

# The 10th Company Law Directive on Cross-Border Mergers

*Nathalie Berger*

*Presentation of Company Law Acquis*

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# The 10th CLD –

## *A quick happy end to an old story !*

- Unsuccessful negotiations in the 1980s
- Key measure of 2003 Action Plan on Company Law and Corporate Governance
- New proposal tabled in November 2003
- Adoption in first reading on 26 October 2005
- Transposition deadline 15 December 2007

# The beneficiaries of the 10th CLD

- Limited liability companies:
  - Companies listed in 3rd CLD, or
  - Company with share capital, legal personality, separate assets serving to cover its debts, subject to conditions concerning guarantees provided by 1st CLD
- Exclusion: UCITS
- Opt-out provision: cooperative societies

# The 10th CLD – a simple legal framework

- 12 articles
- 2 principles:
  - Facilitation of exercise of right to participate in cross-border mergers
  - Application of national provisions on domestic mergers
- Core issue: employee participation

# The 10th CLD – Procedure of merger

- Elaboration and publication of draft terms
- Reports for shareholders by the management and by independent experts
- Approval by general assembly
- Certification by competent authority
- Control of legality
- Registration in Host Member State
- Entry into force and publication

# The 10th CLD – Employee participation: the issue at stake

- Different systems in Member States
- **Principle:** application of legislation of Host Member State
- **Risk:** a cross-border merger may imply the loss or reduction of employee participation rights

# The 10th CLD – Employee participation rights preserved

- Organisation of **negotiations** in order to agree new participation arrangements
- In case of failure of negotiations: if **1/3rd** of employees of participating companies are covered by employee participation rights => application of the highest existing participation standards

# The 10th CLD –

Employee representation in board of monistic company

- Move from dualistic to monistic system: if workers representatives constitute  $\frac{1}{3}$  of management or supervisory board in one of the merging companies => the number of employee representatives in new company cannot be less than  $\frac{1}{3}$



# The 10th CLD –

Domestic mergers subsequent to a cross-border merger

- Objective: prevent abuses
- Extension of employee participation provisions to all domestic mergers subsequent to a cross-border merger for a period of 3 years after entry into force of cross-border merger