

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;

⁽¹⁾ OJ No C 89, 14. 7. 1970, p. 20.

⁽²⁾ OJ No C 129, 11. 12. 1972, p. 50;
OJ No C 95, 28. 4. 1975, p. 12.

⁽³⁾ OJ No C 88, 6. 9. 1971, p. 18.

⁽⁴⁾ OJ No 2, 15. 1. 1962, p. 36/62.

⁽⁵⁾ OJ No L 65, 14. 3. 1968, p. 8.

⁽⁶⁾ OJ No L 26, 31. 1. 1977, p. 1.

⁽⁷⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁸⁾ OJ No L 61, 5. 3. 1977, p. 26.

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: