**AMENDMENTS 001-339**

by the Committee on Legal Affairs

**Report**

Evelyn Regner

Cross-border conversions, mergers and divisions


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**Amendment 1**

Proposal for a directive

Recital -1 (new)

*Text proposed by the Commission*  

(-1) *The administrative or management body should be responsible for managing the company in the interests of the company, and should accordingly, take account of the interests of the members, its employees and other stakeholders, with the objective of sustainable creation of value in the long-term.*

**Amendment 2**

Proposal for a directive

Recital 1

*Text proposed by the Commission*  

(1) *The Directive (EU) 2017/1132 of the European Parliament and of the Council regulates cross-border mergers of limited liability companies. These rules represent a significant milestone in improving the*  

(1) *The Directive (EU) 2017/1132 of the European Parliament and of the Council regulates cross-border mergers of limited liability companies. These rules represent a significant milestone in improving the*
functioning of the Single Market for companies and firms and to exercise the freedom of establishment. However, evaluation of these rules shows that there is a need for modifications in cross-border merger rules. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions.


Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Freedom of establishment is one of the fundamental principles of Union law. Under the second paragraph of Article 49 of the Treaty on the Functioning of the European Union (‘TFEU’), when read in conjunction with Article 54 of the TFEU, the freedom of establishment for companies or firms includes, inter alia, the right to form and manage such companies or firms under the conditions laid down by the legislation of the Member State of establishment. This has been interpreted by the Court of Justice of the European Union as encompassing the right of a company or firm formed in accordance with the functioning of the Single Market for companies and firms and to exercise the freedom of establishment on the one hand and provide adequate protection for stakeholders, such as workers, creditors and minority shareholders, on the other. However, evaluation of these rules shows that there is a need for modifications in cross-border merger rules, especially with a view to ensuring adequate protection for workers, creditors and minority shareholders. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions, with a view to fostering cross-border company mobility, and so as to provide a clear, predictable, adequate up-to-date, inclusive and equitable Union legal framework regarding companies.

Amendment

(2) Freedom of establishment is one of the fundamental principles of Union law. Under the second paragraph of Article 49 of the Treaty on the Functioning of the European Union (‘TFEU’), when read in conjunction with Article 54 of the TFEU, the freedom of establishment for companies or firms includes, inter alia, the right to form and manage such companies or firms under the conditions laid down by the legislation of the Member State of establishment. This has been interpreted by the Court of Justice of the European Union extensively beyond the literal meaning of the wording as encompassing the right of a
legislation of a Member State to convert itself into a company or firm governed by the law of another Member State, provided that the conditions laid down by the legislation of that other Member State are satisfied and, in particular, that the test adopted by the latter Member State to determine the connection of a company or firm to its national legal order is satisfied.

Moreover, it is particularly important to take account of additional elements, such as the existence of economic substance criteria, in order to avoid the misuse of that fundamental freedom for the purposes of fraud.

Amendment 4
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

(2a) The freedom of establishment and the development of the internal market are not stand-alone principles or objectives of the Union. They should always be balanced with, in particular in the context of this Directive, the Union’s principles and objectives regarding social progress, the promotion of a high level of employment and the guarantee of adequate social protection, enshrined in Article 3 of the Treaty on the European Union (‘TEU’) and Article 9 of the TFEU. It is therefore clear that the development of the internal market should contribute to social cohesion and upward social convergence, and should not fuel competition between social systems, putting pressure on those systems to lower their standards.

Amendment 5
Proposal for a directive
Recital 2 b (new)

Text proposed by the Commission

(2b) While competition in the single market and freedom of establishment are key principles of the Union, the freedom of companies to move their registered office from one Member State to another is based on an undesirable system of competition between Member States fuelled by an unlevel playing field with different national provisions in social and fiscal policies. Abusive conversions, mergers or divisions constituting artificial arrangements or social dumping, but also reducing fiscal obligations or undercutting social rights of employees should therefore be avoided in order to respect Treaty principles and values. The case law of the European Court of Justice has regrettably resulted in a very far-reaching right to cross-border conversions, and the possibility for firms to move their registered office without moving core activities has in turn contributed to incomprehension and anti-European sentiments on the part of employees and other stakeholders as regards this problematic form of competition.

Amendment 6

Proposal for a directive

Recital 2 c (new)

Text proposed by the Commission

(2c) Union policy should also contribute to the promotion and reinforcement of social dialogue, in line with Article 151 TFEU. It is therefore also the objective of this Directive to secure employees’ information, consultation and participation rights, and to ensure that the cross-border mobility of companies can never lead to the lowering of such rights. Ensuring information, consultation and
participation of employees is essential for cross-border mobility to succeed.

Amendment 7
Proposal for a directive
Recital 2 d (new)

Text proposed by the Commission

Amendment
(2d) Moving towards a common and consolidated corporate tax system at Union level and ensuring minimum common social standards in all Member States should be a pre-condition for common rules on company mobility, in order to allow for fair competition and a level playing field that does not put Member States or stakeholders at a disadvantage.

Amendment 8
Proposal for a directive
Recital 2 e (new)

Text proposed by the Commission

Amendment
(2e) The freedom of establishment should also in no way undermine the principles, regarding countering fraud and any other illegal activities affecting the financial interests of the Union, laid down in Article 310 TFEU.

Amendment 9
Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment
(3) In the absence of harmonisation of Union law, the definition of the connecting factor that determines the national law applicable to a company or firm falls, in accordance with Article 54 of the TFEU,
within the competence of each Member State to so define. Article 54 of the TFEU places the factor of the registered office, the central administration and the principal place of business of a company or firm at the same degree of connection. Therefore, as clarified in case-law, where the Member State of new establishment, namely the destination Member State, requires only the transfer of the registered office as a connecting factor for the existence of a company under its national legislation, the fact that only the registered office (and not the central administration or principal place of business) is transferred does not as such exclude the applicability of the freedom of establishment under Article 49 of the TFEU. The choice of the specific form of company in cross-border mergers, conversions and divisions or the choice of a Member State of establishment are inherent in the exercise of the freedom of establishment guaranteed by the TFEU as part of a Single Market.

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Amendment 10
Proposal for a directive
Recital 4

Text proposed by the Commission

(4) These developments in the case-law have opened up new opportunities for companies and firms in the Single Market in order to foster economic growth, effective competition and productivity. At the same time, the objective of a Single Market without internal borders for companies must also be reconciled with other objectives of European integration such as social protection (in particular the
protection of workers), the protection of creditors and the protection of shareholders. Such objectives, in the absence of harmonised rules specifically regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border. letterbox companies and abusive practices, constituting artificial arrangements and circumventing fiscal and social security obligations as well as undercutting workers’ rights. The objective of a Single Market without internal borders for companies must be reconciled with other objectives of European integration such as social protection for all, in accordance with Article 3(3) of TEU as well as Articles 151 and 152 of the TFEU, the European Pillar of Social Rights and the Charter of Fundamental Rights of the European Union, the protection of workers’ rights, the protection of creditors and the protection of shareholders, as well as the fight against attacks on financial interests of the Union via for example money laundering and tax evasion. In the absence of harmonised rules specifically regarding cross-border conversions, Member States have developed a number of multifarious legal provisions and administrative practices, creating an unsatisfactory climate in terms of legal certainty, adversely affecting both companies and stakeholders and Member States, as well as the fight against attacks on the financial interests of the Union via, for example, money laundering and tax evasion. Similarly, the Union committed to respecting the Charter of Fundamental Rights of the European Union. The freedom of establishment should in no way undermine other values and principles guaranteed by the TFEU, such as the promotion of a high level of employment and the guarantee of adequate social protection (Article 9), improved living and working conditions and dialogue between management and labour, the development of human resources with a view to lasting high employment, and the combating of exclusion (Article 151) or countering of fraud and any other illegal activities affecting the financial interests of the Union (Article 310). As a result, whereas
companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

Amendment 11
Proposal for a directive
Recital 6

(6) It is appropriate therefore to provide procedural and substantive rules on cross-border conversions which would contribute to the abolition of restrictions on freedom of establishment and provide at the same time adequate and proportionate protection for stakeholders such as employees, creditors and minority shareholders.

Amendment

(6) It is appropriate therefore to provide harmonised Union procedural and substantive rules on cross-border conversions which would further facilitate the abolition of restrictions on freedom of establishment and guarantee at the same time the right to adequate, uniform and proportionate protection for stakeholders such as employees, creditors and minority shareholders and, in particular, employees. It is essential that loopholes be closed and that opportunities for abuses related to tax, social security and the rights of different stakeholders, be prevented. It is therefore crucial that the direction taken by the Court of Justice be changed and that it be clarified that a company should not be able to move its registered office without moving its head office in order to carry out a substantial part of its economic activity in the member state of destination.

Amendment 12
Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment
(6a) Further development of the internal market should be properly balanced, maintaining the essential values on which our societies are based and ensuring that all citizens benefit from economic development.

Amendment 13
Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

(6b) This Directive should establish minimum requirements applicable throughout the Member States, while allowing and encouraging Member States to provide more favourable protection of employees.

Amendment 14
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) The right to convert an existing company formed in a Member State into a company governed by another Member State may in certain circumstances be used for abusive purposes such as for the circumvention of labour standards, social security payments, tax obligations, creditors', minority shareholders' rights or rules on employees participation. In order to combat such possible abuses, a general principle of Union law, Member States are required to ensure that companies do not use the cross-border conversion procedure in order to create artificial arrangements aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or members. In so far as it constitutes a derogation from a fundamental freedom,

Amendment

(7) The right to convert an existing company formed in a Member State into a company governed by another Member State may not under any circumstances be used for abusive, fraudulent or criminal purposes such as for the evasion, avoidance or circumvention of labour standards, social security payments, tax obligations, creditors', minority shareholders' rights or rules on employees participation. In order to combat such possible abuses, a general principle of Union law, Member States are required to ensure that companies do not use the cross-border conversion procedures, in order to create artificial arrangements. Member States should also be required to ensure that cross-border conversions correspond to the actual pursuit of a genuine
the fight against abuses must be interpreted strictly and be based on an individual assessment of all relevant circumstances. A procedural and substantive framework which describes the margin of discretion and allows for the diversity of approach by Member States whilst at the same time setting out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law should be laid down.

Amendment 15

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The carrying out of a cross-border conversion entails a change of legal form for a company without losing its legal personality. However, it should not lead to the circumvention of the requirements for incorporation in the destination Member State. Such conditions, including the requirements to have a head office in the destination Member State and those relating to the disqualification of directors, should be fully respected by the company. However, the application of such conditions by the destination Member State may not affect the continuity of the converted company's legal personality. A company may convert into any legal form which exists in the destination Member State, in accordance with Article 49 of the TFEU.

Amendment

(8) The carrying out of a cross-border conversion entails a change of legal form for a company without losing its legal personality and without the need for renegotiation of business contracts. However, it should not lead to the circumvention of the requirements for incorporation in the destination Member State. Such conditions, including the requirements to have a head office in the destination Member State and those relating to the disqualification of directors, should be fully respected by the company. However, the application of such conditions by the destination Member State may not affect the continuity of the converted company's legal personality. A company may convert into any regulated legal form which exists in the destination Member State, in accordance with Article 49 of the TFEU.
Amendment 16

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Without prejudice to any fundamental rights, any relevant criminal or administrative records should be taken into account for the assessment of the good repute, honesty and integrity of directors of companies carrying out a cross-border conversion or merger. In this regard, the type of conviction or indictment, the role of the individual involved, the penalty received, the phase of the judicial process reached and any rehabilitation measures that have taken effect should be considered. The surrounding circumstances, including mitigating factors, the seriousness of any relevant offence or administrative or supervisory action, the time elapsed since the offence, the member's conduct since the offence or action, and the relevance of the offence or action to the member's role should be considered. Any relevant criminal or administrative records should be taken into account, considering periods of limitation in force in the national law. Without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights, the following factors should at least be considered in the assessment: convictions or ongoing prosecutions for a criminal offence, in particular offences under laws governing banking, financial, securities or insurance activities; or concerning securities markets or financial or payment instruments, including laws on money laundering, corruption, market manipulation, or insider dealing and usury; offences of dishonesty, fraud or financial crime; tax offences and other offences under legislation relating to companies, including labour law, bankruptcy, insolvency, or consumer
Amendment 17

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To allow all stakeholders’ legitimate interests to be taken into account in the procedure governing a cross-border conversion, the company should disclose the draft terms of the cross-border conversion containing the most important information about the proposed cross-border conversion, including the envisaged new company form, the instrument of constitution and the proposed timetable for the conversion. Members, creditors and employees of the company carrying out the cross-border conversion should be notified in order that they can submit comments with regard to the proposed conversion.

Amendment

(10) To allow all stakeholders’ legitimate interests to be taken into account in the procedure governing a cross-border conversion, the company which intends to carry out a cross-border conversion should draw up the draft terms of the cross-border conversion, together with, where provided for in national law and/or in accordance with national practice, board level employee representatives, and disclose those draft terms. Board level employee representatives should also be included in the decision on the draft terms. The draft terms should contain the most important information about the proposed cross-border conversion, including the envisaged new company form, total turnover and total taxable turnover of the converting company for the last reporting period, the amount of income tax paid by the converting company and its subsidiaries and branches, information on the location and, where relevant, date of the transfer of the head office of the company to the destination Member State, as well as information on the management body and, where applicable, staff, equipment, premises and assets, the number of employees employed on a full-time equivalent basis, the likely repercussions of the cross-border conversion on employment, including the likely changes to the organisation of work, the wages, the location of specific posts and the expected consequences for the employees occupying such posts, including employees in subsidiaries and branches of the converting company that are located
within the Union, and on the company level social dialogue including, where applicable, board level employee representation, the instrument of constitution and the proposed timetable for the conversion. Members, creditors and employees of the company carrying out the cross-border conversion should be notified in order that they can submit comments with regard to the proposed conversion. Before the decision on the draft terms of a cross-border conversion is made, the representatives of the employees of the converting company or, where there are no such representatives, the employees themselves and the trade unions represented should be informed of and consulted on the proposed conversion. Similarly, where a body has been established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, it should also be informed and consulted accordingly.

Amendment 18

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) In order to provide information to its members, the company carrying out the cross-border conversion should prepare a report. The report should explain and substantiate the legal and economic aspects of the proposed cross-border conversion, in particular the implications of the cross-border conversion for members with regard to the future business of the company and the management organ's strategic plan. It should also include potential remedies available to members, where they do not agree with the decision to carry out a cross-border conversion. This report should also be made available to the employees of the company carrying out our cross-border

Amendment

(11) In order to provide information to its members and employees, the company carrying out the cross-border conversion should prepare a report, explaining the implications of the proposed cross-border conversion. The report should explain and substantiate the legal and economic aspects of the proposed cross-border conversion, in particular the reasons for the cross-border conversion, the implications of the cross-border conversion for members with regard to the future business of the company and the management organ's strategic plan. It should also include potential remedies available to members, where they do not agree with the decision to carry out a cross-
border conversion. This report should also be made available to the employees of the company carrying out our cross-border conversion. The report should explain in particular the implications of the proposed cross-border conversion for the jobs of the employees, and for employee involvement, as well as measures to be taken in order to safeguard them, whether there would be any material change in the employment relationships and the locations of the companies’ places of business, information on the procedures by which arrangements for the information, consultation and participation rights of employees in the resulting converted company can be applied and how each of these factors would relate to any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. Before the decision on the report is made, the representatives of the employees of the company carrying out the cross-border conversion or, if there are no representatives, the employees themselves, should be informed and consulted on the proposed conversion. Similarly, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC\textsuperscript{1a} or 2001/86/EC of the European Parliament and the Council\textsuperscript{1b} should also be informed and consulted accordingly. The provision of the report should be without prejudice to any other applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the Council\textsuperscript{1c} or Directive 2009/38/EC.

\textsuperscript{1a} Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in
Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009).


Amendment 19

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

(11a) Where the administrative or management body of the company carrying out the cross-border conversion receives, in good time, an opinion from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, or where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, the members should be informed thereof and that opinion should be appended to that report. The administrative or management body of the company which intends to carry out the cross-border conversion, should provide a motivated response on the opinion provided by the employee representatives, and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, before the
date of the general meeting.

Amendment 20
Proposal for a directive
Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) In order to be enabled to conduct an analysis of the report, the company carrying out the cross-border conversion should provide the employee representatives, the trade unions represented in the company and where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC such financial and material resources necessary as to enable them to apply the rights arising from this Directive in an appropriate manner, such as for example access to a private and password-protected computer, a secure internet connection, meeting rooms, time off for meetings, the cost of organising meetings and if necessary, interpretation facilities, accommodation and travel expenses.

Amendment 21
Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) In order to provide information to its employees, the company carrying out the cross-border conversion should prepare a report explaining the implications of the proposed cross-border conversion for employees. The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there

deleted
would be any material change in the employment relationships and the locations of the companies’ places of business and how each of these factors would relate to any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the Council\(^4\) or Directive 2009/38/EC of the European Parliament and of the Council\(^4\).


Amendment 22

Proposal for a directive
Recital 12 a (new)

<table>
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<tr>
<th>Text proposed by the Commission</th>
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<td>(12a) Companies willing to make full use of the benefits of the internal market through cross-border conversions should in return adhere to an adequate level of transparency and good corporate governance. Public country by country</td>
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reporting is an efficient and appropriate tool to increase the transparency of multinational enterprises activities and to enable the public to assess their impact on the real economy. It will also improve shareholders’ ability to properly evaluate the risks taken by companies, lead to investment strategies based on accurate information and enhance decision-makers ability to assess the efficiency and the impact of national law. Therefore, a set of financial information should be published ahead of the cross-border operation ahead of its execution.

Amendment 23
Proposal for a directive
Recital 12 b (new)

Text proposed by the Commission

(12b) The freedom of establishment and the development of the internal market are not stand-alone principles or objectives of the Union. They should always be balanced with, in particular in the context of this Directive, the Union’s principles and objectives regarding social progress, the promotion of a high level of employment and the guarantee of adequate social protection, enshrined in Article 3 of the Treaty on the European Union and Article 9 of the TFEU. It is therefore clear that the development of the internal market should contribute to social cohesion and upward social convergence, and should not fuel competition between social systems, putting pressure on those systems to lower their standards.

Amendment 24
Proposal for a directive
Recital 12 c (new)
(12c) Union policy should also contribute to the promotion and reinforcement of social dialogue, in line with Article 151 TFEU. It is therefore also the objective of this Directive to secure employees’ information, consultation and participation rights and to ensure that the cross-border mobility of companies can never lead to the lowering of these rights. Ensuring information, consultation and participation of employees is essential for all such actions to succeed.

Amendment 25
Proposal for a directive
Recital 12 d (new)

(12d) The freedom of establishment should also in no way undermine the principles regarding countering fraud and any other illegal activities affecting the financial interests of the Union laid down in Article 310 TFEU.

Amendment 26
Proposal for a directive
Recital 12 e (new)

(12e) There is a need to ensure consistency for companies and employees in order to avoid duplication of existing Union legislation. Directive 2002/14/EC, Council Directive 2001/23/EC1a and Directive 2009/38/EC already include requirements on information and consultation of employees that apply in situations of cross border conversions, mergers and divisions. It is important that
this Directive complement these existing Directives in order to avoid unnecessary administrative burdens by undermining the current provisions in place for information, consultation and participation of employees.

Amendment 27
Proposal for a directive
Recital 13

Text proposed by the Commission

(13) **In order** to assess the accuracy of the information contained in the draft terms of conversion and in the **reports** addressed to the members and employees and **to provide factual elements necessary to assess whether the proposed conversion constitutes an artificial arrangement, an independent expert report should be required to be prepared in order to assess the proposed cross-border conversion. In order to secure the independence of the expert, the expert should be appointed by the competent authority, following an **application by the company.** In this context, the **expert** report should **present** all relevant information to enable the competent authority in the departure Member State to take an informed decision as to whether or not to issue the pre-conversion certificate. To this end, the expert should be able to obtain all the relevant company information and documents and carry out all necessary investigations in order to gather all the evidence required. The expert should use information, in particular net turnover and

Amendment

(13) **The competent national authorities should be able** to assess the accuracy of the information contained in the draft terms of conversion and in the **report** addressed to the members and employees. In this context, the report should **contain** all relevant information to enable the competent authority in the departure Member State to take an informed decision as to whether or not to issue the pre-conversion certificate. To this end, the **competent authority** should be able to obtain all the relevant company information, such as net turnover and profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States, and any documents needed to carry out the investigations necessary to gather the evidence required and to assess the proposed cross-border conversion with all necessary factual elements provided by the company. However, in order to protect any confidential information, including
profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States. However, in order to protect any confidential information, including business secrets of the company, such information should not form part of the expert’s final report which itself would be publically available.

Amendment 28
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) With a view to avoiding disproportionate costs and burdens for smaller companies carrying out the cross-border conversion, micro and small enterprises, as defined in the Commission Recommendation 2003/361/EC45, should be exempted from the requirement to produce an independent expert report. However, these companies can resort to an independent expert report to prevent litigation costs with creditors.

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Amendment 29
Proposal for a directive
Recital 15
(15) On the basis of the draft terms of conversion and the reports, the general meeting of the members of the company should decide on whether or not to approve those draft terms. It is important that the majority requirement for such a vote should be sufficiently high in order to ensure that the decision to convert is a collective one. In addition, members should also have the right to vote on any arrangements concerning employee participation, if they have reserved that right during the general meeting.

Amendment

(15) On the basis of the draft terms of conversion and the reports, the general meeting of the members of the company should decide on whether or not to approve those draft terms. It is important that the majority requirement for such a vote should be sufficiently high in order to ensure that the decision to convert is a collective one. Before a decision is taken, any preceding applicable information and consultation rights should be respected in order for any opinion by the employee representatives to be taken into account in accordance with Directive 2002/14/EC, and, where applicable, Directives 2009/38/EC and 2001/86/EC. In addition, members should also have the right to vote on any arrangements concerning employee participation, if they have reserved that right during the general meeting.

Amendment 30

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) It is *appropriate* that those members who held voting rights and who did not vote to approve the draft terms of conversion and those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should be able to leave the company and receive cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.

Amendment

(16) It is *necessary* that those members who held voting rights and who did not vote to approve the draft terms of conversion and those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should be able to leave the company and receive *adequate* cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.
Proposal for a directive
Recital 18

Text proposed by the Commission

(18) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms of the cross-border conversion, creditors may apply to the competent judicial or administrative authority of the departure Member State for the adequate safeguards. In order to facilitate the assessment of prejudice, certain presumptions should be laid down whereby creditors would be deemed not to be prejudiced by a cross-border conversion, where the risk of loss to a creditor is remote. A presumption should arise where an independent expert report concludes that there is no reasonable likelihood that the creditors would be prejudiced or where creditors are offered a right to payment against the converted company or against a third party guarantee of equivalent value to the creditor's original claim and which can be brought in the same jurisdiction as the original claim. The creditor protection provided for in this Directive should be without prejudice to national laws of the Member State of departure concerning payment to public bodies, including taxation or social security contributions.

Amendment

(18) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms of the cross-border conversion, creditors may apply to the competent judicial or administrative authority of the departure Member State for the adequate safeguards. In order to facilitate the assessment of prejudice, certain presumptions should be laid down whereby creditors would be deemed not to be prejudiced by a cross-border conversion, where the risk of loss to a creditor is remote. A presumption should arise where creditors are offered a right to payment against the converted company or against a third party guarantee of equivalent value to the creditor's original claim and which can be brought in the same jurisdiction as the original claim. The creditor protection provided for in this Directive should be without prejudice to national laws of the Member State of departure concerning payment to public bodies, including taxation or social security contributions.

Amendment 32

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border conversion, where the company carrying out the cross-border conversion is operating under an employee participation system in the

Amendment

(19) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border conversion, where the company carrying out the cross-border conversion is operating under an employee participation system in the
departure Member State, the company should be obliged to take a legal form allowing for the exercise of such participation, including through the presence of representatives of the employees in the appropriate management or supervisory organ of the company in the destination Member State. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place, along the lines of the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution reconciling the right of the company to carry out a cross-border conversion with the employees' rights of participation. As soon as possible after publishing the draft terms of conversion, the company should take the necessary steps, including providing information about the identity of the participating companies, subsidiaries or establishments concerned, and the number of their employees, to start negotiations with the representatives of the companies' employees, or, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, on arrangements for the involvement of employees in the company or companies resulting from the conversion, along the lines of the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution reconciling the right of the company to carry out a cross-border conversion with the employees' rights of participation. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply, mutatis mutandis. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out subsequent domestic or cross-border conversion, merger or division within three years.

Where an applicable threshold for employee participation laid down in the law of the departure Member State is exceeded in the six years following the
cross-border conversion, the same level and elements of employee participation as would have been legally provided for had the company reached the relevant threshold in the departure Member State should apply and new negotiations should be initiated.

Amendment 33
Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission  
Amendment

(19a) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies should be respected and acknowledged.

Amendment 34
Proposal for a directive
Recital 19 b (new)

Text proposed by the Commission  
Amendment

(19b) Information and consultation procedures at national and transnational level should, nevertheless, be complied with by all companies resulting from the cross-border conversion or merger.

Amendment 35
Proposal for a directive
Recital 20

Text proposed by the Commission  
Amendment

(20) In order to prevent the circumvention of employee participation rights by means of a cross-border conversion, the company carrying out a conversion which is
registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border conversion without first entering into negotiations with its employees or their representatives when the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee participation.

Member States should ensure that employee’s representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

Amendment 36

Proposal for a directive
Recital 20 a (new)

*Text proposed by the Commission*

(20a) Following the conversion, the company carrying out the cross-border conversion should continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the company before the conversion under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement, in accordance with Directive 2001/23/EC.

Amendment 37

Proposal for a directive
Recital 21

*Text proposed by the Commission*

(21) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border
conversions, both the departure and the destination Member States should designate the appropriate competent authorities. In particular, the competent authorities of the departure Member States should have the power to issue a pre-conversion certificate without which the competent authorities in the destination Member State should not be able to complete the cross-border conversion procedure. Member States should ensure that competent authorities designated set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields concerned by this Directive and should, where appropriate, consult other relevant authorities with competence in the different fields concerned by the cross-border conversion. The decision to issue a pre-conversion certificate by the competent authority of the departure Member State or any approval by the competent authority in the destination Member State should not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.

Amendment 38
Proposal for a directive
Recital 22

Text proposed by the Commission

(22) The issue of the pre-conversion certificate by the departure Member State should be scrutinised to ensure the legality of the cross-border conversion of the company. The competent authority of the departure Member State should decide on the issue of the pre-conversion certificate within one month of the application by the company, unless it has serious concerns as to the existence of an artificial arrangement aimed at obtaining undue tax advantages

Amendment

(22) The issue of the pre-conversion certificate by the departure Member State should be scrutinised to ensure the legality of the cross-border conversion of the company. The competent authority of the departure Member State should decide on the issue of the pre-conversion certificate within two months of the reception of all the necessary documents and information unless it has serious concerns as to the existence of an artificial arrangement or
or unduly prejudicing the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically, but it should be conducted on a case-by-case basis, where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within two months of informing the company that the in-depth assessment will be carried out.

that the conversion does not involve the actual pursuit of genuine economic activity. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically, but it should be conducted on a case-by-case basis, where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. Whenever the competent authority makes an assessment on whether the conversion involves the actual pursuit of genuine economic activity, the competent authority should in particular verify whether the company has a fixed establishment in the destination Member State, which has the objective appearance of permanency, whether it has a management body, staff, equipment, premises and assets, and whether it is materially equipped to autonomously negotiate business with third parties, and should consider whether the company has chosen to delegate its management to directors, officers or legal representatives, hired from an independent third party through a service contractor. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within three months of informing the company that the in-depth assessment will be carried out.

Amendment 39

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) After having received a pre-

Amendment

(23) After having received a pre-
conversion certificate, and after verifying that the incorporation requirements in the destination Member State are fulfilled, the competent authorities of the destination Member State should register the company in the business register of that Member State. Only after this registration should the competent authority of the departure Member State strike the company off its own register. It should not be possible for the competent authority of the destination Member State to challenge the accuracy of the information provided by the pre-conversion certificate. As a consequence of the cross-border conversion, the converted company should retain its legal personality, its assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions.

However, if during the two years following the date on which the cross-border conversion takes effect, new information concerning the cross-border conversion is brought to the attention of the competent authorities, suggesting there has been an infringement of any of the provisions in this Directive, the competent authorities should revise their assessment of the facts of the case and should be empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.

Amendment 40
Proposal for a directive
Recital 26

Text proposed by the Commission

(26) The evaluation of the implementation of the cross-border merger rules in Member States has shown that the number of cross-border mergers in the Union has significantly increased. However, this evaluation has also revealed certain shortcomings in relation specifically to creditor protection and shareholder

Amendment

(26) The evaluation of the implementation of the cross-border merger rules in Member States has shown that the number of cross-border mergers in the Union has significantly increased. However, this evaluation has also revealed certain shortcomings in relation specifically to creditor protection, minority shareholder
protection as well as to the lack of simplified procedures which impede the full effectiveness and efficiency of those cross-border merger rules.

Amendment 41
Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

(27a) The right to merge an existing company formed in a Member State into a company governed by another Member State should not, under any circumstances, be used for abusive, fraudulent or criminal purposes such as for the evasion, avoidance or circumvention of labour standards, social security payments, tax obligations, creditors' rights, minority shareholders' rights or rules on employee participation. In order to combat such possible abuses, and respect a general principle of Union law, Member States should be required to ensure that companies do not use cross-border merger procedures, in order to create artificial arrangements. Member States should also be required to ensure that the cross-border merger corresponds to the actual pursuit of a genuine economic activity, including in the digital sector, through a fixed establishment in the Member State of the company resulting from the merger for an indefinite period, in order to avoid the setting up of 'letterbox' or 'front' companies with the purpose of evading, circumventing or infringing national and/or Union law. The fight against abuses should be based on an assessment of all relevant circumstances. A procedural and substantive framework which describes the margin of discretion
and takes account of the diversity of approaches by Member States, whilst at the same time setting out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law, should be introduced into the merger procedure.

Amendment 42

Proposal for a directive
Recital 27 b (new)

**Text proposed by the Commission**

(27b) To allow all stakeholders’ legitimate interests to be taken into account in the procedure governing a cross-border merger, the company involved in a cross-border merger should draw up the draft terms of the cross-border merger, together with, where provided for in national law and/or in accordance with national practice, board level employee representatives, and disclose those draft terms. Board level employee representatives should also be included in the decision on the draft terms. The draft terms should contain the most important information about the proposed cross-border merger, including the envisaged new company form, total turnover and total taxable turnover of each of the merging companies for the last reporting period, the amount of income tax paid by the merging companies and their subsidiaries and branches, information on the location and, where relevant, date of the transfer of the head office of the company to the Member State of the company resulting from the merger, as well as information on the management bodies and, where applicable, staff, equipment, premises and assets, the number of employees employed on a full-time equivalent basis, the likely repercussions of the cross-border merger on employment, including the likely
changes to the organisation of work, the wages, the location of specific posts and the expected consequences for the employees occupying such posts, including employees in subsidiaries and branches of the merging companies located within the Union, and on the company level social dialogue including, where applicable, board level employee representation, the instrument of constitution and the proposed timetable for the merger. Members, creditors and employees of the company involved in the cross-border merger should be notified in order that they can submit comments with regard to the proposed merger. Before the decision on the draft terms of a cross-border merger is made, the representatives of the employees of each of the merging companies or, where there are no such representatives, the employees themselves and the trade unions represented should be informed of and consulted on the proposed merger. Similarly, where a body has been established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, it should also be informed and consulted accordingly.

Amendment 43

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to oblige the management or administrative organs of the merging
companies to prepare separate reports
detailing the legal and economic aspects
of the cross-border merger for both
members and for employees. The
obligation on the management or
administrative organ of the company to
prepare the report for the members may
however be waived, where those members
are already informed about legal and
economic aspects of the proposed merger.
However, the report prepared for
employees may only be waived where the
merging companies and their subsidiaries
do not have any employees other than
those who form part of the management
or administrative organ.

Amendment 44
Proposal for a directive
Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) Where each of the administrative or
management bodies of the companies
involved in cross-border merger receive,
in good time, an opinion from the
representatives of the employees or, where
there are no such representatives, from
the employees themselves, as provided for
under national law, or where applicable,
from the bodies established for the
purposes of transnational information
and consultation in accordance with
Directive 2009/38/EC or 2001/86/EC, the
members should be informed thereof and
the opinions should be appended to each
report. Each of the administrative or
management bodies of the companies
which intend to carry out the cross-border
merger, should provide a motivated
response on the opinion provided by the
employee representatives, and, where
applicable, the bodies established for the
purposes of transnational information
and consultation in accordance with
Directive 2009/38/EC or 2001/86/EC,
before the date of the general meetings.

Amendment 45
Proposal for a directive
Recital 28 b (new)

Text proposed by the Commission

Amendment

(28b) In order to be enabled to conduct an analysis of the report of each of the merging companies, each company involved in the cross-border merger should provide the employee representatives, the trade unions represented in the company and where applicable, any body has been established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC such financial and material resources necessary to enable them to apply the rights arising from this directive in an appropriate manner, such as for example access to a private and password-protected computer, a secure internet connection, meeting rooms, time off for meetings, the cost of organising meetings and if necessary, interpretation facilities, accommodation and travel expenses;

Amendment 46
Proposal for a directive
Recital 28 c (new)

Text proposed by the Commission

Amendment

(28c) The competent national authorities should be able to assess the accuracy of the information contained in the draft terms of merger and in the reports addressed to the members and employees. In this context, each report should contain all relevant information to enable the competent authority in each Member State of the merging companies to take an
informed decision as to whether or not to issue the pre-merger certificate. To this end, the competent authorities of each Member State of the merging companies should be able to obtain all relevant company information, such as net turnover and profit or loss, number of employees and the composition of its balance sheet, collected by the company for the purposes of the preparation of financial statements in accordance with Union law and the law of Member States, and any documents needed to carry out the investigations necessary to gather the evidence required, and to assess the proposed cross-border merger with all necessary factual elements provided by the companies. However, in order to protect any confidential information, including business secrets of the companies, such information should not form part of the final reports of each competent authority which itself should be publicly available.

Amendment 47

Proposal for a directive
Recital 28 d (new)

Text proposed by the Commission

(28d) On the basis of the draft terms of merger and the reports, each general meeting of the members of the companies involved in the cross-border merger should decide on whether or not to approve those draft terms. It is important that the majority requirement for such a vote should be sufficiently high in order to ensure that the decision to merge is a collective one. Before a decision is taken in each of the companies, any preceding applicable information and consultation rights should be respected in order for opinions by the employee representatives to be taken into account in accordance with Directive 2002/14/EC, and where
Amendment 48

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) Furthermore, in order to enhance the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the company report setting out the implications of the cross-border merger for them. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC, Directive 2002/14/EC or Directive 2009/38/EC.

Amendment

(29) Furthermore, in order to enhance the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the company report setting out the implications of the cross-border merger for them. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC, Directive 2002/14/EC or Directive 2009/38/EC. In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to oblige each of the management or administrative bodies of the merging companies to prepare a report providing information to its members and employees, detailing the legal and economic aspects and explaining the implications of the cross-border merger for both members and for employees, in particular the reasons for the cross-border merger, the implications of the cross-border merger for members and employees with regard to the future business of the company and the management organ’s strategic plan. It should also include potential remedies available to members, where they do not agree with the decision to carry out a
cross-border merger. The report of each merging company should explain in particular the implications of the proposed cross-border merger for the jobs of the employees, and for employee involvement, as well as measures to be taken in order to safeguard them, whether there would be any material change in the employment relationships and the locations of the companies’ places of business, information on the procedures by which arrangements for the information, consultation and participation rights of employees in the company resulting from the merger can be applied and how each of these factors would relate to any subsidiaries of the company. This requirement should not, however, apply where the only employees of the companies are in its administrative organ. Before the decision on each report is made, the representatives of the employees of the companies carrying out the cross-border merger or, if there are no representatives, the employees themselves, should be informed of and consulted on the proposed merger. Similarly, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC should also be informed and consulted accordingly. The provision of the report should be without prejudice to any other applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC or Directive 2009/38/EC. It should be possible, however, to waive the obligation on the management or administrative organ of the company to prepare the report for the members and employees where those members are already informed about the legal and economic aspects of the proposed merger. However, the report prepared for employees should only be waived where the merging companies and their subsidiaries do not have any employees
other than those who form part of the management or administrative organ.


Amendment 49
Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

(29a) Companies willing to make full use of the benefits of the internal market through cross-border mergers should in return adhere to an adequate level of transparency and good corporate governance. Public country by country reporting is an efficient and appropriate tool to increase transparency of multinational enterprises activities and to enable the public to assess their impact on the real economy. It will also improve shareholders ability to properly evaluate the risks taken by companies, lead to investment strategies based on accurate information and enhance decision-makers ability to assess the efficiency and the impact of national law. Therefore, a set of financial information should be published before the cross-border merger actually takes place.

Amendment 50
Proposal for a directive
Recital 29 b (new)

Text proposed by the Commission

Amendment
(29b) To prevent conflicts of interests between the members of the management body and the interests of the company, those members should not be allowed to benefit financially from the merger in the form of variable compensation, bonuses or rising share prices.

Amendment 51
Proposal for a directive
Recital 31

Text proposed by the Commission

(31) The lack of harmonisation of safeguards for members or creditors has been identified as an obstacle for cross-border mergers by different stakeholders. Members and creditors should be offered the same level of protection regardless of the Member States in which the merging companies are situated. This is without prejudice to the Member States’ rules on protecting creditors or shareholders which are outside the scope of the harmonised measures, such as transparency requirements.

Amendment

(31) The lack of harmonisation of safeguards for employees, members or creditors has been identified as an obstacle for cross-border mergers by different stakeholders. Employees, members and creditors should be offered at least the same level of protection regardless of the Member States in which the merging companies are situated. This is without prejudice to the Member States’ rules on protecting employees, creditors or shareholders which are outside the scope of the harmonised measures, such as transparency requirements.

Amendment 52
Proposal for a directive
Recital 34

Text proposed by the Commission

(34) Companies involved in a cross-border merger should propose adequate measures to protect their creditors in the common draft terms of merger. In addition, in order to strengthen the protection of those creditors in case of insolvency following the cross-border merger, Member States should be allowed to require the merging companies to make a declaration of solvency stating that they are not aware of any reason why the company

Amendment

(34) Companies involved in a cross-border merger should propose adequate measures to protect their creditors in the common draft terms of merger. In addition, in order to strengthen the protection of those creditors in case of insolvency following the cross-border merger, Member States should be allowed to require the merging companies to make a declaration of solvency stating that they are not aware of any reason why the company
resulting from the merger should not be able to meet its liabilities. In those circumstances, Member States should be able to make the members of the management organ personally liable for the accuracy of that declaration statement. As legal traditions vary amongst Member States with regard to the use of solvency declarations and their possible consequences, it should be up to Member States to draw appropriate consequences for inaccurate or misleading declarations, including effective and proportionate sanctions and liabilities in compliance with Union law.

Amendment 53

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the common draft terms of the cross-border merger, creditors who are prejudiced by the cross-border merger may apply to the competent administrative or judicial authority of each Member State of the merging companies for the safeguards they consider adequate. In order to facilitate the assessment of prejudice, certain presumptions should be laid down whereby creditors would be deemed not to be prejudiced by a cross-border merger, where the risk of loss to a creditor is remote. A presumption should arise where an independent expert concludes that there is no reasonable likelihood that the creditors would be prejudiced or where creditors are offered a right to payment against the merged company or against a third party guarantee of equivalent value to the creditor's original claim and which can be brought in the same jurisdiction as the original claim.
original claim.

Amendment 54
Proposal for a directive
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border mergers, each of the Member States involved, should designate the appropriate court, notary or other competent authority. In particular, each competent authority of the Member States should have the power to issue a pre-merger certificate without which the competent authority in the Member State of the company resulting from the merger should not be able to complete the cross-border merger procedure. Member States shall ensure that competent authorities designated set up appropriate coordination mechanisms with other authorities and bodies in each Member State working in the policy fields concerned by this Directive and should where appropriate consult other relevant authorities with competence in the different fields concerned by the cross-border merger. The decision to issue a pre-merger certificate by the competent authority of each Member State of the merging companies or any approval by the competent authority in the Member State of the company resulting from the merger should not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.

Amendment 55
Proposal for a directive
Recital 35 b (new)
Text proposed by the Commission

Amendment

(35b) The issue of the pre-merger certificate by each Member State of the merging companies should be scrutinised to ensure the legality of the cross-border merger of the companies. Each competent authority of the Member State of the merging companies should decide on the issue of the pre-merger certificate within two months of the reception of all the necessary documents and information unless it has serious concerns as to the existence of an artificial arrangement or that the merger does not involve actual pursuit of genuine economic activity. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically but rather on a case-by-case basis, where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors, laid down in this Directive, which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. Whenever the competent authority makes an assessment on whether the merger involves the actual pursuit of genuine economic activity, the competent authority should in particular verify whether the company has a fixed establishment in the Member State of the company resulting from the merger, which has the objective appearance of permanency, whether it has a management body, staff, equipment, premises and assets, and is materially equipped to autonomously negotiate business with third parties, and should consider whether the company has chosen to delegate its management to directors, officers or legal representatives, hired from an independent third party through a service contractor. In order not to burden companies with an overly lengthy
procedure, such in-depth assessment should, in any event, be concluded within three months of inform the company that the in-depth assessment will be carried out.

Amendment 56
Proposal for a directive
Recital 35 c (new)

Text proposed by the Commission

(35c) After having received a pre-merger certificate, and after verifying that the incorporation requirements in the Member State of the company resulting from the merger are fulfilled, the competent authorities of the Member State of the company resulting from the merger should register the company in the business register of that Member State. Only after this registration, should each competent authority of the Member State of the merging companies strike the company off its own register. It should not be possible for the competent authority of the Member State of the company resulting from the merger to challenge the accuracy of the information provided by the pre-merger certificate of each competent authority. As a consequence of the cross-border merger, the company resulting from the merger should retain its legal personality, its assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions. However, if during the two years following the date on which the cross-border merger takes effect, new information concerning the cross-border merger is brought to the attention of the competent authorities, suggesting there has been an infringement of any of the provisions in this Directive, the competent authorities should revise their assessment of the facts of the case and should be
empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.

Amendment 57

Proposal for a directive
Recital 35 d (new)

Text proposed by the Commission

(35d) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border merger, where a company involved in the cross-border merger is operating under an employee participation system in the Member State of the merging company, the company should be obliged to take a legal form allowing for the exercise of such participation, including through the presence of representatives of the employees in the appropriate management or supervisory body of the company in the Member State of the company resulting from the merger. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place. As soon as possible after publishing the draft terms of merger, each company concerned should take the necessary steps, including providing information about the identity of the participating companies, subsidiaries or establishments concerned, and the number of their employees, to start negotiations with the representatives of the companies' employees, or, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, on arrangements for the involvement of employees in the company or companies resulting from the merger, along the lines of the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution reconciling the right of...
each company to carry out a cross-border merger with the employees’ rights of participation. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply, mutatis mutandis. In order to protect either the bespoke and agreed solution or the application of those standard rules, the company resulting from the merger should not be able to remove the participation rights through carrying out subsequent domestic or cross-border conversion, merger or division within six years. Where an applicable threshold for employee participation laid down in the law of a Member State involved in the merger is exceeded in the six years following the cross-border merger, the same level and elements of employee participation as would have been legally provided for had the company reached the relevant threshold in that Member State, should apply and new negotiations should be initiated.

Amendment 58

Proposal for a directive

Recital 35 e (new)

Text proposed by the Commission

(35e) In order to prevent the circumvention of employee participation rights by means of a cross-border merger, a company carrying out a merger which is registered in a Member State which provides for employee participation rights, should not be able to perform a cross-border merger without first entering into negotiations with its employees or their representatives when the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee
participation. Member States should ensure that employee’s representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

Amendment 59
Proposal for a directive
Recital 35 f (new)

Text proposed by the Commission

(35f) Following the merger, each company carrying out the cross-border merger should continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the company before the merger under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement, in accordance with Directive 2001/23/EC.

Amendment 60
Proposal for a directive
Recital 40

Text proposed by the Commission

(40) The right of companies to carry out a cross-border division may in certain circumstances be used for abusive purposes such as for the circumvention of labour standards, social security payments, tax obligations, creditors' or members' rights or rules on employees participation. In order to combat such abuses, as a general principle of Union law, Member States are required to ensure that companies do not use the cross-border division procedure in order to create artificial arrangements aimed at obtaining undue tax advantages

Amendment

(40) The right of companies to carry out a cross-border division should not under any circumstances be used for abusive, fraudulent or criminal purposes such as for the evasion, avoidance or circumvention of labour standards, social security payments, tax obligations, creditors' or members' rights or rules on employees participation. In order to combat such abuses, as a general principle of Union law, Member States are required to ensure that companies do not use the cross-border division procedure in order to
or at unduly prejudicing the legal or contractual rights of employees, creditors or members. In so far as it constitutes a derogation from a fundamental freedom, the fight against abuses must be interpreted strictly and must be based on an individual assessment of all relevant circumstances. A procedural and substantive framework which describes the margin of discretion and allows for the diversity of approaches by Member States whilst at the same time setting out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law should be laid down.

Amendment 61
Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Given the complexity of cross-border divisions and the multitude of the interests concerned, it is appropriate to provide for an ex-ante control in order to create legal certainty. To that effect, a structured and multi-layered procedure should be set out whereby both the competent authorities of the Member State of the company being divided and of the Member State of the recipient companies ensure that a decision on the approval of a cross-border division is taken in a fair, objective and non-discriminatory manner on the basis of all relevant elements and by taking into account all legitimate public interests, in particular the protection of employees, shareholders and creditors.

Amendment

(41) Given the complexity of cross-border divisions and the multitude of the interests concerned, it is appropriate to provide for an ex-ante and an ex-post control in order to create legal certainty. To that effect, a structured and multi-layered procedure should be set out whereby both the competent authorities of the Member State of the company being divided and of the Member State of the recipient companies ensure that a decision on the approval of a cross-border division is taken in a fair, objective and non-discriminatory manner on the basis of all relevant elements and by taking into account all legitimate public interests, in particular the protection of employees, shareholders and creditors.
Amendment 62
Proposal for a directive
Recital 42

Text proposed by the Commission

(42) To allow all stakeholders' legitimate interests to be taken into account, the company being divided should disclose the draft terms of the division containing the most important information about the proposed cross-border division, including the envisaged the exchange ratio of securities or shares, the instruments of constitution of the recipient companies and the proposed timetable for the cross-border division. Members, creditors and employees of the company carrying out the cross-border division should be notified that they can submit comments with regard to the division.

Amendment

(42) To allow all stakeholders' legitimate interests to be taken into account, the company being divided which intends to carry out a cross-border division should draw up the draft terms of the division, together with, where provided for in national law and/or in accordance with national practice, board level employee representatives, and disclose those draft terms. Board level employee representatives should also be included into the decision on the draft terms. The draft terms should contain the most important information about the proposed cross-border division, including the envisaged the exchange ratio of securities or shares, total turnover and total taxable turnover of the company being divided for the last reporting period, the amount of income tax paid by the company being divided and its subsidiaries and branches, information on the location and, where relevant, date of the transfer of the head office of the company to the Member State of the recipient companies, as well as information on the management bodies and, where applicable, staff, equipment, premises and assets, the number of employees on a full-time equivalent basis, the likely repercussions of the cross-border division on employment, including the likely changes to the organisation of work, the wages, the location of specific posts and the expected consequences for the employees occupying such posts, including employees in the subsidiaries and branches of the company being divided that are located within the Union, and company level social dialogue including, where applicable, board level employee representation, the instruments of constitution of the recipient companies and the proposed timetable for the cross-
border division. Members, creditors and employees of the company carrying out the cross-border division should be notified that they can submit comments with regard to the division. Before the decision on the draft terms of a cross-border division is made, the representatives of the employees of the company being divided or, where there are no such representatives, the employees themselves and the trade unions represented should be informed of and consulted on the proposed division. Similarly, where a body has been established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, it should also be informed and consulted accordingly.

Amendment 63

Proposal for a directive
Recital 43

Text proposed by the Commission

(43) In order to provide information to its members, the company being divided should prepare a report. The report should explain and substantiate the legal and economic aspects of the proposed cross-border division, in particular explaining the implications of the cross-border division for members with regard to the future business of the company and the management organs’ strategic plan. It should also include explanations about the exchange ratio, where applicable, the criteria to determine the allocation of shares and potential remedies available to members, where they do not agree with the decision to carry out a cross-border division.

Amendment

(43) In order to provide information to its members and employees, the company being divided should prepare a report, explaining the implications of the proposed cross-border division. The report should explain and substantiate the legal and economic aspects of the proposed cross-border division, in particular the reasons for the cross-border division, explaining the implications of the cross-border division for members with regard to the future business of the company and the management organs’ strategic plan. It should also include explanations about the exchange ratio, where applicable, the criteria to determine the allocation of shares and potential remedies available to members, where they do not agree with the decision to carry out a cross-border division. The report should explain in particular the implications of the proposed cross-border division for the
jobs of the employees, and for employee involvement, as well as measures to be taken in order to safeguard them, whether there would be any material change in the employment relationships and the locations of the companies’ places of business, information on the procedures by which arrangements for the information, consultation and participation rights of employees in the recipient companies can be applied and how each of these factors would relate to any subsidiaries of the company. This requirement should not, however, apply where the only employees of the company are in its administrative organ. Before the decision on the report is made, the representatives of the employees of the company carrying out the cross-border division or, if there are no representatives, the employees themselves, should be informed of and consulted on the proposed division. Similarly, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC should also be informed and consulted accordingly. The provision of the report should be without prejudice to any other applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC or Directive 2009/38/EC.

Amendment 64

Proposal for a directive
Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) Where the administrative or management body of the company being divided receives, in good time, an opinion from the representatives of the employees or, where there are no such representatives, from the employees
themselves, as provided for under national law, or where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, the members should be informed thereof and that opinion should be appended to that report. The administrative or management body of the company which intends to carry out the cross-border division, should provide a motivated response on the opinion provided by the employee representatives, and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, before the date of the general meeting.

Amendment 65

Proposal for a directive
Recital 43 b (new)

*Text proposed by the Commission*

(43b) In order to be enabled to conduct an analysis of the report, the company carrying out the cross-border division should provide the employee representatives, the trade unions represented in the company and where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, such financial and material resources necessary to enable them to apply the rights arising from this directive in an appropriate manner, such as for example access to a private and password-protected computer, a secure internet connection, meeting rooms, time off for meetings, the cost of organising meetings and if necessary, interpretation facilities, accommodation and travel expenses.
Amendment 66

Proposal for a directive
Recital 44

Text proposed by the Commission

(44) In order to provide information its employees, the company being divided should prepare a report explaining the implications of the proposed cross-border division for employees. The report should explain in particular the implications of the proposed cross-border division on the safeguarding of the jobs of the employees, whether there would be any material change in the conditions of employment and the locations of the companies’ places of business, and how each of these factors would relate to any subsidiaries of the company. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.

Amendment 67

Proposal for a directive
Recital 45

Text proposed by the Commission

(45) In order to ensure the accuracy of the information contained in the draft terms of division and in the reports addressed to the members and employees and to provide factual elements necessary to assess whether the proposed division constitutes an artificial arrangement which could not be authorised, an independent expert report to assess the division plan should be required to be prepared. In order to secure the independence of the expert, the expert should be appointed by the competent authority, following an application by the company. In this context, the expert report

(45) The competent national authorities should be able to assess the accuracy of the information contained in the draft terms of division and in the report addressed to the members and employees and to provide factual elements necessary to assess whether the proposed division constitutes an artificial arrangement which could not be authorised, an independent expert report to assess the division plan should be required to be prepared. In order to secure the independence of the expert, the expert should be appointed by the competent authority, following an application by the
should present all relevant information to enable the competent authority of the Member State of the company being divided to take an informed decision as to whether or not to issue the pre-division certificate. To this end, the expert should be able to obtain all the relevant company information and documents and carry out all necessary investigations in order to gather all the evidence required. The expert should use information, in particular net turnover and profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States. However, in order to protect any confidential information, including business secrets of the company, such information should not form part of the expert's final report which itself would be publically available.

company. In this context, the expert report should contain all relevant information to enable the competent authority of the Member State of the company being divided to take an informed decision as to whether or not to issue the pre-division certificate. To this end, the competent authority should be able to obtain all the relevant company information such as net turnover and profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States, and any documents needed to carry out the investigations necessary to gather the evidence required and to assess the proposed cross-border division, with all necessary factual elements provided by the company. However, in order to protect any confidential information, including business secrets of the company, such information should not form part of the final report which itself would be publically available. The competent authority should be able to have recourse to an independent expert. The expert should be appointed from a list that is drawn up by the competent authority, and should have no past or current link with the company concerned. The expert should have relevant expertise, in particular, in the fields of company law, taxation and fiscal law, social security and labour law.

Amendment 68

Proposal for a directive
Recital 46

(46) With a view to avoiding disproportionate costs and burdens for smaller companies carrying out cross-border division, micro and small
enterprises as defined in the Commission Recommendation 2003/361/EC of 6 May 2003 should be exempted from the requirement to have produce an independent expert.

Amendment 69
Proposal for a directive
Recital 47

Text proposed by the Commission

(47) On the basis of the draft terms of the cross-border division and the reports, the general meeting of the members of the company being divided, should decide on whether or not to approve those draft terms. It is important that, the majority requirement for such a vote should be sufficiently high in order to ensure that the decision to divide is a collective one.

Amendment

(47) On the basis of the draft terms of the cross-border division and the reports, the general meeting of the members of the company being divided, should decide on whether or not to approve those draft terms. It is important that, the majority requirement for such a vote should be sufficiently high in order to ensure that the decision to divide is a collective one. Before a decision is taken, any preceding applicable information and consultation rights should be respected in order for an opinion by the employee representatives to be taken into account in accordance with Directive 2002/14/EC, and where applicable Directives 2009/38/EC and 2001/86/EC. In addition, members should also have the right to vote on any arrangements concerning employee participation, if they have reserved that right during the general meeting.

Amendment 70
Proposal for a directive
Recital 50

Text proposed by the Commission

(50) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms of the cross-border division, creditors who are

Amendment

(50) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms of the cross-border division, creditors who are
prejudiced by the cross-border division may apply to the competent judicial or administrative authority of the Member State of the company being divided for the safeguards they consider adequate. In order to facilitate the assessment of prejudice, certain presumptions should be laid down whereby creditors would be deemed not to be prejudiced by a cross-border division where the risk of loss to a creditor is remote. A presumption should arise where an independent expert report concludes that there is no reasonable likelihood that the creditors would be prejudiced or where creditors are offered a right to payment against the company resulting from the division or against a third party guarantee of equivalent value to the creditor's original claim and which can be brought in the same jurisdiction as the original claim. The creditor protection provided for in this Directive should be without prejudice to national laws of the Member State of the company being divided concerning payment to public bodies, including taxation or social security contributions.

Amendment 71

Proposal for a directive
Recital 51

Text proposed by the Commission

(51) To ensure the proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border divisions, the competent authority of the Member State of the company being divided should have the power to issue a pre-division certificate without which the authorities of the Member States of the recipient companies should not be able to complete the cross-border-division procedure.

Amendment

(51) To ensure the proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border divisions, both, the Member State of the company being divided and the Member States of the recipient companies should designate the appropriate court, notary or other competent authorities. In particular, the competent authority of the Member States of the company being divided should have the power to issue a pre-division certificate without which the authorities of the
Member States of the recipient companies should not be able to complete the cross-border-division procedure. Member States should ensure that the competent authorities designated set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields concerned by this Directive and should, where appropriate, consult other relevant authorities with competence in the different fields concerned by the cross-border division. The decision to issue a pre-division certificate by the competent authority of the Member State of the company being divided or any approval by the competent authority in the Member States of the recipient companies should not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.

Amendment 72
Proposal for a directive
Recital 52

Text proposed by the Commission

(52) The issue of the pre-division certificate by the Member State of the company being divided should be scrutinised to ensure the legality of the cross-border division. The competent authority should decide whether to issue a pre-division certificate within one month of the application by the company has been submitted, unless it has serious concerns as to the existence of an artificial arrangement aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically but it should be conducted on a case-by-case basis where there are

Amendment

(52) The issue of the pre-division certificate by the Member State of the company being divided should be scrutinised to ensure the legality of the cross-border division. The competent authority should decide whether to issue a pre-division certificate within two months of the reception of all the necessary documents and information, unless it has serious concerns as to the existence of an artificial arrangement or that the division does not involve the actual pursuit of genuine economic activity. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically but it should be conducted on a case-by-case basis where there are
on a case-by-case basis where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within two months informing the company that the in-depth assessment will be carried out. Whenever the competent authority makes an assessment on whether the division involves the actual pursuit of genuine economic activity, the competent authority should in particular verify whether the company has a fixed establishment in all Member States of the recipient companies, which has the objective appearance of permanency, whether it has a management body, staff, equipment, premises and assets, and is materially equipped to autonomously negotiate business with third parties and should consider whether the company has chosen to delegate its management to directors, officers or legal representatives, hired from an independent third party through a service contractor. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within two months informing the company that the in-depth assessment will be carried out.

Amendment 73
Proposal for a directive
Recital 53

Text proposed by the Commission

(53) After having received a pre-division certificate, and after verifying that the incorporation requirements of the Member State of the recipient company or companies are fulfilled, the authorities of the Member States of the recipient companies should register the companies in the business registers of that Member State. Only after this registration should the

Amendment

(53) After having received a pre-division certificate, and after verifying that the incorporation requirements of the Member State of the recipient company or companies are fulfilled, the authorities of the Member States of the recipient companies should register the companies in the business registers of that Member State. Only after this registration should the
competent authority of the Member State of the company being divided strike the company off its own register. The accuracy of the information provided by the pre-division certificate cannot be challenged by the competent authorities of the Member States of the recipient companies. It should not be possible for the competent authority of the Member States of the recipient companies to challenge the accuracy of the information provided by the pre-division certificate. However, if during the two years following the date on which the cross-border division takes effect, new information concerning the cross-border division is brought to the attention of the competent authorities, suggesting there has been an infringement of any of the provisions in this Directive, the competent authorities should revise their assessment of the facts of the case and should be empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.

Amendment 74
Proposal for a directive
Recital 55

Text proposed by the Commission

(55) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border division where the company carrying out the cross-border division is operating under an employee participation system, the companies resulting from the division should be obliged to take a legal form allowing for the exercise of participation, including through the presence of representatives of the employees in the appropriate management or supervisory organs of the companies. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place, along the lines of the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution reconciling the right of the company to carry out a cross-border division with the employees’

Amendment

(55) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border division where the company carrying out the cross-border division is operating under an employee participation system, the companies resulting from the division should be obliged to take a legal form allowing for the exercise of participation, including through the presence of representatives of the employees in the appropriate management or supervisory organs of the companies. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place. As soon as possible after publishing the draft terms of division, the company being divided should take the necessary steps, including providing information about the identity of the participating companies,
rights of participation. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply mutatis mutandis. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out subsequent domestic or cross-border conversions, mergers or divisions within 3 years.

Amendment 75

Proposal for a directive
Recital 56

Text proposed by the Commission

(56) In order to prevent the circumvention

Amendment

(56) In order to prevent the circumvention
of the employee participation rights by means of a cross-border division, the company carrying out a division which is registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border division without first entering into negotiations with its employees or their representatives when the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee participation.

Amendment 76

Proposal for a directive
Recital 56 a (new)

Text proposed by the Commission

(56a) Following the division, the company carrying out the cross-border division should continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the company before the division under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement, in accordance with Directive 2001/23/EC.

Amendment 77

Proposal for a directive
Recital 58
(58) The provisions of this Directive do not affect the legal or administrative provisions, including the enforcement of tax rules in cross-border conversions, mergers and divisions, of national law relating to the taxes of Member States, or its territorial and administrative subdivisions. For example, in certain cases, departure Member States tax unrealised capital gains at the time of the cross-border conversion of a company. In such cases, Member states should be able to (i) give the company's option to choose between the immediate payment of the tax or deferral of payment until realization of the values, with a request to pay interest; (ii) request payment by instalments; and (iii) request the company to provide guarantees only upon prior assessment of a risk of non-recovery of the tax.

Amendment 78

Proposal for a directive
Recital 61

(61) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

Amendment

(61) This Directive ensures full respect for the fundamental rights and the principles recognised in the Charter of Fundamental Rights of the European Union, including the right to establishment in any Member State (Article 15(2)), freedom to conduct a business (Article 16), workers’ right to information and consultation within the undertaking (Article 27), the right of collective bargaining and action (Article 28), the right to protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions (Article 31), the right to an effective remedy and to a fair trial (Article 47) and the right to protection of personal data.
Amendment 79
Proposal for a directive
Recital 63

Text proposed by the Commission

(63) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 201652 that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures.


Amendment 80
Proposal for a directive
Article 1 – paragraph 1 – point -1 (new)
Directive (EU) 2017/1132
Article 1 a (new)

Text proposed by the Commission

(63) The Commission should carry out an evaluation of this Directive. It should examine its impact on the economy, competitiveness and growth. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 201652 that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures. In its assessment, the Commission should also take into account the level of protection afforded to employees, creditors and minority shareholders in the implementation of this Directive.


Amendment

(-1) The following Article 1a is added:

Article 1a
Definitions
For the purposes of this Directive:
(1) 'limited liability company' in Chapter I, Chapter II and Chapter II, Title II referred to as "company", means:

(a) a company of a type listed in Annex II;

(b) if not included in Annex II for the purposes of Chapter II of Title II, a company with share capital and that has legal personality, possesses separate assets which alone serve to cover its debts and that is subject, under the national law governing it, to conditions concerning guarantees such as those provided for in Section 2 of Chapter II of Title I and Section 1 of Chapter III of Title I for the protection of the interests of members and others;

(2) 'cross-border conversion' means an operation whereby a company, without being dissolved, wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into the legal form of a company of a destination Member State and transfers at least its registered office to the destination Member State whilst retaining its legal personality;

(3) 'departure Member State' means a Member State in which a company is registered in its legal form prior to a cross-border conversion;

(4) 'destination Member State' means a Member State in which a company is registered as a result of a cross-border conversion;

(5) 'register' means the central, commercial or companies register referred to in Article 16(1);

(6) 'converted company' means the company formed in the destination Member State on the date the cross-border conversion takes effect;

(7) 'merger by acquisition’ in Chapter I of Title II means an operation whereby one or more companies are wound up without going into liquidation and transfer to another company 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 in certain cases also a cash payment not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value. 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;

(8) 'merger by the formation of a new company’ in Chapter I of Title II means an 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, in certain cases, a cash payment not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value. 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 ceases 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;

(9) ‘merger’ in Chapter II of Title II means an operation whereby:

(a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the
nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or

(c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital;" 

(d) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their shares in the same proportion in all merging companies.";

(10) 'company being divided' means a company which is undergoing the process of cross-border division whereby it transfers all its assets and liabilities to one or more companies, or in case of a partial division it transfers part of its assets and liabilities to one or more companies;

(11) 'division 'means an operation whereby either:

(a) a company being divided, which has been wound up without going into liquidation, transfers all its assets and liabilities to two or more newly formed companies (‘the recipient companies’), in exchange for the issue to the members of the company being divided of securities or
shares in the recipient companies and, if any, a cash payment not exceeding 10% of the nominal value of those securities or shares or, where they have no nominal value, a cash payment not exceeding 10% of the accounting par value of their securities or shares ('full division');

(b) a company being divided transfers part of its assets and liabilities to one or more newly formed companies ('the recipient companies'), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies or, in the company being divided, or in both the recipient companies and in the company being divided, and if any a cash payment not exceeding 10% of the nominal value of those securities or shares, or, in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of their securities or shares ('partial division').

(12) "employees' representatives" means the employees' representatives provided for by national law and/or in accordance with national practice;

(13) "involvement of employees" has the same meaning as provided for by point (h) of Article 2 of Directive 2001/86/EC;

(14) ‘employee information’ has the same meaning as provided for by point (f) of Article 2 of Directive 2009/38/EC;

(15) ‘employee consultation’ has the same meaning as provided for by Article 2 (g) of Directive 2009/38/EC;

(16) "employee participation" has the same meaning as provided for by point (k) of Article 2 of Directive 2001/86/EC;

(17) ‘artificial arrangement’ means an arrangement aiming at or leading to the evasion, avoidance or circumvention of companies’ obligations arising from Union and national law, including the legal and contractual rights of employees, creditors and members, or the avoidance
of financial obligations, through, for example, a fictitious or provisional establishment not carrying out genuine economic activity in the destination Member State.

Amendment 81

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86a – paragraph 3

Text proposed by the Commission

3. Member States may decide not to apply this Chapter to cross-border conversions involving a cooperative society even in the case where the latter would fall within the definition of a ‘limited liability company’ as laid down in Article 86a(1).

Amendment 82

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86b

Text proposed by the Commission

Article 86b

For the purposes of this Chapter:

(1) 'limited liability company’ hereinafter referred to as "company", means a company of a type listed in Annex II;

(2) 'cross-border conversion' means an operation whereby a company, without being dissolved, wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of a company of a destination Member State and transfers at least its registered office
into the destination Member State whilst retaining its legal personality;

(3) 'departure Member State' means a Member State in which a company is registered in its legal form prior to the cross-border conversion;

(4) 'destination Member State' means a Member State in which a company shall be registered as a result of the cross-border conversion;

(5) 'register' means the central, commercial or companies register referred to in Article 16(1);

(6) 'converted company' means the newly formed company in the destination Member State from the date upon which the cross-border conversion takes effect.

Amendment 83

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86c – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that where a company intends to carry out a cross-border conversion, the departure and destination Member States verify that the cross-border conversion complies with the conditions laid down in paragraph 2.

Amendment

1. Member States shall ensure that where a company intends to carry out a cross-border conversion, the court, notary or other authority competent of the departure and destination Member States verify that the cross-border conversion complies with the conditions laid down in paragraph 2.

Amendment 84

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86c – paragraph 2 – point b
(b) the company is subject to preventive restructuring proceedings initiated because of the likelihood of insolvency; deleted

Amendment 85
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86c – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, after an examination of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or minority members.

Amendment 86
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – introductory part

Text proposed by the Commission

1. The management or administrative organ of the company which intends to carry out a cross-border conversion shall draw up the draft terms of a cross-border conversion. The draft terms of a cross-border conversion shall include at least the following:

Amendment

1. The administrative or management body, including, where provided for in national law and/or in accordance with national practice, board level employee representatives of the company which intends to carry out a cross-border conversion shall draw up the draft terms of a cross-border conversion and be included in the decision on those draft terms. The
draft terms of a cross-border conversion shall include at least the following:

Amendment 87

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point a

\[
\begin{align*}
\text{Text proposed by the Commission} & \quad \text{Amendment} \\
(a) & \quad \text{the legal form, name and registered office of the company in the departure Member State;} & (a) & \quad \text{the legal form, name and location of registered office of the company in the departure Member State;}
\end{align*}
\]

Amendment 88

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point d a (new)

\[
\begin{align*}
\text{Text proposed by the Commission} & \quad \text{Amendment} \\
(da) & \quad \text{information on the location and date of the transfer of the head office of the company to the destination Member State, in the event that it is not already located there, as well as information on the management body and, where applicable, staff, equipment, premises and assets;}
\end{align*}
\]

Amendment 89

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point g

\[
\begin{align*}
\text{Text proposed by the Commission} & \quad \text{Amendment} \\
(g) & \quad \text{the date from which the transactions of the company formed and registered in the departure Member State will be} & \quad\text{deleted}
\end{align*}
\]

treated for accounting purposes as being those of the converted company;

Amendment 90
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point h

Text proposed by the Commission

(h) any special advantages granted to members of the administrative, management, supervisory or controlling organ of the converted company;

Amendment

(h) any special advantages granted to members of the administrative, management, supervisory or controlling body of the converted company;

Amendment 91
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point h a (new)

Text proposed by the Commission

(ha) information on any incentive, subsidy or commitment received to remain in the departure Member State.

Amendment

Amendment 92
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point i a (new)

Text proposed by the Commission

(ia) the number of employees on a full-time equivalent basis;

Amendment

Amendment 93
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point j

Text proposed by the Commission
(j) the likely repercussions of the cross-border conversion on employment

Amendment
(j) the likely repercussions of the cross-border conversion on employment, including the likely changes to the organisation of work, the wages, the place of specific posts and the expected consequences for the employees occupying such posts, including employees in the subsidiaries and branches of the converting company located within the Union and the company level social dialogue including, where applicable, board level employee representation;

Amendment 94
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point k

Text proposed by the Commission
(k) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined pursuant to Article 86l and on the possible options for such arrangements.

Amendment
(k) information on the procedures by which arrangements for the involvement of employees in the definition of their rights to information, consultation and participation in the converted company are determined pursuant to Article 86l and on the possible options for such arrangements.

Amendment 95
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point k a (new)

Text proposed by the Commission

(k) the name of the ultimate company
and, where applicable, the list of all its subsidiaries, a brief description of the nature of their activities and their respective geographic allocation;

Amendment 96

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

(kb) total turnover and total taxable turnover of the converting company for the last reporting period;

Amendment 97

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 – point k c (new)

Text proposed by the Commission

Amendment

(kc) the amount of income tax paid by the converting company and its subsidiaries and branches,

Amendment 98

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Before the management or administrative organ decides on the draft terms of a cross-border conversion, the representatives of the employees of the company carrying out the cross-border conversion or, where there are no such
representatives, the employees themselves and the trade unions represented shall be informed of and consulted on the proposed conversion in accordance with Article 4 of Directive 2002/14/EC mutatis mutandis. Where a body has been established for the purposes of transnational information and consultation in accordance with 2009/38/EC or 2001/86/EC, it shall also be informed and consulted accordingly.

Amendment 99

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86d – paragraph 2

2. In addition to the official languages of the departure and destination Member States, Member States shall allow the company carrying out the cross-border conversion to use a language customary in the sphere of international business and finance in order to draw up the draft terms of a cross-border conversion and all other related documents. Member States shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those documents.

Amendment

2. In addition to the official languages of the departure and destination Member States, Member States may indicate that the company shall allow the company carrying out the cross-border conversion to use a language customary in the sphere of international business and finance in order to draw up the draft terms of a cross-border conversion and all other related documents. The company shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those documents. Members, employees or creditors shall have the possibility to comment on those draft terms.

Amendment 100

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 1
1. The management or administrative organ of the company carrying out the cross-border conversion shall draw up a report explaining and justifying the legal and economic aspects of the cross-border conversion.

Amendment 101

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 – point -a (new)

Text proposed by the Commission  
Amendment

(-a) the reasons for the cross-border conversion;

Amendment 102

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 – point c a (new)

Text proposed by the Commission  
Amendment

(ca) the implications of the cross-border conversion for employment relationships and employee involvement, as well as measures to be taken in order to safeguard them;

Amendment 103

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 – point c b (new)
Text proposed by the Commission

Amendment

(cb) any material changes in the conditions of employment, laid down by law, collective agreements and transnational company agreements and in the location of the company’s places of business;

Amendment 104

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 – point c c (new)

Text proposed by the Commission

Amendment

(cc) information on the procedures by which arrangements for the information, consultation and participation rights of employees in the resulting converted company can be applied in accordance with this Directive;

Amendment 105

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 – point c d (new)

Text proposed by the Commission

Amendment

(cd) whether the factors set out in points (a) to (g) also relate to any subsidiaries of the company.

Amendment 106

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 2 a (new)
Text proposed by the Commission

Amendment

2a. Before the administrative or management body decides on the report referred to in paragraph 1 of this Article, the representatives of the employees of the company carrying out the cross-border conversion or, if there are no representatives, the employees themselves, shall be informed and consulted on the proposed conversion in accordance with Article 4 of Directive 2002/14/EC. Where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC shall also be informed and consulted accordingly.

Amendment 107

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 3

Text proposed by the Commission

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the members not less than two months before the date of the general meeting referred to in Article 86i. That report shall also be made similarly available to the representatives of the employees of the company carrying out the cross-border conversion or, where there are no such representatives, to the employees themselves.

Amendment

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the members and to the representatives of the employees of the company carrying out the cross-border conversion or, where there are no such representatives, to the employees themselves and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, not less than two months before the date of the general meeting referred to in Article 86i.

Amendment 108

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 4

Text proposed by the Commission

4. However, that report shall not be required where all the members of the company carrying out the cross-border conversion have agreed to waive this requirement.

Amendment

4. However, that report shall not be required where all the members of the company and all the representatives of the employees or, where there are no such representatives, the employees themselves and where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, carrying out the cross-border conversion have agreed to waive this requirement.

Amendment 109

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 4 a (new)

Text proposed by the Commission

4a. Where the administrative or management body of the company carrying out the cross-border conversion receives, in good time, an opinion from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, or where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, the members shall be informed thereof and that opinion shall be appended to that report.

Amendment 110

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 4 b (new)

Text proposed by the Commission

4b. The administrative or management body of the company which intends to carry out the cross-border conversion, shall provide a motivated response on the opinion provided by the employee representatives, and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, before the date of the general meeting referred to in Article 86i.

Amendment 111
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 4 c (new)

Text proposed by the Commission

4c. The national employees’ representative bodies, the trade unions represented in the company and where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC shall have the means and resources required to exercise the rights arising from this Directive to conduct an analysis of the report. Paragraph 6 of Annex I to Directive 2009/38/EC shall apply mutatis mutandis to that end.

Amendment 112
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86e – paragraph 4 d (new)

Text proposed by the Commission

4d. Paragraphs 1 to 4 of this Article shall be without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

Amendment 113

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86f

Text proposed by the Commission

Article 86f

deleted

Report of the management or administrative organ to the employees

1. The management or administrative organ of the company carrying out the cross-border conversion shall draw up a report explaining the implications of the cross-border conversion for employees.

2. The report referred to in paragraph 1, shall in particular explain the following:

(a) the implications of the cross-border conversion on the future business of the company and on the management's strategic plan;

(b) the implications of the cross-border conversion on the safeguarding of employment relationships;

(c) any material changes in the conditions of employment and in the location of the company’s places of business;

(d) whether the factors set out in points
(a), (b) and (c) also relate to any subsidiaries of the company.

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of the company carrying out the cross-border conversion or, where there are no such representatives, to the employees themselves not less than two months before the date of the general meeting referred to in Article 86i. That report shall also be made similarly available to the members of the company carrying out the cross-border conversion.

4. Where the management or administrative organ of the company carrying out the cross-border conversion receives, in good time, an opinion from the representatives of their employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that report.

5. However, where a company carrying out the cross-border conversion and its subsidiaries, if any, have no employees other than those who form part of the management or administrative organ, the report referred to in paragraph 1 shall not be required.

6. Paragraphs 1 to 6 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC or 2009/38/EC.

Amendment 114

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – title
Amendment 115

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the company carrying out the cross-border conversion applies not less than two months before the date of the general meeting referred to in Article 86i to the competent authority designated in accordance with Article 86m(1), to appoint an expert to examine and assess the draft terms of the cross-border conversion and the reports referred to in Articles 86e and 86f, subject to the proviso set out in paragraph 6 of this Article.

Amendment

Member States shall ensure that the company carrying out the cross-border conversion applies not less than two months before the date of the general meeting referred to in Article 86i to the competent authority designated in accordance with Article 86m(1), for the assessment of the draft terms of the cross-border conversion and the report referred to in Article 86e.

Amendment 116

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

The application for the appointment of an expert shall be accompanied by the following:

Amendment

The application for the assessment of the competent authority shall be accompanied by the following:

Amendment 117

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 1 – subparagraph 2 – point b
(b) the reports referred to in Articles 86e and 86f.

Amendment 118

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 1 – subparagraph 2 – point b a (new)

(ba) where submitted, the comments formulated by members, employees and creditors regarding the draft terms and the report referred to in Article 86d and Article 86e;

Amendment 119

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 1 – subparagraph 2 – point b b (new)

(bb) if the requirement for the report referred to in Article 86 e has been waived, the reasons for the cross-border conversion.

Amendment 120

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 2

2. The competent authority shall appoint an independent expert within five

2. The competent authority shall start working on the application referred to in
working \textit{days from} the application referred to in paragraph 1 and the receipt of the 
\textit{draft terms and reports}. \textbf{The} expert shall be \textit{independent from the company} 
carrying out the cross-border conversion \textit{and may be a natural or a legal person} 
depending upon the law of the departure \textit{Member State}. Member States shall \textit{take} 
into account, in assessing the \textit{independence} of the expert, the 
framework established in Articles 22 and 22b of Directive 2006/43/EC.

\begin{amendment}
\textbf{Proposal for a directive} 
\textbf{Article 1 – paragraph 1 – point 3} 
\textbf{Directive (EU) 2017/1132} 
\textbf{Article 86g – paragraph 3 – introductory part} 

\textit{Text proposed by the Commission} 

3. \textbf{The expert} shall draw up a written report providing at least:

\begin{amendment}
3. \textbf{After, where necessary, consulting third parties with a legitimate interest in} 
\textit{the conversion of the company, in particular taxation, labour and social} 
\textit{security authorities, the competent authority} shall draw up a written report 
providing at least:

\end{amendment}

\begin{amendment}
\textbf{Proposal for a directive} 
\textbf{Article 1 – paragraph 1 – point 3} 
\textbf{Directive (EU) 2017/1132} 
\textbf{Article 86g – paragraph 3 – point a} 

\textit{Text proposed by the Commission} 

(a) \textbf{a detailed assessment of the accuracy} of the reports and information submitted by 
\textit{the company carrying out the cross-border conversion};

\begin{amendment}
(a) \textbf{a detailed assessment of the accuracy of the} \textit{draft terms, the reports and the} 
\textit{information submitted by the company carrying out the cross-border conversion} \textit{in terms of both form and content}.

\end{amendment}
Amendment 123

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 3 – point b

Text proposed by the Commission

(b) a description of all factual elements necessary for the competent authority, designated in accordance with Article 86m(1), to carry out an in-depth assessment to determine whether the intended cross-border conversion constitutes an artificial arrangement in accordance with Article 86n, including at a minimum the following: the characteristics of the establishment in the destination Member State, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the converted company in the destination Member State and the departure Member State.

Amendment

(b) a description of all factual elements necessary to carry out an in-depth assessment to determine whether the intended cross-border conversion constitutes an artificial arrangement in accordance with Article 86n, including at a minimum the following:

(i) the characteristics of the establishment in the destination Member State, including the intent, the sector, the investment, the net turnover and profit or loss, information on the management body and, where applicable, staff, equipment, premises and assets,

(ii) the composition of the balance sheet, the tax residence, the assets and their location and the commercial risks assumed by the converting company in the destination Member State and the departure Member State,

(iii) the number of employees, the habitual places of work of the employees and of specific groups of employees,
including, where relevant, the number of employees posted, sent or working simultaneously in different Member States in the year prior to the conversion, within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, and their countries of destination, the places where social contributions are due, the impact on occupational pensions of employees.

Amendment 124

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the independent expert shall be entitled to obtain, from the company carrying out the cross-border conversion, all relevant information and documents and to carry out all necessary investigations to verify all elements of the draft terms or management reports. The expert shall also be entitled to receive comments and opinions from the representatives of the employees of the company, or, where there are no such representatives, from the employees themselves and also from the creditors and members of the company.

Amendment

4. Member States shall ensure that the competent authority is entitled to obtain, from the company carrying out the cross-border conversion, all relevant information and documents, including any comments on the draft terms submitted in accordance with Article 86d(2), and carries out all necessary investigations to verify all elements of the draft terms or the report of the administrative or management body. The competent authority shall, furthermore, be able to, where necessary, put questions to the competent authority of the destination Member State, as well as be entitled to receive further comments and opinions from the representatives of the employees of the company, or, where there are no such representatives, from the employees themselves and where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, and also from the creditors and members of the company. These shall be attached to the report as appendices.
Amendment 125

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that information submitted to the independent expert can only be used for the purpose of drafting their report and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the expert may submit a separate document containing any such confidential information to the competent authority, designated in accordance with Article 86m(1) and that separate document shall only be made available to the company carrying out the cross-border conversion and not be disclosed to any other party.

Amendment

5. Member States shall ensure that information and comments submitted to the independent expert can only be used for the purpose of drafting their report and that confidential information, including business secrets, shall not be disclosed in accordance with Union and national law. Where appropriate, the competent authority may produce a separate document containing any such confidential information and that separate document shall only be made available to the company and, to employee representatives where provided for by Union or national law and in accordance with Union or national practice.

Amendment 126

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 6

Text proposed by the Commission

6. Member States shall exempt 'micro' and 'small enterprises' as defined in Commission Recommendation 2003/361/EC (**) from the provisions of this Article.

Amendment

deleted

Amendment 127

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 6 a (new)
6a. A company shall not be entitled to complete a cross border conversion, in cases where the company is subject to ongoing court proceedings, due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations, if there is a risk that final damages would not be covered in the context of the Union measures for civil justice cooperation and the company has not provided a financial guarantee covering that risk.

Amendment 128

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g – paragraph 6 b (new)

6b. Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the reports referred to in this Article, including in respect of any misconduct on its part in the performance of its duties.

Amendment 129

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86g a (new)

Article 86ga

Civil liability of members of the administrative or management bodies of the company being converted
Member States shall lay down rules governing at least the civil liability 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 conversion towards the shareholders of the company being converted.

Amendment 130

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86h – paragraph 1 – point b

Text proposed by the Commission

(b) the independent expert report referred to in Article 86g, where applicable;

Amendment

(b) the application for the assessment of the draft terms of the cross-border conversion and of the report referred to in Article 86g(1) and where applicable, the report drawn up by the competent authority in accordance with Article 86g (3) without, however, disclosing any confidential information in accordance with national and Union law;

Amendment 131

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86h – paragraph 1 – point c

Text proposed by the Commission

(c) a notice informing the members, creditors and employees of the company carrying out the cross-border conversion that they may submit, before the date of the general meeting, comments concerning the documents referred to in points (a) and (b) of the first subparagraph to the company and to the competent authority designated in accordance with Article 86m(1).

Amendment

(c) a notice informing the members, creditors and representatives of the employees of the company, or, where there are no such representatives, the employees themselves carrying out the cross-border conversion that they may submit, before the date of the general meeting, comments regarding the documents referred to in points (a) and (b)
of the first subparagraph to the company and to the competent authority designated in accordance with Article 86m (1).

Amendment 132

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86h – paragraph 3 – point d

Text proposed by the Commission

(d) details of the website where draft terms of the cross-border conversion, the notice and the expert report referred in paragraph 1 and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

Amendment

(d) details of the website where draft terms of the cross-border conversion, the notice and the report drawn up by the competent authority referred in paragraph 1 and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

Amendment 133

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86h – paragraph 3 – point d a (new)

Text proposed by the Commission

(da) information on the ultimate beneficial owners of the company before and after the cross-border conversion.

Amendment

However, Member States may, in cases of genuine suspicion of fraud based on

Amendment

However, Member States may, where justified by the overriding reason of the
reasonable grounds, require a physical presence before a competent authority.

public interest in the prevention of fraud as regards the identity of the person representing the company carrying out a cross-border conversion, require a physical presence before any competent authority, or before any other person or body dealing with, making or assisting in making the online disclosure.

Member States shall lay down detailed rules for the online disclosure of documents and information referred to in paragraphs 1 and 3 of this Article. Articles 13b a (new) and Article 13f (3) and (4) shall apply accordingly.

Amendment 135

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86h – paragraph 5

Text proposed by the Commission

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border conversion, or the information referred to in paragraph 3 is published in their national gazette. In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette.

Amendment

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border conversion, or the information referred to in paragraph 3 is published in their national gazette. In that instance, in accordance with the principle of the once-off transmission of information in the Union, Member States shall ensure that the register transmits the relevant information to the national gazette.

Amendment 136

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86i – paragraph 1

Text proposed by the Commission

1. After taking note of the reports

Amendment

1. After taking note of the reports
referred to in Articles 86e, 86f and 86g, where applicable, the general meeting of the company carrying out the conversion shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion. The company shall inform the competent authority designated in accordance with Article 86m(1) of the decision of the general meeting. Before a decision is taken, any preceding applicable information and consultation rights shall be respected in order for an opinion by the employee representatives to be taken into account in accordance with Directive 2002/14/EC, and where applicable Directives 2009/38/EC and 2001/86/EC. The company shall inform the competent authority designated in accordance with Article 86m(1) of the decision of the general meeting.

Amendment 137

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86i– paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the approval of any amendment to the draft terms of the cross-border conversion requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented. In any event the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.

Amendment

3. Member States shall ensure that the approval of or any amendment to the draft terms of the cross-border conversion requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented. In any event the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.

Amendment 138

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86i– paragraph 4
4. The general meeting shall also decide whether the cross-border conversion would necessitate amendments to the instruments of constitution of the company carrying out the conversion.

Amendment

Where applicable, the general meeting shall also decide on any amendments to the instruments of constitution of the company carrying out the conversion.

Amendment 139

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article– paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that the following members of a company carrying cross-border conversion have the right to dispose of their shareholdings under the conditions laid down in paragraphs 2 to 6:

Amendment

1. Member States shall ensure that the following members of a company carrying out cross-border conversion have the right to dispose of their shareholdings under the conditions laid down in paragraphs 2 to 6:

Amendment 140

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article– paragraph 1 – point a

Text proposed by the Commission

(a) the members holding shares with voting rights and who did not vote for the approval of the draft terms of the cross-border conversion;

Amendment

(a) the members holding shares with voting rights and who voted against or who did not attend the general meeting but expressed their intention before the meeting to vote against the approval of the draft terms of the cross-border conversion and expressed their intention to make use of the exit right;

Amendment 141

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86j – paragraph 1 – point b

**Text proposed by the Commission**

(b) the members holding shares without voting rights.

**Amendment**

(b) the members holding shares without voting rights, who, at the general meeting, expressed their intention to make use of the exit right.

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**Amendment 142**

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86j – paragraph 3 – subparagraph 1

**Text proposed by the Commission**

Member States shall ensure that a company carrying out a cross-border conversion makes an offer of adequate compensation in the draft terms of the cross-border conversion as specified in the Article 86d(1)(i) to the members, referred to in paragraph 1 of this Article, who wish to exercise their right to dispose of their shareholdings. Member States shall also establish the period for the acceptance of the offer, which shall not in any event exceed one month after the general meeting referred to in Article 86i.

**Amendment**

Member States shall ensure that a company carrying out a cross-border conversion makes an offer of adequate compensation in the draft terms of the cross-border conversion as specified in the Article 86d(1)(i) to the members, referred to in paragraph 1 of this Article, who wish to exercise their right to dispose of their shareholdings. **Without prejudice to the actual exercise of the exit right, members shall communicate their intention to make use of it before the general meeting.** Member States shall also establish the period for the acceptance of the offer which shall not in any event exceed one month after the general meeting referred to in Article 86i. **National law on the form and validity of contracts for the sale and transfer of shares in companies shall remain unaffected.**

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**Amendment 143**

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86j – paragraph 5
5. Member States shall provide that any member who has accepted the offer of cash compensation referred to in paragraph 3 but who considers that the compensation has not been adequately set, is entitled to demand the recalculation of the cash compensation offered before a national court within one month of the acceptance of the offer.

Amendment 144

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86j – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that the law of the departure Member State governs the rights referred to in paragraphs 1 to 5 and that the courts of that Member State shall have jurisdiction. Any member who has accepted the offer of cash compensation to acquire its shares shall be entitled to institute or to be a party to proceedings referred to in paragraph 5.

Amendment

6. Member States shall ensure that the law of the departure Member State governs the rights referred to in paragraphs 1 to 4 and that the courts of that Member State shall have jurisdiction. Any member who has accepted the offer of cash compensation to acquire its shares shall be entitled to institute or to be a party to proceedings referred to in paragraph 4.

Amendment 145

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86k – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that creditors who are dissatisfied with the protection of their interests provided for in the draft terms of the cross-border conversion, as provided for in Article 86d(f), may apply to the appropriate

Amendment

2. Member States shall ensure that creditors, whose rights predate the draft terms of the cross-border conversion and who are dissatisfied with the protection of their interests provided for in the draft terms of the cross-border conversion, as
administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 86h. provided for in Article 86d(f), and who have lodged their objection before the cross-border conversion may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 86h.

Amendment 146

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86k – paragraph 3 – point a

Text proposed by the Commission

(a) where the company discloses together with the draft terms of conversion an independent expert report, which concluded that there is no reasonable likelihood that the rights of creditors would be unduly prejudiced. The independent expert should be appointed or approved by the competent authority and shall fulfil the requirements laid down in Article 86g(2);

Amendment

(a) where the company discloses together with the draft terms of conversion an independent expert report, which concluded that there is no reasonable likelihood that the rights of creditors would be unduly prejudiced. The independent expert shall be consulted by the competent authority as part of its assessment laid down in Article 86g;

Amendment 147

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86k – paragraph 3 – point b

Text proposed by the Commission

(b) where creditors are offered a right to payment, either against a third party guarantor, or against the company resulting from the cross-border conversion of at least equivalent value to their original claim, which may be brought in the same jurisdiction as their original claim, and which is of a credit quality at least commensurate with the creditor's original claim immediately after the completion of the conversion.

Amendment

(b) where creditors are offered a right to payment, either against a third party guarantor, or against the company resulting from the cross-border conversion of at least the actual value of their original claim, which may be brought in the same jurisdiction as their original claim, and which is of a credit quality at least commensurate with the creditor's original claim.
Amendment 148

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – title

Text proposed by the Commission
Employee participation

Amendment
Employee information, consultation and participation

Amendment 149

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph -1 (new)

Text proposed by the Commission
-1. Where the administrative or management body of the company draws up a plan to carry out a conversion, they shall, as soon as possible after publishing the draft terms of conversion, take the necessary steps, including providing information about the identity of the participating companies, subsidiaries or establishments concerned, and the number of their employees, to, where applicable, start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the company or companies resulting from the conversion.

Amendment 150

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph 2 – point a
(a) provide for at least the same level of employee participation as operated in the company prior to the conversion, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

**Amendment 151**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86l – paragraph 3 – introductory part

**Text proposed by the Commission**

3. In the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

**Amendment**

3. *The information, consultation and participation of employees in the company resulting from the cross-border conversion company and their involvement in the definition of such rights and in the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be the subject of an agreement between the employees and the management of the converted company and shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:*

**Amendment 152**

**Proposal for a directive**
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l– paragraph 3 – point b

**Text proposed by the Commission**

(b) Article 4(1), Article 4(2)(a), (g) and (h), Article 4(3) and Article 4(4);

**Amendment**

(b) Article 4(1), Article 4(2)(a), (b), (c), (d), (e), (g) and (h), Article 4(3) and Article 4(4);

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**Amendment 153**

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph 3 – point e

**Text proposed by the Commission**

(e) the first subparagraph of Article 7(1);

**Amendment**

(e) Article 7(1);

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**Amendment 154**

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph 3 – point g

**Text proposed by the Commission**

(g) point (a) of Part 3 of the Annex.

**Amendment**

(g) the Annex, with the exception of points (a) and (b) of Part 3, instead of which the following shall apply as a minimum:

*The employees of the company, its subsidiaries and establishments and/or the representative body shall have the right to elect and appoint a number of members of the administrative or supervisory body of the converted company equal to two representatives in companies having more than 50 employees, one third in companies having 250 to 1000 employees and parity in companies with more than 1000 employees.*
Amendment 155

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph 3a (new)

Text proposed by the Commission

3a. The level of employee participation agreed in accordance with paragraph 3 shall not be lower than the level applied in the company prior to the conversion or lower than the level that would apply in the destination Member State. That level shall be measured in accordance with paragraph 2.

Amendment

Amendment 156

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l– paragraph 4

Text proposed by the Commission

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

(a) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the destination Member State;

Amendment

4. When regulating the principles and procedures referred to in paragraph 3 of this Article, Member States shall ensure that any rules on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with the Annex to Directive 2001/86/EC.
(b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ of the converted company. However, if in the company carrying out the conversion employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third;

(c) shall ensure that the rules on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (a) of Part 3 of the Annex.

Amendment 157

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l– paragraph 5

Text proposed by the Commission  Amendment

5. The extension of participation rights to employees of the converted company employed in other Member States, referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

Amendment 158

Proposal for a directive
Article 1 – paragraph 1 – point 3
7. Where the converted company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic merger, division or conversion for a period of three years after the cross-border conversion has taken effect, by applying mutatis mutandis the rules laid down in paragraphs 1 to 6.

Amendment

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l – paragraph 7 a (new)

7a. Member States shall ensure, in accordance with Article 6 of Directive 2002/14/EC that employees’ representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.
employee participation laid down in the law of the departure Member State is exceeded in the six years following the cross-border conversion, new negotiations shall be initiated in accordance with paragraphs 3 to 8, mutatis mutandis. In such cases, the rules for employee participation shall provide for the same level and elements of employee participation as would have been legally provided for had the company reached the relevant threshold in the departure Member State.

Amendment 161

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86l a (new)

Text proposed by the Commission

Amendment

Article 86la

Collective agreements

Following the conversion, the company carrying out the cross-border conversion shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the company before the conversion under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement, in accordance with Article 3(3) of Directive 2001/23/EC.

Amendment 162

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 1
1. Member States shall designate the authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the departure Member State and to issue a pre-conversion certificate attesting compliance with all the relevant conditions and the proper completion of all procedures and formalities in the departure Member State.

Amendment 163

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 2 – point b

Text proposed by the Commission

(b) the reports referred to in Articles 86e, 86f and 86g, as appropriate;

Amendment

(b) the report referred to in Articles 86e and 86g, as appropriate, including the employees’ opinion and response of the management referred to in Article 86(4a) and (4b);

Amendment 164

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 3 – subparagraph 3

Text proposed by the Commission

However, in cases of genuine suspicion of fraud based on reasonable grounds
Member States may require a physical presence before a competent authority where relevant information and documents are required to be submitted.

Amendment

Member States shall lay down detailed rules for the online application referred to in paragraph 2 of this Article and in the second subparagraph of Article 86h(4). Article 13f (3) and (4) shall apply accordingly.
Amendment 165

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 4

*Text proposed by the Commission*

4. In respect of compliance with the rules concerning employee participation as laid down in Article 86l, the departure Member State shall verify that the draft terms of cross-border conversion, referred to in paragraph 2 of this Article, include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

*Amendment*

4. In respect of compliance with the rules concerning employee participation as laid down in Article 86l, the departure Member State shall verify that the draft terms of the cross-border conversion and the report, referred to in paragraph 2 of this Article, include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

Amendment 166

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 5 – introductory part

*Text proposed by the Commission*

5. As part of the assessment of legality referred to in paragraph 1, the competent authority, shall examine the following:

*Amendment*

5. As part of the assessment referred to in Article 86g, the competent authority, shall examine the following:

Amendment 167

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 5 – point c a (new)

*Text proposed by the Commission*

(ca) whether the cross-border conversion constitutes an artificial arrangement.

*Amendment*

(ca) whether the cross-border conversion constitutes an artificial arrangement.
Amendment 168

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that competent authorities designated in accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion.

Amendment

6. Member States shall ensure that competent authorities designated in accordance with paragraph 1 *set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields concerned by this Directive, and shall, where appropriate, consult other relevant authorities with competence in the different fields concerned by the cross-border conversion.*

Amendment 169

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 7 – introductory part

Text proposed by the Commission

7. Member States shall ensure that the assessment by the competent authority is carried out within *one month* of the date of receipt of the information concerning the approval of the conversion by the general meeting of the company. It shall have one of the following outcomes:

Amendment

7. Member States shall ensure that the assessment by the competent authority is carried out within *three months* of the date of receipt of the information concerning the approval of the conversion by the general meeting of the company. It shall have one of the following outcomes:

Amendment 170

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86m – paragraph 7 – point a

Text proposed by the Commission

(a) where the competent authority

Amendment

(a) *the competent authority shall issue*
determines that the cross-border conversion falls within the scope of the national provisions transposing this Directive, that it complies with all the relevant conditions and that all necessary procedures and formalities have been completed, **the competent authority shall issue the pre-conversion certificate**;

**Amendment 171**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86m – paragraph 7 – point b

*Text proposed by the Commission*

(b) where the competent authority determines that the cross-border conversion does not fall within the scope of the national provisions transposing this Directive, **the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision**. The same shall apply to the situations in which the competent authority determines that the cross-border conversion does not meet all the relevant conditions or that not all necessary procedures and formalities have been completed and the company, after being invited to take the necessary steps, has failed to do so;

**Amendment**

(b) **the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision** where the competent authority determines that the cross-border conversion does not fall within the scope of the national provisions transposing this Directive. The same shall apply to the situations in which the competent authority determines that the cross-border conversion does not meet all the relevant conditions or that not all necessary procedures and formalities have been completed and the company, after being invited to take the necessary steps, has failed to do so;

**Amendment 172**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86m – paragraph 7 – point c

*Text proposed by the Commission*

(c) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial

**Amendment**

(c) **the competent authority shall not issue a pre-conversion certificate and shall carry out an in-depth assessment in**
arrangement referred to in Article 86c(3), it may decide to carry out an in-depth assessment in accordance with Article 86n and shall inform the company about its decision to conduct such an assessment and of the subsequent outcome.

accordance with Article 86n, and shall inform the company about its decision and the outcome of the assessment, in one of the following cases:

(i) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement

(ii) the company is subject to preventive restructuring proceedings initiated because of the likelihood of insolvency or is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council*, or in Directive 2014/67/EU of the European Parliament and of the Council**;

(iii) the company has been convicted in the last three years by a court or is subject to ongoing court proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations;

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Amendment 173

Proposal for a directive
7a. The decision to issue a pre-conversion certificate by the competent authority of the departure Member State or any approval by the competent authority in the destination Member State shall not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.

Amendment

Proposal for a directive

Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86n – paragraph 1

Text proposed by the Commission

1. Member States shall ensure in order to assess whether the cross-border conversion constitutes an artificial arrangement within the meaning of Article 86c(3), that the competent authority of the departure Member State carries out an in-depth assessment of all relevant facts and circumstances and shall take into account at a minimum the following: the characteristics of the establishment in the destination Member State, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the converted company in the destination Member State and the departure Member State.

Amendment

(a) the characteristics of the
establishment in the destination Member State, including the management body, the staff, sector, the investment, the net turnover and profit or loss, the tax residence, the premises, the assets and their location, the composition of the balance sheet and the commercial risks assumed by the converted company in the destination Member State and the departure Member State;

(b) the number and habitual place of work of the employees and of specific groups of employees, working in the country of destination, the number of employees working in another country grouped according to the country in which they work, the number of employees posted in the year prior to the conversion within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, and the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004;

(c) the places where social contributions are due;

(d) if the company has chosen to delegate its management to directors, officers or legal representatives, hired from an independent third party through a service contractor.

Amendment 175

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86n – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where necessary, the competent authority shall put questions to and receive information from the competent authority of the destination Member State. The competent authority shall ensure
communication with other authorities in the Member State responsible for any of the areas concerned by this Directive.

Amendment 176
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86n – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that where the competent authority referred to in paragraph 1 decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article 86h(1)(c) in accordance with national law. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-conversion certificate within two months from the start of the in-depth assessment.

Amendment

2. Member States shall ensure that where the competent authority referred to in paragraph 1 decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article 86h(1)(c) in accordance with national law. In particular, it shall enable the company to provide further information on an actual or fixed establishment and its pursuit of genuine economic activity in the destination Member State for an indefinite period. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-conversion certificate within two months from the start of the in-depth assessment.

Amendment 177
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86n – paragraph 2 a (new)

Text proposed by the Commission

2a. Member States shall ensure that the competent authority of the departure Member State does not issue a pre-conversion certificate for the cross-border
conversion where it determines, after carrying out an in-depth assessment of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement.

Amendment 178

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86p – paragraph 1

Text proposed by the Commission

1. Member States shall designate an authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the destination Member State and to approve the cross-border conversion where the conversion complies with all the relevant conditions and the proper completion of all procedures and formalities in the destination Member State.

Amendment

1. Member States shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the destination Member State and to approve the cross-border conversion where the conversion complies with all the relevant conditions and the proper completion of all procedures and formalities in the destination Member State.

Amendment 179

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86p – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, in cases of genuine suspicion of fraud based on reasonable grounds, Member States may require a physical presence before a competent authority of a Member State where relevant information and documents are required to be submitted.

Amendment

However, Member States may, where justified by the overriding reasons of the public interest to prevent fraud as regards the identity of the person representing the company carrying out a cross-border conversion, require a physical presence before any competent authority, or before any other person or body dealing with, making or assisting in making the online disclosure.
Amendment 180
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86p – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Member States shall lay down detailed rules for the online application referred to in paragraph 1 of this Article and in the second subparagraph of Article 86h(4). Article 13f (3) and (4) shall apply accordingly.

Amendment 181
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86t

Text proposed by the Commission

Amendment

Article 86t deleted

Liability of the independent experts

Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the reports referred to in Articles 86g and 86k(2)(a), including in respect of any misconduct on their part in the performance of their duties.

Amendment 182
Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86u – paragraph 1

Text proposed by the Commission

Amendment

A cross-border conversion which has

However, if during the two years
taken effect in compliance with the procedures transposing this Directive may not be declared null and void.

following the date on which the cross-border conversion takes effect, new information concerning the cross-border conversion and suggesting there has been an infringement of any of the provisions in this Directive is brought to the attention of the competent authorities, the competent authorities shall revise their assessment of the facts of the case and shall be empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.

Amendment 183

Proposal for a directive
Article 1 – paragraph 1 – point 5
Directive (EU) 2017/1132
Article 120 – paragraph 4

Text proposed by the Commission

(5) Article 120, paragraph 4 is replaced by the following:

"4. Member States shall ensure that this Chapter does not apply to the company or companies where:

(a) proceedings have been instituted for the winding-up, liquidation, or insolvency of that company or companies;

(b) the company is subject to preventive restructuring proceedings initiated because of the likelihood of insolvency;

(c) the suspension of payments is ongoing;

(d) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU;

(e) preventive measures have been taken by the national authorities to avoid the initiation of proceedings referred to in points (a), (b) or (d)."

Amendment

(5) Article 120, paragraph 4 is deleted.
Amendment 184

Proposal for a directive
Article 1 – paragraph 1 – point 6 – point b a (new)
Directive (EU) 2017/1132
Article 121 – paragraphs 2 a and 2 b (new)

Text proposed by the Commission

Amendment

(paragraphs 2a and 2b are added:

“2a. A company shall not be entitled to carry out a cross border merger in any of the following circumstances:

(a) proceedings have been instituted for the winding-up, liquidation, or insolvency of that company or companies;

(b) the suspension of payments is ongoing;

(c) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU;

(d) preventive measures have been taken by the national authorities to avoid the initiation of proceedings referred to in points (a), (b) or (c).

2b. Member States shall ensure that the competent authority of the departure Member State does not authorise the cross-border merger where it determines, after carrying out an assessment of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement.”

Amendment 185

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point -a (new)
Directive (EU) 2017/1132
Article 122 – paragraph 1 – introductory part

Present text

Amendment

(paragraph 1, introductory part is replaced by the following:

The management or administrative organ

“1. The administrative or management
of each of the merging companies shall draw up the common draft terms of a cross-border merger. The common draft terms of a cross-border merger shall include at least the following particulars:

body, including, where provided for in national law and/or in accordance with national practice, board level employee representatives, of each of the merging companies, shall draw up and be included into the decision on the common draft terms of a cross-border merger. The common draft terms of a cross-border merger shall include at least the following particulars:

Amendment 186

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point -a a (new)
Directive (EU) 2017/1132
Article 122 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(-aa) point (aa) is inserted:
“(aa)where appropriate, information on the location and date of the transfer of the head office of the company to the company resulting from the merger, as well as information on the management body and, where applicable, staff, equipment, premises and assets;”;

Amendment 187

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point -a b (new)
Directive (EU) 2017/1132
Article 122 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(-ab) point (ca) is inserted:
“(ca) the number of employees on a full-time equivalent basis;”;

Amendment 188

Proposal for a directive
Amendment 189
Proposal for a directive
Article 1 – paragraph 1 – point 7 – point a
Directive (EU) 2017/1132
Article 122 – paragraph 1 – point i

Text proposed by the Commission

(a) point (i) is replaced by the following:

"(i) the instrument or instruments of constitution of the company resulting from the cross-border merger";

Amendment

(a) point (i) is deleted.

Amendment 190
Proposal for a directive
Article 1 – paragraph 1 – point 7 – point a a (new)
Directive (EU) 2017/1132
Article 122 – paragraph 1 – point j

Present text

(j) where appropriate, information on the

Amendment

(j) information on the procedures by
procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined pursuant to Article 133;

which arrangements for the involvement of employees in the definition of their rights to information, consultation and participation in the company resulting from the cross-border merger are determined pursuant to Article 133;”

Amendment 191

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point a b (new)
Directive (EU) 2017/1132
Article 122 – paragraph 1 – points j a, j b and j c (new)

Amendment

(ab) points ja, jb and jc are inserted:
“(ja) the name of the company resulting from the merger and, where applicable, the list of all its subsidiaries, a brief description of the nature of their activities and their respective geographic allocation;

(jb) total turnover and total taxable turnover of the merging companies for the last reporting period;

(jc) the amount of income tax paid by the merging companies and their subsidiaries and branches,”

Amendment 192

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point c
Directive (EU) 2017/1132
Article 122 – paragraph 1 – subparagraph 1a

Amendment

"In addition to the official language of each Member State of the merging companies, Member States shall allow the merging companies to use a language customary in the sphere of international business and finance to draw up the common draft terms of a cross-border merger and all other

"In addition to the official language of each Member State of the merging companies, Member States shall allow the merging companies to use a language customary in the sphere of international business and finance to draw up the common draft terms of a cross-border merger and all other
related documents. Member States shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those documents.

Amendment 193

Proposal for a directive
Article 1 – paragraph 1 – point 7 – point c a (new)
Directive (EU) 2017/1132
Article 122 – paragraphs 1 a and 1 b (new)

Text proposed by the Commission

(2a) the following paragraphs are added:

“1a. Before the management or administrative organ decides on the common draft terms of a cross-border merger, the representatives of the employees of each company involved in the cross-border merger, or, where there are no such representatives, the employees themselves and the trade unions represented shall be informed of and consulted on the proposed merger in accordance with Article 4 of Directive 2002/14/EC mutatis mutandis. Where a body has been established for the purposes of transnational information and consultation in accordance with 2009/38/EC or 2001/86/EC, it shall also be informed and consulted accordingly.

1b. In addition to the official languages of the Member States involved, Member States may provide that companies carrying out the cross-border merger may use a language customary in the sphere of international business and finance in order to draw up the draft terms of a cross-border merger and all other related documents. The companies shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those
documents. Members, employees and creditors shall have the possibility to comment on those common draft terms.”

Amendment 194

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 123 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the common draft terms of the cross-border merger are disclosed and made publically available in their respective national registers, referred to in Article 16, at least one month before the date of the general meeting which is to decide thereon. Those common draft terms shall also be accessible by means of the system referred to in Article 22.

Amendment

1. Member States shall ensure that the following documents of the cross-border merger are disclosed and made publically available in their respective national registers, referred to in Article 16, at least one month before the date of the general meeting which is to decide thereon. The following documents shall also be accessible by means of the system referred to in Article 22:

(a) the common draft terms of the cross-border merger; those common draft terms shall also be accessible by means of the system referred to in Article 22;

(b) the application for the assessment of the draft terms of the cross-border merger and of the report referred to in Article 124 and where applicable, the report drawn up by each competent authority in accordance with Article 125a, without however disclosing any confidential information;

(c) a notice informing the members, creditors and representatives of the employees of each company, or, where there are no such representatives, the employees themselves of each company carrying out the cross-border merger that they may submit, before the date of the general meeting, comments regarding the documents referred to in points (a) and (b) of the first subparagraph to the company and to the competent authority designated in accordance with Article 127
Amendment 195

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 123 – paragraph 3 – point d

Text proposed by the Commission

(d) details of the website where the common draft terms of the cross-border merger and complete information on the arrangements referred to in point (c) may be obtained free of charge.

Amendment

(d) details of the website where the common draft terms of the cross-border merger and the report referred to in Article 125a complete information on the arrangements referred to in point (c) may be obtained free of charge.

Amendment 196

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 123 – paragraph 3 – point d a (new)

Text proposed by the Commission

(da) information on the ultimate beneficial owners of the company before and after the cross-border merger

Amendment


Amendment 197

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 123 – paragraph 4 – subparagraph 2

Text proposed by the Commission

However, Member States may, in cases of genuine suspicion of fraud based on reasonable grounds, require a physical presence before a competent authority.

Amendment

However, Member States may, where justified by the overriding reason of the public interest to prevent fraud as regards the identity of the persons representing the companies carrying out the cross-border merger based on reasonable
grounds, require a physical presence before a competent authority.

Amendment 198

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) No 2017/1132
Article 123 a (new)

Text proposed by the Commission

Article 123 a

Preventing conflicts of interest due to management compensation

To prevent a conflict of interest between the members of the management body or administrative organ and the interests of the company, in light of Article 1a (new) of this Directive, the members of the management body shall not be allowed to benefit financially from the merger, in the form of a rise of the share price of the share packages in their (variable) compensation or bonuses paid out in light of the merger. On any compensation paid out in shares of the company in the first year after the merger to the members of the management body or administrative organ, the rise in share prices due to the merger shall be deducted from the value paid to the management body. The share price on the day the merger was first made public will serve as the baseline.

Amendment 199

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – title

Text proposed by the Commission

Report of the management or administrative organ to the members

Amendment

Report of the administrative or management body to the members and
Amendment 200

Proposal for a directive  
Article 1 – paragraph 1 – point 9  
Directive (EU) 2017/1132  
Article 124 – paragraph 1

Text proposed by the Commission

1. The management or administrative organ of each of the merging companies shall draw up a report explaining and justifying the legal and economic aspects of the cross-border merger.

Amendment

1. The management or administrative organ of each of the merging companies shall draw up a report for the members and employees explaining and justifying the legal and economic aspects of the cross-border merger as well as explaining the implications for employees.

Amendment 201

Proposal for a directive  
Article 1 – paragraph 1 – point 9  
Directive (EU) 2017/1132  
Article 124 – paragraph 2 – point -a (new)

Text proposed by the Commission

(-a) the reasons for the cross-border merger;

Amendment

Amendment 202

Proposal for a directive  
Article 1 – paragraph 1 – point 9  
Directive (EU) 2017/1132  
Article 124 – paragraph 2 – point e a (new)

Text proposed by the Commission

(ea) the implications of the cross-border merger for employment relationships and employee involment, as well as measures to be taken in order to safeguard them;
Amendment 203

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 2 – point e b (new)

*Text proposed by the Commission*

(eb) any material changes in the conditions of employment, laid down by law, collective agreements and transnational company agreements and in the location of the company's places of business;

Amendment 204

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 2 – point e c (new)

*Text proposed by the Commission*

(ec) information on the procedures by which arrangements for the information, consultation and participation rights of employees in the resulting company can be applied in accordance with this Directive.

Amendment 205

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 2 – point e d (new)

*Text proposed by the Commission*

(ed) whether the factors set out in points (a) to (c) also relate to any subsidiaries of the company.
Amendment 206
Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 2 a (new)

Text proposed by the Commission

2a. Before the administrative or management body decides on the report referred to in paragraph 1 of this Article, the representatives of the employees of each of the merging companies or, if there are no representatives, the employees themselves, shall be informed of and consulted on the proposed merger in accordance with Article 4 of Directive 2002/14/EC. Where applicable, the body established for the purposes of transnational information and consultation in accordance with 2009/38/EC or 2001/86/EC shall also be informed and consulted accordingly.

Amendment 207
Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 3

Text proposed by the Commission

3. The report shall be made available, at least electronically, to the members of each of the merging companies not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the representatives of the employees of each of the merging companies, or where there are no such representatives, to the employees themselves. However, where the approval of the merger is not required by general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available, at least one month

Amendment

3. The report shall be made available, at least electronically, to the members of each of the merging companies and to the representatives of the employees of the company carrying out the cross-border merger or, where there are no such representatives, to the employees themselves and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly
before the date of the general meeting of the other merging company or companies.

Amendment 208
Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 4

Text proposed by the Commission

4. However, the report referred to in paragraph 1, shall not be required where all the members of the merging companies have agreed to waive this requirement.

Amendment

4. However, the report referred to in paragraph 1, shall not be required where all the members and all the representatives of the employees or, where there are no such representatives, the employees themselves and where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, of the merging companies have agreed to waive this requirement.

Amendment 209
Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 4 a (new)

Text proposed by the Commission

4a. Where the administrative or management body of any of the merging companies receives, in good time, an opinion from the representatives of the
employees or, where there are no such representatives, from the employees themselves, as provided for under national law, or where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, the members shall be informed thereof and that opinion shall be appended to that report.

Amendment 210

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 4 b (new)

Text proposed by the Commission

4b. The administrative or management body of each of the companies which intends to carry out the cross-border merger, shall provide a motivated response on the opinion provided by the employee representatives, and, where applicable, by the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, before the date of the general meeting referred to in Article 126.

Amendment 211

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 4 c (new)

Text proposed by the Commission

4c. The national employees’ representative bodies, the trade unions represented in the merging companies and where applicable, the body established for the purposes of
transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, shall have the means and resources required to exercise the rights arising from this Directive to conduct an analysis of the report. Paragraph 6 of Annex I to Directive 2009/38/EC shall apply mutatis mutandis to that end.

Amendment 212

Proposal for a directive
Article 1 – paragraph 1 – point 9
Directive (EU) 2017/1132
Article 124 – paragraph 4 d (new)

*Text proposed by the Commission*

4d. Paragraphs 1 to 4c shall be without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

Amendment 213

Proposal for a directive
Article 1 – paragraph 1 – point 10
Directive (EU) 2017/1132
Article 124a

*Text proposed by the Commission*

[...]

*deleted*

Amendment 214

Proposal for a directive
Article 1 – paragraph 1 – point 10 a (new)
Directive (EU) 2017/1132
Article 124 b (new)

*Text proposed by the Commission*

*Amendment*
1. Member States shall ensure that the companies carrying out the cross-border merger apply not less than two months before the date of the general meeting referred to in Article 126 to the competent authorities of the Member States, to appoint two experts to examine and assess the draft terms of the cross-border merger and the reports referred to in this chapter, subject to the proviso set out in paragraph 6 of this Article. The application for the appointment of an expert shall be accompanied by the following:

(a) the draft terms of the cross-border merger;

(b) the company reports referred to in this chapter.

2. The competent authorities, in coordination with each other, shall appoint two independent experts within one month of the application referred to in paragraph 1 and the receipt of the draft terms and reports. The experts shall be appointed on the basis of pre-selected lists in the Member States concerned, that were specifically established for the purpose of assessing cross-border mergers. The list shall include natural persons on the basis of their personal expertise. The fields of expertise to be reflected in the list shall include at least company law, taxation and fiscal law, social security and workers’ rights. Together, the two independent experts shall cover all of the fields of expertise mentioned in this paragraph. An expert may operate on his or her own behalf or on behalf of a legal person. Member States shall define fixed rates for the fees paid to the independent experts, which shall be paid by the companies applying for the merger.

The experts shall be independent from the
company carrying out the cross-border merger. Member States shall take into account, in assessing the independence of the experts, the framework established in Articles 22 to 22b of Directive 2006/43/EC. In addition:

(a) the experts or the legal person on whose behalf he or she is operating, shall not have performed work, in whatever capacity, for the company applying for the merger in the five years prior to his or her appointment or vice versa; and

(b) the two experts appointed shall not operate on behalf of the same legal person.

3. The experts shall draw up a written report within two months of their appointment, providing at least:

(a) a detailed assessment of the accuracy of both the draft terms and the reports as well as information submitted by the company carrying out the cross-border merger;

(b) a description of all factual elements necessary for the competent authorities, designated, to carry out an in-depth assessment to determine whether the intended cross-border merger constitutes an artificial arrangement, including as a minimum the following:

(i) the characteristics of the establishment in the different Member States, including the intent, the sector, the investment, the net turnover and profit or loss,

(ii) the number of employees working in the countries concerned, the number of employees working in another country grouped according to the country of work, the number of employees posted or sent in the year prior to the merger within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004,
(iii) the tax residence,
(iv) the assets and their location,
(v) the habitual place of work of the employees and of specific groups of employees,
(vi) the places where social contributions are due,
(vii) the commercial risks assumed by the merged company in the Member States concerned,
(viii) the composition of the balance sheet and of the financial statement in the destination Member State and in all Member States in which the company operates in the last two fiscal years.

4. Whenever relevant, the independent experts shall ask questions to and receive information from the competent authorities in the Member States concerned. The competent authorities shall ensure communication between the independent expert and other authorities in their Member State responsible for any of the areas covered by this Directive.

5. Member States shall ensure that the independent experts shall be entitled to obtain from the company carrying out the cross-border merger all relevant information and documents, and to carry out all necessary investigations to verify all elements of the draft terms or management reports. The expert shall also be entitled to receive comments and opinions from the representatives of the employees of the company, or, where there are no such representatives, from the employees themselves, and also from the creditors and members of the company.

6. Member States shall ensure that information submitted to the independent experts can only be used for the purpose of drafting their report.

6. Member States may apply a lower independent expert fee for 'micro' and 'small enterprises' as defined in
Amendment 215

Proposal for a directive
Article 1 – paragraph 1 – point 11 a (new)
Directive (EU) 2017/1132
Article 125 a (new)

Text proposed by the Commission

(11a) The following article is inserted:

Article 125a
Assessment by the competent authority

1. Member States shall ensure that the companies carrying out the cross-border merger apply not less than two months before the date of the general meeting referred to in Article 126 to each competent authority designated in accordance with Article 127, for the assessment of the common draft terms of the cross-border merger and the report referred to in Article 123. The application for the assessment of the competent authority shall be accompanied by the following:

(a) the common draft terms of the cross-border merger referred to in Article 122;
(b) the report referred to in Article 124;
(c) where submitted, the comments formulated by members, employees and creditors regarding the draft terms and the report referred to in Article 122 and Article 124;
(d) if the requirement for the report referred to in Article 124 is waived, the reasons for the cross-border merger.

2. Each competent authority shall start working on the application referred to in paragraph 1 within ten working days of the receipt of the documents and information referred to in points (a) to (d)
3. After, where necessary, consulting third parties with a legitimate interest in the merging of the companies, in particular taxation, labour and social security authorities, the competent authorities shall draw up a written report providing at least:

(a) a detailed assessment of the accuracy of the draft terms, the report and the information submitted by the companies carrying out the cross-border merger in terms of both form and content;

(b) a description of all factual elements necessary to carry out an in-depth assessment to determine whether the intended cross-border merger constitutes an artificial arrangement, including as a minimum the following:

(i) the characteristics of the establishment of the resulting company, including the intent, the sector, the investment, the net turnover and profit or loss, information on the management body and, where applicable, staff, equipment, premises and assets.

(ii) the composition of the balance sheet, the tax residence, the assets and their location, and the commercial risks assumed by the each of the companies participating in the merger; the number of employees, the habitual places of work of the employees and of specific groups of employees, including where relevant, the number of employees posted, sent or working simultaneously in different Member States in the year prior to the merger within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, and their countries of destination, the places where social contributions are due, and the impact on occupational pensions of employees.

4. Member States shall ensure that the competent authority is entitled to obtain, from each of the companies involved in the cross-border merger, all relevant
information and documents, including any comments on the draft terms submitted in accordance with Article 122, and that it carries out all necessary investigations to verify all elements of the draft terms or the report of the administrative or management body. Each competent authority shall furthermore be able to, where necessary, put questions to the competent authority of the Member States of the merging companies, as well as be entitled to receive further comments and opinions from the representatives of the employees of each of the merging companies, or, where there are no such representatives, from the employees themselves and, where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, and also from the creditors and members of each company. These shall be attached to each report as appendices.

5. Member States shall ensure that information and comments submitted to the competent authority can only be used for the purpose of drafting their report and that confidential information, including business secrets, shall not be disclosed in accordance with Union and national law. Where appropriate, the competent authority may produce a separate document containing any such confidential information and that separate document shall only be made available to the companies and to employee representatives where provided for by Union or national law and in accordance with Union or national practice.

6. A company shall not be entitled to complete a cross border merger, in cases where any of the merging companies is subject to ongoing court proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations, if there is a risk that
final damages would not be covered in view of the Union measures for civil justice cooperation and the company has not provided a financial guarantee covering that risk.

7. Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the reports referred to in Article 125, including in respect of any misconduct on its part in the performance of its duties.

Amendment 216

Proposal for a directive
Article 1 – paragraph 1 – point 11 b (new)
Directive (EU) 2017/1132
Article 125 b (new)

Text proposed by the Commission

(11b) The following article is inserted:

Article 125 b

Civil liability of members of the administrative or management bodies of the companies to be merged

Member States shall lay down rules governing at least the civil liability of the members of the administrative or management bodies of each of the merging companies in respect of misconduct on the part of members of those bodies in preparing and implementing the merger towards the shareholders of the resulting company.

Amendment 217

Proposal for a directive
Article 1 – paragraph 1 – point 12 – point a
Directive (EU) 2017/1132
Article 126 – paragraph 1
"1. After taking note of the reports referred to in Articles 124, 124a and 125, as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger."

“A 1. After taking note of the reports referred to in Articles 124 and 125, as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger. Before a decision is taken, any preceding applicable information and consultation rights shall be respected in order for an opinion by the employee representatives to be taken into account in accordance with Directive 2002/14/EC, and where applicable Directives 2009/38/EC and 2001/86/EC. The company shall inform the competent authority designated in accordance with Article 127 of the decision of the general meeting.”

Amendment 218

Proposal for a directive
Article 1 – paragraph 1 – point 13
Directive (EU) 2017/1132
Article 126a – paragraph 1 – point a

“(a) the members holding shares with voting rights and who did not vote for the approval of the common draft terms of the cross-border merger;”

Amendment

“(a) the members holding shares with voting rights and who voted against or who did not attend the general meeting but expressed their intention before the meeting to vote against the common draft terms of the cross-border merger and expressed their intention to make use of the exit right;”

Amendment 219

Proposal for a directive
Article 1 – paragraph 1 – point 13
Directive (EU) 2017/1132
Article 126a – paragraph 1 – point b
(b) the members holding shares without voting rights.

**Amendment 220**

**Proposal for a directive**
**Article 1 – paragraph 1 – point 13**
Directive (EU) 2017/1132
Article 126a – paragraph 3

**Text proposed by the Commission**

3. Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. Member States shall also establish the period for the acceptance of the offer, which shall not in any event exceed one month after the general meeting referred to in Article 126 or, in cases where the approval of the general meeting is not required, within two months after the disclosure of the common draft terms of merger referred to in Article 123. Member States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

**Amendment**

3. Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. Without prejudice to the exercise of the exit right, members shall communicate their intention to make use of it before the general meeting. Member States shall also establish the period for the acceptance of the offer, which shall not in any event exceed one month after the general meeting referred to in Article 126 or, in cases where the approval of the general meeting is not required, within two months after the disclosure of the common draft terms of merger referred to in Article 123. Member States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

**Amendment 221**

**Proposal for a directive**
**Article 1 – paragraph 1 – point 13**
4. Member States shall ensure that the offer of cash compensation is conditional upon the cross-border merger taking effect in accordance with Article 129. Member States shall further establish the period within which the cash compensation is to be paid, which shall not in any event exceed one month after the cross-border merger takes effect.

Amendment 222
Proposal for a directive
Article 1 – paragraph 1 – point 13
Directive (EU) 2017/1132
Article 126b – paragraph 2

2. Member States shall ensure that creditors of the merging companies who are dissatisfied with the protection of their interests as provided for in the common draft terms of the cross-border merger, as provided for in Article 122(1)(n), may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 123.

Amendment 223
Proposal for a directive
Article 1 – paragraph 1 – point 14 – point a
Directive (EU) 2017/1132
Article 127 – paragraph 1 – subparagraphs 1a, 1b, 1c and 1d

2. Member States shall ensure that creditors of the merging companies, whose rights predate the draft terms of the cross-border merger and who are dissatisfied with the protection of their interests as provided for in the common draft terms of the cross-border merger, as provided for in Article 122(1)(n), and who have lodged their objection before the cross-border merger may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 123.
"Member States shall ensure that the application for obtaining a pre-merger certificate by the merging companies is accompanied in particular by the following:

(a) the draft terms of merger referred to in Article 122;

(b) the reports referred to in Article 124 and Article 124a, as appropriate, including the employees’ opinion and response of the management referred to in Article 124(4a) and (4b);

(c) information on the resolution of the general meeting to approve the merger referred to in Article 126.

Re-submission to the competent authority of the draft terms and report submitted shall not be required.

Member States shall ensure that the application for obtaining a pre-merger certificate by the merging companies including submission of any information and documents may be completed online in its entirety without the necessity to appear in person before the competent authority referred to in paragraph 1.

However, in cases of genuine suspicion of fraud based on reasonable grounds Member States may require a physical presence before a competent authority where relevant information and documents are required to be submitted.

However, where justified by the overriding reason of the public interest in the prevention of fraud as regards the identity of the person representing the companies carrying out the cross-border merger, Member States may require a physical presence before a competent authority where relevant information and documents are required to be submitted."

Amendment 224

Proposal for a directive
Article 1 – paragraph 1 – point 14 – point a a (new)
Directive (EU) 2017/1132
Article 127 – paragraph 1 a (new)
Amendment 225

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point a
Directive (EU) 2017/1132
Article 128 – paragraph 2

Text proposed by the Commission

2. For the purpose of paragraph 1 of this Article, each merging company shall submit to the authority referred to in that paragraph the common draft terms of cross-border merger, approved by the general meeting referred to in Article 126.

Amendment

2. For the purpose of paragraph 1 of this Article, each merging company shall submit to the authority referred to in that paragraph:

(a) the common draft terms of cross-border merger, approved by the general meeting referred to in Article 126;

(b) the reports referred to in Articles 124, 125 and 125a, as appropriate, including the employees’ opinion and response of the management referred to in Article 124(4a) and (4b);

(c) information on the resolution of the general meeting to approve the merger referred to in Article 126.

The common draft terms and report submitted under Article 125a do not have to be re-submitted to the competent authority.
Amendment 226

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point a a (new)
Directive (EU) 2017/1132
Article 128 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph is added:

2a. As part of the assessment referred to in Article 125a, each competent authority, shall examine the following:

(a) the documents and information referred to in paragraph 2;

(b) all comments and opinions submitted by interested parties in accordance with Article 123;

(c) an indication by the company that the procedure referred to in Article 133 (3) and (4) has started, where relevant;

(d) whether the cross-border merger constitutes an artificial arrangement.

Amendment 227

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point a b (new)
Directive (EU) 2017/1132
Article 128 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(ab) the following paragraph is added:

2b. Member States shall ensure that competent authorities designated in accordance with paragraph 1 set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields concerned by this Directive and shall where appropriate consult other relevant authorities with competence in the different fields concerned by the cross-border merger.
Amendment 228

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point a c (new)
Directive (EU) 2017/1132
Article 128 – paragraph 2 c (new)

Text proposed by the Commission

(ac) the following paragraph is added:

2c. Member States shall ensure that the assessment by each competent authority is carried out within three months of the date of receipt of the information concerning the approval of the merger by the general meeting of each company. It shall have one of the following outcomes:

(a) each competent authority shall issue the pre-merger certificate, where the competent authority determines that the cross-border merger falls within the scope of the national provisions transposing this Directive, that it complies with all the relevant conditions and that all necessary procedures and formalities have been completed;

(b) the competent authorities shall not issue a pre-merger certificate and shall inform the companies of the reasons for their decision, where any competent authority determines that the cross-border merger does not fall within the scope of the national provisions transposing this Directive. The same shall apply to the situations in which the competent authority determines that the cross-border merger does not meet all the relevant conditions or that not all necessary procedures and formalities have been completed and the company, after being invited to take the necessary steps, has failed to do so;

(c) a competent authority shall not issue a pre-merger certificate and shall carry out an in-depth assessment in accordance with Article 128a, and shall inform the company about its decision and the outcome of the assessment, in the
following cases:

(i) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement

(ii) the company is subject to preventive restructuring proceedings initiated because of the likelihood of insolvency or is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council, or in Directive 2014/67/EU of the European Parliament and of the Council;

(iii) any of the merging companies have been convicted in the last three years by a court or where they are subject to ongoing court proceedings due to infringements of social, taxation, environmental and labor law, or concerning fundamental and human rights violations.

Amendment 229

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point a d (new)

Directive (EU) 2017/1132
Article 128 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

(ad) the following paragraph is added:

2d. The decision to issue a pre-merger certificate by the competent authority shall not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.
Amendment 230

Proposal for a directive
Article 1 – paragraph 1 – point 15 – point b
Directive (EU) 2017/1132
Article 128 – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, Member States may take measures in cases of genuine suspicion of fraud based on reasonable grounds which could require a physical presence before a competent authority of a Member State in which the relevant information and documents are required to be submitted.

Amendment

However, Member States may take measures where justified by the overriding reason of the public interest in the prevention of fraud as regards the identity of the persons representing the companies carrying out the cross-border merger require a physical presence before a competent authority of a Member State in which the relevant information and documents are required to be submitted.

Amendment 231

Proposal for a directive
Article 1 – paragraph 1 – point 15 a (new)
Directive (EU) 2017/1132
Article 128 a (new)

Text proposed by the Commission

(15a) The following article is inserted:

“Article 128a

In-depth assessment

1. Member States shall ensure, in order to assess whether the cross-border merger constitutes an artificial arrangement, that the competent authorities carry out an in-depth assessment of all relevant facts and circumstances and that they take into account at a minimum the following:

(a) the characteristics of the establishment in the resulting company, including the management body, the staff, the sector, the investment, the net turnover and profit or loss, the tax residence, the premises, the assets and their location, the composition of the balance sheet and the
commercial risks assumed by each of the merging companies;

(b) the number and habitual place of work of the employees and of specific groups of employees, working in each of the merging companies, the number of employees working in another country grouped according to the country in which they work, the number of employees posted in the year prior to the merger within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, and the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004;

(c) the places where social contributions are due;

(d) if the companies have chosen to delegate the management of the resulting company to directors, officers or legal representatives, hired from an independent third-party through a service contractor. Those elements may only be considered as indicative factors in the overall assessment and therefore shall not be considered in isolation.

2. Where relevant, the competent authorities shall communicate with each other. The competent authorities shall also ensure communication with other authorities in their respective Member States responsible for any of the areas concerned by this Directive.

3. Member States shall ensure that where the competent authorities referred to in paragraph 1 decide to carry out an in-depth assessment, they are able to hear the company and all parties that have submitted observations pursuant to Article 123 in accordance with national law. In particular, it shall enable the company to provide further information on an actual or fixed establishment and its pursuit of genuine economic activity in the resulting company for an indefinite period. The competent authorities referred to in
paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-merger certificate within two months of the start of the in-depth assessment.

4. Member States shall ensure that the competent authority of any Member State of the merging companies shall not issue a pre-merger certificate for the cross-border merger where it determines, after carrying out an in-depth assessment of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement."

Amendment 232

Proposal for a directive
Article 1 – paragraph 1 – point 18 – point -a (new)
Directive (EU) 2017/1132
Article 133 – paragraph -1 (new)

Text proposed by the Commission

Amendment

(-a) paragraph -1 is inserted:

“-1. Where the administrative or management body of the merging company draws up a plan to carry out a merger, it shall as soon as possible after publishing the common draft terms of the cross-border merger take the necessary steps, including providing information about the identity of the participating companies, subsidiaries or establishments concerned, and the number of its employees, to, where applicable, start negotiations with the representatives of the company's employees on arrangements for the involvement of employees in the company resulting from the cross-border merger.”;
Amendment 233

Proposal for a directive
Article 1 – paragraph 1 – point 18 – point -a a (new)
Directive (EU) 2017/1132
Article 133 – paragraph 2

Present text

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging companies has, in the six months prior to the publication of the draft terms of the cross-border merger as referred to in Article 123, an average number of employees that exceeds 500 and is operating under an employee participation system within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not:

(a) provide for at least the same level of employee participation as operated in the relevant merging companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

(b) provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees

Amendment

(-aa) paragraph 2 is replaced by the following:

“2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging companies, in the six months prior to the publication of the draft terms of the cross-border merger as referred to in Article 123, an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State to whose jurisdiction the merging company is subject, which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not:

(a) provide for at least the same level and elements of employee participation as operated in the relevant merging company or companies with the highest level of employee participation, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

(b) provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by employees employed in
employed in the Member State where the company resulting from the cross-border merger has its registered office.

the Member State where the company resulting from the cross-border merger has its registered office.”;

Amendment 234

Proposal for a directive
Article 1 – paragraph 1 – point 18 – point -a b (new)
Directive (EU) 2017/1132
Article 133 – paragraph 3

Present text

Amendment

(-ab) paragraph 3 is replaced by the following:

“3. In the cases referred to in paragraph 2, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

(a) Article 3(1), (2) and (3), the first indent of the first subparagraph of Article 3(4), the second subparagraph of Article 3(4) and Article 3(5) and (7);
(b) Article 4(1), Article 4(2)(a), (g) and (h) and Article 4(3);
(c) Article 5;
(d) Article 6;
(e) Article 7(1), point (b) of the first subparagraph of Article 7(2), the second subparagraph of Article 7(2) and Article 7(3). However, for the purposes of this Chapter, the percentages required by

(a) Article 3(1), (2) and (3), the first indent of the first subparagraph of Article 3(4), the second subparagraph of Article 3(4) and Article 3(5) and (7);
(b) Article 4(1), Article 4(2)(a), (b), (c), (d), (e), (g) and (h) and Article 4(3);
(c) Article 5;
(d) Article 6;
(e) Article 7(1),
(f) Articles 8, 10 and 12;

(h) point (b) of Part 3 of the Annex.

The level of employee participation agreed in accordance with paragraph 3 shall not be lower than the level applied in the merging company or companies with the highest level of employee participation prior to the merger, or lower than the level in the Member State of the resulting company. That level shall be measured in accordance with paragraph 2.”

Amendment 235
Proposal for a directive
Article 1 – paragraph 1 – point 18 – point -a c (new)
Directive (EU) 2017/1132
Article 133 – paragraph 4

Text proposed by the Commission

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

(a) shall confer on the relevant organs of the merging companies the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in point (h) of paragraph 3, as laid down by the legislation of the Member State in which
the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;

(b) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated;

(c) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ of the company resulting from the cross-border merger. However, if in one of the merging companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third.

Amendment 236

Proposal for a directive
Article 1 – paragraph 1 – point 18 – point a a (new)
Directive (EU) 2017/1132
Article 133 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph 7a is inserted:

“7a. Member States shall ensure, in accordance with Article 6 of Directive 2002/14/EC1a that employee representatives, when carrying out their
functions, enjoy adequate protection and guarantees to enable them to perform properly the duties, which have been assigned to them.”

Amendment 237
Proposal for a directive
Article 1 – paragraph 1 – point 18 – point b a (new)
Directive (EU) 2017/1132
Article 133 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

(ba) the following paragraph 8a is added:

“8a. Where, following the application of paragraph 3 in the case referred to paragraph 2, an applicable threshold for employee participation laid down in the law of a Member State involved in the merger is exceeded in the six years following the cross-border merger, new negotiations shall be initiated in accordance with paragraphs 3 to 8, mutatis mutandis. In such cases, the rules for employee participation shall provide for the same level and elements of employee participation as would have been legally provided for, had the company reached the relevant threshold in a Member State involved in the merger.”

Amendment 238
Proposal for a directive
Article 1 – paragraph 1 – point 18 a (new)
Directive (EU) 2017/1132
Article 133 a (new)

Text proposed by the Commission

Amendment

(18a) The following article is inserted:

“Article 133a
Collective agreements

EN

PE637.721/ 151
Following the cross-border merger, the resulting company shall continue to comply with the terms and conditions agreed in any collective agreements on the same terms as were applicable to the merging companies before the cross-border merger regardless of which law is otherwise applicable to that company under such agreements, until the date of termination or expiry of the collective agreement or the date of the entry into force or application of another collective agreement, in accordance with Article 3(3) of the Directive 2001/23/EC.”

Amendment 239

Proposal for a directive
Article 1 – paragraph 1 – point 19 a (new)
Directive (EU) 2017/1132
Article 134 – paragraph 1 a (new)

Text proposed by the Commission

(19a) in Article 134, the following paragraph is added:

However, if during the two years following the date on which the cross-border merger takes effect, new information concerning the cross-border merger, and suggesting there has been an infringement of any of the provisions in this Directive is brought to the attention of the competent authorities, the competent authorities shall revise their assessment of the facts of the case, and shall be empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.”

Amendment 240

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160b
Article 160b deleted

Definitions

For the purposes of this Chapter:

(1) ‘limited liability company’, hereinafter referred to as ‘company’, means a company as defined in Annex II;

(2) 'company being divided' means a company which in a process of the cross-border division whereby it transfers all its assets and liabilities to one or more companies, or in case of a partial division it transfers part of its assets and liabilities to one or more companies;

(3) ‘division’ means an operation whereby either:

(a) a company being divided, which has been wound up without going into liquidation, transfers all its assets and liabilities to two or more newly formed companies (‘the recipient companies’), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if any, a cash payment not exceeding 10 % of the nominal value of those securities or shares or, where they have no nominal value, a cash payment not exceeding 10% of the accounting par value of their securities or shares (‘full division’);

(b) a company being divided transfers part of its assets and liabilities to one or more newly formed companies (‘the recipient companies’), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies or, in the company being divided, or in both the recipient companies and in the company being divided, and if any a cash payment not exceeding 10 % of the nominal value of those securities or shares, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the
accounting par value of their securities or shares (‘partial division’).

Amendment 241

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132

Text proposed by the Commission

Article 160c deleted

Further provisions concerning the scope

1. Notwithstanding Article 160b(3), this Chapter shall also apply to cross-border divisions where the national law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of Article 160b(3) to exceed 10 % of the nominal value or, in the absence of a nominal value, 10% of the accounting par value of the securities or shares representing the capital of the recipient companies.

2. Member States may decide not to apply this Chapter to cross-border divisions involving a cooperative society even in the cases where the latter would fall within the definition of ‘limited liability company’ as laid down in Article 160b(1).

3. This Chapter shall not apply to cross-border divisions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders’ request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such
repurchase or redemption.

Amendment 242

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160d – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that where a company intends to carry out a cross-border division, the Member State of the company being divided and of the recipient company or companies verify that the cross-border division complies with the conditions laid down in paragraph 2.

Amendment

1. Member States shall ensure that where a company intends to carry out a cross-border division, \textit{the court, notary or other authority competent of} the Member State of the company being divided and of the recipient company or companies verify that the cross-border division complies with the conditions laid down in paragraph 2.

Amendment 243

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160d – paragraph 2 – point b

Text proposed by the Commission

(b) the company is subject to preventive restructuring proceedings initiated because of the likelihood of insolvency;

Amendment

deleted

Amendment 244

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160d – paragraph 2 – point d

Text proposed by the Commission

(d) the company is subject to resolution tools, powers and mechanisms provided for

Amendment

(d) the company is subject to resolution tools, powers and mechanisms provided for

**Amendment 245**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160d – paragraph 2 – point e

*Text proposed by the Commission*

(e) the preventive measures have been taken by the national authorities to avoid the initiation of proceedings referred to in points (a), *b* or (d).

*Amendment*

(e) the preventive measures have been taken by the national authorities to avoid the initiation of proceedings referred to in points (a) or (d).

**Amendment 246**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160d – paragraph 3

*Text proposed by the Commission*

3. The Member State of the company being divided shall ensure that the competent authority shall not authorise the division when it determines, *after an examination* of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement *aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or members.*

*Amendment*

3. The Member State of the company being divided shall ensure that the competent authority shall not authorise the division when it determines, *carrying out an assessment* of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement

**Amendment 247**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – introductory part
1. The **management or** administrative organ of the company being divided shall draw up the draft terms of cross-border division. The draft terms of cross-border division shall include at least the following:

Amendment 248

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160e – paragraph 1 – point -a (new)

**Text proposed by the Commission**

- (a) the legal form, name and registered office proposed for the new company or companies resulting from the cross-border division;

**Amendment**

- (a) the legal form, name and **location of** the registered offices proposed for the new company or companies resulting from the cross-border division;

Amendment 249

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160e – paragraph 1 – point a

**Text proposed by the Commission**

- (a) the legal form, name and registered office proposed for the new company or companies resulting from the cross-border division;

**Amendment**

- (a) the legal form, name and **location of** the registered offices proposed for the new company or companies resulting from the cross-border division;

Amendment 250

Proposal for a directive  
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point d a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(da) where applicable, detailed information on the location and date of establishment of the head office of the company to the Member State of the recipient company or companies, in the event that it is not already located there, as well as information on the management body and, where applicable, staff, equipment, premises and assets;</td>
<td></td>
</tr>
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</table>

Amendment 251

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point h

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(h) details of any special advantages granted to members of the administrative, management, supervisory or controlling organ of the company being divided;</td>
<td></td>
</tr>
<tr>
<td>(h) details of any special advantages granted to members of the administrative, management, supervisory or controlling body of the company being divided;</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 252

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point h a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ha) any special advantages granted to members of the administrative, management, supervisory or controlling body of the dividing company;</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 253

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) the number of employees employed on a full-time equivalent basis;

Amendment 254

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

(kb) the likely repercussions of the cross-border division on employment, including the likely changes to the organisation of work, the wages, the place of specific posts and the expected consequences for the employees occupying such posts, including employees in the subsidiaries and branches of the company being divided located within the Union and on the company level social dialogue including, where applicable, board level employee representation;

Amendment 255

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 1 – point l

Text proposed by the Commission

Amendment

(l) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the recipient companies are determined pursuant to Article160n and on the possible options for such arrangements;

(l) information on the procedures by which arrangements for the involvement of employees in the definition of their rights to information, consultation and participation in the recipient companies are determined pursuant to Article160n and on the possible options for such arrangements;
### Amendment 256

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160e – paragraph 1 – point l a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(la) the name of the ultimate company or companies and, where applicable, the list of all subsidiaries, a brief description of the nature of their activities and their respective geographic allocation;</td>
<td></td>
</tr>
</tbody>
</table>

### Amendment 257

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160e – paragraph 1 – point l b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(lb) total turnover and total taxable turnover of the company being divided for the last reporting period;</td>
<td></td>
</tr>
</tbody>
</table>

### Amendment 258

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160e – paragraph 1 – point l c (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(lc) the amount of income tax paid by the company being divided and its subsidiaries and branches;</td>
<td></td>
</tr>
</tbody>
</table>

### Amendment 259

Proposal for a directive  
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 3 a (new)

Text proposed by the Commission

3a. Before the management or administrative body decides on the draft terms of a cross-border division, and the representatives of the employees of the company carrying out the cross-border division or, where there are no such representatives, the employees themselves and the trade unions represented shall be informed and consulted on the proposed division in accordance with Article 4 of Directive 2002/14/EC mutatis mutandis. Where a body has been established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC, it shall also be informed and consulted accordingly.

Amendment

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160e – paragraph 4

Text proposed by the Commission

4. In addition to the official languages of the Member States of the recipient companies and the one being divided, Member States shall allow the company to use a language customary in the sphere of international business and finance in order to draw up the draft terms of cross-border division and all other related documents. Member States shall specify which language will prevail in case of discrepancies among different linguistic versions of those documents.

Amendment

4. In addition to the official languages of the Member States of the recipient companies and the one being divided, Member States may provide that the company may use a language customary in the sphere of international business and finance in order to draw up the draft terms of cross-border division and all other related documents. The company being divided shall specify which language will prevail in case of discrepancies among different linguistic versions of those documents. Members, employees or creditors shall have the possibility to comment on those draft terms.
Amendment 261

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – title

Text proposed by the Commission

Report of the management or administrative organ to the members

Amendment

Report of the administrative or management body to the members and employees

Amendment 262

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 1

Text proposed by the Commission

1. The management or administrative organ of the company being divided shall draw up a report explaining and justifying the legal and economic aspects of the cross-border division.

Amendment

1. The management or administrative body of the company being divided shall draw up a report for the members and employees explaining and justifying the legal and economic aspects of the cross-border division, as well as explaining the implications of the cross-border division for employees.

Amendment 263

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 – point -a (new)

Text proposed by the Commission

(-a) the reasons for the cross-border division;

Amendment

Amendment 264

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment
(ea) the implications of the cross-border division for employment relationships and employee involvement, as well as measures to be taken in order to safeguard them;

Amendment 265
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment
(eb) any material changes in the conditions of employment, laid down by law, collective agreements and transnational company agreements and in the location of the company’s places of business;

Amendment 266
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment
(ec) information on the procedures by which arrangements for the information, consultation and participation rights of employees in the recipient companies can be applied in accordance with the provisions of this Directive;
Amendment 267

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 – point e d (new)

Text proposed by the Commission

(ed) whether the factors set out in points (a) to (i) also relate to any subsidiaries of the dividing company.

Amendment 268

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 2 a (new)

Text proposed by the Commission

2a. Before the administrative or management body decides on the report referred to in paragraph 1 of this Article, the representatives of the employees of the company carrying out the cross-border division or, if there are no representatives, the employees themselves, shall be informed and consulted on the proposed division in accordance with Article 4 of Directive 2002/14/EC. Where applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC it shall also be informed and consulted accordingly.

Amendment 269

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 3

Text proposed by the Commission

3. The report referred to in paragraph 1

Amendment

3. The report referred to in paragraph 1
of this Article shall be made available, at least electronically, to the members of the company being divided not less than two months before the date of the general meeting referred to in Article 160k. That report shall also be made similarly available to the representatives of the employees of the company being divided or, where there are no such representatives, to the employees themselves.

Amendment 270

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 4

Text proposed by the Commission

4. However, the report referred to in paragraph 1, shall not be required where all the members of the company being divided have agreed to waive this document.

Amendment 271

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 4 a (new)

Text proposed by the Commission

4a. Where the administrative or
management body of the company being divided receives, in good time, an opinion from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, or where applicable, from the body established for the purposes of transnational information and consultation, in accordance with Directive 2009/38/EC or 2001/86/EC, the members shall be informed thereof and that opinion shall be appended to that report.

Amendment 272

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 4 b (new)

_4b. The administrative or management body of the company being divided, shall provide a motivated response on the opinion provided by the employee representatives and, where applicable, the body established for the purposes of transnational information and consultation in accordance with 2009/38/EC or 2001/86/EC, before the date of the general meeting referred to in Article 160k._

Amendment 273

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160g – paragraph 4 c (new)

_4c. The national employees’ representative bodies, the trade unions represented in the company and where_
applicable, the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC shall have the means and resources required to exercise the rights arising from this Directive to conduct an analysis of the report. Paragraph 6 of Annex I to Directive 2009/38/EC shall apply mutatis mutandis to that end.

Amendment 274

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160 g – paragraph 4 d (new)

Text proposed by the Commission

Amendment

4d. Paragraphs 1 to 4c shall be without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

Amendment 275

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160 h

Text proposed by the Commission

Amendment

[...]
deleated

Amendment 276

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160h a (new)
Text proposed by the Commission

Amendment

Article 160 ha

Civil liability of members of the administrative or management bodies of the company being divided

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

Amendment 277

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – title

Text proposed by the Commission

Amendment

Examination by an independent expert

Assessment by the competent authority

Amendment 278

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that the company being divided applies to the competent authority, designated in accordance with Article 160o(1), not less than two months before the date of the general meeting referred to in Article 160k, to appoint an expert to examine and assess the draft terms of cross-border division and the reports referred to in Articles 160g and 160h, subject to the proviso set out in paragraph 6 of this

Member States shall ensure that the company being divided applies to the competent authority, designated in accordance with Article 160o(1), not less than two months before the date of the general meeting referred to in Article 160k, for the assessment of the draft terms of cross-border division and the report referred to in Articles 160g.
Article.

Amendment 279
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 1 – subparagraph 2 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application for the <strong>appointment of an</strong> expert shall be accompanied by the following:</td>
<td>The application for the <strong>assessment of the competent authority</strong> shall be accompanied by the following:</td>
</tr>
</tbody>
</table>

Amendment 280
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 1 – subparagraph 2 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) the <strong>reports</strong> referred to in <em>Articles 160g and 160h.</em></td>
<td>(b) the <strong>report</strong> referred to in <em>Article 160g;</em></td>
</tr>
</tbody>
</table>

Amendment 281
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 1 – subparagraph 2 – point b a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(ba)</em> where submitted, the comments formulated by members, employees and creditors regarding the draft terms and the report referred to in <em>Article 160c and Article 160g;</em></td>
<td></td>
</tr>
</tbody>
</table>

Amendment 282
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 1 – subparagraph 2 – point b b (new)

Text proposed by the Commission

(bb) if the requirement for the report referred to in Article 160g has been waived, the reasons for the cross-border division.

Amendment 283

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 2

Text proposed by the Commission

2. The competent authority shall appoint an independent expert within five working days of the application referred to in paragraph 1 and the receipt of the draft terms and reports. The expert shall be independent from the company being divided and may be a natural or a legal person depending upon the law of the Member State concerned. Member States shall take into account, in assessing the independence of the expert, the framework established in Articles 22 and 22b of Directive 2006/43/EC.

Amendment

2. The competent authority shall start working on the application referred to in paragraph 1 within ten working days following the receipt of the documents and information referred to in points (a) to (d) of paragraph 1. If the competent authority has recourse to an independent expert, that expert shall be appointed within one month on the basis of a pre-selected list that was specifically established for the purpose of assessing cross-border divisions. Member States shall ensure that the expert, or the legal person on whose behalf the expert is operating, is independent and not performing or has not performed work, in whatever capacity for the company applying for the division, or vice versa, in the five years prior to his or her appointment.

Amendment 284

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 3 – introductory part
3. **The expert** shall draw up a written report providing at least:

**Amendment**

3. *After, where necessary, consulting third parties with a legitimate interest in the division of the company, in particular taxation, labour and social security authorities within the company, the competent authority* shall draw up a written report providing at least:

**Amendment 285**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 3 – point e

**Text proposed by the Commission**

(e) a detailed assessment of the accuracy of the reports and information submitted by the company;

**Amendment**

(e) a detailed assessment of the accuracy of the draft terms, the report and information submitted by the company carrying out the cross-border division in terms of both form and content.

**Amendment 286**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 3 – point f

**Text proposed by the Commission**

(f) a description of all factual elements necessary for the competent authority designated in accordance with Article 160o(1), to carry out an in-depth assessment to determine whether the intended cross-border division constitutes an artificial arrangement in accordance with Article 160p, at a minimum the following: the characteristics of the establishments in the Member States concerned of the recipient companies, including the intent, the sector, the

(f) a description of all factual elements necessary, to carry out an in-depth assessment to determine whether the intended cross-border division constitutes an artificial arrangement in accordance with Article 160p, including at a minimum the following:
investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member States of the recipient companies.

(i) the characteristics of the establishments in the Member States concerned of the recipient companies, including the intent, the sector, the investment, the net turnover and profit or loss, information on the management body and, where applicable, staff, equipment, premises and assets.

(ii) the composition of the balance sheet, the tax residence, the assets and their location and the commercial risks assumed by the company being divided and the companies resulting from the cross-border division in all Member States concerned.

(iii) the number of employees, the habitual places of work of the employees and of specific groups of employees, including where relevant, the number of employees posted, sent or working simultaneously in different Member States in the year prior to the division within the meanings of Regulation (EC) No 883/2004 and Directive96/71/EC, and their countries of destination, the places where social contributions are due, the impact on occupational pensions of employees;

Amendment 287

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 4
4. Member States shall ensure that the independent expert shall be entitled to obtain from the company being divided all relevant information and documents and to carry out all necessary investigations to verify all elements of the draft terms or management reports. The independent expert shall also be entitled to receive comments and opinions from the representatives of the employees of the company, or, where there are no such representatives, employees themselves and also from the creditors and members of the company.

4. Member States shall ensure that competent authority is entitled to obtain from the company being divided all relevant information and documents including any comments on the draft terms submitted in accordance with Article 160c (2), and that it carries out all necessary investigations to verify all elements of the draft terms or the report of the administrative or management body. The competent authority shall furthermore be able to, where necessary, put questions to the competent authority of the Member States of the recipient companies, as well as be entitled to receive further comments and opinions from the representatives of the employees of the company, or, where there are no such representatives, employees themselves and where applicable, from the body established for the purposes of transnational information and consultation in accordance with Directive 2009/38/EC or 2001/86/EC and also from the creditors and members of the company. These shall be attached to the report as appendices.

Amendment 288

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160i – paragraph 5

5. Member States shall ensure that information submitted to the independent expert can only be used for the purpose of drafting the report and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the expert may submit a separate document containing confidential information to the competent authority designated in

5. Member States shall ensure that information and comments submitted to the competent authority can only be used for the purpose of drafting the report and that confidential information, including business secrets, shall not be disclosed in accordance with Union and national law. Where appropriate, the competent authority may produce a separate
**Amendment 289**

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160i – paragraph 6 a (new)

*Text proposed by the Commission*

6a. A company shall not be entitled to complete a cross border division, in cases where the company is subject to ongoing court proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations, if there is a risk that final damages would not be covered in the context of the Union measures for civil justice cooperation and the company has not provided a financial guarantee covering that risk.

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**Amendment 290**

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160i – paragraph 6 b (new)

*Text proposed by the Commission*

6b. Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the reports referred to in this Article, including in respect of any misconduct on their part in the performance of their duties.
Amendment 291

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 1 – point b

Text proposed by the Commission

(b) the independent expert report referred to in Article 160i, where applicable;

Amendment

(b) the application for the assessment of the draft terms of the cross-border division and of the report referred to in Article 160g(1) and, where applicable, the report drawn up by the competent authority in accordance with Article 160g(3), without however disclosing any confidential information in accordance with national and Union law;

Amendment 292

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 1 – point c

Text proposed by the Commission

(c) a notice informing the members, creditors and employees of the company being divided that they may submit, before the date of the general meeting comments concerning the documents referred to in points (a) and (b) of the first subparagraph to the company and to the competent authority designated in accordance with Article 160o(1).

Amendment

(c) a notice informing the members, creditors and representatives of the employees of the company, or, where there are no such representatives, the employees themselves of the company being divided that they may submit, before the date of the general meeting comments regarding the documents referred to in points (a) and (b) of the first subparagraph to the company and to the competent authority designated in accordance with Article 160o(1).

Amendment 293

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 3 – point d
Text proposed by the Commission

(d) details of the website where the draft terms of the cross-border division, the notice and the expert report referred in paragraph 1 and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

Amendment

(d) details of the website where the draft terms of the cross-border division, the notice and the report drawn up by the competent authority referred in paragraph 1 and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge;

Amendment 294

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 3 – point d a (new)

Text proposed by the Commission

(da) information on the ultimate beneficial owners of the company before and after the cross-border division.

Amendment

However, Member States may in cases of genuine suspicion of fraud based on reasonable grounds, require a physical presence before a competent authority.

Amendment 295

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 4 – subparagraph 2

Text proposed by the Commission

However, Member States may where justified by the overriding reason of the public interest to prevent fraud as regards the identity of the person representing the company carrying out a cross-border division, require a physical presence before any competent authority, or before any other person or body dealing with, making or assisting in making the online disclosure.
Amendment 296

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 4 – subparagraph 2 a (new)

Text proposed by the Commission

Member States shall lay down detailed rules for the online disclosure of documents and information referred to in paragraphs 1 and 3. Articles 13ba and 13f(3) and (4) of Directive [on digital tools in company law] shall apply accordingly.

Amendment 297

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 5

Text proposed by the Commission

5. Member States may require in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border division, or the information referred to in paragraph 3, is published in their national gazette. In that instance, Member States shall ensure that the register transmits the relevant information to the national gazettes.

Amendment 298

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160j – paragraph 6 a (new)

5. Member States may require in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border division, or the information referred to in paragraph 3, is published in their national gazette. In that instance, in accordance with the principle of the once-off transmission of information in the Union, Member States shall ensure that the register transmits the relevant information to the national gazettes.
Text proposed by the Commission

Proposed for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160k – paragraph 1

1. After taking note of the reports referred to in Articles 160g, 160h and 160i, where applicable, the general meeting of the company being divided shall decide by means of a resolution, whether to approve the draft terms of cross-border division. The company shall inform the competent authority designated in accordance with Article 160o(1) of the decision of the general meeting.

Amendment 299

Amendment

6a. Member States shall ensure that confidential information, including business secrets, are not disclosed, other than, where applicable under Union and national law, to employee representatives.

Amendment 300

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160k – paragraph 4

4. The general meeting shall also decide whether the cross-border division would

Amendment

4. Where applicable, the general meeting shall also decide on any
necessitate amendments to the instruments of constitution of the company being divided.

Amendment 301

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 1601 – paragraph 1 – point a

Text proposed by the Commission

(a) the members holding shares with voting rights and, who did not vote for the approval of the draft terms of the cross-border division;

Amendment

(a) the members holding shares with voting rights and, who voted against or who did not attend the general meeting but expressed their intention before the meeting to vote against the draft terms of the cross-border division and expressed their intention to make use of the exit right;

Amendment 302

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 1601 – paragraph 1 – point b

Text proposed by the Commission

(b) the members holding shares without voting rights.

Amendment

(b) the members holding shares without voting rights, at the general meeting, expressed their intention to make use of the exit right.

Amendment 303

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 1601 – paragraph 3

Text proposed by the Commission

(3) Member States shall ensure that a

Amendment

(3) Member States shall ensure that a
company being divided makes an offer of adequate cash compensation in the draft terms of the cross-border division as specified in Article 160e(1)(q) to the members, referred to in paragraph 1 of this Article, who wish to exercise their right to dispose of their shareholdings. Member States shall also establish the period for the acceptance of the offer which shall not in any event exceed one month after the general meeting referred to in Article 160k. Member States shall further ensure that a company is able to accept an offer communicated electronically to an address provided by the company for that purpose.

Amendment 304
Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160m – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that creditors, who are dissatisfied with the protection of their interests provided for in the draft terms of the cross-border division, as provided for in Article 160e, may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 160j.

Amendment

2. Member States shall ensure that creditors, whose rights predate the draft terms of the cross-border division and who are dissatisfied with the protection of their interests provided for in the draft terms of the cross-border division, as provided for in Article 160e, and who have lodged their objection before the cross-border division may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 160j.

Amendment 305
Proposal for a directive
Article 1 – paragraph 1 – point 20
Text proposed by the Commission

(b) where creditors are offered a right to payment, either against a third party guarantor, or against the recipient companies, or in case of a partial division against the recipient company and a company being divided, of at least equivalent value to their original claim, which may be brought in the same jurisdiction as their original claim, and which is of a credit quality at least commensurate with the creditor’s original claim immediately after the completion of the division.

Amendment

(b) where creditors are offered a right to payment, either against a third party guarantor, or against the recipient companies, or in case of a division against the recipient company and a company being divided, of at least the actual value of their original claim, which may be brought in the same jurisdiction as their original claim, and which is of a credit quality at least commensurate with the creditor’s original claim.

Amendment 306

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – title

Text proposed by the Commission

Employee participation

Amendment

Employee information, consultation and participation

Amendment 307

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph -1 (new)

Text proposed by the Commission

-1. Where the administrative or management body of the company draws up a plan to carry out a cross-border division, they shall as soon as possible after publishing the draft terms of the cross-border division take the necessary steps, including providing information
about the identity of the participating companies, subsidiaries or establishments concerned, and the number of their employees, to, where applicable, start negotiations with the representatives of the company's employees on arrangements for the involvement of employees in the companies resulting from the cross-border division.

Amendment 308

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 2 – point a

Text proposed by the Commission

(a) provide for at least the same level of employee participation as operated in the company being divided prior to the division, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

Amendment

(a) provide for at least the same level and elements of employee participation as operated in the company being divided prior to the division, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

Amendment 309

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 3 – introductory part

Text proposed by the Commission

3. In the cases referred to in paragraph 2, the participation of employees in the companies resulting from the cross-border division and their involvement in the definition of such rights shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7 of this

Amendment

3. The information, consultation and participation of employees in the companies resulting from the cross-border division and their involvement in the definition of such rights and in the cases referred to in paragraph 2, the participation of employees in the
Article, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

companies resulting from the cross-border division and their involvement in the definition of such rights shall be the object of agreements between the employees and the management of the companies and shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

Amendment 310

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 3 – point b

Text proposed by the Commission

(b) Article 4(1), Article 4(2)(a), (g) and (h), Article 4(3) and Article 4(4);

Amendment

(b) Article 4(1), Article 4(2)(a), (b), (c), (d), (e), (g) and (h), Article 4(3) and Article 4(4);

Amendment 311

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 3 – point e

Text proposed by the Commission

(e) the first subparagraph of Article 7(1);

Amendment

(e) Article 7(1);

Amendment 312

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 3 – point g
Text proposed by the Commission

(g) point (a) of part 3 of the Annex.

Amendment

(g) the Annex, with the exception of points (a) and (b) of Part 3, instead of which the following shall apply as a minimum:

The employees of the company, its subsidiaries and establishments and/or the representative body shall have the right to elect and appoint a number of members of the administrative or supervisory body of the converted company equal to two representatives in companies having more than 50 employees, one third in companies having 250 to 1000 employees and parity in companies with more than 1000 employees.

Amendment 313

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 3 a (new)

Text proposed by the Commission

3a. The level of employee participation agreed in accordance with paragraph 3 shall not be lower than the level applied in the company prior to the division or lower than the level that would apply in the Member States of the recipient companies. That level shall be measured in accordance with paragraph 2.

Amendment 314

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 4
4. When regulating the principles and procedures referred to in paragraph 3, Member States:

(a) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member States of each of the recipient companies;

(b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ of the recipient companies. However, if in the company being divided the employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third;

(c) shall ensure that the rules on participation that applied prior to the cross-border division continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (a) of Part 3 of the Annex.
Amendment 315

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 5

Text proposed by the Commission

5. The extension of participation rights to employees of the recipient companies employed in other Member States, referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

Amendment 316

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 7

Text proposed by the Commission

7. Where the company resulting from the cross-border division is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic merger, division or conversion for a period of three years after the cross-border division has taken effect, by applying, mutatis mutandis, the rules laid down in paragraphs 1 to 6.

Amendment 317

Proposal for a directive
Article 1 – paragraph 1 – point 20

7. Where the company resulting from the cross-border division is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected also in the event of any subsequent cross-border or domestic merger, division or conversion for a period of six years after the cross-border division has taken effect, by applying, mutatis mutandis, the rules laid down in paragraphs 1 to 3.
Directive (EU) 2017/1132
Article 160n – paragraph 7 a (new)

**Text proposed by the Commission**

7a. **Member States shall ensure, in accordance with Article 6 of Directive 2002/14/EC that employee representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties, which have been assigned to them.**

**Amendment 318**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n – paragraph 8 a (new)

**Text proposed by the Commission**

8a. **Where, following the application of paragraph 3 in the case referred to in paragraph 2, the applicable threshold laid down in the law of the Member State of the company being divided is exceeded in the six years following the cross-border division, new negotiations shall be initiated in accordance with the procedure provided for in paragraphs 3 to 8, mutatis mutandis. In such cases, the rules for employee participation shall provide for the same level and elements of employee participation as would have been legally provided for, had the company reached the relevant threshold in the Member State of the dividing company.**

**Amendment 319**

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160n a (new)
Article 160 na

Collective agreements

Following the cross-border division, the companies resulting from the cross-border division shall continue to observe the terms and conditions agreed in any collective agreements on the same terms as were applicable to the company before the division under such agreement, until the date of termination or expiry of the collective agreement or the date of the entry into force or application of other collective agreements, in accordance with Article 3(3) of Council Directive 2001/23/EC.

Amendment 320

Proposal for a directive
Article 1 – paragraph 1 – point 20
 Directive (EU) 2017/1132
 Article 160o – paragraph 1

1. Member States shall designate the national authority competent to scrutinise the legality of the cross-border divisions as regards the part of the procedure which is governed by the law of the Member State of the company being divided, and to issue a pre-division certificate attesting compliance with all relevant conditions, and the proper completion of all procedures and formalities in that Member State.

Amendment 321

Proposal for a directive
Article 1 – paragraph 1 – point 20

1. Member States shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border divisions as regards the part of the procedure which is governed by the law of the Member State of the company being divided, and to issue a pre-division certificate attesting compliance with all relevant conditions, and the proper completion of all procedures and formalities in that Member State.
Directive (EU) 2017/1132
Article 160o – paragraph 2 – point b

Text proposed by the Commission
(b) the reports referred to in Articles 160g, 160h and 160i, as appropriate;

Amendment
(b) the reports referred to in Articles 160g, 160h and 160i, as appropriate including the employees’ opinion and response of the management referred to in Article 160g(4a) and (4b);

Amendment 322

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 3 – subparagraph 2

Text proposed by the Commission
However, in cases of genuine suspicion of fraud based on reasonable grounds, Member States may require a physical presence before a competent authority where relevant information and documents are required to be submitted.

Amendment
However, where justified by the overriding reason of the public interest in the prevention of fraud as regards the identity of the person representing the company carrying out a cross-border division, Member States may require a physical presence before a competent authority where relevant information and documents are required to be submitted.

Amendment 323

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment
Member States shall lay down detailed rules for the on-line disclosure of documents and information referred to in paragraphs 1 and 3. Articles 13ba and 13f(3) and (4) shall apply accordingly.
Amendment 324

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 4

Text proposed by the Commission

4. In respect of compliance with the rules concerning employee participation as laid down in Article 160n, the Member State of the company being divided shall verify that the draft terms of cross-border division referred to in Article 160e include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

Amendment

4. In respect of compliance with the rules concerning employee participation as laid down in Article 160n, the Member State of the company being divided shall verify that the draft terms of cross-border division referred to in Article 160e and the report in Article 160n include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

Amendment 325

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 5 – point c a (new)

Text proposed by the Commission

(cca) whether the cross-border division constitutes an artificial arrangement.

Amendment

Amendment 326

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that competent authorities designated in accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border division.

Amendment

6. Member States shall ensure that competent authorities designated in accordance with paragraph 1 set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields concerned by this Directive and shall,
where appropriate, consult other relevant authorities with competence in the different fields concerned by the cross-border division.

Amendment 327

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 7 – introductory part

Text proposed by the Commission

7. Member States shall ensure that the assessment by the competent authority is carried out within one month of the receipt of the information concerning the approval of the cross-border division by the general meeting of the company. It shall have one of the following outcomes:

Amendment

7. Member States shall ensure that the assessment by the competent authority is carried out within three months of the receipt of the information concerning the approval of the cross-border division by the general meeting of the company. It shall have one of the following outcomes:

Amendment 328

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 7 – point c

Text proposed by the Commission

(c) where the competent authority has serious concerns that the cross-border division constitutes an artificial arrangement referred to in Article 160d(3), it may decide to carry out an in-depth assessment in accordance with Article 160p and shall inform the company about its decision to conduct such an assessment and the subsequent outcome.

Amendment

(c) the competent authority shall not issue a pre-division certificate and carry out an in-depth assessment in accordance with Article 86n, and shall inform the company about its decision and the outcome of the assessment, in any of the following cases:

(i) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement;

(ii) the company is subject to preventive restructuring proceedings initiated
because of the likelihood of insolvency, or is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC, or in Directive 2014/67/EU;

(iii) the company has been convicted in the last three years by a court, or where the company is subject to ongoing court proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations.

Amendment 329

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160o – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The decision to issue a pre-division certificate by the competent authority of the Member State of the company being divided, or any approval by the competent authority in the Member States of the company or companies resulting from the cross-border division, shall not preclude any subsequent procedures or decisions by authorities in the Member States in respect of other relevant fields of law.

Amendment 330

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160p – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure in order

1. Member States shall ensure in order
to assess whether the cross-border division constitutes an artificial arrangement *within the meaning of Article 160d(3) of this Directive*, the competent authority of the company being divided shall carry out an in-depth assessment of all relevant facts and circumstances and shall take into account at a minimum the following: the characteristics of the establishment in the Member States concerned, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member State of that company and Member States of recipient companies.

(a) the characteristics of the establishments in the Member State of the recipient company or companies concerned, including the management body, the staff, the intent, the sector, the investment, the net turnover and profit or loss, the tax residence, the premises, the assets and their location, the composition of the balance sheet and the commercial risks assumed by the company being divided and the recipient companies;

(b) the number and the habitual place of work of the employees and of specific groups of employees, working in the country of recipient company or companies, the number of employees working in another country grouped according to the country of which they work, the number of employees posted in the year prior to the division, within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, and the number of employees working simultaneously in more than one Member State, within the meaning of Regulation (EC) No 883/2004;
(c) the place where social contributions are due;

(d) if the company has chosen to delegate its management to directors, officers or legal representatives, hired from an independent third party through a service contractor.

Those elements may only be considered as indicative factors in the overall assessment and therefore shall not be considered in isolation.

Amendment 331

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160p – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where relevant, the competent authority shall put questions to and receive information from the competent authority of the Member States of the recipient company or companies. The competent authority shall ensure communication with other authorities in that Member State responsible for any of the areas concerned by this Directive.

Amendment 332

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160p – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that the competent authority of the departure Member State shall not issue a pre-division certificate for the cross-border division where it determines, after carrying out an in-depth assessment of
the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement.

Amendment 333

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160r – paragraph 1

Text proposed by the Commission

1. Member States shall designate an authority competent to scrutinise the legality of the cross-border divisions as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed.

Amendment

1. Member States shall designate a court, notary or other authority competent to scrutinise the legality of the cross-border divisions as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed.

Amendment 334

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160r – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, in cases of genuine suspicion of fraud based on reasonable grounds, Member States may require a physical presence before a competent authority of a Member State where relevant information and documents are required be submitted.

Amendment

However, where justified by the overriding reason of the public interest in the prevention of fraud as regards the identity of the person representing the company carrying out a cross-border division Member States may require a physical presence before a competent authority of a Member State or before any other person or body dealing with, making or assisting in making the online disclosure.
Amendment 335

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160r – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Member States shall lay down detailed rules for the online application referred to in paragraph 1 of this Article and in the second subparagraph of Article 86h(4). Article 13f (3) and (4) shall apply accordingly.

Amendment

Article 160r – paragraph 3 – subparagraph 2 a (new)

Amendment 336

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160v

Text proposed by the Commission

Article 160v

Liability of the independent experts

Article 160v

Liability of the independent experts

Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the report referred to in Articles 160i and 160m(2)(a), including in respect of any misconduct on their part in the performance of their duties.

Amendment 337

Proposal for a directive
Article 1 – paragraph 1 – point 20
Directive (EU) 2017/1132
Article 160w – paragraph 1

Text proposed by the Commission

A cross-border division which has taken

I. A cross-border division which has taken
effect in compliance with the procedures transposing this Directive may not be declared null and void.

effect in compliance with the procedures transposing this Directive may not be declared null and void.

**Amendment 338**

Proposal for a directive  
Article 1 – paragraph 1 – point 20  
Directive (EU) 2017/1132  
Article 160w – paragraph 1 a (new)

*Text proposed by the Commission*

1a. However, if during the two years following the date on which the cross-border division takes effect, new information concerning the cross-border division, and suggesting there has been an infringement of any of the provisions in this Directive is brought to the attention of the competent authorities, the competent authorities shall revise their assessment of the facts of the case and shall be empowered to take effective, proportionate and dissuasive penalties in the event of an artificial arrangement.

**Amendment 339**

Proposal for a directive  
Article 3 – paragraph 1

*Text proposed by the Commission*

1. The Commission shall, no later than five years after [OP please insert the date of the end of the transposition period of this Directive], carry out an evaluation of this Directive and present a Report on the findings to the European Parliament, the Council and the European Economic and Social Committee accompanied, where appropriate, by a legislative proposal. Member States shall provide the Commission with the information

*Amendment*

1. The Commission shall, no later than three years after [OP please insert the date of the end of the transposition period of this Directive], carry out an evaluation of this Directive and present a Report on the findings to the European Parliament, the Council and the European Economic and Social Committee accompanied, where appropriate, by a legislative proposal. Member States shall provide the Commission with the information
necessary for the preparation of that report and legislative proposal, in particular by providing data on the number of cross-border conversions, mergers and divisions, their duration and related costs as well as their impact on employment, and on employee information, consultation and participation. They shall also provide data on the number and types of artificial arrangements that were detected and that prevented a cross-border activity from happening.