

Third and Sixth Company Law Directive: Merger and division of public limited liability companies

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Presentation of Company Law Acquis

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Third Company Law Directive - Domestic mergers of public companies

- Directive 78/855/EEC of 9 October 1978
- Legal basis: Article 54(3) (g) EEC Treaty
- Part of the general programme for the abolition of restrictions on freedom of establishment
- Objective: harmonisation of legislations relating to domestic mergers of public companies

Sixth Company Law Directive - Division of public companies

- Directive 82/891/EEC of 17 Dec. 1982
- Legal basis: Article 54(3) (g) EEC Treaty
- Part of the general programme for the abolition of restrictions on freedom of establishment
- Objective: harmonisation of legislations relating to division of public companies

Third and Sixth CLD

- **Scope:** domestic mergers/divisions of public companies
- **Opt out provision:** cooperative societies
- **Exception:** companies subject to bankruptcy proceedings, insolvency or judicial arrangements.
- **Definition of mergers covered:**
 - Merger/division by acquisition
 - Merger/division by formation of new company(ies)

Third and Sixth CLD - Procedure

1. Elaboration of **draft terms**
2. **Publication** at least one month before the general meeting
3. **Approval** of the general meeting of each participating company

NB: possibility not to require approval of merger under certain conditions

Third and Sixth CLD – Reports

- Report by the **administration or management bodies** of each participating company explaining the draft terms of the merger/division (legal and economic ground, share exchange ratio)
- **Independent expert report** to the shareholders on draft terms of merger/division

Third and Sixth CLD – Rights of shareholders

- **Access to documents** at least one month before general meeting (draft terms of merger, annual accounts and reports, accounting statement, specific reports)
- Right to obtain **copies** of those documents free of charge
- Holders of securities with **special rights** entitled to get equivalent rights in new company(ies)

Third and Sixth CLD – Rights of employees

- Regulated in accordance with Directive Council Directive 2001/23/EC 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 (consolidated version of Directive 77/187/EEC)
=> **information** and **consultation** of employees

Third and Sixth CLD – Protection of creditors

- **National legislation** shall provide adequate system of creditors' protection
- Creditors shall be entitled to obtain **adequate safeguards** where the financial situation of the participating companies makes such protection necessary
- **Different treatment possible** between creditors

Third and Sixth CLD – Effect of merger/division

- Certification of draft terms of merger/division
- Date on which merger/division takes effect determined by national legislations
- Publication of the merger/division