



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 March 2006

**Interinstitutional File:
2004/0256 (COD)**

**6951/06
ADD 1**

**DRS 3
CODEC 212**

ADDENDUM TO THE NOTE

from: Presidency

to: Permanent Representatives Committee (Part 1)

No prev. doc. : 12973/05 DRS 32 CODEC 837 OC 677

No. Cion prop. : 14197/04 DRS 37 CODEC 1199+ADD1

Subject : Proposal for a Directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, as regards the formation of public limited liability companies and the maintenance and alteration of their capital
- Examination of the text of the final compromise with a view to an agreement

Delegations will find below the modifications to the Commission proposal suggested by the Presidency, in the context of the compromise agreement reached with the European Parliament.

<p align="center">Commission Proposal</p>	<p align="center">Compromise suggestion (Changes to COM text are underlined)</p>
<p align="center">Proposal for a</p> <p align="center">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p align="center">amending Council Directive 77/91/EEC, as regards the formation of public limited liability companies and the maintenance and alteration of their capital</p> <p align="center">(Text with EEA relevance)</p>	<p align="center"><i>-no change to Commission text-</i></p>
<p>(1) The Second Council Directive 77/91/EEC of 13 December 1976 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent sets out the requirements for several capital-related measures taken by those companies.</p>	<p align="center"><i>-no change to Commission text-</i></p>
<p>(2) In its Communication to the Council and the European Parliament “Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward” of 21 May 2003 the Commission draws the conclusion that a simplification of the Directive 77/91/EEC would significantly contribute to the promotion of business efficiency and competitiveness without reducing the protection offered to shareholders and creditors.</p>	<p>(2) In its Communication to the Council and the European Parliament “Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward” of 21 May 2003 the Commission draws the conclusion that a simplification <u>and modernisation</u> of the Directive 77/91/EEC would significantly contribute to the promotion of business efficiency and competitiveness without reducing the protection offered to shareholders and creditors. <u>Those objectives have first priority but do not affect the need to proceed without delay to a general examination of the feasibility of alternatives to the capital maintenance regime, which would adequately, protect the interests of creditors and of shareholders of a public limited liability company.</u></p>

<p>(3) Member States should have the possibility to enable public limited liability companies to attract considerations other than in cash to their capital without them having to resort to a special expert valuation in cases in which there is a clear point of reference for the valuation of such consideration. Nonetheless, the right of minority shareholders to require such valuation should be guaranteed.</p>	<p><i>-no change to Commission text-</i></p>
<p>(4) Public limited liability companies should be allowed to acquire their own shares up to the limit of the company's distributable reserves and the period for which such an acquisition can be authorised by the general meeting should be increased so as to enhance flexibility and reduce administrative burden for companies which have to react promptly to market developments affecting their share price.</p>	<p><i>-no change to Commission text-</i></p>
<p>(5) Public limited liability companies should be able to grant financial assistance with a view to the acquisition of their shares by a third party up to the limit of the company's distributable reserves so as to increase flexibility with regard to changes in the ownership structure of the share capital of companies. This possibility should be subject to safeguards imposed by the Directive's objective of protection of both shareholders and third parties.</p>	<p>(5) <u>It should be open to Member States to permit public limited liability companies to grant financial assistance with a view to the acquisition of their shares by a third party up to the limit of the company's distributable reserves so as to increase flexibility with regard to changes in the ownership structure of the share capital of companies. This possibility should be subject to safeguards imposed by the Directive's objective of protection of both shareholders and third parties.</u></p>
<p>(6) Public limited liability companies should be able to increase, under certain conditions, their capital without having to meet reporting requirements linked to the restriction or withdrawal of pre-emption rights of shareholders so as to reduce the administrative burden for listed companies which want to be able to embark on prompt capital increases.</p>	<p><u>Delete</u></p>

<p>(7) Creditors should be able to resort, under certain conditions, to judicial or administrative proceedings where their claims are at stake as a consequence of a reduction in the capital of a public limited liability company so as to enhance standardized creditor protection in all Member States.</p>	<p><i>-no change to Commission text-</i></p>
<p>(8) Shareholders holding a large majority of a public limited liability company's capital should have the right to acquire the remaining shares for adequate compensation, so as to enable a streamlined and more viable share ownership in listed companies. Likewise, in such a situation, the remaining shareholders should be able to require such acquisition. Nonetheless, the rules applicable according to the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids should not be affected by those rights.</p>	<p><u>Delete</u></p>
<p>(9) In order to ensure that market abuse is prevented, the Member States should take into account, for the purpose of implementation of this Directive, the dispositions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and of Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions, as well as of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.</p>	<p>(9) In order to ensure that market abuse is prevented, the Member States should take into account, for the purpose of implementation of this Directive, the <u>provisions</u> of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and of Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions, as well as of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.</p>

(10) Directive 77/91/EEC should be therefore amended accordingly,	<i>-no change to Commission text-</i>
<i>-nothing-</i>	(11) <u>Member States are encouraged, in accordance with paragraph 34 of the Interinstitutional Agreement on better law-making, to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between the Directive and the transposition measures, and to make them public.</u>
HAVE ADOPTED THIS DIRECTIVE: Directive 77/91/EEC is hereby amended as follows:	<i>-no change to Commission text-</i>
<i>-nothing-</i>	<p style="text-align: center;"><i>ARTICLE 1, POINT -1 (new)</i></p> <p style="text-align: center;"><i>Article 1, paragraph 1, indent 21</i></p> <p><u>(-1) In Article 1(1), the 21st indent shall be replaced by the following:</u></p> <p style="padding-left: 40px;"><u>"- in Hungary:</u></p> <p style="padding-left: 80px;"><u>nyilvánosan működő részvénytársaság".</u></p>
<p style="text-align: center;"><i>Article 1(1)</i></p> <p>The following Articles 10a and 10b are inserted:</p> <p style="padding-left: 40px;">"Article 10a</p> <p>1. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, transferable securities as defined in Article 4(1)(18) of Directive 2004/39/EC¹ are contributed as consideration other than in cash, and those securities are valued at the weighted average price at which they have been traded on one or more regulated market(s) as defined in Article 4(1)(14) of that Directive in the 3 months preceding the</p>	<p style="text-align: center;"><i>Article 1(1)</i></p> <p>The following Articles 10a and 10b are inserted:</p> <p style="padding-left: 40px;">"Article 10a</p> <p>1. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, transferable securities as defined in Article 4(1)(18) of Directive 2004/39/EC¹ <u>or money market instruments as defined in Article 4(1)(19) of that Directive</u> are contributed as consideration other than in cash, and those securities <u>or money market instruments</u> are valued at the weighted average price at which they have been</p>

¹ OJ L 145, 30.4.2004, p. 1.

<p>effectuation of the respective consideration other than in cash.</p> <p>However, where that price has been affected by exceptional occurrences that would significantly change the value of the asset at the effective date of its contribution, Articles 10(1), (2) and (3) shall apply.</p>	<p>traded on one or more regulated market(s) as defined in Article 4(1)(14) of that Directive <u>during a sufficient period, to be determined by national law, preceding the effectuation of the respective consideration other than in cash.</u></p> <p>However, where that price has been affected by exceptional occurrences that would significantly change the value of the asset at the effective date of its contribution, <u>including situations where the market for such transferable securities or money market instruments has become illiquid, a revaluation must be carried out on the initiative and under the responsibility of the administrative or management body. For the purposes of the aforementioned revaluation,</u> Article 10(1), (2) and (3) shall apply.</p>
<p>2. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, assets are contributed as consideration other than in cash which have already been subject to a fair value opinion by a recognized independent expert and where the following conditions are fulfilled:</p>	<p>2. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, assets <u>other than the transferable securities and money market instruments referred to in paragraph 1</u> are contributed as consideration other than in cash which have already been subject to a fair value opinion by a recognized independent expert and where the following conditions are fulfilled:</p>
<p>(a) the recognized expert who has carried out the valuation is sufficiently trained and experienced in valuation of the kind of assets to be contributed;</p>	<p><i>Delete</i></p>
<p>(b) the fair value is determined for a date not more than 3 months before the effective date of the asset's contribution;</p>	<p><u>(a)</u> the fair value is determined for a date not more than <u>6</u> months before the effective date of the asset's contribution;</p>
<p>(c) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State, which are applicable to the kind of assets to be contributed.</p>	<p><u>(b)</u> the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State, which are applicable to the kind of assets to be contributed.</p>

<p>In the case of new qualifying circumstances, that would significantly change the value of the asset at the effective date of its contribution, a re-valuation has to be made on the initiative and under the responsibility of the administrative or management body. That body shall inform shareholders whether any such new qualifying circumstances have occurred.</p>	<p>In the case of new qualifying circumstances, that would significantly change the <u>fair</u> value of the asset at the effective date of its contribution, a revaluation has to be made on the initiative and under the responsibility of the administrative or management body. [...]</p> <p><u>For the purposes of the aforementioned revaluation, Article 10(1), (2) and (3) shall apply.</u></p>
<p>In any event, shareholders holding an aggregate percentage of at least 5% of the company's subscribed capital may require a re-valuation of the asset concerned, and may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply.</p>	<p><u>In the absence of such a revaluation, one or more</u> shareholders holding an aggregate percentage of at least 5% of the company's subscribed capital <u>on the day the decision on the increase is taken</u> may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply. <u>Such shareholder(s) may submit a demand up until the effective date of the asset contribution, provided that, at the date of the demand, the shareholder(s) in question still hold(s) an aggregate percentage of at least 5% of the company's subscribed capital, as it was on the day the decision on the increase was taken.</u></p>
<p>3. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, assets are contributed as consideration other than in cash whose value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been drawn up in accordance with the requirements of Directive 78/660/EEC and have been subject to an audit in accordance with Directive 84/253/EEC.</p> <p>In the case of new qualifying circumstances, that would significantly change the value of the asset contributed at the effective date of its contribution, a re-valuation</p>	<p>3. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or the management body, assets, <u>other than the transferable securities and money market instruments referred to in paragraph 1</u>, are contributed as consideration other than in cash whose <u>fair</u> value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been [...] subject to an audit in accordance with Directive 84/253/EEC.</p> <p><u>The second and third subparagraphs of paragraph 2 shall apply <i>mutatis mutandis</i>.</u></p>

<p>has to be made on the initiative and under the responsibility of the administrative or management body. That body shall inform shareholders whether any such new qualifying circumstances have occurred. In any event, shareholders holding an aggregate percentage of at least 5% of the company's subscribed capital may require a re-valuation of the asset concerned, and may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply.</p>	<p>[...]</p>
<p style="text-align: center;"><i>Article 10b</i></p> <p>1. Where consideration other than in cash as referred to in Article 10a occurs without an expert's report, the persons, companies and firms referred to in Article 3(i) or the administrative or the management body shall, in addition to the requirements set out in Article 3(h), submit to the register for publication a declaration containing the following:</p>	<p style="text-align: center;"><i>Article 10b</i></p> <p>1. Where consideration other than in cash as referred to in Article 10a occurs without an expert's report [...] as referred to in Article 10(1), (2) and (3), in addition to the requirements set out in Article 3(h) <u>and within one month after the effective date of the asset contribution</u>, a declaration containing the following <u>shall be published</u>:</p>
<p>(a) a description of the consideration other than in cash at issue;</p> <p>(b) its estimated value and the source of this valuation;</p> <p>(c) a statement whether the values arrived at correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them;</p> <p>(d) if appropriate, a statement as to whether new qualifying circumstances with regard to the original valuation have occurred.</p> <p>That declaration shall be published in accordance with Article 3 of Directive 68/151/EEC.</p>	<p>(a) a description of the consideration other than in cash at issue;</p> <p>(b) its [...] value, the source of this valuation and, <u>where appropriate, the method of valuation</u>;</p> <p>(c) a statement whether the values arrived at correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them;</p> <p>(d) [...] a statement <u>that no</u> new qualifying circumstances with regard to the original valuation have occurred.</p> <p><u>That publication shall be effected in the manner laid down by the laws of each Member State</u> in accordance with Article 3 of Directive 68/151/EEC.</p>

<p align="center"><i>-nothing-</i></p>	<p>1a. <u>Where consideration other than in cash is proposed to be made without an expert's report as referred to in Article 10(1), (2) and (3) in relation to an increase in capital proposed to be made under Article 25(2), an announcement containing the date when the decision on the increase was taken and the information listed in paragraph 1 shall be published, in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, before the contribution of the asset as consideration other than in cash is to become effective. In that event, the declaration pursuant to paragraph 1 shall be limited to the statement that no new qualifying circumstances have occurred since the aforementioned announcement was published.</u></p>
<p>2. Each Member State shall designate an independent administrative or judicial authority which is responsible for examining the legality of the considerations other than in cash made in accordance with Article 10a and the declaration referred to in paragraph 1.”</p>	<p>2. Each Member State shall [...] provide for adequate safeguards ensuring compliance with the procedure set out in Article 10a and in this Article where a contribution for a consideration other than in cash is made without an expert's report as referred to in Article 10(1), (2) and (3).”</p>
<p align="center"><i>Article 1(2)</i></p> <p>In Article 11(1) the first subparagraph is amended as follows:</p> <p>(a) The word “Article 10” is replaced by “Article 10 (1), (2) and (3)”.</p> <p>(b) The following sentence is added: “Articles 10a and 10b shall apply mutatis mutandis.”</p>	<p align="center"><i>-no change to Commission text-</i></p>
<p align="center"><i>Article 1(3)</i></p> <p>In Article 19, paragraph 1 is replaced by the following:</p> <p>“1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's</p>	<p align="center"><i>Article 1(3)</i></p> <p>In Article 19, paragraph 1 is replaced by the following:</p> <p>“1. <u>Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Directive 2003/6/EC of the European Parliament</u></p>

<p>behalf, they shall make such acquisitions subject to the following conditions:</p>	<p><u>and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), [...]</u> the laws of a Member State <u>may</u> permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf. <u>To the extent that the acquisitions are permitted, Member States</u> shall make such acquisitions subject to the following conditions:</p>
<p>(a) authorization must be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and in particular the maximum number of shares to be acquired, the duration of the period for which the authorization is given and which may not exceed 5 years, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body must satisfy themselves that, at the time when each authorized acquisition is effected, the conditions referred to in subparagraphs (b), (c) and (d) are respected;</p> <p>(b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in Article 15(1)(a);</p> <p>(c) only fully paid-up shares may be included in the transaction;</p> <p>(d) the principle of equal treatment of shareholders shall apply; in particular, acquisition and sale by a company of its own shares on a regulated market as defined in Art. 4(1)(14) of Directive 2004/39/EC</p>	<p>(a) authorization <u>shall</u> be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and in particular the maximum number of shares to be acquired, the duration of the period for which the authorization is given, <u>the maximum length of which shall be determined by national law without, however, exceeding</u> 5 years, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body must satisfy themselves that, at the time when each authorized acquisition is effected, the conditions referred to in subparagraphs (b) <u>[...]</u> and (c) are respected;</p> <p>(b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in Article 15(1) <u>points (a) and (b)</u>;</p> <p>(c) only fully paid-up shares may be included in the transaction;</p> <p>(d) <u>Delete</u></p>

<p>shall be considered fulfilling that principle.</p>	
<p>Member States may also subject acquisitions within the meaning of the first subparagraph to the condition that the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed 10% of the subscribed capital.”</p>	<p>Member States may, <u>furthermore</u>, also subject acquisitions within the meaning of the first subparagraph to <u>any or all of the following conditions</u>:</p> <ul style="list-style-type: none"> - <u>the condition that the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company’s behalf, may not exceed a limit to be determined by Member States; this limit may not be lower than 10% of the subscribed capital;</u> - <u>the condition that the authority of the company to acquire own shares within the meaning of the first paragraph, the maximum number of shares to be acquired, the duration of the period for which the authority is granted or the maximum or minimum consideration is laid down in the statutes or in the instrument of incorporation of the company;</u> - <u>the condition that the company complies with appropriate reporting and notification requirements;</u> - <u>the condition that certain companies, as determined by Member States, may be required to cancel the acquired shares provided that an amount equal to the nominal par of the shares cancelled must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; it may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves;</u>

	<p>- <u>the condition that the acquisition shall not prejudice the satisfaction of creditors' claims.</u>"</p>
-nothing-	<p><i>Article 1(3A)</i></p> <p><u>In Article 20(3) the words "Article 15(1)(a)" shall be replaced by the words "Article 15(1), points (a) and (b)".</u></p>
<p><i>Article 1(4)</i></p> <p>In Article 23, paragraph 1 is replaced by the following:</p> <p>"1. A company may not advance funds, nor make loans, nor provide security, with a view to the acquisition of its shares by a third party, unless such transactions in national legislation are subject to the conditions set out in the second to fifth subparagraphs.</p> <p>The transactions must take place on the initiative and under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company from the third party and with regard to security provided to the company by the third party for the loans and advances referred to in paragraph 1. The credit standing of the third party must have been duly investigated and the company must be able to maintain its liquidity and solvency for the next five years. The latter must be credibly demonstrated by a detailed cash flow analysis based on the information at the time of the approval of the transaction.</p>	<p><i>Article 1(4)</i></p> <p>In Article 23, paragraph 1 is replaced by the following:</p> <p>"1. <u>Where the laws of a Member State permit</u> a company [...] <u>to, either directly or indirectly,</u> advance funds <u>or</u> make loans <u>or</u> provide security, with a view to the acquisition of its shares by a third party, [...] <u>they shall make</u> such transactions subject to the conditions set out in the second to fifth subparagraphs.</p> <p>The transactions must take place [...] under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company [...] and with regard to security provided to the company [...] for the loans and advances referred to in paragraph 1. The credit standing of the third party <u>or, in the case of multiparty transactions, of each counterparty thereto</u> must have been duly investigated [...].</p>
<p>The transactions must be submitted by the administrative or management body to the general meeting for ex ante-approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. The administrative or management body must present a written report to the general meeting, indicating the reasons for the transaction, the interest of the company in effectuating such a transaction, the conditions at which the transaction is effectuated, the risks involved</p>	<p>The transactions must be submitted by the administrative or management body to the general meeting for <u>prior</u> approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. The administrative or management body must present a written report to the general meeting, indicating the reasons for the transaction, the interest of the company in effectuating such a transaction, the conditions at which the transaction is effectuated, the</p>

<p>in the transaction for the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report shall be submitted to the register for publication in accordance with Article 3 of Directive 68/151/EEC.</p>	<p>risks involved in the transaction for the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report shall be submitted to the register for publication in accordance with Article 3 of Directive 68/151/EEC.</p>
<p>The aggregate financial assistance granted to third parties must not have the effect of reducing the net assets below the amount specified in Article 15(1)(a).</p> <p>Where own shares of the company within the meaning of Article 19(1) or shares issued in the course of an increase in subscribed capital are acquired by a third party from the company, that acquisition must be made at a fair price, in order to avoid dilution of existing shareholdings.”</p>	<p>The aggregate financial assistance granted to third parties must <u>at no time result in the reduction of the net assets below the amount specified in Article 15(1) points (a) and (b), taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of own shares in accordance with Article 19(1). The company shall include among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.</u></p> <p>Where own shares of the company within the meaning of Article 19(1) <u>are acquired</u> or shares issued in the course of an increase in subscribed capital are <u>subscribed for</u> by a third party <u>by means of financial assistance</u> from the company, that acquisition must be made at a fair price [...].”</p>

<p style="text-align: center;"><i>Article 1(5)</i></p> <p>The following Articles 23a and 23b are inserted:</p>	<p style="text-align: center;"><i>Article 1(5)</i></p> <p>The following Article [...] 23b <u>is</u> inserted:</p>
<p style="text-align: center;"><i>“Article 23a</i></p> <p>A shareholder shall have the right to contest the general meeting’s approval of a transaction referred to in Article 23(1) by applying to the appropriate administrative or judicial authority to decide on the legality of that transaction.</p>	<p style="text-align: center;"><u>Delete</u></p>
<p style="text-align: center;"><i>Article 23b</i></p> <p>In cases where individual members of the administrative or management body of the company being party to a transaction referred to in Article 23(1), or of the administrative or management body of a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC or such parent undertaking itself, or individuals acting in their own name, but on behalf of the members of such bodies or on behalf of such undertaking, are counterparts to such a transaction, Member States shall ensure through adequate safeguards that such transaction does not conflict with the company’s best interest.”</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>
<p style="text-align: center;"><i>Article 1(6)</i></p> <p>In Article 27(2) the second subparagraph is replaced by the following:</p> <p>“Article 10(2) and (3) and Article 10a and 10b shall apply.”</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>

Article 1(7)

Delete

In Article 29 the following paragraph 5a is inserted:

“5a. Where an administrative or management body of a listed company is given the power to restrict or withdraw the right of pre-emption in accordance with paragraph 5, under the additional condition, that the shares for a future increase in the subscribed capital must be issued at the market price which, at the time of issue, prevails on one or more regulated market(s) within the meaning of Article 4(1)(14) of Directive 2004/39/EC, the administrative or management body is exempted from having to present to the general meeting a written report as required under paragraph 4 of this Article.

Shareholders may, however, request the administrative or management body to indicate the reasons for the restriction or withdrawal of the right of pre-emption.”

<p style="text-align: center;"><i>Article 1(8)</i></p> <p>In Article 32, paragraph 1 is replaced by the following:</p> <p>“1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision to make the reduction shall be entitled at least to have the right to obtain security for claims which have not fallen due by the date of that publication. Member States may not set aside such a right unless the creditor has adequate safeguards, or unless the latter is not necessary in view of the assets of the company.</p> <p>Member States shall lay down the conditions for the exercise of the right provided for in the first subparagraph. In any event, Member States shall ensure that the creditors are authorized to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the reduction in subscribed capital the satisfaction of their claims is at stake, and that no adequate safeguards have been obtained from the company.”</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>
<p style="text-align: center;"><i>Article 1(9)</i></p> <p>The following Articles 39a and 39b are inserted:</p> <p style="text-align: center;">“Article 39a</p> <p>1. Member States shall ensure that a shareholder who holds at least 90% of the subscribed capital of a listed company, hereinafter referred to as the “majority shareholder”, shall be able to require all the holders of the remaining shares, hereinafter referred to as “minority shareholders”, to sell him those shares at a fair price. However, Member States may set a higher threshold provided that it does not exceed 95% of the subscribed capital of the company.</p>	<p style="text-align: center;"><u>Delete</u></p>

A company is considered to be a listed company within the meaning of this provision if its shares are traded on a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC.

2. Member States shall ensure that it is possible to determine when the threshold is reached.
3. Where the company has issued more than one class of shares, Member States may provide that the right to require the minority shareholder to sell as provided for in paragraph 1 shall apply only in the class in which the thresholds referred to in that paragraph are reached.
4. Member States shall ensure that each minority shareholder concerned may demand an appraisal of the fair price.

The appraisal of whether the price is fair shall be carried out by an independent administrative or judicial authority or by an independent expert appointed or approved by such an authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State. The demand for such an appraisal shall be exercised within three months after the minority shareholder was required to sell and the price was announced in accordance with paragraph 1.

5. This Article is without prejudice to Article 15 of Directive 2004/25/EC.

Article 39b

1. Member States shall ensure that minority shareholders in a listed company shall be able to require, jointly or individually, the majority shareholder to buy from them their shares in that company at a fair price.
2. Member States shall ensure that in cases where there is no agreement on the fair price between the prospective parties of the transaction mentioned in paragraph 1, the price is examined by an independent administrative or judicial authority or by an independent expert

<p>appointed or approved by such an authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.</p> <p>3. The provisions of Article 39a(1) second and third sentence, (2) and (3) shall apply mutatis mutandis.</p> <p>4. Member States shall ensure an adequate procedure which guarantees a fair treatment of all minority shareholders.</p> <p>5. This Article is without prejudice to Article 16 of Directive 2004/25/EC.”</p>	
<p style="text-align: center;"><i>Article 1(10)</i></p> <p>In Article 41 paragraph 1 is replaced by the following:</p> <p>“1. Member States may derogate from Article 9(1), Article 19(1)(a), first sentence, and from Articles 25, 26 and 29 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.”</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>
<p style="text-align: center;"><i>Article 2(1)</i></p> <p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2006 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p>	<p style="text-align: center;"><i>Article 2(1)</i></p> <p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...² at the latest. [...]</p>
<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>

² Eighteen months after the entry into force of this Directive.

<p style="text-align: center;"><i>Article 2(2)</i></p> <p>Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>
<p style="text-align: center;"><i>Article 3</i></p> <p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	<p style="text-align: center;"><i>-no change to Commission text-</i></p>