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Proposal for a tenth Council Directive based on Article 54 (3) (g) of the EEC Treaty concerning cross-border mergers of public limited companies

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contents

Explanatory memorandum

Objectives

1. In order to meet the aim of the Treaty of Rome to create a strong, homogeneous internal market, it is most important that Community undertakings have at their disposal the instruments which would enable them to adapt their legal status to the dimension of the Community and to achieve cross-border mergers of public limited companies within the Community.

At the moment in the Community the legislation of certain Member States does not allow, or does not provide for, such mergers, and other Member States subject such operations to prohibitive conditions such as the unanimous approval of the shareholders of the company being acquired. In the circumstances, Community undertakings wishing to merge have to opt for complex techniques usually requiring the formation of a group of companies headed by a financial holding company, followed by the transfer of assets within the group. Even then the result is by no means identical to that of a merger as all the original companies remain in separate legal existence.

In this respect, the cross-border merger should be seen above all as a technique to simplify the procedures for creating or restructuring complex economic entities.

2. Such was the objective of two initiatives intended to facilitate mergers of companies from different Member States – on the one hand the proposal for a Regulation on the Statute for European Companies,[1] which would allow two or more companies to merge by forming a new type of Community company, and on the other hand the preparatory work on a convention on international mergers which would allow a company from one Member State to be acquired by a company from another.

In both cases, however, the pace of work slowed progressively and was suspended in 1980.

In particular the same problem has hitherto prevented all regulation of cross-border mergers: the lack of the equivalent provisions concerning employee representation in the organs of public limited companies in the Community. Those Member States in whose legislation employee representation plays a large part feared that international mergers could be used as a means of avoiding such laws.

3. Recently, however, developments have taken place in the problems associated with international mergers which suggest that work on a convention should cease and a new start be made by means of this proposed Directive.

The major element in this new approach is the priority accorded by Community bodies to the need to facilitate and promote cooperation between undertakings operating in the Community. It had in fact become evident, particularly in high-investment areas, that adequate means could usually only be found through a pooling of resources by several undertakings. More and more, such cooperation involved undertakings which in the internal market were governed by the laws of different Member States.

With this priority in mind, the March 1984 European Council in Brussels stressed the importance of the proposed Regulation on the European Economic Interest Grouping.[2]

Like international mergers, that proposal is intended to provide a legal framework for cooperation between undertakings from different Member States.

Also with the aim of promoting cooperation between undertakings, the Council attempted to overcome the final problems associated with a series of fiscal measures[3] including one which directly

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[1] OJ C 124, 10.10.1970; Supplement 4/75 – Bull. EC.

[2] OJ C 14, 15.2.1974; Supplement 1/74 – Bull. EC; OJ C 103, 28.4.1978. However, while the aim of the European Grouping is to allow undertakings to pool certain activities, cross-border mergers provide public limited companies which wish to do so with the legal means to take international cooperation to its ultimate conclusion with the aim of attaining the size and achieving the economies of scale necessary for them to take full advantage of the European economy and strengthen their ability to compete with large undertakings from non-member States.

[3] These fiscal measures comprise three proposed Directives relating to:

- the common system of taxation applicable to mergers, divisions and contributions of assets occurring between companies of different Member States (OJ C 39, 22.3.1969);
- the common system of taxation applicable to parent and subsidiary companies of different Member States (OJ C 39, 22.3.1969);
- the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises (arbitration procedure) (OJ C 301, 21.12.1976).

concerned mergers between companies across the Community's internal borders.

In addition it also recommended early action in the field of company law on international mergers. In effect, a preliminary step to the fiscal measures on cross-border mergers is that they should be able to legally take place.

4. The re-examination of the problem of cross-border mergers is further suggested as a result of developments in the company law harmonization programme.

In fact the law on mergers of public limited companies from the same Member State (national mergers) was harmonized by the third company law Directive adopted in 1978.[1]

As the legal mechanics of national and cross-border mergers are identical, this Directive is firmly anchored to the solutions already found in the third Directive. This means that while full advantage is taken of the considerable achievements of the earlier work on the draft convention, harmonization can be limited to those elements which are different or additional for cross-border mergers compared with national mergers.

5. Finally, it seems possible to overcome temporarily the previously insurmountable problem of employee representation in the company's organs. In the tax Directive a solution was found based on the idea that a Member State might subject an international merger to certain conditions if one of the effects would be to put an end to employee representation in an undertaking, particularly one being acquired.

Given the priority accorded to solving the problems of international mergers, this solution could also be temporarily accepted in the company law field pending subsequent coordination to be achieved by the proposed fifth Directive on the structure of public limited companies and the powers and obligations of their organs.[2] This provides for different but equivalent employee representation systems and thus facilitates the complete solution of the problems related to international mergers.

Legal basis

6. The legal basis for the Directive is Article 54 (3) (g) of the Treaty, which is that usually used for company law harmonization. Although Article 220 stipulates that the Member States shall, in so far as is necessary, enter into negotiations with each other with a view to securing the possibility of cross-border mergers, this in no way precludes action under any other provision of the Treaty.

7. A directive has been preferred to a convention as the most appropriate means of regulating cross-border mergers.

This choice enables the text to a considerable extent to rely upon the already adopted provisions of the third Directive wherever the same treatment is appropriate for cross-border and national mergers.

This choice has the further advantage of ensuring the uniform interpretation of texts on mergers by the Court of Justice of the European Communities and, by presenting the cross-border merger merely as a particular form of merger, of rendering it unexceptional.

Contents of the Directive

8. However, all mergers, both national and cross-border, are operations involving the same steps:

(a) the drawing-up of joint draft terms of merger;

(b) the approval of the merger by the appropriate organs of each of the companies involved (in principle the general meeting);

(c) the drawing-up of a report by the administrative or management bodies of each of the companies involved;

(d) the drawing-up of an expert's report for each of the companies involved;

(e) either the judicial or administrative preventive supervision of the legality of the merger, or the drawing-up and certification in due legal form of the acts required for the merger, for each of the companies involved.

Following this sequence of preparatory acts, the merger may take effect on a given date and its

[1] OJ L 295, 20.10.1978.
[2] OJ C 131, 13.12.1972; Supplement 10/72 – Bull. EC; OJ C 240, 9.9.1983; Supplement 6/83 – Bull. EC.

effectiveness as against third parties may be organized by means of disclosure.

9. One special aspect of cross-border mergers is that the merging companies are governed by the laws of different Member States. However, it is very important to note that all of the preparatory acts (with the exception of the joint draft terms of merger) and the disclosure obligations are carried out individually by each of the companies involved. As a result they may be carried out by each of the companies involved in a cross-border merger in accordance with the law of its own Member State without any need to provide for uniform rules.

10. It is nevertheless necessary to synchronize certain steps in the procedure. This is the case for:

(a) the preventive supervision or the drawing-up and certification of acts in due legal form for each company in an order fixed by the Directive;

(b) the publicity surrounding the completion of a merger.

11. Finally, certain rules relating to cross-border mergers must be harmonized to a greater degree than was necessary for national mergers. This has been achieved either by adopting uniform provisions in the Directive or by designating the applicable law. This is particularly the case for:

(a) the contents of the draft terms of merger;

(b) the protection of creditors of acquired companies;

(c) the date on which the merger takes effect;

(d) the causes of nullity of mergers.

Article 1

The scope of this Directive is identical to that of the third Directive as regards the types of company covered. As in the case of the third Directive, the Member States need not apply this Directive to cooperatives or to companies that are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings. Where this possibility is used, the Directive cannot be applied.

Cross-border mergers must not have a detrimental effect on the employees of one of the companies involved. In particular, they must not preclude application of those rules which provide for employee participation in the appointment and dismissal of members of that company's organs. In such cases, the Member State concerned may exclude such companies from the application of this Directive. However, this exception is to apply only until a permanent general solution can be achieved through harmonization of employee participation systems. Such harmonization has already begun with the amended proposal for a fifth Directive of 12 August 1983 concerning the structure of public limited companies and the powers and obligations of their organs,[1] which provides for different equivalent employee participation systems.

Finally, the Council Directive of 14 February 1977 concerning the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of businesses[2] shall apply.

Article 2

The aim here is to require Member States to provide for cross-border mergers both by the acquisition of one or more companies by another and by the formation of a new company. The provisions of the third Directive apply to such operations, unless the present Directive stipulates otherwise.

Where the third Directive on national mergers permits Member States to choose whether or not to apply certain provisions of that Directive, they may exercise these options in the case of cross-border mergers only in respect of companies which are governed by their law. This applies to:

1. mergers by acquisition, where one or more of the companies being acquired is in liquidation (Article 3 (2));

2. merger by the formation of a new company, where one or more of the companies ceasing to exist is in liquidation (Article 4 (2));

3. the option of not requiring approval by the general meeting of the acquiring company (Article 8);

4. restrictions on the content of the accounting statement made available to the shareholders before the general meeting called upon to decide on the

[1] OJ C 240, 9.9.1983; Supplement 6/83 – Bull. EC.
[2] OJ L 61, 5.3.1977.

draft terms of merger (Article 11 (2), second subparagraph);

5. nullity rules for mergers (Article 22 (1) and (2));

6. the option of not verifying any consideration other than cash, where a new company is formed (Article 23 (4));

7. the options of not requiring the approval of the general meeting, of not requiring reports to be drawn up by the administrative or management bodies or by experts and of not requiring certain documents to be made available to shareholders where a company is acquired by another which owns 90% or more of its shares (Articles 25 to 29).

Moreover, certain options which are permitted for national mergers may only apply to cross-border mergers if all the laws involved have provided for them. This is the case with:

1. the option of treating operations involving cash payments exceeding 10% as mergers (Article 30);

2. the option of permitting mergers in which not all of the transferring companies cease to exist (Article 31).

Articles 3 and 4

The definition of a cross-border merger, either by acquisition or by the creation of a new company, is identical to that of a national merger in the third Directive, with the sole exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 5

For drawing up the draft terms of a cross-border merger, the same provisions must in principle apply as apply to national mergers in the third Directive. As regards the content of the draft terms, the third Directive simply lays down minimum requirements. However, as the draft terms are a joint document of all the companies involved, the information to be included in the case of a cross-border merger must be fixed in order to avoid any risk of conflict between the laws of different Member States.

The draft terms of cross-border merger must be drawn up in writing. Nevertheless, in view of the text of the third Directive, it may well be that the law of a Member State governing one of the companies involved requires that they be drawn up and certified in due legal form; in that case the draft terms of merger shall be so drawn up by one of the persons or bodies recognized by that law. Where more than one law requires the draft terms to be drawn up and certified in due legal form, they may be so drawn up by any person or body recognized by any of those laws.

Finally, the third Directive already provides for the draft terms of merger to be drawn up and certified in due legal form wherever a merger need not be approved by the general meetings of all the companies involved. This provision also applies to cross-border mergers.

Article 6

The draft terms of a cross-border merger must be published in the same way as the draft terms of a national merger in accordance with the rules of the first Council Directive of 9 March 1968 on company law.[1] The draft terms of the merger are filed in the register of each of the merging companies and are published in the national gazette either in full or in part or by reference to the document filed in the register (Article 3 (4)).

However, publication by means of a simple reference would not seem to be sufficient for cross-border mergers. In such cases it is desirable that in order to ensure that third parties are better informed, the following should appear in full in the publication:

- the elements necessary to identify the companies involved and thereby bring to light the cross-border nature of the merger;
- the register in which each company is listed;
- the conditions which determine the date on which the merger will take affect, given that it will be decided by the law governing the acquiring company (see Article 11).

Furthermore, it is of prime importance that creditors of companies being acquired should be informed of the details of the exercise of their rights. Unlike the creditors of the acquiring company, whose position does not change as a result of the cross-border nature of the merger, the creditors of an acquired company find that they to have exercise

[1] OJ L 65, 14.3.1968.

their rights under a system which has changed, particularly as regards procedures, as a result of the merger even although their protection is the same since it has been harmonized by the third Directive. It is therefore essential that they are fully informed, in good time, when the draft terms of merger are published.

Article 7

Member States may not impose stricter requirements as regards a general meeting's decision concerning a cross-border merger than they impose in respect of a general meeting's decision concerning a national merger under the third Directive.

Article 8

The report of the expert or experts is required in principle for each of the merging companies. However, these experts must be appointed or approved by a judicial or administrative authority of the Member State whose laws govern the company for whose shareholders the report is drawn up.

The third Directive stipulates that a Member State may provide for the appointment of one or more experts for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. This possibility should not be precluded for cross-border mergers, subject to the condition, however, that all the Member States' laws governing the companies involved in the cross-border merger make use of this possibility. The experts may be appointed by a judicial or administrative authority of any of those Member States. In such case, the information to be included in the experts' report shall be determined by the law governing that judicial or administrative authority.

Article 9

According to the third Directive, the laws of the Member States must provide for an adequate system of protection for the interests of creditors of the merging companies having claims which antedate the publication of the draft terms of merger and which have not fallen due at the time of such publication. Such creditors are entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and those creditors do not already have such safeguards. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

This minimum requirement is also appropriate for cross-border mergers. Given that harmonization has already taken place, it may be assumed that creditors can best be protected by the same system which applies in the case of a national merger.

The holders of securities, other than shares, to which special rights are attached, must be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired. This does not apply where the holders of those securities are entitled to have their securities repurchased by the acquiring company. Nor does it apply where the alteration of those rights has been approved by the holders of such securities individually or by a meeting of them. The question whether there is provision for such a meeting or whether an entitlement to repurchase exists depends on national law. For cross-border mergers this is governed, in the case of meetings, by the law governing the acquired company and, in the case of repurchase, by the law governing the acquiring company.

Article 10

Under the terms of the third Directive, Member States have several possibilities for examining the legality of mergers. They may provide for judicial or administrative preventive supervision. Where such supervision does not exist or where it does not extend to all the legal acts required for a merger, the minutes of the general meetings together with the decision on the merger must be drawn up and certified in due legal form. This applies also to any merger contract concluded subsequent to such general meetings.

These options should also apply to supervision of cross-border mergers, bearing in mind that the method of supervision will be determined by the law of the Member State governing the company concerned.

It is, however, necessary to synchronize the judicial or administrative supervision or the drawing-up and certification of acts in due legal form. To that end,

- where there is supervision of both the acquiring company and the acquired company, such supervision should be exercised first over the acquiring company;

• where supervision is exercised only in respect of one of the companies involved and documents are drawn up and certified in due legal form in respect of the other, the supervision may only be based on such documents.

Article 11

The third Directive leaves it to the laws of the Member States to determine the date on which national mergers take effect. In the case of cross-border mergers, this date should be determined according to the law of the Member State governing the acquiring company. However, the operation may not take effect until the supervision prescribed for all the companies involved has taken place and all necessary formalities have been completed.

Article 12

Under the terms of the third Directive, a merger is publicized according to the same rules as apply to the publication of the draft terms of merger. These rules are also applicable to cross-border mergers. However, in order to avoid any risk of omission, publication for the company being acquired must take place before that for the acquiring company.

Article 13

According to the third Directive, a merger effects the transfer to the acquiring company of all the assets and liabilities of the company being acquired. However, this does not affect the laws of the Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations to be effective as against third parties. In the case of cross-border merger, it needs to be made clear that the applicable law is that of the Member State governing the company being acquired.

Article 14

The civil liability of the members of the administrative or management bodies and of the experts of the company being acquired is determined by the law governing that company, subject to minimum rules laid down by the third Directive. Where experts are appointed at the joint request of all the companies involved in the cross-border merger, the civil liability of those experts is determined by the law governing the administrative or judicial authority which appointed them.

Article 15

According to the third Directive, Member States may lay down nullity rules only subject to certain conditions. For example, a merger may be declared void only if there has been no judicial or administrative preventive supervision of its legality or if it has not been drawn up and certified in due legal form or if the decision of the general meeting is void or voidable pursuant to national law.

The last-mentioned reason, which relates nullity directly to the nullity or voidability of an act leading up to the merger, does not appear to be suitable for cross-border mergers. Nullity should be limited to those cases where one or other of the measures of control has not taken place as those measures are intended to ensure that a merger can take place even where there may have been some procedural irregularity. The law of the Member State governing the company involved shall determine whether a measure of control or the certification of a document in due legal form has been omitted.

Furthermore, it seemed desirable that in order to further limit the risk of nullity, cross-border mergers should only be voidable for reasons contained in the law of the Member State governing the acquiring company as only that company will remain once the merger has taken place.

In each Member State cases of nullity for cross-border mergers should be limited to those cases provided for mergers involving companies governed by the laws of that Member State.

Finally, the law governing the judicial authority which has declared a merger void shall determine whether third parties may challenge such a judgment.

Cross-border mergers of public limited companies

Proposal for a tenth Council Directive based on Article 54 (3) (g) of the EEC Treaty

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, although mergers between public limited liability companies have been coordinated by Council Directive 78/855/EEC,[1] such coordination extends only to mergers involving companies which are governed by the law of the same Member State; whereas, in the interests of the common market, provision should be made particularly for mergers involving companies which are governed by the laws of different Member States;

Whereas Article 220 of the Treaty, which provides for Member States, where necessary, to enter into negotiations with each other with a view to ensuring that cross-frontier mergers are possible, does not prevent the matter from being harmonized by directive;

Whereas that approach offers the advantage that in the numerous cases where the arrangements governing national and cross-border mergers coincide, reference can be made in the present Directive to the corresponding provisions of Directive 78/855/EEC, thereby ensuring at the same time a more uniform implementation and interpretation of both sets of rules than would be possible with two completely separate legal instruments;

Whereas this Directive is therefore limited to additional requirements or to those aspects of cross-border mergers which differ from national mergers;

Whereas the scope of this Directive is essentially the same as that of Directive 78/855/EEC; whereas, however, a Member State should also be empowered not to apply this Directive to companies which, under its law, are governed by provisions concerning employee participation in the composition of the organs of those companies, whereas this exception appears necessary at any rate until the Council has decided on the Commission's amended proposal for a fifth Directive based on Article 54 (3) (g) of the Treaty concerning the structure of public limited companies and the powers and obligations of their organs;[2] whereas in other respects the protection of employees in the event of either cross-border or national mergers is guaranteed by Council Directive 77/187/EEC;[3]

Whereas, for the purpose of defining cross-border mergers, reference may be made to the definition of national mergers in Directive 78/855/EEC, with the sole exception that two or more of the companies involved must be governed by the laws of different Member States;

Whereas, although Directive 78/855/EEC permits Member States to choose whether or not to apply certain provisions of that Directive in the case of national mergers, they may exercise those options in the case of cross-border mergers only for those companies involved in the operation which are governed by their law;

Whereas although Directive 78/855/EEC permits certain exceptions for operations treated as mergers, Member States may make use of those exceptions in the case of cross-border mergers only if the other Member States whose law governs the other companies involved have also done so;

Whereas although Directive 78/855/EEC provides in the case of national mergers that it is sufficient for the draft terms of merger to be drawn up in writing, the draft terms of a cross-border merger need to be drawn up and certified in due legal form if the law of a Member State governing one of the companies involved so provides;

Whereas, following their filing in the register, the draft terms of a national merger may be published in the national gazette in accordance with Council Directive 68/151/EEC,[4] simply by means of a

[1] OJ L 295, 20.10.1978.
[2] OJ C 240, 9.9.1983; Supplement 6/83 – Bull. EC.
[3] OJ L 61, 5.3.1977.
[4] OJ L 65, 14.3.1968.

reference to their filing in the register; whereas, in the case of cross-border mergers, additional details appear necessary in order to provide third parties, and particularly creditors of companies being acquired, with better information on their rights;

Whereas stricter requirements should not be imposed in respect of a general meeting's decision concerning a cross-border merger than in respect of a general meeting's decision concerning a national merger;

Whereas the creditors of companies involved in a cross-border merger should benefit from the same system of protection as creditors in the case of a national merger;

Whereas in the case of cross-border mergers the judicial or administrative preventive supervision or, where appropriate, the drawing-up and certification of documents in due legal form, must be synchronized for all the companies involved;

Whereas a cross-border merger may not take effect until the necessary supervision or formalities have been completed for all the companies involved;

Whereas the publication of a cross-border merger must take place for the acquired company before it takes place for the acquiring company;

Whereas the grounds of nullity of cross-border mergers should be limited as far as possible,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

(*a*) Germany: Aktiengesellschaft,

(*b*) Belgium, société anonyme/naamloze vennootschap,

(*c*) Denmark: aktieselskaber,

(*d*) France: société anonyme,

(*e*) Greece: ανώνυμη εταιρεία,

(*f*) Ireland: public companies limited by shares or by guarantee,

(*g*) Italy: società per azioni,

(*h*) Luxembourg: société anonyme,

(*i*) the Netherlands: naamloze vennootschap,

(*j*) the United Kingdom: public companies limited by shares or by guarantee.

2. Where a Member State applies Article 1 (2) or (3) of Directive 78/855/EEC in respect of a company governed by its law which is involved in a cross-border merger, this Directive shall not apply.

3. Pending subsequent coordination, a Member State need not apply the provisions of this Directive to a cross-border merger where an undertaking, whether or not it was involved, would as a result no longer meet the conditions required for employee representation in that undertaking's organs.

4. Protection of the rights of the employees of each of the companies involved in a cross-border merger shall be regulated in accordance with Directive 77/187/EEC.

Article 2

1. Except where this Directive provides otherwise, the Member States shall provide for cross-border mergers by the acquisition of one or more companies by another and for cross-border mergers by the creation of a new company in accordance with Directive 78/855/EEC in respect of companies governed by their law.

2. Articles 17 and 22 (1) (b) of Directive 78/855/EEC shall not apply.

3. A Member State may apply Articles 3 (2), 4 (2), 8, 11 (2) second subparagraph, 22 (1) and (2), 23 (4) and 25 to 29 of Directive 78/855/EEC only in respect of those companies involved in a cross-border merger which are governed by its law.

4. A Member State may apply Articles 30 and 31 of Directive 78/855/EEC to those companies involved in a cross-border merger which are governed by its law only if the Member States by whose law the other companies involved in the operation are governed have also done so.

Article 3

For the purpose of this Directive, 'cross-border merger by acquisition' means the operation referred

to in Article 3 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 4

For the purposes of this Directive, 'cross-border merger by the formation of a new company' means the operation referred to in Article 4 (1) of Directive 78/855/EEC, with the exception that two or more of the companies involved must be governed by the laws of different Member States.

Article 5

1. Article 5 of Directive 78/855/EEC shall apply to the drawing-up of the draft terms of a cross-border merger. No further details than those listed in paragraph 2 of the abovementioned Article may be required.

2. The draft terms of a cross-border merger shall be drawn up and certified in due legal form if this is prescribed by the law of a Member State by which one or more of the companies involved in the cross-border merger is governed.

3. The law of the Member State requiring that the draft terms be drawn up and certified in due legal form shall determine the person or authority competent so to do. Where the laws of several Member States by which companies involved in the cross-border merger are governed require that the draft terms be drawn up and certified in due legal form, this may be done by any person or authority competent under the law of one of those Member States.

Article 6

1. Article 6 of Directive 78/855/EEC and Article 3 of Directive 68/151/EEC shall apply to the publication of the draft terms of a cross-border merger for each of the merging companies.

2. However, when the draft terms referred to in paragraph 1 are disclosed as provided for in Article 3 (4) of Directive 68/151/EEC, for each of the merging companies the following information shall be specified:

(a) the type, name and registered office of each of the merging companies;

(b) the register in which a file as referred to in Article 3 (2) of Directive 68/151/EEC has been opened for each of the merging companies and the number of the entry in that register;

(c) the conditions which, in accordance with Article 11, determine the date on which the cross-border merger takes effect.

3. The disclosure shall also specify, for the acquired company or companies, the details of the exercise of the rights of the creditors of those companies in accordance with Articles 13, 14 and 15 of Directive 78/855/EEC and Article 9 of this Directive.

Article 7

Article 7 of Directive 78/855/EEC relating to rules for approval by the general meeting shall apply to each of the merging companies. However, the Member States may not require a larger majority than they require for a merger in which all the companies involved are governed by their law.

Article 8

1. Article 10 of Directive 78/855/EEC relating to the drawing-up of the report of the expert or experts shall apply.

2. The experts shall be appointed or approved by a judicial or administrative authority of the Member State whose law governs the company for whose shareholders the report is drawn up.

3. Where all the laws of the Member States by which the companies involved in a cross-border merger are governed apply the second sentence of Article 10 (1) of Directive 78/855/EEC, the appointment of one or more experts for all the merging companies may be made at the joint request of those companies by a judicial or administrative authority of any of those Member States. In such cases, the content of the experts' report shall be determined by the law governing that judicial or administrative authority in accordance with Article 10 (2) of Directive 78/855/EEC.

Article 9

1. Articles 13 and 14 of Directive 78/855/EEC relating to the system of protection of the interests of creditors shall apply to cross-border mergers.

2. The protective system shall not be different from that which applies to the creditors of merging companies which are all governed by the law of the Member States concerned.

3. Article 15 of Directive 78/855/EEC shall apply to cross-border mergers subject to the proviso that:

(a) the law governing the company being acquired shall determine whether a meeting of holders of the securities referred to may approve an alteration in their rights in that company;

(b) the law governing the acquiring company shall determine whether the holders of the securities referred to are entitled to have them repurchased by the acquiring company.

Article 10

1. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger provides for judicial or administrative preventive supervision of the legality of that merger, that law shall apply to those companies.

2. Where the law of a Member State governing one or more of the companies involved in a cross-frontier merger does not provide for judicial or administrative preventive supervision or where such supervision does not extend to all the legal acts required for the merger, Article 16 of Directive 78/855/EEC shall apply to the company or companies concerned. Where that law provides for a merger contract to be concluded following the decisions of the general meetings held concerning the cross-border merger, that contract shall be concluded by all the companies involved in the operation. Article 5 (3) shall apply.

3. Where both the law governing the acquiring company and the law governing the company or companies being acquired provides for judicial or administrative preventive supervision of the legality of the cross-border merger, that supervision shall be carried out first in respect of the acquiring company. It may not be carried out in respect of a company being acquired until proof is furnished that it has already been carried out in respect of the acquiring company.

4. Where the law governing one or more of the companies involved provides for judicial or administrative preventive supervision while the law governing one or more of the other companies involved does not, that supervision must be carried out simply on the basis of the documents drawn up and certified in due legal form referred to in Article 16 of Directive 78/855/EEC.

Article 11

The law of the Member State governing the acquiring company shall determine the date on which a cross-border merger takes effect. That date must be after the supervision has been carried out and, where appropriate, the documents certified in due legal form referred to in Article 10 have been drawn up for all the companies involved.

Article 12

Article 18 of Directive 78/855/EEC shall apply. However, the publication of a cross-border merger must take place for the company or companies being acquired before publication for the acquiring company.

Article 13

Article 19 (3) of Directive 78/855/EEC shall apply subject to the proviso that the law of the Member State governing a company being acquired shall determine whether, in order to be effective against third parties, the transfer of certain assets, rights and obligations by that company requires the completion of special formalities.

Article 14

The civil liability of the members of the administrative or management bodies and of the experts of an acquired company shall be determined, in accordance with Articles 20 and 21 of Directive 78/855/EEC, by the law of the Member State governing that company. However, in the case referred to in Article 8 (3), the civil liability of the experts shall be determined by the law of the Member State governing the judicial or administrative authority which appointed them.

Article 15

1. Article 22 (1) of Directive 78/855/EEC shall apply subject to the proviso in paragraph 1 (b) of the said Article that a cross-border merger which has taken effect pursuant to Article 11 of this

Directive may be declared void only if there has been no judicial or administrative preventive supervision of its legality or if it has not been drawn up and certified in due legal form, where such supervision or certification is laid down by the law of the Member State governing the relevant company. However, where the law governing the acquiring company does not provide for the nullity of the merger where there has been no judicial or administrative preventive supervision of its legality or where it has not been drawn up and certified in due legal form, it may not be declared void.

2. The law of a Member State may not provide for grounds of nullity of cross-border mergers which it has not provided for mergers involving companies all of which are governed by that law.

3. Article 22 (1) (f) of Directive 78/855/EEC shall apply where the laws of a Member State where a judgment has declared a cross-border merger void permit a third party to challenge such a judgment.

Article 16

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. The Member States need not apply this Directive to cross-border mergers or to operations treated as cross-border mergers for the preparation or execution of which a prescribed act or formality has already been completed when the provisions referred to in paragraph 1 enter into force.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the fields covered by this Directive.

Article 17

This Directive is addressed to the Member States.

Third Council Directive of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies

(78/855/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission, [1]

Having regard to the opinion of the European Parliament, [2]

Having regard to the opinion of the Economic and Social Committee, [3]

Whereas the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment [4] was begun with Directive 68/151/EEC ; [5]

Whereas this coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC, [6] and as regards the annual accounts of certain types of companies with Directive 78/660/EEC ; [7]

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to mergers of public limited liability companies be coordinated and that provision for mergers should be made in the laws of all the Member States ;

Whereas in the context of such coordination it is particularly important that the shareholders of merging companies be kept adequately informed in as objective a manner as possible and that their rights be suitably protected ;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC ; [8]

Whereas creditors, including debenture holders, and persons having other claims on the merging companies must be protected so that the merger does not adversely affect their interests ;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include mergers so that third parties are kept adequately informed ;

Whereas the safeguards afforded to members and third parties in connection with mergers must be extended to cover certain legal practices which in important respects are similar to merger, so that the obligation to provide such protection cannot be evaded ;

Whereas to ensure certainty in the law as regards relations between the companies concerned, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Scope

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company :

Germany :
die Aktiengesellschaft,

Belgium :
la société anonyme/de naamloze vennootschap,

Denmark :
aktieselskaber,

France :
la société anonyme,

[1] OJ C 89, 14.7.1970, p. 20.
[2] OJ C 129, 11.2.1972, p. 50 ; OJ C 95, 28.4.1975, p. 12.
[3] OJ C 88, 6.9.1971, p. 18.
[4] OJ 2, 15.1.1962, p. 36/62.
[5] OJ L 65, 14.3.1968, p. 8.
[6] OJ L 26, 31.1.1977, p. 1.
[7] OJ L 222, 14.8.1978, p. 11.
[8] OJ L 61, 5.3.1977, p. 26.

Ireland :
public companies limited by shares, and public companies limited by guarantee having a share capital,

Italy :
la società per azioni,

Luxembourg :
la société anonyme,

the Netherlands :
de naamloze vennootschap,

the United Kingdom :
public companies limited by shares, and public companies limited by guarantee having a share capital.

2. The Member States need not apply this Directive to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the word 'cooperative' in all the documents referred to in Article 4 of Directive 68/151/EEC.

3. The Member States need not apply this Directive in cases where the company or companies which are being acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings.

CHAPTER I

Regulation of merger by the acquisition of one or more companies by another and of merger by the formation of a new company

Article 2

The Member States shall, as regards companies governed by their national laws, make provision for rules governing merger by the acquisition of one or more companies by another and merger by the formation of a new company.

Article 3

1. For the purposes of the Directive, 'merger by acquisition' shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

Article 4

1. For the purposes of this Directive, 'merger by the formation of a new company' shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

CHAPTER II

Merger by acquisition

Article 5

1. The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.

2. Draft terms of merger shall specify at least :

(a) the type, name and registered office of each of the merging companies ;

(b) the share exchange ratio and the amount of any cash payment ;

(c) the terms relating to the allotment of shares in the acquiring company ;

(d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement ;

(e) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company ;

(f) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them ;

(g) any special advantage granted to the experts referred to in Article 10 (1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

Article 6

Draft terms of merger must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

Article 7

1. A merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this decision shall require a majority of not less than two thirds of the votes attaching either to the shares or to the subscribed capital represented.

The laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented. Moreover, where appropriate, the rules governing alterations to the memorandum and articles of association shall apply.

2. Where there is more than one class of shares, the decision concerning a merger shall be subject to a separate vote by at least each class of shareholders whose rights are affected by the transaction.

3. The decision shall cover both the approval of the draft terms of merger and any alterations to the memorandum and articles of association necessitated by the mergers.

Article 8

The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the following conditions are fulfilled :

(a) the publication provided for in Article 6 must be effected, for the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which are to decide on the draft terms of merger ;

(b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) at the registered office of the acquiring company ;

(c) one or more shareholders of the acquiring company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger. This minimum percentage may not be fixed at more than 5%. The Member States may, however, provide for the exclusion of non-voting shares from this calculation.

Article 9

The administration or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

The report shall also describe any special valuation difficulties which have arisen.

Article 10

1. One or more experts, acting on behalf of each of the merging companies but independent of them,

appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. In the report mentioned in paragraph 1 the experts must in any case state whether in their opinion the share exchange ratio is fair and reasonable. Their statement must at least :

(a) indicate the method used to arrive at the share exchange ratio proposed ;

(b) state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such method and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also describe any special valuation difficulties which have arisen.

3. Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.

Article 11

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger :

(a) the draft terms of merger ;

(b) the annual accounts and annual reports of the merging companies for the preceding three financial years ;

(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date ;

(d) the reports of the administrative or management bodies of the merging companies provided for in Article 9 ;

(e) the reports provided for in Article 10.

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that :

(a) it shall not be necessary to take a fresh physical inventory ;

(b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account ; the following shall nevertheless be taken into account ;

(i) interim depreciation and provisions,
(ii) material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

Article 12

Protection of the rights of the employees of each of the merging companies shall be regulated in accordance with Directive 77/187/EEC.

Article 13

1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2. To this end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

Article 14

Without prejudice to the rules governing the collective exercise of their rights, Article 13 shall apply to the debenture holders of the merging companies, except where the merger has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

Article 15

Holders of securities, other than shares, to which special rights are attached, must be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased by the acquiring company.

Article 16

1. Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the minutes of the general meetings which decide on the merger and, where appropriate, the merger contract subsequent to such general meetings shall be drawn up and certified in due legal form. In cases where the merger need not be approved by the general meetings of all the merging companies, the draft terms of merger must be drawn up and certified in due legal form.

2. The notary or the authority competent to draw up and certify the document in due legal form must check and certify the existence and validity of the legal acts and formalities required of the company for which he or it is acting and of the draft terms of merger.

Article 17

The laws of the Member States shall determine the date on which a merger takes effect.

Article 18

1. A merger must be publicized in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC, in respect of each of the merging companies.

2. The acquiring company may itself carry out the publication formalities relating to the company or companies being acquired.

Article 19

1. A merger shall have the following consequences *ipso jure* and simultaneously :

(a) the transfer, both as between the company being acquired and the acquiring company and as regards third parties, to the acquiring company of all the assets and liabilities of the company being acquired ;

(b) the shareholders of the company being acquired become shareholders of the acquiring company ;

(c) the company being acquired ceases to exist.

2. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either :

(a) by the acquiring company itself or through a person acting in his own name but on its behalf ;

or

(b) by the company being acquired itself or through a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by the acquired company to be effective as against third parties. The acquiring company may carry out these formalities itself however, the laws of the Member States may permit the company being acquired to continue to carry

out these formalities for a limited period which cannot, save in exceptional cases, be fixed at more than six months from the date on which the merger takes effect.

Article 20

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.

Article 21

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the experts responsible for drawing up on behalf of that company the report referred to in Article 10 (1) in respect of misconduct on the part of those experts in the performance of their duties.

Article 22

1. The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only :

(a) nullity must be ordered in a court judgment ;

(b) mergers which have taken effect pursuant to Article 17 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law ;

(c) nullification proceedings may not be initiated more than six months after the date on which the merger becomes effective as against the person alleging nullity or if the situation has been rectified ;

(d) where it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation ;

(e) a judgment declaring a merger void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC ;

(f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC ;

(g) a judgment declaring a merger void shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date referred to in Article 17 ;

(h) companies which have been parties to a merger shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in (g).

2. By way of derogation from paragraph 1(a), the laws of a Member State may also provide for the nullity of a merger to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g) and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 17.

3. The foregoing shall not affect the laws of the Member States on the nullity of a merger pronounced following any supervision other than judicial or administrative preventive supervision of legality.

CHAPTER III

Merger by formation of a new company

Article 23

1. Articles 5, 6, 7 and 9 to 22 shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to merger by formation of a new company. For this purpose, 'merging companies' and 'company being acquired' shall mean the companies which will cease to exist and 'acquiring company' shall mean the new company.

2. Article 5 (2) (a) shall also apply to the new company.

3. The draft terms of merger and, if they are contained in a separate document, the memoran-

dum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

4. The Member States need not apply to the formation of a new company the rules governing the verification of any consideration other than cash which are laid down in Article 10 of Directive 77/91/EEC.

CHAPTER IV

Acquisition of one company by another which holds 90% or more of its shares

Article 24

The Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Chapter II, with the exception of Articles 5 (2) (b), (c) and (d), 9, 10, 11 (1) (d) and (e), 19 (1) (b), 20 and 21.

Article 25

The Member States need not apply Article 7 to the operations specified in Article 24 if the following conditions at least are fulfilled :

(a) the publication provided for in Article 6 must be effected, as regards each company involved in the operation, at least one month before the operation takes effect ;

(b) at least one month before the operation takes effect, all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply ;

(c) Article 8 (c) must apply.

Article 26

The Member States may apply Articles 24 and 25 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

Article 27

In cases of merger where one or more companies are acquired by another company which holds 90% or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States need not require approval of the merger by the general meeting of the acquiring company, provided that the following conditions at least are fulfilled :

(a) the publication provided for in Article 6 must be effected as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger ;

(b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply ;

(c) Article 8 (c) must apply.

Article 28

The Member States need not apply Articles 9 to 11 to a merger within the meaning of Article 27 if the following conditions at least are fulfilled :

(a) the minority shareholders of the company being acquired must be entitled to have their shares acquired by the acquiring company ;

(b) if they exercise that right, they must be entitled to receive consideration corresponding to the value of their shares ;

(c) in the event of disagreement regarding such consideration, it must be possible for the value of the consideration to be determined by a court.

Article 29

The Member States may apply Articles 27 and 28 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company if 90% or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

CHAPTER V

Other operations treated as mergers

Article 30

Where in the case of one of the operations referred to in Article 2 the laws of a Member State permit a cash payment to exceed 10%, Chapters II and III and Articles 27, 28 and 29 shall apply.

Article 31

Where the laws of a Member State permit one of the operations referred to in Articles 2, 24 and 30, without all of the transferring companies thereby ceasing to exist, Chapter II, except for Article 19 (1) (c), Chapter III or Chapter IV shall apply as appropriate.

CHAPTER VI

Final provisions

Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within three years of its notification. They shall forthwith inform the Commission thereof.

2. However, provision may be made for a delay of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

3. The Member States need not apply Articles 13, 14 and 15 as regards the holders of convertible debentures and other convertible securities if, at the time when the laws, regulations and administrative provisions referred to in paragraph 1 come into force, the position of these holders in the event of a merger has previously been determined by the conditions of issue.

4. The Member States need not apply this Directive to mergers or to operations treated as mergers for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 enter into force.

Article 33

This Directive is addressed to the Member States.

Done at Luxembourg, 9 October 1978.

For the Council

The President

H.-J. VOGEL

European Communities — Commission

Cross-border mergers of public limited companies — Proposal for a tenth Directive

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The purpose of the proposal for a Directive published in this Supplement is to enable public limited companies in the Community to enter into cross-border mergers. The cross-border merger should be seen above all as a technique to simplify the procedures for creating or restructuring complex economic entities.