reports at the registered office of the companies involved. At least for the two reports on the previous financial years it should be sufficient to make them available online, via the company’s website.

Concerning the Eleventh Directive, some respondents took the view that the current situation where it is only ensured that the information is available at the moment of the registration of the branch is not satisfactory. Although the directive contains rules to have changes concerning the mother company filed at the branch's register this is not enforceable in practice. Also, the register of the parent company should be informed about changes in the branch register. In this context and also from a number of other respondents there was a call on the Commission to increase its support for the BRITE project, in order to make sure that information can be exchanged via the European Business Register (EBR).

Another proposal that was made was to look not only at the Company law Directives but also at the Capital markets Directives.[95] Finally, one respondent suggested proposing a single simplification directive in case option 1 would not obtain sufficient support.

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[95] Here, it should be noted that the ongoing exercise to measure administrative burdens also extends to certain Financial Services and Capital Markets Directives. Results of this measurement will be available in the course of 2008.

7.2. Accounting

In addition to responding on questions, commentators presented the following additional suggestions on the accounting side of the Commission Communication:

Many respondents perceived the need to prepare different statements for different users (tax, statistics, etc.) as a major burden, and therefore encourage general work on 'all purpose' financial statements accompanied by single filing.

In terms of disclosure it was suggested that Commission should exert pressure on Member Sates to utilise already existing exemption options in accounting directives.

Some respondents commented on the current IASB draft "IFRS for SMEs" by stating that it is too complex and not focussing enough on the particular user needs and thus not suitable for SMEs.

A call to reduce the number of options available in the directives was also issued. Other respondents, however, highlighted the need to keep options available to Member States so as to accommodate accounting requirements to national setting (especially where threshold values are concerned).

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ANNEX 2

National rules applying to mergers/division of private limited-liability companies

Mergers / divisions involving private limited-liability companies						
COUNTRY	Application of the same rules for private and public companies	Need for merger/division plan	Need for general meeting	Need for written report by management	Need for independent expert's report	Need for separate accounting statement
Austria	Basically yes, with some specific provisions	yes	no, the shareholders may also cast their vote by circular resolution	yes	yes	yes, if last regular statement is older than six months
Belgium	yes					
Bulgaria						
Cyprus	very simplified	yes	yes	yes	no	no
Czech Rep	yes (references), but simplified	yes	no, but signature of associates or partners	yes	yes	yes
Denmark	yes					
Estonia	Basically yes, with specific provisions	yes, no waiver	Merger Yes, unless 90% of share capital hold by acquiring company and not demanded by 5% Division Yes, no waiver	Merger Yes, unless all shares hold by acquiring company or agreed by all shareholders - applicable only if net turnover does not exceed certain thresholds Division Yes, unless exchange of shares with divided company or approval of all shareholders	Yes (by auditor), unless all shares held by acquiring company (merger) / exchange of shares with divided company (division) or agreed by all shareholders	yes
Finland	basically yes	yes	yes	yes	yes, unless subsidiary merger or waived unanimously by shareholders	no

France						
Germany	Basically yes, with specific provisions	yes	yes	Yes, unless all shares held by acquiring company or waived by all shareholders	Yes, unless all shares hold by acquiring company or waived by all shareholders	no
Greece						
Hungary	no	yes, but contents differ from 3rd/6th CLD, merely basic information	Yes	no	no	statement of assets and liabilities
Ireland	no, no possibility for private companies to merge so far but provided for in Reform Bill	(yes)		(yes)		
Italy						
Latvia	yes					
Lithuania	basically yes	yes	yes	no, unless requested by the shareholders who hold at lest 10% of all voting shares exept in case of merger by acquisition, when the acquiring company holds at least 90% of the shares of the acquired company	yes (firm of auditors), except in case of merger by acquisition, when the acquiring company holds at least 90% of the shares of the acquired company	like public limited
Luxembourg	yes	yes	yes	yes	yes	yes
Malta	yes	N.A.	could be waived under conditions in Companies Act, Articles 345(6), 358(3), 359(1) (merger), Article 362(6) (division)	yes, but not for acquiring company holding at least 90% but not all of the shares, Article 359(2) Companies Act	yes, but not for acquiring company holding at least 90% but not all of the shares, Article 359(2) Companies Act; and not for divisions in the cases described by Articles 374(5), 374A(4) Companies Act	N.A.

Netherlands	yes	N.A.	N.A.	N.A.	N.A.	N.A.
Norway	Basically yes	yes	yes	yes	reports explaining share exchange ratio, not necessarily expert's report, acquiring company's report must be confirmed by auditor, though	no
Poland						
Portugal	yes	yes	yes	yes	yes	no
Romania						
Slovakia	Yes, unless other stipulation [less detailed rules for cooperatives, partnerships]	Yes	yes	Not, if all members renounce, § 152a(5) CC	No, auditor examination only if some of the members apply for it, § 152a(6) CC	no
Slovenia	yes					
Spain	Basically yes	yes	yes	yes	no	yes
Sweden	yes					
UK	No - rules apply (part 28 of Companies Act 2006) in the case of private companies	yes	yes	yes	yes unless all shareholders agree that one is not necessary.	yes

Mergers / divisions involving private limited-liability companies				
COUNTRY	Possibility to renounce to documents referred to above	Provision of documents in electronic form	Different procedures for mergers/divisions	Statistics on number of mergers/division
Austria	not for separate accounting statement; management report and examination of share exchange ratio if declared by all shareholders in writing or in the general meeting	law requires reports in writing, but, however, provision via electronic is not prohibited	procedures identical	in 2006: appr. 1,000 mergers (only privates) appr. 100 divisions (both publics and privates)
Belgium	no	no, but in preparation		not available
Bulgaria				
Cyprus	yes. The merger cannot proceed if so decided by majority	no		not available
Czech Rep	yes, unanimity	no specification, therefore allowed	Commercial Code Sec 92a Mergers of Partnerships Sec 92b Merger of Partnership with Ltd. Partnership Sec 104a Mergers of Ltd Partnerships Sec 104b Mergers of Ltd. Partnerships with Partnership	not available
Denmark	Like public limited	yes, e-mail is allowed	procedures identical	appr. 800 mergers / 500-600 divisions (companies in general)
Estonia	(cf. C-G)			mergers /divisions: 2005: 101 / 10 2006: 176 / 40 2007: 186 / 79
Finland	only export report, (cf. F)	yes	Procedures identical, only differences in information contained in merger/division plan	2007: 1288 mergers, 200-300 registered divisions (public and private companies)
France				

Germany	yes in regard of written reports, unanimity	No (not required)	procedures identical	2004/05: 1093
Greece				
Hungary	no	allowed, not required	-	not available
Ireland	yes, approval of shareholders	Allowed	Secs 201-204 Companies Act 1963 binding arrangements between company and members/creditors for the purpose of reconstruction/amalgamation of companies, provision by a court to facilitate transfer of property in this regard, possibility of squeeze-out (beneficial ownerships) of dissenting shareholders	no recourse to 3rd CLD in case of merger of public companies so far
Italy				
Latvia	Yes, unanimity	Allowed, electronic document without legal power		
Lithuania	no	No provisions	Procedures identical (Art. 61 sqq. Law on Companies)	2007: mergers: 195 privates, 11 publics, divisions: 7 privates, 1 public
Luxembourg	not provided for	no provision	identical procedure	not available
Malta	(cf. D-F); in addition, for divisions director's and expert's report and accounting statement can be waived unanimously, Article 366 Companies Act	allowed, not required	procedures are very similar for mergers: Part VIII of the Companies Act (Articles 336-359), for divisions: Part IX of the Companies Act (Articles 360-375)	2006 42 companies involved in merger, 2 companies divides
Netherlands	N.A.	allowed, not required	N.A.	
Norway		Allowed if accepted by shareholders		2007: 4200 mergers (60 public), 1765 divisions (15 public)

Poland				
Portugal	yes, unanimity	no provision	procedures identical	in 2007: 21 mergers / 24 divisions
Romania				
Slovakia	Like public limited			
Slovenia	yes, unanimity	not required	procedures identical	in 2005: 20 mergers in 2006: 21 mergers
Spain	no	allowed, not required	procedures identical	
Sweden	no	allowed	procedures identical	2000 mergers/year, 9 mergers between listed companies; divisions rare
UK	yes for the independent experts report if all shareholders agree on that it is not necessary	not specified	Takeover Provisions in Part 28 of Companies Act 2006 supported by the Takeover Panel/code - is the normal route for domestic mergers and divisions in the UK	s. 427a of Companies Act 1985 (public companies) Part 27 of the Companies Act 2006

ANNEX 3

Simplified mergers and divisions

1. POSSIBILITIES FOR SIMPLIFIED MERGERS AND DIVISIONS UNDER THE THIRD AND THE SIXTH COMPANY LAW DIRECTIVES

1.1. Simplified mergers

The Third Directive allows for different forms of simplified mergers:

– Member States can provide that, under certain conditions, the **acquiring company** does not need to hold a **general meeting**[96].

– Member States can, furthermore, provide that, under certain conditions, none of the companies has to hold a **general meeting** to approve the draft terms of merger where the acquiring company already holds **all** (voting) **shares** of the acquired company.[97] In this case, also no **written report by the management** of the companies and no **independent expert reports** have to be established.[98]

– Where the acquiring company does not hold all shares but holds **at least 90%** and the minority shareholders of the company to be acquired are granted a **sell out right** for their shares, Member States can not only relieve the merging companies from the requirement of the written report by the management and the independent expert reports but also from the obligation to give shareholders the right to inspect certain documents, including an **accounting statement**, one month before the general meeting deciding on the merger.[99]

1.2. Simplified divisions

Also the Sixth Directive allows for three forms of simplified divisions:

– Member States can provide that, under certain conditions, the **recipient companies** do not need to hold a general meeting[100];

– Where all (voting) shares in the company to be divided are owned by the recipient companies, Member States can also provide that there is no need to hold a general meeting for **the company to be divided**, subject to certain conditions;[101] and

– Where the recipients companies are newly established ones and their shares are attributed to the shareholders of the company to be divided in proportion to their rights in the company to be divided, no independent expert's report under the Sixth Directive has to be established[102].

[96] Art. 8 Third Directive
[97] Art. 25 Third Directive
[98] Art. 24 Third Directive
[99] Art. 28 Third Directive
[100] Art. 6 Sixth Directive
[101] Art. 20 Sixth Directive
[102] Art. 22(5) Sixth Directive

2. USE OF THE OPTIONS BY THE MEMBER STATES

COUNTRY	Simplified mergers - use of the options provided by the Third Directive - Approval of the general meeting			
	Article 8 Third Directive	**Article 24 Third Directive**	**Article 25 Third Directive**	**Article 26 Third Directive**
Austria	Yes	*not transposed **	No	*Article transposed*
Belgium	No	*Article transposed*	No	*Article transposed*
Bulgaria		*not transposed*	*not transposed*	*not transposed*
Cyprus	Not applicable	*Article transposed*	Not applicable	*not transposed*
Czech Republic	(Act No. 125/2008 Coll., on transformation of business companies and cooperatives (as of 1 July 2008) §129: where the shares of the acquiring company's existing shareholders are not exchanged, the decision on a merger by acquisition may be taken by the acquiring company's board instead of its GM provided that: a) SH shall be informed about their rights at least one month before the resolution on the draft terms of merger; b) at least 1 month before the decision on the draft terms of merger all SH of the participating company must have access to the documents listed in Art. 11 Third Directive and must be entitled to receive, without any undue delay, copies or abstracts (§ 119); c) one or more SH of the acquiring company holding at least 5% of shares can demand a GM within 1 month after publication. If the company has issued shares with no voting rights attached, such shares are not taken into account for the calculation (§131(1)); d) the acquiring company owns at least 90% of the merging company's shares or interim certificates (in case of capital increase, calculated after such increase).	*not transposed*	(According to the Act No. 125/2008 Coll., on transformation of business companies and cooperatives, which shall enter into force 1 July 2008) § 132 stipulates that if the acquiring company is the only shareholder of a merging company, the merger shall be approved by the boards of all participating companies; § 132 stipulates that if the acquiring comapny is owner of all shares with voting rights of the merging company, the merger shall be approved by the boards of all participating companies.	*not transposed*
Denmark	Yes	*Article transposed*	Yes	*not transposed*
Estonia	no	*not transposed*	no	*not transposed*
Finland		*not transposed*	*not transposed*	*not transposed*
France	No. Pursuant to Article L.236-9 of the Code of Commerce, the approval of the general meetings in respect of the merging companies is compulsory.	*Article transposed*	Article L.236-11 of the Code of Commerce stipulates that the approval of the draft terms of merger by the general meeting of respect of the acquired company is not necessary if all the shares representing the total capital of the acquired company are held in their entirety by the acquiring company. The approval by the general meeting in respect of the acquiring comapny is however needed.	*not transposed*
Germany	yes	*not transposed*	no (under German law a general meeting has to take place for passing resolutions on all fundamental issues in a controlled company)	*Article transposed*
Greece	no such exemption in our national law. Approval of the general meeting is in force	*not transposed*	<u>No Approval</u> of the general meeting is needed	*Article transposed*
Hungary		*not transposed*	*not transposed*	*not transposed*
Ireland		*Article transposed*	*Article transposed*	*Article transposed*

Italy	The merger is decided upon according to the provisions concerning the amendment of the memorandum and articles of association (Article 2502 Codice Civile)	*Article transposed*	The memorandum or the articles of association may stipulate that the merger by acquisition is decided by the administrative bodies, if the requirements in respect of the draft terms of merger and the depositing of the shares are respected	*Article transposed*
Latvia	no, due to protection of minority shareholders	*not transposed*	no, due to protection of minority shareholders	*not transposed*
Lithuania	yes	*Article transposed*	yes	*Article transposed*
Luxembourg		*Article transposed*	*Article transposed*	*Article transposed*
Malta	Yes. Article 345(6) of the Companies Act (Cap. 386)	*not transposed*	Yes. Article 358(3) of the Companies Act (Cap. 386)	*not transposed*
Netherlands		*Article transposed*	*not transposed*	*Article transposed*
Norway				
Poland		*Article transposed*	*Article transposed*	*Article transposed*
Portugal		*Article transposed*	*Article transposed*	*Article transposed*
Romania		*Article transposed*	*Article transposed*	*Article transposed*
Slovakia	No. In the year 2001 when the 3rd Directive was transposed, the option was not included. Nowadays, the more profound changes of our Commercial Code, including the simplification measures, await the re-codification of the whole Civil law (which is under way).	*Article transposed*	*Article transposed*	*Article transposed*
Slovenia	Yes, Companies Act Art. 599	*Article transposed*	*Article transposed*	*Article transposed*
Spain		*Article transposed*	*Article transposed*	*Article transposed*
Sweden	yes	*not transposed*	yes	*not transposed*
United Kingdom	Yes Co Act 2006 S.916	*Article transposed*	Yes Co Act 2006 S.916	*Article transposed*

** Information in italics is taken from report on measurement of administrative costs by Deloitte/Ramboll/Capgemini*

COUNTRY	Simplified mergers - use of the options provided by the Third Directive - Approval of the general meeting		
	Article 27 Third Directive	**Article 28 Third Directive**	**Article 29 Third Directive**
Austria	Yes	*not transposed **	*not transposed*
Belgium	No	*not transposed*	*not transposed*
Bulgaria	*not transposed*	*not transposed*	*not transposed*
Cyprus	Not applicable	*not transposed*	*not transposed*
Czech Republic	(Act No. 125/2008 Coll., on transformation of business companies and cooperatives (as of 1 July 2008) §129: where the shares of the acquiring company's existing shareholders are not exchanged, the decision on a merger by acquisition may be taken by the acquiring company's board instead of its GM provided that: a) SH shall be informed about their rights at least one month before the resolution on the draft terms of merger; b) at least 1 month before the decision on the draft terms of merger all SH of the participating company must have access to the documents listed in Art. 11 Third Directive and must be entitled to receive, without any undue delay, copies or abstracts (§ 119); c) one or more SH of the acquiring company holding at least 5% of shares can demand a GM within 1 month after publication. If the company has issued shares with no voting rights attached, such shares are not taken into account for the calculation (§131(1)); d) the acquiring company owns at least 90% of the merging company's shares or interim certificates (in case of capital increase, calculated after such increase).	*Article transposed*	*not transposed*
Denmark	Yes	*not transposed*	*not transposed*
Estonia	yes, Article 421(4) Commercial Code	*not transposed*	*not transposed*
Finland	*not transposed*	*not transposed*	*not transposed*
France	No, since shareholders must have the possibility to take part in all important decisions, including mergers.	*not transposed*	*not transposed*
Germany	yes	*Article transposed*	*Article transposed*
Greece	no such exemption in our national law. Approval of the general meeting is in force	*not transposed*	*Article transposed*
Hungary	*not transposed*	*not transposed*	*not transposed*
Ireland	*Article transposed*	*Article transposed*	*Article transposed*
Italy	There are simplifying measures in terms of documentation on the decision for a merger (e.g. regarding the experts report), but the requirement of an approval of the decision is the same as illustrated in the preceding point.	*Article transposed*	*Article transposed*
Latvia	no, due to protection of minority shareholders	*not transposed*	*not transposed*
Lithuania	yes	*Article transposed*	*Article transposed*

Luxembourg	*Article transposed*	*Article transposed*	*Article transposed*
Malta	Yes. Article 359(1) of the Companies Act (Cap. 386)	*Article transposed*	*not transposed*
Netherlands	*not transposed*	*not transposed*	*not transposed*
Norway			
Poland	*Article transposed*	*Article transposed*	*Article transposed*
Portugal	*Article transposed*	*Article transposed*	*Article transposed*
Romania	*Article transposed*	*not transposed*	*Article transposed*
Slovakia	yes	*Article transposed*	*Article transposed*
Slovenia	yes, Companies Act Art. 599.1	*Article transposed*	*Article transposed*
Spain	*not transposed*	*Article transposed*	*Article transposed*
Sweden	yes (cf. 1(a))	*not transposed*	*not transposed*
United Kingdom	Yes Co Act 2006 S.917	*Article transposed*	*Article transposed*

** Information in italics is taken from report on measurement of administrative costs by Deloitte/Ramboll/Capgemini*

COUNTRY	Simplified divisions - use of the options provided by the Sixth Directive - Approval of the general meeting		
	Article 6 Sixth Directive	Article 20 Sixth Directive	Article 23 Sixth Directive
Austria	Yes	No	*not transposed **
Belgium	No	No	*not transposed*
Bulgaria			*not transposed*
Cyprus	Not applicable	Not applicable	*not transposed*
Czech Republic			*not transposed*
Denmark	Yes	Yes	*not transposed*
Estonia	no		*not transposed*
Finland			*Article transposed*
France	No. The general meeting remains compulsory since shareholders must have the possibility to take part in all important decisions, including divisions.	No. The general meeting remains compulsory since shareholders must have the possibility to take part in all important decisions, including divisions.	*not transposed*
Germany	yes	no (cf. 1(b))	*not transposed*
Greece	No such exemption in our national law. Approval of the general meeting is in force.	No. Approval of the general meeting is needed	*not transposed*
Hungary			*not transposed*
Ireland			*partially transposed*
Italy	The administrative bodies of the companies participating in the division draw up the balance sheet and the report accompanying the balance sheet, including the experts report. The experts report is not necessary if the division is effected by the formation of one or more new companies and if there are no criteria for the allocation of shares other than the pro-quota distribution. For the other procedural requirements for the division the respective provisions in terms of mergers apply.	The administrative bodies of the companies participating in the division draw up the balance sheet and the report accompanying the balance sheet, including the experts report. The experts report is not necessary if the division is effected by the formation of one or more new companies and if there are no criteria for the allocation of shares other than the pro-quota distribution. For the other procedural requirements for the division the respective provisions in terms of mergers apply.	*not transposed*
Latvia	no, due to protection of minority shareholders	no, due to protection of minority shareholders	*not transposed*
Lithuania	no	no	*not transposed*
Luxembourg			*not transposed*
Malta	Yes. Article 362(6) of the Companies Act (Cap. 386)	No.	*not transposed*

Netherlands			*not transposed*
Norway			
Poland			*not transposed*
Portugal			*not transposed*
Romania			*not transposed*
Slovakia	yes	yes	*Article transposed*
Slovenia	yes, Companies Act Art. 629, 296	NO, option not used	*not transposed*
Spain			*not transposed*
Sweden	yes	not specifically, but there applies the general rule that shareholders may unanimously set aside rules that protect them	*not transposed*
United Kingdom	Yes - Co Act 2006 S.931/932	Yes - Co Act 2006 S.933	*Article transposed*

** Information in italics is taken from report on measurement of administrative costs by Deloitte/Ramboll/Capgemini*

ANNEX 4

Costs of filing draft terms of merger/division with the register

Costs of registration in the central register, commercial register or companies register			
COUNTRY	**(Initial) registration of companies**	**Amendments to the register in general**	**publication of draft terms of merger/division**
Austria	Costs depend on the content to be registered: * basic fee (€ 34,-- for most companies, € 131,-- for public limited companies) * registration fees, e.g.: name of the company: € 8,--; address: € 8,--; capital: € 131,--; articles of association: € 87,--; directors: € 25,--/each; members/shareholders: € 17,--/each; members of the supervisory board € 43,-- /each	Fees for amendments generally equal the fees for initial registrations (except for amendments to the articles of association: € 43,-- instead of € 87,--).	For a filing of the draft terms of merger/divison with the Commercial Court, only the applicable basic fee has to be paid. In addition, the companies have to bear the costs of publication of this filing in the official gazette (€ 100,--).
Belgium	* civil companies: none; * commercial company: 71 EUR (plus 71 EUR for each accessory branch). This cost is linked to the 'entreprise counters'	* civil companies: none; * commercial company: amendments : none close-up of the company :71€	Publication by mention in the national journal by each concerned company : 134,07€
Bulgaria	* Checking availability of company name and obtaining certificate for the registered name: BGN 100 (EUR 51) or 102 BGN (EUR 52) (by phone); * Court fee at the to the bank account of Sofia City Court: state fee for court registration and certified copy of the court decision is BGN 121.50 (EUR 62) (it may be BGN 122.50 (EUR 62.3) if the court decision is longer than 1 standard typing page)		
Cyprus	£CY60 (EUR 102) plus 0.6% on the nominal capital	£CY60 (EUR 102) plus 0.6% on the nominal capital	£CY60 (EUR 102) plus 0.6% on the nominal capital
Czech Republic	Registration in the Commercial Register: 5000 CZK (EUR 190); (according to the Act No. 549 of 1991 Coll., on court fees) ONLY FOR REGISTRATION IN THE COMMERCIAL REGISTER (CHANGES IN REGISTERED INFO AND DELETION OF THE COMPANY), NOT FOR FILING OF THE DOCUMENTS IN THE COLLECTION OF DOCUMENTS	Changes: 1000 CZK (EUR 38); Deletion: 3000 CZK (EUR 114); (according to the Act No. 549 of 1991 Coll., on court fees)	The draft terms of merger is filed in the Collection of Documents (which is an integral part of the Commercial Register where all documents are filed), filing of the draft terms of merger is free of charge and always in electronic form; then the draft terms of merger has to be published in the National Gazette (sent in electronic form from the Commercial Register), fees: 2500 CZK/1Word page (100 EUR); 4900 CZK/2 and more Word pages (196 EUR)
Denmark	Register the company with the Danish Commercial and Companies Agency over Webreg system: no charge	no charge	no charge

Estonia	Dependent on type of legal person: - sole trader: 200 EEK (13€), via internet: 200 EEK (13€); - general partnership, limited partnership: 200 EEK (13€), via internet: 200 EEK (13€); - commercial association: 2200 EEK (141€), via internet: not possible; - branch of foreign company: 2200 EEK (141€), via internet: not possible; - private limited company: 2200 EEK (141€), via internet: 2900 EEK (185€); - public limied company: 2200EEK (141€), via internet: not possible	* sole trader, general partnership, limited partnership: 60 EEK (4 €), * commercial association, branch of foreign company, private limited company, public limied company: 280 EEK (18 €)	* general partnership, limited partnership: 60 EEK (4 €), * commercial association, private limited company, public limied company: 280 EEK (18 €)
Finland	* registration of new limited company or branch 330 €, partnership 155 €, sole trader 60 €	* registration of changes 57 €, change of articles of association 330 €	
France	* check company name availability with the Institut National de la Propriété Industrielle: no charge (unless deeper research is made, for example, by field of activity); * request for a company's registration with the Centre de Formalités des Entreprises (CFE): €40 paid to the CFE and €76.19 paid to the trade register in the Commercial court	* fees are fixed in the Code of Commerce (decree). They are calculated on the basis of a baseline rate, which is currently fixed at 1.30€/unit; * the first amendment to the register amounts to 42 units, that is 42*1.30€ (54.60€); * any further amendment amounts to 15 units (19.50€).	Fees for publication are fixed in the Code of Commerce (decree). The draft terms of merger/division are published in: * regional newspapers entitled to publish legal announcements: fees are fixed by each "préfets" and go from 3€ to 4€ per line; * in the relevant part of the national gazette ("BALO") - if the company makes direct offers to the public: the fee is 64.60€.
Germany	* First registration - private limited company: 100€ (no 2100 of the Gebührenverzeichnis der HRegGebV) - public limited company or KGaA: 240€ (no 2102 of the Gebührenverzeichnis der HRegGebV), in the case of a formation against contributions in kind: 290€ (no 2103 of the Gebührenverzeichnis der HRegGebV) * Registration of a branch: 90€ (no 2200 of the Gebührenverzeichnis der HRegGebV) * if the parent company has its seat in another MS: as new registration (100€ or 240 €)	* registration of changes 30 € - 170 € (depending on the information to be registered)	* (until the end of 2008 publication in a newspaper in addition to) 20 € * electronical publication 1 €
Greece	* Costs for incorporation are dependent on the capital of a company. Example: S.A. with a capital of 60000 Euro the costs are: 60000*1/100 (tax of capital concentration) + 60000*1/1000 (tax of competition) + 60000*3/1000 (approximately for notary's fee), + 544 Euro (publication fee); * publication fee for a branch of a S.A. is 544 Euro.	publication fee 289 euro (s.a. companies)	publication fee 289 euro (s.a. companies)

Hungary	The duty on company registration is: • 600,000 HUF (EUR 2,340) for public limited companies and European public limited-liability companies, • 100,000 HUF (EUR 390) for private limited companies and limited liability companies, • 50,000 HUF(EUR 195) for unincorporated business associations • 30,000 HUF (EUR 117) for sole proprietorships • 250,000 HUF (EUR 975) for the Hungarian branch offices of foreign-registered companies • 150,000 HUF (EUR 590) for direct commercial representations of foreign companies. The duty payable for the registration of companies under simplified proceedings is 15,000 HUF (EUR 59).		
Ireland	* The standard fee for registering a company is €100. * The 'CRODisk' scheme incurrs costs of €50 but this scheme is generally limited to frequent presenters of documents. * The standard fee for registering a business name is €40, or €20 if filed electronically.	€15 per form - resolution, Memo & Arts. Change in company details - address, Director info can be filed online for free. €100 to change company name.	€15 for form CBM1. No fees order introduced to date.
Italy	Register with the Register of Enterprises (Registro delle Imprese) at the local Chamber of Commerce: € 156,00 (registration tax) + € 90,00 (registration with Chamber of Commerce) + € 200.00 (membership fees)	costs do not change in case of modification	costs do not change in case of merger or division
Latvia	Register at the Ministry of Justice, Register of Enterprises: LVL 125 (176 (EUR)) (+/- fee for verifying the signature in case of a sole founder on the company's registration application and the sample signatures of the members of the Management Boardthis service: LVL 5.5 (EUR 8)		
Lithuania	The costs depend on the type of company to be registered: - Private limited liability company: 198 Litas (57,42 €); - Public limited liability company: 198 Litas (57,42 €), - European company: 198 Litas (57,42 €); - Branch of company: 99 Litas (28,71 €) - Branch of foreign company: 200 Litas (58 €)	Registration of amended document of incorporation costs 92 Litas (26,56 €), Registration of amendments to the particulars or information (one record) cost 10 Litas (2,89 €).	There is no fee for the filing of the draft terms of merger/ division in the register

Luxembourg	* Fee dependent on form of company (21 different forms). * Costs for Registration of a new company range from 13,70 € to 132,39 €; Examples: SE 132,39 €, limited liability company (société responsabilité limitée) 132,39 €.	* Changes to the register are devided between - statutory changes (13,70 € to 68,48 €) and - other changes (9,13 € to 13,70 €). * Deletion: from 13,70 € to 132,39 €	
Malta	From 350 € to 1,725 €, according to the share capital	No fee imposed	No fee imposed
Netherlands	dependent on the size of company: - small companies (capital less than 2.5 million € and less than 50 employees): 54,05 €; - medium sized companies (capital in between 2.5 million - 10 million € and 50 - 250 employees): 108,10€; - big companies (capital more than 10 million €, more than 250 employees): 313,49€		
Norway	The fee is NOK 6000 (which is approximately EUR 750) for registration of private limited companies public limited companies, limited partnerships and cooperatives. For other companies and branches the registration fee is NOK 2500 (EUR 310). The registration fee basically covers the lifetime cost for registration in The Register of Business Enterprises.		
Poland	* The registration of an incorporation of a company as well as a branch costs in total 1000 Zloty (EUR 277). Exception: a partnership costs 750 Zloty (EUR 208).	* Changes in the companies register cost 400 Zloty (EUR 111).	
Portugal	€360 or €300 (depending on whether the company's object is IT or IT related or not), including mandatory publications but excluding a 0.4% Stamp Tax rate, levied on the amount of the company's share capital subscriptions		
Romania	Approximately: 350 RON (EUR 94) RON 50 (EUR 13) (verification and registration of company's name/emblem) + RON 10 (EUR 3) (verification uniqueness of headquarters) + RON 30 (EUR 9) (Certificate issued by the trade register office) + 20% of the registration tax: 24 RON (EUR 6) (Dissolution Fund) + 10,00 RON (EUR 3) (Obtaining Unique Registration Code) + 5% of the registration tax: EUR 6 (EUR 1) (Fund for the Bulletin of judicial reorganization and insolvency procedures) + RON 39 (EUR 10) (stamp duty) + RON 120 (EUR 32) (registration fee) + publication taxes Subsequent ammendments: RON 30 (EUR 9) for each mandatory element of the basic information of the company to be registered.		

Slovakia	Item No 17 of the Act No 71/1992 stipulates the actual fees for the registration in the matters of the Commercial Register as follows: 1. Joint Stock Company SKK 25 000 (EUR 833) (e-registration = 12500 (EUR 417)) 2. Other legal entities SKK 10 000 (EUR 333) (e-registration = 5000 (EUR 167)) 3. Individual entrepreneur SKK 5 000 (EUR 167) (e-registration = 2500 (EUR 83)) 4. Branch of a legal entity SKK 10 000 (EUR 333) (e-registration = 5000 (EUR 167) 5. Branch of individual entrepreneur SKK 1 000 (EUR 33) (e-registration = 500 (EUR 17)) (If a whole application is submitted via electronic means, the fee is only 50% of the sum stipulated)	• change of legal form SKK 10 000 (EUR 333 (e-registration = 5000 (EUR 167)) • change (deletion of an old entry and insertion of a new entry) of any number of particulars regarding the same entity within the same application – SKK 2000 (EUR 67) (SKK 1000 or EUR 33 for e-registration) • change of the name of the street/village/town/city, change of ZIP code, etc. if the registered office remain the same - free of charge	free of charge
Slovenia	* no court taxes for any entry into court register		
Spain	* Certification of uniqueness of proposed company name: EUR 7 to 14 * Public deed of incorporation of the company for its registration with the Mercantile Registry: EUR 159		
Sweden	2000 SEK (EUR 212) for registration of a new company or a new branch	800 SEK (EUR 85)	800 SEK (EUR 85)
United Kingdom	Company: £20 (EUR 26) Branch: £20 (EUR 26) Both can request a same day service for £50 (EUR 66). In addition, companies and branches pay an annual fee of £30 (EUR 40) (this fee applies when a company files its annual return and a branch files its annual accounts).	Incorporation £20, Electronic Incorporation £15, Change of Name £20, Same day change of name £50, Re-registration £20, Annual Returns £30, Same day re-registration and change of name £100, Electronic Annual Returns £30, Registration of charge per entry £13,Voluntary dissolution £10.	Companies deliver to registrar to publish in the Gazette - no specific charges made - but may be re-registration costs see general charges.

ANNEX 5

Costs of providing free copies of certain documents to shareholders

Example[103]: Merger between two large Insurance groups (with international activities)

Annual accounts/annual report	Issue language 1	Issue language 2	Issue English
Group 1 (year n-1)	2,500 copies	250 copies	250 copies
Group 1 (year n-2)	2500 copies	250 copies	250 copies
Group 1 (year n-3)	750 copies	250 copies	250 copies
Parent Company 1 (year n-1)	2,500 copies	250 copies	250 copies
Parent Company 1 (year n-2)	2,500 copies	250 copies	250 copies
Parent Company 1 (year n-3)	750 copies	250 copies	250copies
Group 2 (year n-1)	500 copies	500 copies	250 copies
Group 2 (year n-2)	500 copies	500 copies	250 copies
Group 2 (ear n-3)	500 copies	500 copies	250 copies
Company 2 (year n-1)	500 copies	500 copies	250 copies
Company 2 (year n-2)	500 copies	500 copies	250 copies
Company 2 (year n-3)	500 copies	500 copies	250 copies
	14,500	4,500	3,000
Total	**22,000 copies**		

103 Example provided by the Gesamtverband der Deutschen Versicherungswirtschaft (GDV)

Accounting Statement (quarterly financial statement) year n	Issue language 1	Issue language 2	Issue English
Group 1	5,500 copies	100 copies	500 copies
Parent Company 1	2,000 copies	100 copies	100 copies
Group 2	1,000 copies	2,000 copies	250 copies
Parent Company 2	1,000 copies	2,000 copies	250 copies
Total	9,500	4,200	1,100
			14,800 copies

Total number of copies printed	36,800
Number of copies requested	./. 3,600
Copies to be destroyed	**33,200**

Year n: Year of the merger

ANNEX 6

Number of limited-liability companies in the EU

VIII. Data on registrations- A

Country	Total number of new company registrations during 2006					Total number of registered companies as of December 31, 2006				
	Sole trader	General partnership	Private LLC	Public LLC	Other	Sole trader	General partnership	Private LLC	Public LLC	Other
AT	Missing	Missing	Missing	Missing	Missing	8 290	16 500	100 710	1 720	56 480
BE	Missing	Missing	Missing	Missing	Missing	601 926	Missing	726 919	Missing	Missing
BG	14 852	158	34 911	.[1]	0	749 352	25 732	250 699	.[1]	0
HR	12 701	.	10 010	39	675	103 736	.	114 196	1 773	6 951
CS	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing
DK	33 442	3 790	23 628	2 835	13 784	274 073	26 516	137 753	40 990	85 761
EE	683	15	12 013	114	63	20 642	380	76 852	5 799	1 427
FI	15 696	1 240	10 245	2	3 549	148 852	13 739	179 270	212	122 369
FR	82 129	3 703	144 925	361	139 668	991 471	59 043	1 550 637	127 313	1 518 853
DE	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing
GI	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing
GB	.	.	370 000	1 000	8 800	0	0	2 310 300	12 900	50 000
GR	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing
HU	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing
IS	.	128	3 189	28	808	0	2 667	26 056	908	21 776
IE	.	.	17 327	359	1 461	.	.	148 643	1 561	16 857
IM	689	0	3 465	0	505	0	0	30 934	0	0
IT	260 635	29 229	74 785	1 022	57 900	3 494 890	637 013	1 029 325	54 045	910 241
JE	810	0	3 314	165	0	14 705	0	31 220	935	0
LV	1 759	22	11 231	50	18	25 357	242	89 330	1 263	143
LI	50	Missing	8	450	Missing	350	Missing	60	7 500	Missing
LT	1 401	6	5 254	6	1 601	66 831	624	60 398	664	41 545
LU	242	20	5 046	3 415	508	8 415	386	32 322	49 129	0
MT	.	37	2 800	6	0	NR	30	2 800	4	0
MD	2 529	1	4 764	3	1 682	63 402	171	54 414	1 033	13 804
NL	93 771	1 882	47 463	240	31 146	577 379	11 890	712 979	6 401	192 063
NO	7 232	3 087	34 813	36	3 995	127 033	38 823	192 168	505	24 231
RO	41 526	13	90 986	642	112	398 974	34 212	1 084 320	31 751	6 731
RS	45.99	1.04	11.04	40	754.0	16.48	17 2.00	4.50	6.00	272.00
SI	.	3 800	120	42	250	.	41 438	2 649	1 063	6 087
ES	87	100	146 641	2 025	610	0	0	1 831 720	314 538	80 328
SE	25 380	8 158	23 912	.[1]	2 526	556 025	121 392	311 468	.[1]	41 860
CH	11 500	1 200	11 400	7 700	2 400	152 000	14 700	94 500	178 300	47 300
UA	314 539	41	231	113	68 874	1 610 160	905	9 850	8 206	534 566

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[1] Figures are included under "Private LLC"