



2018/0114(COD)

7.8.2018

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions
(COM(2018)0241 – C8-0167/2018 – 2018/0114(COD))

Committee on Legal Affairs

Rapporteur: Evelyn Regner

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (COM(2018)0241 – C8-0167/2018– 2018/0114(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0241),
 - having regard to Article 294(2) and Article 50(1) and (2), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0167/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and also the opinions of the Committee on Economic and Monetary Affairs and the Committee on Employment and Social Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Approves its statement annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The Directive (EU) 2017/1132 of the European Parliament and of the Council⁴¹ regulates cross-border mergers of limited liability companies. These rules represent a significant milestone in improving the functioning of the Single Market for companies and firms and to

Amendment

(1) The Directive (EU) 2017/1132 of the European Parliament and of the Council⁴¹ regulates cross-border mergers of limited liability companies. These rules represent a significant milestone in improving the functioning of the Single Market for companies and firms and to

exercise the freedom of establishment. However, evaluation of these rules shows that there is a need for modifications in cross-border merger rules. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions.

⁴¹ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169, 30.6.2017, p. 46).

exercise the freedom of establishment, *as well as to ensure proper protection of all stakeholders*. However, evaluation of these rules shows that there is a need for modifications in cross-border merger rules. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions.

⁴¹ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169, 30.6.2017, p. 46).

Or. en

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

(4) These developments in the case-law have opened up new opportunities for companies and firms in the Single Market in order to foster economic growth, effective competition and productivity. At the same time, the objective of a Single Market without internal borders for companies must also be reconciled with other objectives of European integration such as social protection (in particular the protection of workers), the protection of creditors and the protection of shareholders. Such objectives, in the absence of harmonised rules specifically regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States

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 accordance with Article 3 (3) of the Treaty on the European Union as well as Articles 151 and 152 of the Treaty on the functioning of the European Union, the European Pillar of Social Rights and the EU Charter of Fundamental rights* (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,

provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

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 3

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 ***facilitate*** freedom of establishment ***while*** at the same time ***ensure a strong*** protection for stakeholders such as employees, creditors and minority shareholders.

Or. en

Amendment 4

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 5

Proposal for a directive

Recital 6 b (new)

Text proposed by the Commission

Amendment

(6 b) Timely information, consultation and participation of employees is a prerequisite for the success of the restructuring and adaptations of undertakings to the new conditions created by the single market and the globalisation of the economy.

Or. en

Amendment 6

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 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

(7) The right to convert an existing company formed in a Member State into a company governed by another Member State may ***not under any*** circumstances be used for abusive purposes such as for the circumvention of labour standards, social security payments, tax obligations, creditors', minority shareholders' rights or rules on employees participation ***through for example a fictitious establishment not carrying out any genuine economic activity in the territory of the host Member State, in particular in the case of a 'letterbox' or 'front' subsidiary.*** In order to combat such possible abuses, a general principle of Union law, Member States are required to ensure that ***company conversions and mergers correspond with an actual establishment intended to carry out genuine economic activities in the host Member State and that they*** do not use the cross-border conversion procedure in order to create artificial arrangements ***which do not reflect economic reality and aimed at escaping the tax normally due on***

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.

the profits generated, social security payments and or circumventing or infringing 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.

Or. en

Amendment 7

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) Any derogation from a fundamental right or freedom 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 8

Proposal for a directive Recital 8 a (new)

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

Or. en

Amendment 9

Proposal for a directive Recital 10

Text proposed by the Commission

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

Amendment

(10) To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border conversion, the company 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 a timely manner, and in such a way as to allow them to meet with company representatives and to formulate their opinion*** in order to submit comments with regard to the proposed conversion. ***Employee involvement must respect the standards laid down in Directives 2002/14/EC^{1a} of the European Parliament and of the Council as well as in Directives 2009/38/EC^{1b} and 2001/86/EC^{1c} where relevant.***

^{1a} ***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).***

^{1b} ***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. 28–44).***

^{1c} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22–32).

Or. en

Amendment 10

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, 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 ***as well as, where relevant, the European Works Council.***

Or. en

Amendment 11

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

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, ***information on the procedures***

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 Council⁴³ or Directive 2009/38/EC of the European Parliament and of the Council⁴⁴.

⁴³ 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).

⁴⁴ 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).

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 Council⁴³ or Directive 2009/38/EC of the European Parliament and of the Council⁴⁴.

⁴³ 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).

⁴⁴ 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 12

Proposal for a directive Recital 13

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 13

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/EC⁴⁵, should be exempted from the requirement to produce an independent expert report. However, these companies can resort to an independent expert report to prevent litigation costs with creditors.

deleted

⁴⁵ 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 14

Proposal for a directive Recital 15

Text proposed by the Commission

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. *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.*

(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 15

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.*

Or. en

Amendment 16

Proposal for a directive

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19 a) 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 17

Proposal for a directive

Recital 19 b (new)

Text proposed by the Commission

Amendment

(19 b) 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 18

Proposal for a directive

Recital 19 c (new)

Text proposed by the Commission

Amendment

(19 c) 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^{1a}, 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^{1b} should apply, mutatis mutandis. A company shall 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^{1c}. 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.

^{1a} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22–32).

^{1b} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22–32).

^{1c} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22–32).

Or. en

Amendment 19

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 20

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***

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. ***In order to assess the accuracy of the information contained in the draft terms of conversion and in the reports addressed to the members and employees and to provide factual elements necessary to assess whether the proposed conversion constitutes an artificial arrangement, the competent authority should be required to assess the proposed cross-border conversion or merger. In this context, the company should present all relevant information to enable the competent authority in the departure Member State***

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.

to take an informed decision as to whether or not to issue the pre-conversion certificate. To this end, the authority should be able to obtain all the relevant company information and documents and carry out all necessary investigations in order to gather all the evidence required. The competent authority of the departure Member State may also in this regard ask questions to the competent authority in the Member State of destination. The authority should use information, in particular 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 security contributions or tax obligations are due and the commercial risks assumed by the converted company in the destination Member State and the departure Member State, in accordance with Union law and the law of Member States. However, in order to protect any confidential information, including business secrets of the company, such information should not be made publically available, but should nevertheless be at the disposal, under confidentiality requirements, to the competent authority as well as employee representatives. The competent authority shall also, before the pre-conversion certificate is issued, verify that final arrangements have been concluded as regards any applicable employee participation rights in accordance with national law and practice.

Or. en

Amendment 21

Proposal for a directive Recital 22 a (new)

(22 a) The competent authority of the departure Member State should decide on the issue of the pre-conversion certificate within three months of the application by the company, unless it has concerns as to the existence of an artificial arrangement. 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 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 objective 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. en

Amendment 22

Proposal for a directive Recital 23

(23) After having received a pre-conversion certificate, and after verifying that the incorporation requirements in the destination Member State are fulfilled, the competent authorities of the destination Member State should register the company in the business register of that Member State. Only after this registration should the competent authority of the departure Member State strike the company off its

(23) After having received a pre-conversion certificate, and after verifying that the incorporation requirements in the destination Member State are fulfilled, the competent authorities of the destination Member State should register the company in the business register of that Member State. Only after this registration should the competent authority of the departure Member State strike the company off its

own register. It should **not** be possible for the competent authority of the destination Member State to **challenge** the accuracy of the information provided by the pre-conversion certificate. As a consequence of the cross-border conversion, the converted company should retain its legal personality, its assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions.

own register. It should be possible for the competent authority of the destination Member State to **submit questions to the competent authority in the Member State of departure as to** the accuracy of the information provided by the pre-conversion certificate, **in particular to avoid an artificial arrangement. The competent authority of the Member State of departure shall reply to such questions without undue delay.** As a consequence of the cross-border conversion, the converted company should retain its legal personality, its assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions.

Or. en

Amendment 23

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 **the protection of employees, creditors and shareholders** 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 24

Proposal for a directive

Recital 36

Text proposed by the Commission

Amendment

(36) *The existing Union law does not provide for a legal framework for cross-border divisions of companies and firms, since Directive (EU) 2017/1132 only provides rules in Chapter III for domestic divisions of public limited companies.* **deleted**

Or. en

Amendment 25

Proposal for a directive Recital 37

Text proposed by the Commission

Amendment

(37) *The European Parliament has called upon the Commission to adopt harmonised rules on cross-border divisions. This harmonised legal framework would further contribute to the removal of restrictions on the freedom of establishment whilst at the same time providing adequate protection for stakeholders such as employees, creditors and members.* **deleted**

Or. en

Amendment 26

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(38) *This directive lays down rules on cross-border divisions, both for partial and full divisions, but only through the formation of new companies. However, this directive does not provide a harmonised framework for cross-border divisions in which a company transfers assets and liabilities to more than one existing company as these instances had been viewed as being very complex,* **deleted**

requiring the involvement of competent authorities from several Member States and entailing additional risks in terms of fraud and the circumvention of those rules.

Or. en

Amendment 27

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(39) *In case of a cross-border division involving newly formed recipient companies, those recipient companies, which are governed by the laws of Member States other than those of the Member State of the company being divided, should be required to comply with the incorporation requirements of those Member States. Such conditions include those related to the disqualification of directors.* **deleted**

Or. en

Amendment 28

Proposal for a directive Recital 40

Text proposed by the Commission

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 aimed at* **deleted**

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.

Or. en

Amendment 29

Proposal for a directive

Recital 41

Text proposed by the Commission

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 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.

deleted

Or. en

Amendment 30

Proposal for a directive Recital 42

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 31

Proposal for a directive Recital 43

Text proposed by the Commission

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*

deleted

division.

Or. en

Amendment 32

Proposal for a directive

Recital 44

Text proposed by the Commission

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.*

deleted

Or. en

Amendment 33

Proposal for a directive

Recital 45

Text proposed by the Commission

Amendment

(45) *In order to ensure the accuracy of the information contained in the draft terms of division and in the reports addressed to the members and employees and to provide factual elements necessary to assess whether the proposed division constitutes an artificial arrangement which could not be authorised, an*

deleted

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

Or. en

Amendment 34

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

(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

deleted

independent expert.

Or. en

Amendment 35

Proposal for a directive

Recital 47

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 36

Proposal for a directive

Recital 48

Text proposed by the Commission

Amendment

(48) It is appropriate that members who held voting rights and who did not vote to approve the draft terms of the cross-border division and those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should be able to leave the company and receive cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered and also the share exchange ratio where they wish to remain members of any of the recipient companies before a court. As part of those proceedings, the court should be able to order any company involved in the cross-border

deleted

division either to pay additional cash compensation or to issue additional shares.

Or. en

Amendment 37

Proposal for a directive Recital 49

Text proposed by the Commission

Amendment

(49) *The company being divided should propose in the draft terms adequate means to protect creditors in view of the cross-border division. In addition, in order to strengthen the protection of creditors in case of insolvency following the cross-border division, Member States should be allowed to require the company to make a declaration stating that it is not aware of any reason why the converted company should not be able to meet its liabilities. Member States should be able to make management organ personally liable for the accuracy of the statement. Since legal traditions vary among Member States with regard to solvency declarations and their possible consequences, it should be up to Member States to draw appropriate consequences of false or misleading declarations, including sanctions and liabilities in compliance with Union law.* **deleted**

Or. en

Amendment 38

Proposal for a directive Recital 50

Text proposed by the Commission

Amendment

(50) *In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the* **deleted**

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

Or. en

Amendment 39

Proposal for a directive

Recital 51

Text proposed by the Commission

Amendment

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

deleted

border-division procedure.

Or. en

Amendment 40

Proposal for a directive

Recital 52

Text proposed by the Commission

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

deleted

Or. en

Amendment 41

Proposal for a directive Recital 53

Text proposed by the Commission

Amendment

(53) After having received a pre-division certificate, and after verifying that the incorporation requirements of the Member State of the recipient company or companies are fulfilled, the authorities of the Member States of the recipient companies should register the companies in the business registers of that Member State. Only after this registration should the competent authority of the Member State of the company being divided strike the company off its own register. The accuracy of the information provided by the pre-division certificate cannot be challenged by the competent authorities of the Member States of the recipient companies.

deleted

Or. en

Amendment 42

Proposal for a directive Recital 54

Text proposed by the Commission

Amendment

(54) As a consequence of the cross-border division, the assets and liabilities of the company being divided shall be transferred to the recipient companies in accordance with the allocation specified in the draft terms of division and the members of the company being divided shall become members of the recipient companies or remain members of the company being divided or shall become members of both.

deleted

Or. en

Amendment 43

Proposal for a directive Recital 55

Text proposed by the Commission

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.

deleted

Or. en

Amendment 44

Proposal for a directive Recital 56

Text proposed by the Commission

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.*

deleted

Or. en

Amendment 45

Proposal for a directive

Recital 58

Text proposed by the Commission

Amendment

(58) The provisions of this Directive do not affect the legal or administrative provisions, including the enforcement of tax rules in cross-border conversions, mergers **and divisions**, of national law relating to the taxes of Member States, or its territorial and administrative subdivisions.

(58) The provisions of this Directive do not affect the legal or administrative provisions, including the enforcement of tax rules in cross-border conversions **and** mergers of national law relating to the taxes of Member States, or its territorial and administrative subdivisions.

Or. en

Amendment 46

Proposal for a directive

Recital 60

Text proposed by the Commission

Amendment

(60) Since the objectives of this Directive, to facilitate and regulate cross-border conversions, mergers **and divisions** cannot be sufficiently achieved by the

(60) Since the objectives of this Directive, to facilitate and regulate cross-border conversions **and** mergers cannot be sufficiently achieved by the Member

Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

Or. en

Amendment 47

Proposal for a directive

Recital 61

Text proposed by the Commission

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

Amendment

(61) This Directive respects the fundamental rights and the principles recognised in the Charter of Fundamental Rights of the European Union, *notably the freedom to conduct a business (Article 16), the workers' right to information and consultation within the undertaking (Article 24), the right of collective bargaining and action (Article 28), the protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), the right to an effective remedy and to a fair trial (Article 47) and has to be implemented in accordance with those rights and principles.*

Or. en

Amendment 48

Proposal for a directive

Recital 63

Text proposed by the Commission

(63) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European

Amendment

(63) The Commission should carry out an evaluation of this Directive. *It should in particular examine its impact on the exercise of workers' rights, notably*

Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016⁵² that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures.

⁵² OJ L123, 12.5. 2016, p. 1.

employee involvement rights. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016⁵² that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures.

⁵² OJ L123, 12.5. 2016, p. 1.

Or. en

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point -1

Directive (EU) 2017/1132

Article 1 a (new)

Text proposed by the Commission

Amendment

(-1) before Article 1 the following Article - 1 (a) is inserted:

Article 1 a (new)

Interest of the company

The management or administrative organ of a company assumes full responsibility for managing the company in the best interests of the company, meaning that it considers the needs of the shareholders, the employees and other stakeholders, with the objective of sustainable value creation.

Or. en

Amendment 50

Proposal for directive

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

Directive (EU) 2017/1132

Article 1 b (new)

(- 2) after Article 1 the following Article 1 (a) new is inserted:

Article 1 a (new)

Definitions

For the purposes of this Directive:

(1) 'limited liability company' in Title II Chapter I and Chapter II referred to as "company", means

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

(b) in Title II Chapter II a company with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and that is subject, under the national law governing it, to conditions concerning guarantees such as are provided for by Section 2 of Chapter II of Title I and Section 1 of Chapter III of Title I for the protection of the interests of members and others;

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

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

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

(5) 'register' means the central, commercial or companies register

referred to in Article 16(1);

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

(7) 'merger by acquisition' in Title II Chapter I shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

(8) 'merger by the formation of a new company' in Title II Chapter I shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute

their assets to their shareholders.

(9) 'merger' in Title II Chapter II means an operation whereby:

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

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

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

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

(10) "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;

(11) "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;

(12) "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;

(13) "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.

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

a fictitious establishment not carrying out any substantive economic activity supported by staff, equipment, assets and premises, in particular in the case of a 'letterbox' or 'front' subsidiary.

Or. en

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86a – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86b

Text proposed by the Commission

Amendment

Article 86b

deleted

Definitions

For the purposes of this Chapter:

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

(2) *'cross-border conversion' means an operation whereby a company, without*

being dissolved, wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of a company of a destination Member State and transfers at least its registered office into the destination Member State whilst retaining its legal personality;

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

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

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

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

Or. en

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86c – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(c a) the company is subject to proceedings related to social fraud or infringements of workers' rights or there is a suspicion that such fraud or infringements have taken place;

Or. en

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(d a) the company is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC^{1a} of the European Parliament and of the Council, or in Directive 2014/67/EU of the European Parliament and of the Council.^{1b}

^{1a} Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68.

^{1b} Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’), OJ L 159, 28.5.2014, p. 11–

Amendment 56**Proposal for a directive****Article 1 – paragraph 1 – point 3**

Directive (EU) 2017/1132

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

*Text proposed by the Commission**Amendment*

(d b) Without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights, any of the directors of the company are subject to disciplinary proceedings, criminal sanctions or have been disqualified as directors in any Member State in which the company has operations. In this regard, the following shall be considered :

i. convictions or ongoing prosecutions for a criminal offence, in particular offences under the laws governing banking, financial, securities, insurance activities, or concerning securities markets or financial or payment instruments, including laws on money laundering, corruption, market manipulation, or insider dealing and usury;

ii. offences of dishonesty, fraud or financial crime;

iii. tax offences; and

iv. other offences under legislation relating to companies, bankruptcy, insolvency, labour law or consumer protection;

v. other relevant current or past measures taken by any regulatory or professional body for non-compliance with any relevant provisions governing banking, financial, securities, or insurance activities.

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86c – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86c – paragraph 3

Text proposed by the Commission

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

Amendment

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. *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 59

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86d – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. The 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. *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 60

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86d – 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 61

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(d a) detailed information on the transfer of the central administration or principle place of business;

Or. en

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86d – paragraph 1 – point h

Text proposed by the Commission

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 63

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(i a) 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 64

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86d – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

(k) *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 65

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. 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 of

Article 4 of Directive 2002/14/EC^{1a}.

^{1a} 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 66

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86e – paragraph 3

Text proposed by the Commission

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

Amendment

3. The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the members not less than two months before the date of the general meeting referred to in Article 86i. That report shall also, *at the same time*, be made similarly available 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 *and the trade unions of the company*.

Or. en

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86e – 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 68

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86f – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

(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 69

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86f – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

(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 70

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132
Article 86f – 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 **or branches** of the company;

Or. en

Amendment 71

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 72

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(d b) The implications of the cross-border conversion on the future business of the company and on the managements strategic plan;

Or. en

Amendment 73

Proposal for a directive

Article 1 – paragraph 1 – point 3

PE625.524v01-00

52/90

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

Text proposed by the Commission

Amendment

(d c) The rights and remedies available to members opposing the conversion;

Or. en

Amendment 74

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

Text proposed by the Commission

Amendment

2 a. 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^{1a}.

^{1a} 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 75

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86f – 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 76

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86f – 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 77

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – title

PE625.524v01-00

54/90

PR\1159406EN.docx

Text proposed by the Commission

Amendment

Article 86g

Article 86g

Examination by *an independent expert*

Examination by *the competent authority*

Or. en

Amendment 78

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

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 that authority to* 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. en

Amendment 79

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

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

The application for the *assessment* shall be accompanied by the following:

Or. en

Amendment 80

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 2

Text proposed by the Commission

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 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.

deleted

Or. en

Amendment 81

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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

3. After consulting third parties with a reasoned interest in the conversion of the company, the competent authority shall draw up a written report providing at least:

Or. en

Amendment 82

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall ensure that the ***competent authority*** 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 ***competent authority*** shall ***furthermore be able to, where necessary, ask questions to the competent authority of the destination Member State, as well as*** 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. en

Amendment 83

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 5

Text proposed by the Commission

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

Amendment

5. Member States shall ensure that information submitted to the ***competent authority*** can only be used for the purpose of drafting their report and that confidential information, including business secrets, shall not be disclosed, ***other than to employee representatives*** in accordance with ***national law and practice.***

Or. en

Amendment 84

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86g – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 85

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 g a (new)

Text proposed by the Commission

Amendment

Article 86 g a (new)

Non-preclusion

The decision to issue a pre-conversion certificate by the competent authority of the departure state or any approval by the equivalent authority in the destination state shall not preclude any subsequent procedures or decisions by authorities in those states in respect of for instance taxation.

Or. en

Amendment 86

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86h – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) a notice informing the members, creditors and employees of the company **or trade unions** 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 87

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86h – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 88

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86i – paragraph 1

Text proposed by the Commission

1. After taking note of the reports 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

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. **Before a decision is taken, the employee representatives in**

designated in accordance with Article 86m(1) of the decision of the general meeting.

the company must have been informed and consulted, in a timely manner which allowed for the opinion of the employees to be taken into account in accordance with Directive 2002/14/EC^{1a}, and where applicable Directives 2009/98/EC^{1b} and 2001/86/EC^{1c}. The company shall inform the competent authority designated in accordance with Article 86m(1) of the decision of the general meeting.

^{1a} 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.

^{1b} Commission Directive 2009/98/EC of 4 August 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include boric oxide as an active substance in Annex I thereto, OJ L 203, 5.8.2009, p. 58–61.

^{1c} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22–32.

Or. en

Amendment 89

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

Text proposed by the Commission

Article 86l
Employee participation

Amendment

Article 86l
Employee *information, consultation and* participation

Or. en

Amendment 90

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph -1 a (new)

Text proposed by the Commission

Amendment

- 1a. 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

Amendment 91

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply, where the company carrying out the conversion has, in the six months prior to the publication of the draft terms of the cross-border conversion as referred to in Article 86d of this Directive, an average number of employees equivalent ***to four fifths*** of the applicable threshold, laid down in the law of the departure Member

2. However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply, where the company carrying out the conversion has, in the six months prior to the publication of the draft terms of the cross-border conversion as referred to in Article 86d of this Directive, an average number of employees equivalent ***two thirds*** of the applicable threshold, laid down in the law of the departure Member State,

State, which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law of the destination Member State does not:

which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law of the destination Member State does not:

Or. en

Amendment 92

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 93

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. ***The information, consultation and participation of employees in the converted company and their involvement in the definition of such rights and Iin.*** In the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, mutatis mutandis and subject to paragraphs

and the following provisions of Directive 2001/86/EC:

4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

Or. en

Amendment 94

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 95

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 3 – point g

Text proposed by the Commission

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

Amendment

(g) the Annex.

Or. en

Amendment 96

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 4

Text proposed by the Commission

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

Amendment

4. When regulating the principles and procedures referred to in paragraph 3, Member States shall ensure that the rules on employee participation that applied

prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (a) of Part 3 of the Annex.

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

(b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ of the converted company. However, if in the company carrying out the conversion employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third;

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

Or. en

Amendment 97

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 98

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7 a. Member States shall ensure, in accordance with Article 6 of Directive 2002/14/EC^{1a} that employee's representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

^{1a} 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 99

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8 a. *Member States shall provide for appropriate measures in the event of non-compliance with the provisions in this Article by the converting company. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Article to be enforced.*

Or. en

Amendment 100

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 8 b (new)

Text proposed by the Commission

Amendment

8 b. *Member States shall also provide for adequate sanctions to be applicable in the event of infringement of this Article by the converting company. These sanctions must be effective, proportionate and dissuasive.*

Or. en

Amendment 101

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86l – paragraph 8 c (new)

Text proposed by the Commission

Amendment

8 c. *As soon as following the applicability of Art. 86l (3) in the first case*

referred to in paragraph 2, a threshold of the departure member state is exceeded new negotiations need to be initiated according to the following provisions of this article. Different from Art. 86l (5) the standard rules refer to the level of employee participation that would be legally foreseen for the company in the country of origin above the threshold if the company had not undergone the cross-border conversion.

Or. en

Amendment 102

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86m – paragraph 1

Text proposed by the Commission

1. Member States shall designate the authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the departure Member State and to issue a pre-conversion certificate attesting compliance with all the relevant conditions and the proper completion of all procedures and formalities in the departure Member State.

Amendment

1. Member States shall designate the ***court, notary or other*** authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the departure Member State and to issue a pre-conversion certificate attesting compliance with all the relevant conditions and the proper completion of all procedures and formalities in the departure Member State.

Or. en

Amendment 103

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86m – paragraph 3 – subparagraph 2

Text proposed by the Commission

However, in cases of ***genuine*** suspicion of fraud based on reasonable grounds Member States may require a physical

Amendment

However, in cases of suspicion of fraud based on reasonable grounds Member States may require a physical presence

presence before a competent authority where relevant information and documents are required to be submitted.

before a competent authority where relevant information and documents are required to be submitted.

Or. en

Amendment 104

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86m – paragraph 7 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 105

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86m – paragraph 7 – point c

Text proposed by the Commission

(c) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement **referred to in Article 86c(3), it may decide to** carry out an in-depth assessment in accordance with Article 86n and shall inform the company about its decision to conduct such an assessment and of the subsequent outcome.

Amendment

(c) where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement, **it shall** carry out an in-depth assessment in accordance with Article 86n and shall inform the company about its decision to conduct such an assessment and of the subsequent outcome.

Or. en

Amendment 106

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86n – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure in order to assess whether the cross-border conversion constitutes an artificial arrangement, that the competent authority of the departure Member State carries out an in-depth assessment of all relevant facts and circumstances and shall take into account at a minimum the following: the characteristics of the establishment in the destination Member State, including the 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.

Or. en

Amendment 107

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86n – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that where the competent authority referred to in paragraph 1 decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article

Amendment

2. Member States shall ensure that where the competent authority referred to in paragraph 1 decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article

86h(1)(c) in accordance with national law. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-conversion certificate within *two* months from the start of the in-depth assessment.

86h(1)(c) in accordance with national law. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-conversion certificate within *five* months from the start of the in-depth assessment.

Or. en

Amendment 108

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86p – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 109

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86p – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Member State where relevant information and documents are required to be submitted.

State where relevant information and documents are required to be submitted.

Or. en

Amendment 110

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 s a (new)

Text proposed by the Commission

Amendment

Article 86 sa (new)

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

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

Or. en

Amendment 111

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86t

Text proposed by the Commission

Amendment

Article 86t

deleted

Liability of the independent experts

Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the reports referred to in Articles 86g and 86k(2)(a), including in

respect of any misconduct on their part in the performance of their duties.

Or. en

Amendment 112

Proposal for a directive

Article 1 – paragraph 1 – point 3 a (new)

Directive (EU) 2017/1132

Article 89

Text proposed by the Commission

Amendment

3a. Article 89 is deleted.

Or. en

Amendment 113

Proposal for a directive

Article 1 – paragraph 1 – point 3 b (new)

Directive (EU) 2017/1132

Article 90

Text proposed by the Commission

Amendment

3b. Article 90 is deleted.

Or. en

Amendment 114

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive (EU) 2017/1132

Article 119

Text proposed by the Commission

Amendment

(4) *in* Article 119, *point (2)* is amended as follows:

(4) Article 119 is *deleted*.

(a) *at the end of point (c) the following is added "; or";*

(b) *the following point (d) is added:*

‘(d) one or more companies, on being dissolved without going into liquidation,

transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their shares in the same proportion in all merging companies.; ’

Or. en

Amendment 115

Proposal for a directive

Article 1 – paragraph 1 – point 4 a (new)

Directive (EU) 2017/1132

Article 90

Text proposed by the Commission

Amendment

(4a) In Article 120, paragraph 2 is deleted.

Or. en

Amendment 116

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 120 – paragraph 4 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the company is subject to proceedings related to social fraud or infringements of workers’ rights or there is a suspicion that such fraud or infringements have taken place;

Or. en

Amendment 117

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 120 – paragraph 4 – point b b (new)

Text proposed by the Commission

Amendment

(b b) the company is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council, or;

Or. en

Amendment 118

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive (EU) 2017/1132

Article 120 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(d a) Without prejudice to the presumption of innocence applicable to criminal proceedings, and other fundamental rights, any of the directors of the company are subject to disciplinary proceedings, criminal sanctions or have been disqualified as directors in any Member State in which the company has operations. In this regard, the following shall be considered :

i. convictions or ongoing prosecutions for a criminal offence, in particular offences under the laws governing banking, financial, securities, insurance activities, or concerning securities markets or financial or payment instruments, including laws on money laundering, corruption, market manipulation, or insider dealing and usury;

ii. offences of dishonesty, fraud or financial crime;

iii. tax offences; and

iv. other offences under legislation relating to companies, bankruptcy, insolvency, or consumer protection;

v. other relevant current or past measures taken by any regulatory or professional

body for non-compliance with any relevant provisions governing banking, financial, securities, or insurance activities.

Or. en

Amendment 119

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive (EU) 2017/1132

Article 122

Text proposed by the Commission

(7) Article 122 is amended as follows:

Amendment

(7) Article 122 is amended as follows:

First subparagraph is replaced by the following;

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

(a) Point (a) is replaced by the following:

(a) ‘the legal form, name and location of the registered offices of the merging companies and those proposed for the company resulting from the cross-border merger;

(b) The following point is added after (a):

(a a new) where relevant, detailed information on the transfer of the central administration or principle place of business:’

(c) The following point is added after (d):

‘(d a new) comprehensive figures about the workforce of the company including its subsidiaries and branches located within the Member States, carryin out a cross-border merger;’

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

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

(b) following points (m) and (n) are added:

"(m) details of the offer of cash compensation for members opposing the cross-border merger in accordance with Article 126a;

(n) details of the safeguards offered to creditors.";

(c) the following second subparagraph is added:

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

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

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

point (j) is replaced by the following:

‘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 company resulting from the cross-border merger are determined pursuant to Article 133;’

(e) following points (m) and (n) are added:

"(m) details of the offer of cash compensation for members opposing the cross-border merger in accordance with Article 126a;

(n) ***details of the safeguards offered to creditors.***";

(f) the following second subparagraph is added:

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

The following subparagraph is added:

2. Before the management or administrative organ decided on the draft terms of a cross-border merger, the

representatives of the employees and the European Works Council carrying out the cross-border merger or, where there are no such representatives, the employees themselves and the trade unions represented should be informed and consulted on the proposed merger in accordance with Article 4 of Directive 2002/14/EC.

Or. en

Amendment 120

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 123 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 121

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The report shall be made available, at least electronically, to the members of each of the merging companies not less than one month before the date of the general meeting referred to in Article 126. The report shall also ***at the same time*** be made similarly available to ***the European Works Council***, the representatives of the employees of each of the merging companies, or where there are no such representatives, to the employees themselves ***and the trade unions***

meeting of the acquiring company in accordance with Article 126(3), the report shall be made available, at least one month before the date of the general meeting of the other merging company or companies.

represented. However, where the approval of the merger is not required by general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available, at least one month before the date of the general meeting of the other merging company or companies.

Or. en

Amendment 122

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 123

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 124

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132
Article 124a – paragraph 2 – point c

Text proposed by the Commission

(c) any material changes in the conditions of employment and in the locations of the companies' places of business;

Amendment

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

Or. en

Amendment 125

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) information on the procedures by which arrangements for the information, consultation and participation rights of employees in the resulting company following the cross-border merger, in accordance with the provisions of this Directive;

Or. en

Amendment 126

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

(d) whether the factors set out in points (a), (b), **(c) and (c a new)** also relate to any **branches or** subsidiaries of the merging companies.

Or. en

Amendment 127

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 – subparagraph 1

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 each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

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 of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the ***trade unions represented as well as to the*** members of each of the merging companies.

Or. en

Amendment 128

Proposal for a directive

Article 1 – paragraph 1 – point 11

Directive (EU) 2017/1132

Article 125 – paragraph 1

Text proposed by the Commission

(11) ***in*** Article 125(1), the following second subparagraph is added:

Amendment

(11) Article 125(1) is ***amended as follows***:

(a) ***the first paragraph is replaced by the following***:

1. An independent expert report intended for members but also submitted for information to employee representatives, and made available not less than one month before the date of the general meeting referred to in Article 126 shall be drawn up for each merging company. Depending on the law of each

Member State, such experts may be natural persons or legal persons.

(b) the following second subparagraph is added:

"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.";

"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, ***as well as whether any tax advice is already provided for the merging companies by the independent expert or their employer.***";

Or. en

Amendment 129

Proposal for a directive

Article 1 – paragraph 1 – point 14 – point a
Directive (EU) 2017/1132
Article 127 – paragraph 1

Text proposed by the Commission

(a) in paragraph, 1, the following subparagraphs are added:

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

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

Amendment

(a) in paragraph, 1, the following subparagraphs are added:

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

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

Or. en

Amendment 130

Proposal for a directive

Article 1 – paragraph 1 – point 15 – point b

Text proposed by the Commission

3. Each Member State shall ensure that the application for the completion of the procedure, referred to in paragraph 1, by any of the merging companies, which includes the submission of any information and documents may be completed online in its entirety without the necessity to appear in person before any competent authority.

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

Amendment

3. Each Member State shall ensure that the application for the completion of the procedure, referred to in paragraph 1, by any of the merging companies, which includes the submission of any information and documents may be completed online in its entirety without the necessity to appear in person before any competent authority.

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

Or. en

Amendment 131

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive (EU) 2017/1132

Article 133

Text proposed by the Commission

(18) Article 133 is amended as follows:

Amendment

(18) Article 133 is amended as follows:

***(-a) The title is changed into:
Employee information, consultation and participation***

(-aa) a new paragraph - 1 (new) is added:

- 1. Where the management or administrative organs of the participating companies draw up a plan to carry out a merger, they shall as soon as possible after publishing the draft terms of mergers 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 merger;

(-ab) Paragraph 2 is amended as follows:

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging companies has, in the six months prior to the publication of the draft terms of the cross-border merger as referred to in Article 123, an average number of employees equivalent two thirds of the applicable threshold, laid down in the law of the departure Member State, which triggers the participation of and is operating under an employee participation system within the meaning of point(k) of Article 2 of Directive 2001/86/EC^{1a}, or where the national law applicable to the company resulting from the cross-border merger does not:

(-ac) Paragraph 3 a is amended as follows:

(a) Article 3(1), (2)(a), (i), 2 (b) and (3), the first indent of the first subparagraph of Article 3(4), the second subparagraph of Article 3(4) and Article 3(5), the third subparagraph of Article 3 (6) and Article 3 (7);

(-ad) Paragraph 3 b is amended as follows:

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

(-ae) Paragraph 3 (e) should read as follows:

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

(-af) Paragraph 3 f is amended as

follows:

(f) Articles 8, 9, 10 and 12;

(-ag) paragraph 3 (h) is amended as follows:

(h) Annex.

(-ah) paragraph 4 is replaced by the following:

When regulating the principles and procedures referred to in paragraph 3, Member States: shall ensure that the rules on employee participation that applied prior to the cross-border merger continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (a) of Part 3 of the Annex.

(a) paragraph 7 is replaced by the following:

"7. Where the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic mergers, divisions or conversions for a period of three years after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.";

(b) the following paragraph 8 is added:

"8. A company shall communicate to its employees whether it chooses to apply standard rules for participation referred to in point (h) of paragraph 3 or whether it enters into negotiations within the special negotiating body. In the latter case the company shall communicate to its employees the outcome of the negotiations without undue delay.";

(a) paragraph 7 is replaced by the following:

"7. Where the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic mergers, divisions or conversions for a period of ten years after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.";

(b) the following paragraph 8 is added:

"8. A company shall communicate to its employees whether it chooses to apply standard rules for participation referred to in point (h) of paragraph 3 or whether it enters into negotiations within the special negotiating body. In the latter case the company shall communicate to its employees the outcome of the negotiations without undue delay.";

(ba) a new paragraph 9 is added:

9. Member States shall provide for appropriate measures in the event of non-

compliance with the provisions in this Article by the company resulting from the cross-border merger. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Article to be enforced.

(bb) a new paragraph 10 is added:

(10) Member States shall also provide for adequate sanctions to be applicable in the event of infringement of this Article by the company resulting from the cross-border merger. These sanctions must be effective, proportionate and dissuasive.

(bc) a new paragraph 11 is added:

8 c (new) As soon as following the applicability of Art. 86l (3) in the first case referred to in paragraph 2, a threshold of the departure member state is exceeded new negotiations need to be initiated according to the following provisions of this article. Different from Article 86l (5) the standard rules refer to the level of employee participation that would be legally foreseen for the company in the country of origin above the threshold if the company had not undergone the cross-border merger.

^{1a} Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22–32.

Or. en

Amendment 132

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

Text proposed by the Commission

Amendment

(20) *In Title II, the following Chapter IV is added:*

deleted

“CHAPTER IV

[...]”

Or. en

Amendment 133

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. The Commission shall, no later than **five** years after [OP please insert the date of the end of the transposition period of this Directive], carry out an evaluation of this Directive and present a Report on the findings to the European Parliament, the Council and the European Economic and Social Committee accompanied, where appropriate, by a legislative proposal. Member States shall provide the Commission with the information necessary for the preparation of that report, in particular by providing data on the number of cross-border conversions, mergers **and divisions**, their duration and related costs.

1. The Commission shall, no later than **three** years after [OP please insert the date of the end of the transposition period of this Directive], carry out an evaluation of this Directive and present a Report on the findings to the European Parliament, the Council and the European Economic and Social Committee accompanied, where appropriate, by a legislative proposal. Member States shall provide the Commission with the information necessary for the preparation of that report, in particular by providing data on the number of cross-border conversions **and** mergers, their duration and related costs.

Or. en

EXPLANATORY STATEMENT

Background of the proposed Directive

The Commission proposal for a Directive as regards cross-border conversions, mergers and divisions was published at the end of April 2018. It was presented together with the Directive as regards the use of digital tools and processes in company law, as the since 2017 awaited „Company Law *Mobility* package“, amending Directive (EU) 2007/1132 relating to certain aspects of company law. The initiatives to revise the Mergers' Directive, to enable cross-border divisions and to consider rules for the transfer of a companies' registered office, were envisaged in the 2012's Commission Action Plan "European Company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies"¹. Since certain aspects of company law were codified and merged 2017 by the Directive (EU) 2017/1132, the proposal introduces a new chapter on cross-border conversions, amends the chapter on cross-border mergers and includes a new chapter on cross-border divisions. While measures for cross-border mergers and division were already foreseen in the Commission Work Programme 2017², the ECJ - ruling *Polbud-Wykonastwo* (C-106/16) made it necessary to reconsider and adapt the Company Law Package in order to include legislation on cross-border conversions. The latest case law settled that the freedom of establishment also includes the right to convert cross-border into another national company law form of another Member State. The European Parliament has called several times to propose a directive for the transfer of a companies' registered office or seat in then past.³

European Court of Justice case law

For 30 years, the European Court of Justice has been ruling through case law corporate mobility of companies, defining whether and to which extend corporate cross-border operations are covered by the freedom of establishment (Art 49, 54 TFEU). With the ground-breaking judgements *Daily Mail and General Trust plc* (C-81/87), followed by *Centros* (C-212/91), *Überseering* (C-208/00), *Inspire Art* (C-167/01), *Cadbury Schweppes* (C-196/04), *Sevic* (C-411/03), *Cartesio* (C-201/06), *VALE* (C-210/06), *National Grid Indus* (C-371/10) the ECJ interpreted in absence of any harmonization of the applicable law and any further secondary law defining rules for cross-border operations, the freedom of establishment. The extensive interpretation led to the result that companies enjoy the freedom to move to another Member State by registration of its firm (letterbox) in another Member States' register, even if they don't have any economic activity in this respect Member State and only do it for the purpose of enjoying the benefit of more favorable legislation.

¹ COM(2012) 740 final.

² COM(2016) 710 final.

³ Lehne - Report with recommendations to the Commission on the cross-border transfer of the registered office of a company(2008/2196(INI)); Regner - Report with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (2011/2046(INI)).

The need to establish clear rules for cross-border corporate operations/movement of companies

Companies are facing difficulties when exercising their rights provided by the freedom of establishment. With regard of corporate mobility, the lack of regulation, clear processes and proper protection of stakeholders has created legal uncertainty for decades, the EU-legislators have been inactive and the ECJ has ruled in the past instead.

The level of harmonization of company law in Europe has been in general low. Member States follow their own national company law approach and the involved Member States don't have appropriate tools to control and evaluate a cross-border operation or safeguard the main stakeholder's interests by their national law when it comes to corporate cross-border mobility. Due to the cross-border nature, strong safeguards and protection for stakeholders need to go along with the rights of companies to move abroad.

The tax scandals of the latest years, since *Swiss Leaks* and *Lux Leaks*, followed by the revelations with *Panama-Papers*, *Bahama Leaks* and *Paradise Papers*, have visualized how companies create cross-border operations and „reconstructing“ measures corporate constructions including artificial arrangements in order to avoid or circumvent national tax law. The creation of artificial arrangements, so-called „letterbox-companies“, „shell-companies“ or „front subsidiaries“ needs to be prevented. Letterbox-companies are artificial creatures of company law, which is therefor the appropriate and best place to tackle their formation as such. They are established by registration in a Member State while conducting its business in other Member states, with the aim to avoid national tax laws, social security contributions, collective agreements, employee participation laws or other national laws affected. In some sectors, e.g. the road transport sector, letterbox-companies with no or very little economic activity in the country of establishment are used frequently with its main objective of sending workers abroad, sometimes even falsely called „posted“.

With the registration of the registered office in another Member State not only the nationality of a company, but also the applicable law and by-laws are changing. Company reconstructing and relocation have an enormous impact on workers' rights, their job situation and contractual rights. Their basis of existence depend on their jobs, which are put in danger when companies restructure and relocate their business. Employees are the most worth protecting stakeholders. They have a genuine interest of sustainability and long-term success of the companies as their jobs depend on the companies' success. In the light of the European Pillar of Social Rights, laws must upheld and strengthen the position and protection of workers and employees.

It is for the co-legislators to act now and set clear procedures and binding rules for cross-border operations of companies with strong safeguards for all stakeholders and protection of employees and their rights.

Main points of the proposed Directive:

The proposed directive complements the fragmented picture of cross-border mobility within the European Single Market. The Commission proposed two new chapters for cross-border company mobility, providing at the same time protection for stakeholders, namely employees, creditors and minority shareholders. Both involved Member States (departure and destination Member State) are involved in the cross-border operation. While the departure Member State

will have to issue a pre-conversion or pre-division certificate in order to scrutinize the cross-border operation, the departure Member States are empowered to scrutinize the legality of the cross-border operation with regard to the part of procedure governed by its national laws.

Conversions

Following *Polbud-Wykonastwo* (C-106/16), the proposal includes a new chapter on cross-border conversion which introduces the procedure for companies to convert across the border into another company law form of this Member State. New rules allow companies to move their seat from the departure Member State to another (destination) Member State within the EU, without losing legal personality, keeping their contracts and exercise their freedom of establishment to move within the internal market. The procedure to convert is accompanied by safeguards for Member States in order to protect the public interest, which includes protection of employees, creditors and minority shareholders.

Mergers

The chapter on cross-border mergers is revised and updated in order to have the same safeguards for creditors and minority shareholders as foreseen for conversions and divisions. Contrarily to cross-border conversions and divisions, workers' involvement rights are untouched and in the result on a lower level as for conversions and divisions.

Divisions

A new chapter for cross-border divisions is proposed which covers the procedure of cross-border divisions of companies which wish to split up into two or more newly created companies. Other divisions are excluded. According to the proposal, stakeholders of the dividing company will enjoy the same rights and protection as foreseen for conversions.

Main points of the rapporteurs' changes:

Avoid artificial arrangements, the so-called „Letterbox-companies“

The most efficient and sustainable way to avoid artificial arrangements is to require genuine economic activity at the place of registration of the company. Therefore, the rapporteur introduces the requirement of genuine economic activity in the Member State where the company moves to. Also the ECJ considered in *Cadbury Schweppes* (C-196/04) that *freedom of establishment requires a stable and continuing basis in the economic life of a Member State other than the state of origin. Therefore, a company cannot invoke freedom of establishment in another Member State for the sole purpose of benefiting from more advantageous legislation unless the establishment in the other member state is intended to carry on genuine economic activity.* According to the ECJ a restriction of freedom of establishment is therefore possible in cases of a 'letterbox' or 'front' subsidiary. This directive needs to prevent any „*Delaware effect*“ and regime arbitrage within the Union. Company mobility should not lead to forum shopping by companies while the effects potentially create tensions between the Member States. Unless, there is no agreement on the real seat approach, where the registered office and the headquarter have to be on the same place, your rapporteur is of the opinion that a requirement of genuine economic activity in the destination Member States can prevent the creation of a letterbox-company through a cross-border operation.

Strengthen Employee involvement

In order to protect employees' interests, especially worker' board level representation, existing under national laws in 17 Member States in different forms, the rapporteur proposes

stronger protection of employee participation, information and consultation rights and complements the correct references on the basis of Directive (EC) 2157/200 and Directive (EC) 2002/14 and others. A cross-border operation of a company should not lead to the loss of acquired rights of workers in Europe.

Simplify the procedure and lower the costs for companies

In respect of the companies' economic interests, the procedures to convert and merge needs to be clear and simple. The competent national authority is responsible to decide on the cross-border operation. It is in its own discretion to require more information and consult an independent expert. The requirement to do so in any case would overload the directive, therefore, the rapporteur is deleting the requirement to consult an independent expert when doing an in-depth assessment and strengthens the information flow between the national authorities.

No added value for divisions

The proposal is only applicable to a small amount of cross-border divisions. Therefore, your rapporteur suggests to delete the chapter on cross-border divisions. In the absence of rules for transferring the seat of a company cross-border, companies made use of national divisions combined with a cross-border merger. Given to create clear rules for cross-border conversions, the added value for a separate chapter for divisions is not proofed.

Clarify of terms and definitions

In order to set legally certain rules and to create a clear procedure for all cross-border conversions and mergers in Europe, the rapporteur clarifies interpretative terms and complements the relevant definitions.