European Commission imposes simplified rules on mergers and divisions in six Member States among which Cyprus

Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009, regarding the simplification of the rules on merger and divisions, has not been yet implemented in some Member States of the EU. Cyprus is one of those Member States which failed to fulfil their obligations and commitments under the relevant Directive.

Italy, Romania, Slovenia, Spain and UK with regard to Gibraltar are the other five Member States which are in the same category as Cyprus. According to the Commission, if the Directive is not fully implemented in all Member States, companies within the EU will not be able to reap the benefits of the reduced administrative burdens foreseen by the Directive.

Each Member State, under the provisions of the treaties (Article 258 of the TFEU) and (Article 141 of the Euratom Treaty) is responsible for the implementation of the EU law, whereas, the European Commission is responsible for ensuring that EU law is correctly applied. Consequently, when a Member State fails to comply with EU law provisions, the Commission has powers of its own to take actions for non-compliance and to try bring the relevant infringements to an end. If necessary, the case may be brought before the European Court of Justice.

Under EU Treaties provisions, the Commission may take whatever action it deems appropriate in response to Member States' infringements. Under the non-compliance procedure started by the Commission, the first face consists of the pre-litigation administrative face, known as infringements proceeding. The objective of this stage is to enable the Member States conform voluntarily with the requirements of the Treaty. Further, the purpose of the reasoned opinion is to set out the Commission's position on the infringement and to determine the subject matter of any action demanding the Member State to comply with in a certain time limit. In case the Member State concerned has failed under this stage to fulfil its obligations, a referral by the Commission to the Court of Justice may open the litigation procedure. In this respect, the European Commission enjoys a discretionary power in deciding whether or not to commence infringement proceedings before the Court of Justice.

The objective of the EU rule aims at reducing the administrative complications on European public limited liability companies in the area of merger and divisions. Three measures have been identified in order to proceed with their common strategy: to reduce reporting requirements of companies, in particular where shareholders decide that certain reports are not needed in the extent of so - called simplified merger and divisions between parent companies and their shareholders.

In the general framework for better regulation in the EU, the European Commission has decided to proceed with the simplification of the business environment for companies in full cooperation with the European Parliament and the 28 Member States. The objective is to

ensure that EU legislation in the field of company law, accounting and auditing corresponds to business' needs and allows European businesses to be more competitive and to act more effectively in a highly competitive global environment.

The initiative finds its sources to the review of the single market adopted by the European Commission in November 2007 aiming at reducing administrative burdens, especially for SMEs. In order to achieve the scope for simplification and to have quick results, the European Commission tabled three proposals. The first one, aimed at aligning certain rules on expert reports in the case of domestic mergers and divisions with the rules contained in the cross borders' mergers directive (Directive 2007/63/EC). The other two proposals were tabled in April 2008, in order to amend the 1st and 11th Company Law Directives and the Accounting Directives.

The European Council agreed that in order for the competitiveness of companies within the community to be enhanced, administrative burdens on companies should be reduced by 25%. Company law is considered to be an area of law, where a lot of obligations are imposed to the parties, some of which seem outdated and excessive. This should bear in mind the responsibility of protecting the interests of other stakeholders by reviewing those obligations and filtering them out, where necessary.

To this end, the second Council Directive 77/91/EEC sets its scope on coordination of safeguards for the protection of the interests of companies, in respect of the formation of public limited liability companies, maintenance and alteration of their capital with a view to making such safeguards equivalent.

Further, Member States should be able to designate an alternative to publication via the companies' registers and where the possibility exists of using company's or other websites for publication of draft terms of merger and/or division and of other documents that have to be made available to shareholders and creditors in the process.

In respect to cross-border mergers of limited liability companies, the requirements concerning disclosure of draft terms should be similar to those applicable to domestic mergers and divisions pursuant to Article 54(3)(g) of the Treaty.

Member States, should provide the companies with the option of the extensive reporting or information according to Article 9 and Article 11(1)(c) of Directive 78/855/EEC and Article 9(1)(c) of Directive 82/891/EEC, if all shareholders of the companies involved in the merger or division agree that such compliance may be dispensed with. Caution must be drawn to the fact that the specific modification should be without prejudice to the systems of protection of interests of creditors of the companies involved and to the system of information to the employees of those companies, as well as to public authorities, such as tax authorities etc.

Also, where an issuer, whose securities are admitted to trading on a regulated market publishes half-yearly financial reports in accordance with Directive 2004/109/EC, it is not imposed for the requirement to draw up an accounting statement.

Moreover, Member States have the possibility within the context of a merger or division, in case where an independent expert's report is drawn up at the same time where an independent expert's report protecting the interests of shareholders or creditors is also drawn up, to dispense companies from the reporting requirement or provide them with the possibility of both reports to be drawn up by the same expert.

The reporting requirements laid down by Directives 78/855/EEC and 82/891/EEC should be reduced, firstly, in cases where there are mergers between parent companies and their subsidiaries, which have a reduced economic impact on shareholders and creditors, where the parent company's holding in the subsidiary amounts to 90% or more of the shares and other securities conferring the right to vote and secondly and where companies are split into new companies that are owned by the shareholders in the proportion to their rights in the company being divided.

The objective of this Directive should be implemented by all Member States in accordance with the principle of subsidiarity and the principle of proportionality, as set out in the Article 5 of the Treaty.

The financial impact of the legislation proposed amounts to an overall reduction potential of 7.3m euro.

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