



**2018/0114(COD)**

1.10.2018

# **AMENDMENTS**

## **17 - 225**

**Draft opinion**

**Anthea McIntyre**

(PE625.383v01-00)

Cross-border conversions, mergers and divisions

Proposal for a directive

(COM(2018)0241 – C8-0167/2018 – 2018/0114(COD))



**Amendment 17**  
**Csaba Sógor**

**Proposal for a directive**  
**Recital -1 (new)**

*Text proposed by the Commission*

*Amendment*

***(-1) Companies play a crucial role in promoting economic growth, creating jobs and attracting investment in the European Union. They help deliver greater economic as well as social value for society at large. To better achieve their potential they should be able to take advantage of the possibilities the Single Market can offer them to develop and grow across national borders. Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies has had a profound impact on the cross border merger activity between Member States by providing a unified general framework for mergers with simplified procedures involving lower costs and shorter times. These advantages should be carried over to the field of cross-border conversions and divisions, too.***

Or. en

**Amendment 18**  
**Jeroen Lenaers**

**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

(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<sup>42</sup>, 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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<sup>42</sup> Judgment of the Court of Justice of 25 October 2017, Polbud – Wykonawstwo, C-106/16, ECLI:EU:C:2017:804, paragraph 29.

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.

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<sup>42</sup> Judgment of the Court of Justice of 25 October 2017, Polbud – Wykonawstwo, C-106/16, ECLI:EU:C:2017:804, paragraph 29.

Or. nl

**Amendment 19**  
**Miroslavs Mitrofanovs**

**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

*Amendment*

(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.

in order to foster economic growth, effective competition and productivity. At the same time, *in the absence of a level playing field in the form of coherent social and fiscal rules, these developments went hand-in-hand with the proliferation of 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*, 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 EU 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. 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.

Or. en

**Amendment 20**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 4**

*Text proposed by the Commission*

(4) These developments in the case-law

*Amendment*

(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.

have opened up new opportunities for companies and firms in the Single Market. 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 the protection of creditors and the protection of shareholders ***and especially social protection (in particular the protection of workers)***. 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.

Or. en

**Amendment 21**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(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 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 protection for stakeholders such as employees, creditors and minority shareholders. ***Loopholes need to be closed and opportunities for abuses related to tax, social security and the***

*rights of different stakeholders, need to be prevented. It is therefore key to reorient the direction taken by the Court of Justice and clarify that it should not be possible for a company to move its registered office without moving their head office in order to carry out a substantial part of its economic activity in the member state of destination.*

Or. en

**Amendment 22**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(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 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 creditors and minority shareholders **and, in particular, employees.**

Or. en

**Amendment 23**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**(6a) It is necessary to clarify the concepts of information and consultation of employees with the objective of reinforcing the effectiveness of dialogue at transnational level, permitting suitable**

*linkage between the national and transnational levels of dialogue and ensuring the legal certainty required for the application of this Directive.*

Or. en

**Amendment 24**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

*(6a) The concepts of information and consultation of employees need to be clarified with the objectives of reinforcing the effectiveness of dialogue at transnational level. The definition of "consultation" should allow for the expression of an opinion to be properly used in the decision-making process.*

Or. en

**Amendment 25**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) The definition of consultation needs to take account of the aim of expressing an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate.*

Or. en



**Amendment 26**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

**(6b) This directive establishes minimum requirements applicable throughout the Member States while allowing and encouraging Member States to provide more favourable protection of employees.**

Or. en

**Amendment 27**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

**(6c) One of the purpose of this directive is to establish minimum requirements applicable throughout the Member States while not preventing Member States from laying down provisions more favourable to employees.**

Or. en

**Amendment 28**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) The right to convert an existing company formed in a Member State into a company governed by another Member

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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, 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.

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. ***Any evaluation of whether such artificial arrangements have been created should be reasoned and objective.*** In so far as it constitutes a derogation from a fundamental freedom, 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.

Or. en

**Amendment 29**  
**Csaba Sógor**

**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

*Amendment*

(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, 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.

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, *after an examination of specific cases and having regard to all relevant facts and circumstances*, are required to ensure that companies do not use the cross-border conversion *through abuse of law or fraudulent act*. In so far as it constitutes a derogation from a fundamental freedom, the fight against abuses must be interpreted strictly and be based on an individual assessment of all relevant circumstances. *In its judgement on the Polbud<sup>1a</sup> case, the European Court of Justice reconfirmed its previous jurisprudence whereby the fact that either the registered office or real head office of a company was established in accordance with the legislation of a Member State for the purpose of enjoying the benefit of more favourable legislation does not, in itself, constitute abuse.* Therefore 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.

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<sup>1a</sup> *Polbud – Wykonawstwo, Case C-106/16, ECLI:EU:C:2017:804.*

Or. en

**Amendment 30**  
**Paloma López Bermejo**

**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, 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*

(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. 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.

Or. en

**Amendment 31**  
**Miroslavs Mitrofanovs**

**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

*Amendment*

(7) ***The right to merge, divide or*** convert an existing company formed in 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**, 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.

Member State into a company governed by another Member State **should never** 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, **as this is the case for example of letterbox companies**. 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, **merger or division** procedure in order to create artificial arrangements aimed, **solely or partially**, at obtaining tax **or social security** advantages or at prejudicing the legal or contractual rights of employees, creditors or members. The fight against abuses must be based on an individual assessment of all relevant circumstances. A **common** procedural and substantive framework which **sets** 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, **whilst describing, where strictly necessary, the margin of discretion allowed for Member States**.

Or. en

## Amendment 32

Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin

### Proposal for a directive

#### Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

**(7a) The concept of establishment within the meaning of the Treaty provisions on freedom of establishment involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period and it presupposes the pursuit of**

*genuine economic activity there. It is therefore appropriate to ensure that the company carrying out the cross-border conversion or the merging companies, in case of a cross-border merger, are required to demonstrate on the basis of ascertainable objective factors, to have a fixed establishment and to pursue genuine and substantial economic activity in the destination Member State for an indefinite period. In order to combat abuses and to avoid the use of cross-border company restructuring processes to create artificial arrangements, it is also necessary to ensure that the companies resulting from cross-border conversions or cross-border mergers have their head office in the destination Member State.*

Or. en

**Amendment 33**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

(9) Given the complexity of cross-border conversions 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 the competent authorities of both the departure and the destination Member State ensure that a decision on the approval of a cross-border conversion 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, members and creditors.

*Amendment*

(9) Given the complexity of cross-border conversions 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 the competent authorities of both the departure and the destination Member State ensure that a decision on the approval of a cross-border conversion 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, members and creditors. ***Member States should also perform an ex-post verification in cases where new***

*information has become available only after the finalisation of the procedure to check the legitimate character of the conversion and take appropriate action in case of irregularities.*

Or. en

**Amendment 34**  
**Jeroen Lenaers**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

(9) Given the complexity of cross-border conversions 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 the competent authorities of both the departure and the destination Member State ensure that a decision on the approval of a cross-border conversion 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, members and creditors.

*Amendment*

(9) Given the complexity of cross-border conversions and the multitude of the interests concerned, it is appropriate to provide for an ex-ante *and ex-post* control in order to create legal certainty. To that effect, a structured and multi-layered procedure should be set out whereby the competent authorities of both the departure and the destination Member State ensure that a decision on the approval of a cross-border conversion 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, members and creditors.

Or. nl

**Amendment 35**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) To allow all stakeholders' legitimate interests to be taken into account

*Amendment*

(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.

in the procedure governing a cross-border conversion, the company should disclose the draft terms of the cross-border conversion containing the 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 **and be given this information in due time** in order that they can submit comments with regard to the proposed conversion.

Or. en

### **Amendment 36** **Jasenko Selimovic**

#### **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 cross-border conversion.

##### *Amendment*

(11) In order to provide information to its members **and the representatives of employees**, the company carrying out the cross-border conversion should prepare a report **in full respect of the autonomy of the social partners. With regard to the interests of members and especially minority shareholders**, 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 cross-border



conversion.

Or. en

**Amendment 37**  
**Paloma López Bermejo**

**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 our cross-border conversion.

*Amendment*

(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 our cross-border conversion *and trade union representatives*.

Or. en

**Amendment 38**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

(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

*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 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

proposed cross-border conversion for employees, ***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 and on the possible options for such arrangements.*** 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 would be any material change in the employment relationships and ***in the application of collective agreements as well as*** the locations of the companies' ***central administration or places of business-places*** of business and how each of these factors would relate to any subsidiaries of the company. The provision of the report should be ***delivered in a timely manner and in such a way as to allow the employees to meet with company representatives, to formulate their opinion and to seek external expert advice*** 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

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**Amendment 39**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

(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 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> Directive 2009/38/EC of the European

*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, ***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 and on the possible options for such arrangements,*** whether there 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. 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

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 (Recast) (OJ L 122, 16.5.2009, p. 28).

Or. en

**Amendment 40**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

(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 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

*Amendment*

(12) In order to provide information to its employees, ***this report*** should ***also explain*** the implications of the proposed cross-border conversion for ***the representatives of the*** employees. ***It*** should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there 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. ***The*** requirement ***for certain specific information*** 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

Or. en

#### **Amendment 41** **Paloma López Bermejo**

#### **Proposal for a directive** **Recital 12**

##### *Text proposed by the Commission*

(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 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

##### *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 would be any material change in the employment relationships, ***on the application of collective agreements*** 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

instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the Council<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

Or. en

## **Amendment 42** **Csaba Sógor**

### **Proposal for a directive** **Recital 12**

#### *Text proposed by the Commission*

(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 would be any material change in the employment relationships and the locations of the companies' places

#### *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. ***In order to avoid duplications, companies may decide to combine this report with the report addressed to the members.*** The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees,

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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup>.

whether there 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<sup>43</sup> or Directive 2009/38/EC of the European Parliament and of the Council<sup>44</sup> ***while not causing any duplication of reporting requirements.***

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

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<sup>43</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>44</sup> 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 (Recast) (OJ L 122, 16.5.2009, p. 28).

Or. en

**Amendment 43**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The freedom of establishment and the development of the internal market are no stand-alone principles or objectives of the EU. 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, embedded 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.***

Or. en

**Amendment 44**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) EU 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 any 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.***

Or. en



**Amendment 45**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 12 c (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 46**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 14**

*Text proposed by the Commission*

*Amendment*

**(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/EC<sup>45</sup>, 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.**

**deleted**

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<sup>45</sup> **Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).**

Or. en

**Amendment 47**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(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.

Or. en

**Amendment 48**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(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.

**Amendment 49**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**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 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 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.*

*Amendment*

(19) *It is a fundamental principle and stated aim of this Directive to secure employees' involvement -rights. In order to reflect the cross-border nature of a companies' conversion, merger or division, national information and consultation rights must be secured. Therefore, in the company resulting from the cross-border conversion and merger at least the same level of all elements of employee involvement rights should continue to apply.*

**Amendment 50**  
**Paloma López Bermejo**

**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 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 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.

*Amendment*

(19) ***It is a fundamental principle and stated aim of this Directive to secure employees' participation rights. Therefore, in the company resulting from the cross border conversion, at least the same level of all elements of employee participation rights should continue to apply.*** 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 ***ensure*** 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.

Or. en

**Amendment 51**  
**Miroslavs Mitrofanovs**

**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 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 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**

*Amendment*

(19) In order to ensure that employee participation is not 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 **to ensure** the employees' rights of **information, consultation and** participation. **The agreement should ensure that at least the same level of all elements of employee involvement as applicable in the company before the conversion, continues to apply.** As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules 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 **information, consultation and** participation rights

years.

through carrying out subsequent domestic or cross-border conversion, merger or division within *ten* years.

Or. en

**Amendment 52**  
**Csaba Sógor**

**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 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 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

*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 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.

conversion, merger or division within **two** years.

Or. en

### **Amendment 53**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

#### **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.***

Or. en

### **Amendment 54**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

#### **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 ensured in all companies resulting from the cross-border conversion or merger.***

Or. en

### **Amendment 55**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**  
**Recital 19 c (new)**

*Text proposed by the Commission*

*Amendment*

***(19c) In order to ensure that employee participation is not 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 continued 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 secure employees' national and transnational information and consultation as well as participation rights. 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. A company should inform its workforce about the results of those negotiations or the application of standard rules as set out in the Annex to Directive 2001/86/EC. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove or lower the participation rights through carrying out subsequent domestic or cross-border conversion, merger or division within 10 years.***

Or. en



**Amendment 56**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

(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.***

*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.

Or. en

**Amendment 57**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

(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***

*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.

*threshold for triggering such employee participation.*

Or. en

#### **Amendment 58**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

#### **Proposal for a directive**

#### **Recital 20**

*Text proposed by the Commission*

(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.

*Amendment*

(20) *A company shall not be allowed to circumvent* employee participation rights by means of a cross-border conversion. The company carrying out a conversion which is registered in *a* 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 *two thirds* of the national threshold for triggering such employee participation.

Or. en

#### **Amendment 59**

**Jasenko Selimovic**

#### **Proposal for a directive**

#### **Recital 20**

*Text proposed by the Commission*

(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

*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.

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 the national threshold for triggering such employee participation.

Or. en

**Amendment 60**  
**Csaba Sógor**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

(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.*

*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 *exceeds 500.*

Or. en

**Amendment 61**  
**Csaba Sógor**

**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 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.

*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 one month of the application by the company, unless it has serious concerns as to the existence of an **intention to abuse law or to commit a fraudulent act**. 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.

Or. en

**Amendment 62**  
**Jeroen Lenaers**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

(22) The issue of the pre-conversion

*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 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 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.

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 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 **five** months of informing the company that the in-depth assessment will be carried out.

Or. nl

**Amendment 63**  
**Csaba Sógor**

**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

*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 and shareholder protection as well as to the lack of simplified procedures which impede the full effectiveness and efficiency of those cross-border merger rules.

certain shortcomings in relation specifically to creditor protection and shareholder protection as well as to the lack of simplified procedures which impede the full effectiveness and efficiency of those cross-border merger rules. ***While no available data could conclusively establish that the employee participation procedure was inefficient, the evaluation revealed that companies considered it too complex and leading to unnecessary costs and delays within the merger.***

Or. en

**Amendment 64**  
**Miroslavs Mitrofanovs**

**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 protection as well as to the lack of simplified procedures which impede the full effectiveness and efficiency of those cross-border merger rules.

*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 ***employee***, creditor and shareholder protection as well as to the lack of simplified procedures which impede the full effectiveness and efficiency of those cross-border merger rules.

Or. en

**Amendment 65**  
**Miroslavs Mitrofanovs**

**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*

(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 ***align the rules for cross-border mergers with those on cross-border conversions and divisions, and 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 members, *creditors* and employees.

Or. en

**Amendment 66**  
**Jasenko Selimovic**

**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-

*Amendment*

(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.

border merger rules should be modified in order to oblige the management or administrative organs of the merging companies to prepare *a detailed report on* the legal and economic aspects of the cross-border merger for both members, *especially minority shareholders*, and for employees *in full respect of the autonomy of the social partners*. The obligation on the management or administrative organ of the company to *provide certain specific information* for the members may however be waived, where those members are already informed about legal and economic aspects of the proposed merger. However, the *requirement to provide certain specific information related to* 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.

Or. en

## **Amendment 67** **Csaba Sógor**

### **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

#### *Amendment*

(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 *shareholders, creditors* and 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.

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.

Or. en

## **Amendment 68** **Jasenko Selimovic**

### **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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC.

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

#### *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, **to be included in the** report, **on** 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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC.

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. en

**Amendment 69**  
**Csaba Sógor**

**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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC.

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

*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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC. ***In order to avoid duplications, companies may decide to combine this report with the report detailing the legal and economic aspects of the cross-border merger.***

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. en

**Amendment 70**  
**Paloma López Bermejo**

**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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC.

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

*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, ***prior to the merge***, 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<sup>48</sup>, Directive 2002/14/EC or Directive 2009/38/EC.

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<sup>48</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. en

**Amendment 71**  
**Agnes Jongerius, Michael Detjen**

**Proposal for a directive**  
**Recital 29 a (new)**

*Text proposed by the Commission*

*Amendment*

***(29a) In order to prevent conflicts of interests between the members of the management body and the interest of the company, they should not be allowed to benefit financially from the merger in the form of variable compensation, bonuses or rising share prices.***

Or. en

**Amendment 72**  
**Miroslavs Mitrofanovs**

**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 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 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.

Or. en

**Amendment 73**  
**Miroslavs Mitrofanovs**

**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

*Amendment*

(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. The

*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, 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.*

fight against abuses must be based on an individual assessment of all relevant circumstances. A **common** procedural and substantive framework which **sets** 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, **whilst describing, where strictly necessary, the margin of discretion allowed for Member States.**

Or. en

#### **Amendment 74** **Csaba Sógor**

#### **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 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

##### *Amendment*

(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 **abuse the law or to commit a fraudulent act.** 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

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.

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.

Or. en

**Amendment 75**  
**Jeroen Lenaers**

**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 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.

Or. nl

**Amendment 76**  
**Jasenko Selimovic**

**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 **in full respect of the autonomy of the social partners. With regard to the interests of members and especially minority shareholders**, 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.

Or. en

**Amendment 77**  
**Jasenko Selimovic**

**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

*Amendment*

(43) In order to provide information to its members **and employees**, the company being divided should prepare a report. **With regard to the interests of members**, 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

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.

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.

Or. en

**Amendment 78**  
**Csaba Sógor**

**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, 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. ***This report should also be made available to the employees of the company.***

Or. en

**Amendment 79**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Evelyn Regner**



**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*

*deleted*

Or. en

**Amendment 80**  
**Jasenko Selimovic**

**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*

*Amendment*

**(44)** *The report should also explain the implications of the proposed cross-border division for employees. It 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*

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.

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.

Or. en

**Amendment 81**  
**Miroslavs Mitrofanovs**

**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*

(44) In order to provide information *to* 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, ***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 and on the possible options for such arrangements***, 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.

Or. en

**Amendment 82**  
**Csaba Sógor**

**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*

(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. ***In order to avoid duplications, companies may decide to combine this report with the report addressed to members.*** 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, ***while not causing any duplication of reporting requirements.***

Or. en

**Amendment 83**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 44**

*Text proposed by the Commission*

(44) In order to provide information its employees, the company being divided

*Amendment*

(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.

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, ***the application of collective agreements*** 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.

Or. en

**Amendment 84**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

***(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*

***deleted***

Or. en

**Amendment 85**  
**Csaba Sógor**

**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 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.

*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 one month of the application by the company has been submitted, unless it has serious concerns as to the existence of an ***intention to abuse the law or to commit a fraudulent act***. 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 informing the company that the in-depth assessment will be carried out.

Or. en

**Amendment 86**  
**Jeroen Lenaers**

**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 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.

*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 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 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 **five** months informing the company that the in-depth assessment will be carried out.

Or. nl

**Amendment 87**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Evelyn Regner**

**Proposal for a directive**

**Recital 55**

*Text proposed by the Commission*

(55) *In order to ensure that employee*

*Amendment*

*deleted*

*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' 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.*

Or. en

**Amendment 88**  
**Miroslavs Mitrofanovs**

**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

*Amendment*

(55) In order to ensure that employee participation is not prejudiced as a result of the cross-border division where the

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' 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.

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' rights of **information, consultation and** participation. **The agreement should ensure that at least the same level of all elements of employee involvement as applicable in the company before the conversion, continues to apply.** As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules 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 **information, consultation and** participation rights through carrying out subsequent domestic or cross-border conversions, mergers or divisions within **10** years.

Or. en

**Amendment 89**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 55**

*Text proposed by the Commission*

(55) In order to ensure that employee

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*Amendment*

(55) In order to ensure that employee

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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' 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.

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Or. en

**Amendment 90**  
**Csaba Sógor**

**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

*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, 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' 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.

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' 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 2 years.

Or. en

## **Amendment 91**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Evelyn Regner**

### **Proposal for a directive**

#### **Recital 56**

*Text proposed by the Commission*

***(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***

*Amendment*

***deleted***

*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.*

Or. en

**Amendment 92**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Recital 56**

*Text proposed by the Commission*

(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*

(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.

Or. en

**Amendment 93**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Recital 56**

*Text proposed by the Commission*

(56) In order to prevent the circumvention of the employee

*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.*

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.

Or. en

**Amendment 94**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Recital 56**

*Text proposed by the Commission*

(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*

(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 the national threshold for triggering such employee participation.

Or. en

**Amendment 95**  
**Csaba Sógor**

**Proposal for a directive**  
**Recital 56**

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*Text proposed by the Commission*

(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*

(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 ***exceeds 500.***

Or. en

**Amendment 96**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1 a (new)**

Directive (EU) 2017/1132

Article 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1) in Title I, Chapter I, the following Article 1a is inserted:***

***“Article 1a***

***Definitions***

***For the purposes of this Directive:***

***(1) "employees' representatives" means the employees' representatives provided for by Union and national law and/or practice;***

***(2) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence***

*on decisions to be taken within the company;*

*(3) "information" means the informing of the representative of the employees and/or employees' representatives by the competent organ of the company on questions which concern the company itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the company;*

*(4) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the company, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the company;*

*(5) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of: the right to elect or appoint some of the members of the company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ;*

*(6) "artificial arrangement" means a company structure set up for abusive purposes or, improperly or fraudulently taking advantage of provisions of Union and national law, such as through the*

*circumvention of legal and contractual rights of employees, creditors', or minority shareholders', avoidance of rules on employee involvement, social security payments or tax obligations normally due on profits generated, through for example through a fictitious establishment or a company with delegated management not carrying out any substantive economic activity supported by staff, equipment, assets and premises, in particular in the case of a 'letterbox' or 'front' company;*

Or. en

**Amendment 97**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

**(1a)** *Within this directive the management or administrative organ is responsible for managing the company in the interests of the company, that is, taking account of the interest of the members, its employees and other stakeholders, with the objectives of sustainable creation of value.*

Or. en

**Amendment 98**  
**Paloma López Bermejo**

*Text proposed by the Commission*

*Amendment*

**(-1) In Title I, Chapter I, the following Article 1 a is inserted:**

**“Article 1a**

**Definitions**

**(1) ‘information’ means the informing of the representative of the employees and/or employees’ representatives at the relevant level by the competent organ of the company on questions which concern the company itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the company;**

**(2) ‘consultation’ means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees’ representatives and the competent organ of the company, at the time in a manner and with the content which allows the employees’ representatives, on the basis of information provided to express an opinion on the measures envisaged and to meet with the Executive management and to obtain a response, and the reasons for that response, to any opinion they might formulate by the competent organ before the final decision is adopted. Executive management shall take into account employee’s opinion in the decision-making process within the company;**

**(3) ‘artificial arrangement’ means a company structure set up for abusive**



*purposes, improperly or fraudulently taking advantage of provisions laid down by law, collective agreements or contracts of, such as the circumvention of rights of employees, creditors', or minority shareholders, avoidance of rules of employee involvement, social security contributions or tax obligations, such as letter-box companies and 'front'-companies not carrying out any substantive economic activity supported by staff, equipment, assets and premises, or aimed at obscuring ownership relations;*

*(4) 'head office' means the place where key management, and commercial decisions that are necessary of the conduct of the entity's business as a whole are in substance taken;”*

Or. en

#### **Amendment 99**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*(1b) After Article 1a, the following Article 1b is inserted:*

*“Article 1b*

*Definitions*

*For the purposes of this Directive*

*(7) 'head office' means the place where key management and commercial decisions that are necessary for the conduct of the company's business as a whole are in substance made.”*

Or. en

**Amendment 100**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article premier – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 a – paragraph 1

*Text proposed by the Commission*

*Amendment*

***1a. The Member State of destination may require a company which is transferring its registered office to its territory to simultaneously relocate its central administration, where this requirement is laid down in national legislation for undertakings established in their territory.***

Or. fr

**Amendment 101**

**Miroslavs Mitrofanovs**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 b – point 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) "information" means the transmission by the employer to the employees and/or employees' representatives at the relevant level, of data which concern the company itself and any of its subsidiaries or establishments situated in another Member State, in order to enable them to acquaint themselves with the subject matter and to examine it. This shall take place at a time, in a manner and with a content which allows the employees and representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the company;***

**Amendment 102**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

**(6a) 'employee participation' means the influence of the employees and/or the employees' representatives in the affairs of a company byway of the right to elect or appoint some of the members of the company' supervisory or administrative organ.**

Or. en

**Amendment 103**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**(6b) 'participation' means the influence of the employees and/or the employees' representatives in the affairs of a company byway of the right to elect or appoint some of the members of the company's supervisory or administrative organ;**

Or. en

**Amendment 104**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**(6c) 'consultation' means the exchange of views and establishment of dialogue between the employees and/or the employees' representatives and the employer, with the employee's opinion being taken into account in the decision-making process within the company. This shall take place at a time, in a manner and with a content which allows the employees and representatives, on the basis of information provided, to express an opinion on the measures envisaged. It shall allow to meet with the Executive management and obtain a reasoned and exhaustive response before the final decision is adopted;**

Or. en

**Amendment 105**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

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

(a) proceedings have been instituted for the winding-up, liquidation, or insolvency of that company; **or genuine suspicion of not paying social security contributions and/or income taxes and/or of infringement of workers' rights.**

Or. en

**Amendment 106**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

***(ea) the company is under investigation, is being prosecuted or has been convicted in the last 3 years for infringements of employment legislation or workers' rights, social or tax fraud, tax evasion, tax avoidance or money laundering or any other financial crime;***

Or. en

**Amendment 107**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

***(ea) disciplinary of administrative action or criminal sanctions and decisions have been taken involving fraudulent practices which are directly relevant to the companies' competences or reliability.***

Or. en

**Amendment 108**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132  
Article 86 c – paragraph 2 – point e b (new)

*Text proposed by the Commission*

*Amendment*

***(eb) the company has a backlog in tax or social security payments;***

Or. en

**Amendment 109**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

***(ec) the company is under investigation, is being prosecuted or has been convicted in the last 3 years for violations of fundamental or human rights;***

Or. en

**Amendment 110**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

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

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.*

artificial arrangement. *Companies carrying out the cross-border conversion shall prove to have a real establishment and to pursue genuine and substantial economic activities in the destination Member State according to the following criteria which needs to be met in an ongoing way:*

*(a) the EBITDA generated by the operations of the company in the destination Member State in the last two fiscal years corresponds at least to 25 % EBITDA generated by the company in the European Union;*

*(b) the company shall have a fixed establishment performing substantial business activities with material premises, a relevant number of permanent employed workers, and a management body that is materially equipped to negotiate business with third parties;*

*The head office of the converted company shall be located on the destination Member State within 5 months from the date on which the cross-border conversion takes effect according to Article 86r;*

Or. en

## **Amendment 111**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 c – 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

#### *Amendment*

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.*

artificial arrangement. *The company carrying out the cross-border conversion shall demonstrate on the basis of ascertainable objective factors, the actual establishment and the pursuit of genuine economic activity in the destination Member State for an indefinite period. The company carrying out the cross-border conversion shall be presumed to have an actual establishment and to pursue genuine economic activity in the destination Member State where it can demonstrate that it has a fixed establishment in that State which has the objective appearance of permanency, has a management body and is materially equipped to negotiate business with third parties so that the latter do not have to deal directly with the parent body, which is abroad, but may transact business at the place of business constituting the establishment.*

Or. en

**Amendment 112**  
**Csaba Sógor**

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

*Amendment*

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 *abuse of law or a fraudulent act.*



*members.*

Or. en

**Amendment 113**  
**Jasenko Selimovic**

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

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, ***on reasoned and objective grounds***, 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.

Or. en

**Amendment 114**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

***3a. The company carrying out the cross-border conversions shall provide substantive information to demonstrate it has an actual establishment and pursues genuine and substantial economic activity***

*in the destination Member State. To this end, at least the following conditions have to be met:*

*(a) the EBIDTA generated by the operations of the company in the destination Member State in the last two fiscal years corresponds at least to 25% EBITDA generated by the company in the European Union;*

*(b) the company shall have a fixed establishment performing substantial business activities with material premises, a relevant number of workers employed on permanent basis, and a management body that is materially equipped to negotiate business with third parties.*

*In any case, the head office of the converted company shall be relocated to the destination Member State within 5 months from the date on which the cross-border conversion takes effect, according to Article 86r.*

Or. en

## **Amendment 115**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 d – 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 management or administrative organ, ***including employee board level representatives***, of the company which intends to carry out a cross-border conversion shall draw up the draft terms of a cross-border conversion. ***If the company is subject to board level employee representation, this board shall be included into the decision on the draft***

*terms in accordance with national law and practice. The draft terms of a cross-border conversion shall include at least the following:*

Or. en

**Amendment 116**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 d – 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 management or administrative organ, ***including employee board level representatives***, 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:

Or. en

**Amendment 117**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 d – 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 management or administrative organ of the company which intends to carry out a cross-border conversion ***not less than two months before the date of the general meeting referred to in Article 86i***.

The draft terms of a cross-border conversion shall include at least the following:

Or. en

**Amendment 118**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point a

*Text proposed by the Commission*

(a) the legal form, name **and** registered office of the company in the departure Member State;

*Amendment*

(a) the legal form, name, **location of the** registered office, of the company in the departure Member State;

Or. en

**Amendment 119**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point d a (new)

*Text proposed by the Commission*

*Amendment*

**(da) detailed information on the transfer of the central administration or principle place of business;**

Or. en

**Amendment 120**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

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

*Text proposed by the Commission*

*Amendment*

**(da)** *new detailed information on the transfer of the head office;*

Or. en

**Amendment 121**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**(da)** *detailed information on the transfer of the head office;*

Or. en

**Amendment 122**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

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

*Text proposed by the Commission*

*Amendment*

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

(h) any **additional salary, bonuses relating to the conversion or other** special advantages granted to members of the administrative, management, supervisory or controlling organ of the converted company;

Or. en

## Amendment 123

Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point i a (new)

*Text proposed by the Commission*

*Amendment*

***(ia) the consequences of the cross-border conversion for the employees, including likely changes to the workforce, its organisation, or to the work description or place of specific posts and the consequences for the employees upholding such posts including its subsidiaries and branches located within the Member States, carrying out a cross-border conversion;***

Or. en

## Amendment 124

Miroslavs Mitrofanovs

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point j

*Text proposed by the Commission*

*Amendment*

(j) the likely repercussions of the cross-border conversion on employment

***(j) the likely repercussions of the cross-border conversion on employment, wage development and company level social dialogue including board level representation of employee representatives***

Or. en

## Amendment 125

Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 d – 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) *the likely repercussions of the cross-border conversion on employment* 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.

Or. en

**Amendment 126**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 d – 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) where *they exist*, 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.

Or. en

**Amendment 127**  
**Miroslavs Mitrofanovs**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132  
Article 86 d – paragraph 1 – point k

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 128**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 129**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 d – 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 European Works Council and 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 should be informed and consulted on the proposed transfer in accordance with Article 4 of Directive 2002/14/EC<sup>1a</sup>.*

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*<sup>1a</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80, 23.3.2002, p. 29–34.*

Or. en

**Amendment 130**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

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 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. ***Members, employees or creditors shall have the possibility to comment on these draft terms. The comments shall be included in the final***

*report and be made public.*

Or. en

**Amendment 131**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

Report of the management or  
administrative organ to the members

*Amendment*

Report of the management or  
administrative organ to the members *and*  
*to the representatives of the employees*

Or. en

**Amendment 132**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

Report of the management or  
administrative organ to the members

*Amendment*

Report of the management or  
administrative organ to the members *and*  
*employees*

Or. fr

**Amendment 133**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

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*

1. The management or administrative organ of the company carrying out the cross-border conversion shall draw up a report explaining and justifying ***to members*** the legal and economic aspects of the cross-border conversion ***and explaining to the representatives of the employees the implications of the cross-border conversion for them.***

Or. en

**Amendment 134**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 1

*Text proposed by the Commission*

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*

1. The management or administrative organ of the company carrying out the cross-border conversion shall draw up a report ***for the members and employees*** explaining and justifying the legal and economic aspects of the cross-border conversion.

Or. fr

**Amendment 135**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) the reasons of the cross-border conversion**

Or. en

**Amendment 136**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) the reason of the conversion;**

Or. en

**Amendment 137**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

**(ca) the implications of the cross-border conversion for the safeguarding of employment relationships;**

Or. fr

**Amendment 138**

**Jasenko Selimovic**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132  
Article 86 e – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) the implications of the cross-border conversion of the safeguarding of employment relationships;***

Or. en

**Amendment 139**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

*Amendment*

***(cb) any material changes in the conditions of employment and in the location of the company's places of business;***

Or. en

**Amendment 140**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

*Amendment*

***(cb) any material changes in the conditions of employment and in the location of the companies' places of business;***

Or. fr

**Amendment 141**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point c c (new)

*Text proposed by the Commission*

*Amendment*

*(cc) whether the factors set out in points (a), (ca) and (cb) affect any subsidiaries of the company.*

Or. fr

**Amendment 142**

**Jasenko Selimovic**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point c c (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 143**

**Miroslavs Mitrofanovs**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The report referred to in paragraph

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.

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, **and to the European Works Council, where applicable.**

Or. en

**Amendment 144**  
**Jasenko Selimovic**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 e–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 ***not less than two months before the date of the general meeting referred to in Article 86i.***

Or. en

**Amendment 145**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

Or. fr

**Amendment 146**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 e – 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 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, to the employees themselves ***and to the trade union representatives in the company.***

Or. en

**Amendment 147**  
**Jasenko Selimovic**



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

*Text proposed by the Commission*

*Amendment*

**3a. 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 *bi* 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.**

Or. en

**Amendment 148**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

*Amendment*

**3a. 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 its 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.**

Or. fr

**Amendment 149**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

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.***

***deleted***

Or. en

**Amendment 150**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

*Amendment*

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.

4. However, ***the information referred to in points (b) and (c) of paragraph 1*** shall not be required where all the members of the company carrying out the cross-border conversion have agreed to waive this requirement. ***Where a company carrying out the cross-border conversions and its subsidiaries, if any, have no employees other than those who form part of the management or administrative organ, the information referred to in points (d), (e) and 8f) of paragraph 1 shall not be required.***

Or. en

## Amendment 151

Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – 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 **at least two thirds of** the members of the company carrying out the cross-border conversion have agreed to waive this requirement.

Or. fr

## Amendment 152

Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 4 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**4a. However, where a company carrying out a 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.**

Or. fr

## Amendment 153

Jasenko Selimovic

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a.** *Paragraphs 1 to 4 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.*

Or. en

**Amendment 154**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 e – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

**4b.** *Paragraphs 1 to 4 are without prejudice to the applicable information and consultation rights and procedures instituted at national level in response to the transposition of Directive 2002/14/EC or 2009/38/EC.*

Or. fr

**Amendment 155**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f

*Text proposed by the Commission*

*Amendment*

**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.**

Or. fr

**Amendment 156  
Jasenko Selimovic**

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

*Text proposed by the Commission*

*Amendment*

**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.*

*Justification*

*Article 86f now merged with 86e*

**Amendment 157**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) *the reasons of the cross-border conversion;***

Or. en

**Amendment 158**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) *the reasons for the conversion;***

Or. en

**Amendment 159**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**



Directive (EU) 2017/1132  
Article 86 f – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 160**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

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

*Amendment*

(b) the implications of the cross-border conversion on the safeguarding of employment relationships ***and employee involvement;***

Or. en

**Amendment 161**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 162**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

(c) any material changes in the conditions of employment, ***the application of collective agreements*** and in the location of the company's places of business;

Or. en

**Amendment 163**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

(c) any material changes in the conditions of employment, ***including through collective agreements***, and in the location of the company's places of business;

Or. en

**Amendment 164**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

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

*Text proposed by the Commission*

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

*Amendment*

(d) whether the factors set out in points (a), (b) and (c) also relate to any subsidiaries, ***branches or controlled undertakings according to Article 3 of Directive 2009/38/EC*** of the company.

Or. en

**Amendment 165**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

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

*Amendment*

(d) whether the factors set out in points (a), (b) and (c) also relate to any subsidiaries, ***branches or controlled undertakings*** of the company ***according to Article 3 of Directive 2009/38/EC***.

Or. en

**Amendment 166**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

***(da) 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;*

Or. en

**Amendment 167**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

*(da) 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;*

Or. en

**Amendment 168**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

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

*Text proposed by the Commission*

*Amendment*

*(da) information on the procedures by which arrangements for the information, consultation and participation rights of employees in the resulting converted company are determined in accordance with the provisions of this directive;*

**Amendment 169**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point d b (new)

*Text proposed by the Commission*

*Amendment*

*(db) the implications of the cross-border conversion on the future business of the company and on the managements strategic plan;*

Or. en

**Amendment 170**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point d b (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 171**

**Miroslavs Mitrofanovs**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132  
Article 86 f – paragraph 2 – point d b (new)

*Text proposed by the Commission*

*Amendment*

***(db) the rights and remedies available to members opposing the conversion in accordance with Article 86j;***

Or. en

### **Amendment 172**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point d c (new)

*Text proposed by the Commission*

*Amendment*

***(dc) the rights and remedies available to members opposing the conversion;***

Or. en

### **Amendment 173**

**Paloma López Bermejo**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 2 – point d c (new)

*Text proposed by the Commission*

*Amendment*

***(dc) the implications of the cross-border conversions for members;***

Or. en

### **Amendment 174**

**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

***(dd) the rights and remedies available to members opposing the conversion in accordance with Article 86j;***

Or. en

**Amendment 175**  
**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin**

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

*Text proposed by the Commission*

*Amendment*

***2a. Before the management or administrative organ decides on the report to the members, 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 transfer in accordance with Article 4 of Directive 2002/14/EC<sup>1a</sup>.***

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***<sup>1a</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ L 80, 23.3.2002, p. 29–34.***

Or. en

## Amendment 176

Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – 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 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.

#### *Amendment*

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to **the European Works Council and** 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 **trade unions represented in the company, as well as to the** members of the company carrying out the cross-border conversion.

Or. en

## Amendment 177

Paloma López Bermejo

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – 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 representatives of the employees **of** the company carrying out the cross-border conversion or, where there are no such representatives, to the

#### *Amendment*

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the **European Works Council, the** representatives of the employees **and the trade unions in** the company carrying out the cross-border



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.

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.

Or. en

### **Amendment 178**

**Miroslavs Mitrofanovs**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – 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 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.

#### *Amendment*

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 ***and to the European Works Council, where applicable***, 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.

Or. en

### **Amendment 179**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132  
Article 86 f – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The European Works Councils, where applicable, the national employee' representation bodies and the trade unions represented in the company shall have appropriate resources to conduct a thorough analysis on the report.**

Or. en

**Amendment 180**  
**Paloma López Bermejo**

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

*Text proposed by the Commission*

*Amendment*

**3a. The European Works Councils, where applicable, the national employee' representation bodies and the trade unions represented in the company shall have appropriate resources to conduct a thorough analysis on the report.**

Or. en

**Amendment 181**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**3a. The European Works Councils, where applicable, the national employee**

*representation bodies and the trade unions represented in the company shall have appropriate resources to conduct a thorough analysis on the report.*

Or. en

#### **Amendment 182**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 4

#### *Text proposed by the Commission*

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.

#### *Amendment*

4. The management or administrative organ of the company carrying out the cross-border conversion ***requests to submit*** an opinion from the representatives of their employees ***within one month*** 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.

Or. en

#### **Amendment 183**

**Miroslavs Mitrofanovs**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 4 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***4a. The executive management or the administrative organ of the company which intends to carry out the cross-border conversion, shall provide a***

*motivated and written response to the employee opinion before the date of the general meeting referred to in Article 86i.*

Or. en

**Amendment 184**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a.** *The executive management or the administrative organ of the company which intends to carry out the cross-border conversion, shall provide a motivated response on the opinion provided by employee before the date of the general meeting referred to in Article 86i.*

Or. en

**Amendment 185**

**Miroslavs Mitrofanovs**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 5

*Text proposed by the Commission*

*Amendment*

**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.*

*deleted*

**Amendment 186**

**Csaba Sógor**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5a. In order to avoid duplications, companies may decide to combine the report referred to in paragraph 1 with the report referred to in Article 86e.**

Or. en

**Amendment 187**

**Csaba Sógor**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 f – paragraph 6

*Text proposed by the Commission*

*Amendment*

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.

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, **while not causing any duplication of reporting requirements.**

Or. en

**Amendment 188**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

Article 86g  
Examination by *an independent expert*

*Amendment*

Article 86g  
Examination by *the competent authority*

Or. fr

**Amendment 189**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

Article 86g  
Examination by *an independent expert*

*Amendment*

Article 86g  
Examination by independent *experts*

Or. en

**Amendment 190**  
**Jeroen Lenaers**

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

*Text proposed by the Commission*

1. 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

*Amendment*

1. Member States shall ensure that the company carrying out the cross-border conversion applies not less than *five* 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.

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.

Or. nl

#### **Amendment 191**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – paragraph 1 – point 3

#### *Text proposed by the Commission*

1. 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*

1. 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 an assessment of*** 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.

Or. fr

#### **Amendment 192**

**Jasenko Selimovic**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g– paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that the company carrying out the cross-border conversion applies not less than two

#### *Amendment*

1. 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.

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 *report* referred to in *Article 86e*, subject to the *provisions* set out in paragraph 6 of this Article.

Or. en

### **Amendment 193**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

The application *to the competent authority* shall be accompanied by the following

Or. fr

### **Amendment 194**

**Paloma López Bermejo**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – paragraph 1 – subparagraph 2 – point a

#### *Text proposed by the Commission*

(a) the draft terms of the cross-border conversion referred to in Article 86d;

#### *Amendment*

(a) the draft terms of the cross-border conversion referred to in Article 86d; ***The related information of the financial and social security authorities shall be included in the report; The report shall be drafted in cooperation with the social partners; Information of workers***



*representatives shall be declared confidential by the expert; The part of the report which contains information declared as trade secrets shall be put in a separate document which shall not be published;*

Or. en

*Justification*

*That information of workers representatives that they shall be declared confidential is for the protection of them. The separation of trade secrets should avoid, that the whole report is declared confidential and that this is used as excuse that the whole report can therefore not be published.*

**Amendment 195**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

(b) the **reports** referred to in Articles 86e **and 86f**.

*Amendment*

(b) the **report** referred to in Articles 86e.

Or. en

**Amendment 196**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

2. The competent authority shall appoint **an** independent **expert** within **five working days** from the application referred

*Amendment*

2. The competent authority shall appoint **two** independent **experts** within **one month** from the application referred to

to in paragraph 1 and the receipt of the draft terms and reports. ***The expert*** shall be independent from the company carrying out the cross-border conversion ***and may be a natural or a legal person depending upon the law of the departure Member State***. 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.

in paragraph 1 and the receipt of the draft terms and reports. The ***experts shall be appointed on the basis of a pre-selected list that was specifically established for the purpose of assessing cross-border conversions. 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 their 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 company applying for the conversion.***

***The experts*** shall be independent from the company carrying out the cross-border conversion . Member States shall take into account, in assessing the independence of the ***experts***, the framework established in Articles 22 ***to22b*** of Directive 2006/43/EC. ***In addition:***

- (a) the experts or the legal person on whose behalf they are operating, shall not have performed work, in whatever capacity, for the company applying for the conversion 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.***

Or. en

#### **Amendment 197**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

*Text proposed by the Commission*

2. The competent authority shall **appoint** an independent expert within five working days from the application referred to in paragraph 1 and the receipt of the draft terms and reports. The expert shall be independent from the company carrying out the cross-border conversion and may be a natural or a legal person depending upon the law of the departure Member State. 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. ***If it considers it necessary***, the competent authority shall ***be free to seek the assistance of*** an independent expert within five working days from the application referred to in paragraph 1 and the receipt of the draft terms and reports. The expert shall be independent from the company carrying out the cross-border conversion and may be a natural or a legal person depending upon the law of the departure Member State. 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.

Or. fr

**Amendment 198**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

2. The competent authority shall appoint an independent expert within five working days from the application referred to in paragraph 1 and the receipt of the draft terms and **reports**. The expert shall be independent from the company carrying out the cross-border conversion and may be a natural or a legal person depending upon the law of the departure Member State. 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 appoint an independent expert within five working days from the application referred to in paragraph 1 and the receipt of the draft terms and **report**. The expert shall be independent from the company carrying out the cross-border conversion and may be a natural or a legal person depending upon the law of the departure Member State. 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 199**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – paragraph 3

*Text proposed by the Commission*

3. ***The expert*** shall draw up a written report providing at least:

*Amendment*

3. ***Where there is reasonable doubt as to the real reason for a cross-border conversion, the competent authority*** shall draw up a written report providing at least:

Or. fr

**Amendment 200**

**Miroslavs Mitrofanovs**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – 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

*Amendment*

(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:

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.

- (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,
- (ii) ***the number of employees working in the country of destination, 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 conversion 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 converted company in the destination Member State and the departure Member State,
- (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.***

Or. en

**Amendment 201**  
**Paloma López Bermejo**

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

Or. en

**Amendment 202**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**3a.** *Whenever relevant, the independent experts shall ask questions to and receive information from the competent authority of the destination Member State. The competent authority shall ensure communication between the independent expert and other authorities in that Member State responsible for any of the areas touched upon by this Directive.*

Or. en

### **Amendment 203**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – paragraph 4

*Text proposed by the Commission*

*Amendment*

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.

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 and to carry out all necessary investigations to verify all elements of the draft terms or management reports. The ***competent authority*** 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.

Or. fr

### **Amendment 204**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 g – 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 ***the*** 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 ***gathered by the competent authority*** can only be used for the purpose of drafting ***its*** report and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the ***competent authority*** 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.

Or. fr

**Amendment 205**  
**Paloma López Bermejo**

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

Or. en



## *Justification*

*SMEs and micro-enterprises should not be excluded because there can be real and artificial structures of holdings, or of branches which have a high grade of cross-border activities like construction and the transport sector to create Special subsidise to circumvent the requirement of the rules. Means the protection of all stakeholders.*

### **Amendment 206**

**Csaba Sógor**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 g – 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*

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

Or. en

### **Amendment 207**

**Jasenko Selimovic**

#### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 h – paragraph 1 – point b

#### *Text proposed by the Commission*

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

#### *Amendment*

(b) the independent expert report referred to in Article 86g, where applicable, **and without disclosing any confidential information**;

Or. en

**Amendment 208**  
**Paloma López Bermejo**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 h – 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 employees ***and/or trade unions which have members in the company carrying*** 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).

Or. en

**Amendment 209**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

*Amendment*

***(ca) Member States shall ensure that information regarding the publication of the notice referred to in point (c) is also made available by a general announcement in a suitable place in the company carrying out the cross-border conversion.***

Or. en

## **Amendment 210**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 h a (new)

*Text proposed by the Commission*

*Amendment*

***After Article 86h, the following Article 86ha is inserted:***

#### ***Article 86ha***

##### ***Approval by the employees***

***After taking note of the reports referred to in Articles 86e, 86f and 86g, the representatives of the employees of the company carrying out the cross-border conversion or, if there are no representatives, the employees themselves, shall decide, by simple majority, whether to approve the draft terms of the cross-border conversion. In case the representatives of the employees or, where applicable, the employees themselves, reject the draft terms, the general meeting of the company shall not proceed to vote on the resolution referred to in Article 86i.***

Or. en

## **Amendment 211**

**Paloma López Bermejo**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 i – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. After taking note of the reports referred to in Articles 86e, 86f and 86g, where applicable, the general meeting of

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.

the company carrying out the conversion shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion. ***Before a decision is taken, any preceding applicable information and consultation rights have to be met in such a way and at such a time that an opinion by the employee representatives can be taken into consideration.*** The company shall inform the competent authority designated in accordance with Article 86m(1) of the decision of the general meeting.

Or. en

**Amendment 212**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

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.

*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. ***Prior to taking a decision, all applicable information and consultation rights have to be met in a way and at such a time that an opinion by the employees can be taken into consideration.*** The company shall inform the competent authority designated in accordance with Article 86m(1) of the decision of the general meeting.

Or. en

**Amendment 213**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

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.

*Amendment*

1. After taking note of the reports referred to in Articles 86e and 86g, 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.

Or. en

**Amendment 214**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 3**  
Directive (EU) 2017/1132  
Article 86 j – 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 who **voted against** the approval of the draft terms of the cross-border conversion;

Or. fr

**Amendment 215**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

2. Member States shall ensure that the members referred to in paragraph 1, may dispose of their shareholdings, in consideration of **adequate** cash compensation paid, once the cross-border conversion has taken effect in accordance with Article 86r, to one or more of the following:

*Amendment*

2. Member States shall ensure that the members referred to in paragraph 1, may dispose of their shareholdings, in consideration of **appropriate** cash compensation paid, once the cross-border conversion has taken effect in accordance with Article 86r, to one or more of the following:

Or. en

**Amendment 216**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

3. 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.** 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*

3. 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. **Members must express their intention to avail themselves of their exit right before** the general meeting. 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.

Or. fr

**Amendment 217**  
**Jasenko Selimovic**

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

*Text proposed by the Commission*

3. 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. Member States shall further ensure that the company is able to accept an offer communicated electronically to an address provided by the company for that purpose.

*Amendment*

3. Member States shall ensure that a company carrying out a cross-border conversion makes an offer of **appropriate** 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. Member States shall further ensure that the company is able to accept an offer communicated electronically to an address provided by the company for that purpose.

Or. en

**Amendment 218**  
**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

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

*Text proposed by the Commission*

5. Member States shall ensure that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the cash compensation has not been adequately set,

*Amendment*

5. Member States shall ensure that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the cash 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.

is entitled to demand the recalculation of the cash compensation offered before a national court within *15 days* of the acceptance of the offer.

Or. fr

#### **Amendment 219**

**Geoffroy Didier, Anne Sander, Elisabeth Morin-Chartier, Jérôme Lavrilleux**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 k – 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 administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 86h.

#### *Amendment*

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), ***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.

Or. fr

#### **Amendment 220**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 l – title

#### *Text proposed by the Commission*

Article 86l

Employee participation

#### *Amendment*

Article 86l

Employee ***information, consultation and participation***



**Amendment 221**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin, Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 1 a (new)

*Text proposed by the Commission*

*Amendment*

*After Article 86l the following Article 86la is inserted:*

*Article 86l a (new) Collective agreements*

*Following the cross-border conversion, the company carrying out the cross-border conversion shall continue to observe the terms and conditions agreed in any collective agreements on the same terms applicable to the company before the conversion under such agreements, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.*

Or. en

**Amendment 222**

**Paloma López Bermejo**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*It is a fundamental principle and stated aim of this Article to secure employees' participation rights. Therefore, in the company resulting from the cross border*

*restructuring, at least the same level of all elements of employee participation rights shall continue to apply.*

Or. en

**Amendment 223**  
**Miroslavs Mitrofanovs**

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

*Text proposed by the Commission*

*Amendment*

**1. Without prejudice to paragraph 2, the company resulting from the cross-border conversion shall be subject to the rules in force concerning employee participation, if any, in the destination Member State.**

*deleted*

Or. en

**Amendment 224**  
**Joachim Schuster**

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

*Text proposed by the Commission*

*Amendment*

**1. Without prejudice to paragraph 2, the company resulting from the cross-border conversion shall be subject to the rules in force concerning employee participation, if any, in the destination Member State.**

*deleted*

Or. en

**Amendment 225**

**Michael Detjen, Elena Gentile, Agnes Jongerius, Georgi Pirinski, Edouard Martin,  
Evelyn Regner**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

Article 86 1 – paragraph –1 (new)

*Text proposed by the Commission*

*Amendment*

***-1. Where the management or administrative organs of the participating companies draw 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, concerned subsidiaries or establishments, and the number of their employees, to 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.***

Or. en