



2018/0114(COD)

25.9.2018

AMENDMENTS

134 - 363

Draft report
Evelyn Regner
(PE625.524v02-00)

Cross-border conversions, mergers and divisions

Proposal for a directive
(COM(2018)0241 – C8-0167/2018 – 2018/0114(COD))

Amendment 134

Daniel Buda

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 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).

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, ***especially with a view to ensuring adequate protection for workers, creditors and minority shareholders***. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions ***with a view to fostering cross-border company mobility, so as to provide a clear, predictable, adequate up-to-date, inclusive and equitable EU legal framework regarding companies***.

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. ro

Amendment 135

Jiří Maštálka, Kostas Chrysogonos

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 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).

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 ***on the one hand and on the protection of key stakeholders on the other***. 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 136
Daniel Buda

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) In order to ensure sound and prosperous companies that offer economic and social added value to the community, the European Union must lay the foundations for a growth-friendly legal and administrative environment adapted to the new economic and social challenges of globalisation and digitisation, while at the same time upholding legitimate public interests such as the protection of employees, creditors

and minority shareholders and giving the authorities the necessary guarantees to counter fraud or wrongdoing.

Or. ro

Amendment 137

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Recital 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 138

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The freedom of establishment and the development of the internal market are no stand-alone principles or objectives of the EU. They should always be balanced with, in particular in the context of this Directive, the Union's principles and objectives regarding social progress, the promotion of a high level of employment and the guarantee of adequate social protection, embedded in Article 3 of the Treaty on the European Union and Article 9 of the TFEU. It is therefore clear that the development of the internal market should contribute to social cohesion and upward social convergence, and should not fuel competition between social systems, putting pressure on those systems to lower their standards.

Or. en

Amendment 139

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) EU policy should also contribute to the promotion and reinforcement of social dialogue, in line with article 151 TFEU. It is therefore also the objective of this Directive to secure employees' information, consultation and participation rights and to ensure that any

cross-border mobility of companies can never lead to the lowering of these rights. Ensuring information, consultation and participation of employees is essential for all such actions to succeed.

Or. en

Amendment 140

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 2 c (new)

Text proposed by the Commission

Amendment

(2c) The freedom of establishment should also in no way undermine the principles regarding the countering fraud and any other illegal activities affecting the financial interests of the Union included in article 310 of the TFEU.

Or. en

Amendment 141

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 3

Text proposed by the Commission

Amendment

(3) In the absence of harmonisation of Union law, the definition of the connecting factor that determines the national law applicable to a company or firm falls, in accordance with Article 54 of the TFEU, within the competence of each Member State to so define. Article 54 of the TFEU places the factor of the registered office, the central administration and the principal

(3) In the absence of harmonisation of Union law, the definition of the connecting factor that determines the national law applicable to a company or firm falls, in accordance with Article 54 of the TFEU, within the competence of each Member State to so define. Article 54 of the TFEU places the factor of the registered office, the central administration and the principal

place of business of a company or firm at the same degree of connection. **Therefore, as clarified in case-law,**⁴² where the Member State of new establishment, namely the destination Member State, requires only the transfer of the registered office as a connecting factor for the existence of a company under its national legislation, the fact that only the registered office (and not the central administration or principal place of business) is transferred does not as such exclude the applicability of the freedom of establishment under Article 49 of the TFEU. The choice of the specific form of company in cross-border mergers, conversions and divisions or the choice of a Member State of establishment are inherent in the exercise of the freedom of establishment guaranteed by the TFEU as part of a Single Market.

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

place of business of a company or firm at the same degree of connection. **Until now, the interpretation provided in the case-law of the Court of Justice**⁴² stated that where the Member State of new establishment, namely the destination Member State, requires only the transfer of the registered office as a connecting factor for the existence of a company under its national legislation, the fact that only the registered office (and not the central administration or principal place of business) is transferred does not as such exclude the applicability of the freedom of establishment under Article 49 of the TFEU. The choice of the specific form of company in cross-border mergers, conversions and divisions or the choice of a Member State of establishment are inherent in the exercise of the freedom of establishment guaranteed by the TFEU as part of a Single Market.

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

Or. en

Amendment 142

Pascal Durand

on behalf of the Verts/ALE Group

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

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, ***in the absence of a level playing field in the form of coherent***

companies must *also* be reconciled with other objectives of European integration such as social protection (*in particular* the protection of workers), the protection of creditors and the protection of shareholders. *Such objectives*, in the absence of harmonised rules specifically regarding cross-border conversions, *are pursued by* Member States *through* a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

social and fiscal rules, these developments went hand-in-hand with the proliferation of letterbox companies and abusive practices, constituting artificial arrangements and circumventing fiscal and social security obligations as well as undercutting workers' rights. The objective of a Single Market without internal borders for companies must be reconciled with other objectives of European integration such as social protection *for all*, the protection of workers' *rights*, the protection of creditors and the protection of shareholders, *as well as the fight against attacks on financial interests of the EU via for example money laundering and tax evasion.* In the absence of harmonised rules specifically regarding cross-border conversions, Member States *have developed* a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

Or. en

Amendment 143

Daniel Buda

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,

Amendment

(4) These developments in the case-law have opened up new opportunities for companies and firms in the Single Market *to step up their business activities* in order

effective competition and productivity. At the same time, the objective of a Single Market without internal borders for companies must also be reconciled with other objectives of European integration such as social protection (in particular the protection of workers), the protection of creditors and the protection of shareholders. Such objectives, in the absence of harmonised rules specifically regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

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 *EU* rules specifically regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices, ***creating an unsatisfactory climate in terms of legal certainty, adversely affecting both companies and stakeholders and Member States.*** As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

Or. ro

Amendment 144

Jiří Maštálka, Kostas Chrysogonos

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

Amendment

(4) These developments in the case-law have opened up new opportunities for companies and firms in the Single Market. At the same time, the objective of a Single Market without internal borders for companies must also be reconciled with other objectives of European integration

companies must also be reconciled with other objectives of European integration such as social protection (in particular the protection of workers), the protection of creditors and the protection of shareholders. Such objectives, in the absence of harmonised rules specifically regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

such as social protection *embedded in Art. 3 (3) TEU, Art. 9 and 151 TFEU, 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, 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 145

Sajjad Karim

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

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 such as 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

regarding cross-border conversions, are pursued by Member States through a number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

number of multifarious legal provisions and administrative practices. As a result, whereas companies are already able to merge cross-border, they experience a number of legal and practical difficulties when wishing to perform a cross-border conversion. Moreover, the national legislation of many Member States provides for the procedure of domestic conversions without offering an equivalent procedure for converting cross-border.

Or. en

Amendment 146
Daniel Buda

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) This leads to legal fragmentation and legal uncertainty, and thus to barriers to the exercise of the freedom of establishment. It also leads to a suboptimal protection of employees, creditors and minority shareholders within the Single Market.

Amendment

(5) This leads to legal fragmentation and legal uncertainty, and thus to barriers to the exercise of the freedom of establishment ***and to the exploration of new opportunities on the internal market, especially for SMEs.*** It also leads to a suboptimal ***and unequal*** protection of employees, creditors and minority shareholders within the Single Market.

Or. ro

Amendment 147
Sajjad Karim

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) This leads to **legal fragmentation and** legal uncertainty, and thus to barriers to the exercise of the freedom of establishment. ***It also leads to a suboptimal protection of employees, creditors and minority shareholders within the Single Market.***

(5) This leads to legal uncertainty, and thus to barriers to the exercise of the freedom of establishment.

Or. en

Amendment 148

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 6

Text proposed by the Commission

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

Amendment

(6) It is appropriate therefore to provide procedural and substantive rules on cross-border conversions which would contribute to the abolition of restrictions on freedom of establishment and provide at the same time adequate protection for stakeholders such as employees, creditors and minority shareholders. ***Loopholes need to be closed and opportunities for abuses related to tax, social security and the rights of different stakeholders, need to be prevented. It is therefore key to reorient the direction taken by the Court of Justice and clarify that it should not be possible for a company to move its registered office without moving their head office in order to carry out a substantial part of its economic activity in the member state of destination.***

Or. en

Amendment 149

Sajjad Karim

Proposal for a directive
Recital 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 150
Daniel Buda

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 ***harmonised EU*** procedural and substantive rules on cross-border conversions which would contribute to the abolition of restrictions on freedom of establishment and ***guarantee*** at the same time ***the right to*** adequate, ***uniform*** and proportionate protection for stakeholders such as employees, creditors and minority shareholders.

Or. ro

Amendment 151
Răzvan Popa

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 **further facilitate** 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.

Or. en

Amendment 152

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) It is necessary to clarify the concepts of information and consultation of employees with the objectives of reinforcing the effectiveness of dialogue at transnational level, permitting suitable linkage between the national and transnational levels of dialogue and ensuring the legal certainty required for the application of this Directive.

Or. en

Amendment 153

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 154
Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) The definition of ‘consultation’ needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as appropriate

Or. en

Amendment 155
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

Amendment

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

employees.

Or. en

Amendment 156

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Recital 6 c (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 157

Sajjad Karim

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***

(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 ***comply with national laws and*** do not use the cross-border conversion procedure in order to create artificial arrangements ***or*** unduly

or at unduly prejudicing the legal or contractual rights of employees, creditors or members. In so far as it constitutes a derogation from a fundamental freedom, the fight against abuses must be interpreted strictly and be based on an individual assessment of all relevant circumstances. A procedural and substantive framework which describes the margin of discretion and allows for the diversity of approach by Member States whilst at the same time setting out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law should be laid down.

prejudice the legal or contractual rights of employees, creditors or members;

Or. en

Amendment 158

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

(7) The right to convert an existing company formed in a Member State into a company governed by another Member State may 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. *Therefore it is a fundamental principle and stated aim of this Directive*

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.

to secure employees' participation rights. This means, that in companies resulting from the cross border conversion, at least the same level of all elements of employee participation rights should continue to apply. The European Court of Justice allows in its case law to set up regulation for the protection of stakeholder interests. 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 159

Emil Radev

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

(7) The right to convert an existing company formed in a Member State into a company governed by another Member State may 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 ***tax abuses or abuses in respect of*** 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

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.

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. bg

Amendment 160

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

(7) The right to **merge, divide or** convert an existing company formed in a Member State into a company governed by another Member State **should never** be used for abusive purposes such as for the circumvention of labour standards, social security payments, tax obligations, creditors', minority shareholders' rights or rules on employees participation, **as this is the case for example of letterbox companies**. In order to combat such possible abuses, a general principle of Union law, Member States are required **to** ensure that companies do not use the cross-border conversion, **merger or division** procedure in order to create artificial arrangements aimed, **solely or partially**, at obtaining tax **or social security** advantages or at prejudicing the legal or contractual rights of employees, creditors or members. The fight against abuses must be based on an individual assessment of all relevant circumstances. A **common** procedural and

substantive framework which *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.

substantive framework which *sets* out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law should be laid down, *whilst describing, where strictly necessary, the margin of discretion allowed for Member States.*

Or. en

Amendment 161

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The concept of establishment within the meaning of the Treaty provisions on freedom of establishment involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period and it presupposes the pursuit of genuine economic activity there. It is therefore appropriate to ensure that the company carrying out the cross-border conversion or the merging companies, in case of a cross-border merger, are required to demonstrate on the basis of ascertainable objective factors, to have a fixed establishment and to pursue genuine and substantial economic activity in the destination Member State for an indefinite period. In order to combat abuses and to avoid the use of cross-border company restructuring processes to create artificial arrangements, it is also necessary to ensure that the companies resulting from cross-border conversions or cross-border mergers have their head office in the destination Member State.

Or. en

Amendment 162

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) For the assessment of an artificial arrangement for tax purposes, competent authorities in the Member States shall take into account at least a number of factors laid down in Commission’s Recommendation of 6 December 2012 (2012/772/EU) on “aggressive tax planning”

Or. en

Amendment 163

Daniel Buda

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

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

(8) The carrying out of a cross-border conversion entails a change of legal form for a company without losing its legal personality **and without the need for renegotiation of business contracts**. However, it should not lead to the circumvention of the requirements for incorporation in the destination Member State. Such conditions, including the requirements to have a head office in the destination Member State and those relating to the disqualification of directors, should be fully respected by the company. However, the application of such conditions by the destination Member State may not affect the continuity of the

which exists in the destination Member State, in accordance with Article 49 of the TFEU.

converted company's legal personality. A company may convert into any *regulated* legal form which exists in the destination Member State, in accordance with Article 49 of the TFEU.

Or. ro

Amendment 164

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 9

Text proposed by the Commission

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

Amendment

(9) Given the complexity of cross-border conversions and the multitude of the interests concerned, it is appropriate to provide for an ex-ante control in order to create legal certainty. To that effect, a structured and multi-layered procedure should be set out whereby the competent authorities of both the departure and the destination Member State ensure that a decision on the approval of a cross-border conversion is taken in a fair, objective and non-discriminatory manner on the basis of all relevant elements and by taking into account all legitimate public interests, in particular, the protection of employees, members and creditors. ***Member States should also perform an ex-post verification in cases where new information has become available only after the finalisation of the procedure to check the legitimate character of the conversion and take appropriate action in case of irregularities.***

Or. en

Amendment 165

Daniel Buda

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 **at the proper time** 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, **without unjustified delay** in order that they can **have sufficient time to** submit comments with regard to the proposed conversion.

Or. ro

Amendment 166

Pascal Durand

on behalf of the Verts/ALE Group

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

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 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.

the conversion. Members, creditors and employees of the company carrying out the cross-border conversion should be notified ***and be given this information in due time*** in order that they can submit comments with regard to the proposed conversion.

Or. en

Amendment 167
Sajjad Karim

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, ***investors*** and employees of the company carrying out the cross-border conversion should be notified in ***a timely manner so*** that they can submit comments with regard to the proposed conversion.

Or. en

Amendment 168
Răzvan Popa

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

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

(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 *due time in order for them to be able to* submit comments with regard to the proposed conversion.

Or. en

Amendment 169
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Recital 11

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 170
Răzvan Popa

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 **detailed** 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.

Or. en

Amendment 171
Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive
Recital 12

Text proposed by the Commission

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

Amendment

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

cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. ***This requirement should not however apply where the only employees of the company are in its administrative organ.*** The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the 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).

cross-border conversion on the safeguarding of the jobs of the employees, ***information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined pursuant to Article 861 and on the possible options for such arrangements,*** whether there would be any material change in the employment relationships ***and on the application on collective agreements*** and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of 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 172
Răzvan Popa

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) In order to provide information to its employees, the company carrying out the cross-border conversion should prepare a report explaining the implications of the proposed cross-border conversion for employees. The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the 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

Amendment

(12) In order to provide information to its employees, the company carrying out the cross-border conversion should prepare a report explaining the implications of the proposed cross-border conversion for employees. The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships, ***in their contractual arrangements*** 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 ***carried out in due time in order for the employees or their representatives to be able to submit their comments*** 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).

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 173

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) In order to provide information to its employees, the company carrying out the cross-border conversion should prepare a report explaining the implications of the proposed cross-border conversion for employees. The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. ***This requirement should not however apply where the only employees of the company are in its administrative organ.*** The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the Council⁴³ or Directive 2009/38/EC of the European Parliament and of the Council⁴⁴.

Amendment

(12) In order to provide information to its employees, the company carrying out the cross-border conversion should prepare a report explaining the implications of the proposed cross-border conversion for employees. The report should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, ***information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined and on the possible options for such arrangements,*** whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directive 2002/14/EC of the European Parliament and of the 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).

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 174

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) In order to provide information to its employees, ***the company carrying out the cross-border conversion*** should ***prepare a report explaining*** the implications of the proposed cross-border conversion for employees. ***The report*** should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. The provision of ***the report*** should be without prejudice to the applicable information and

Amendment

(12) In order to provide information to its employees, ***this report*** should ***also explain*** the implications of the proposed cross-border conversion for employees. ***It*** should explain in particular the implications of the proposed cross-border conversion on the safeguarding of the jobs of the employees, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would relate to any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. The provision of ***this information*** should be without prejudice to the applicable information and consultation proceedings instituted at national level following the

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 .

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).

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).

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 175 **Răzvan Popa**

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

Text proposed by the Commission

Amendment

(12a) The detailed report intended for the employees should be made available for the European Parliament, the works council of the departure Member State and the European Works Council.

Or. en

Amendment 176 **Pascal Durand**

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on behalf of the Verts/ALE Group

Proposal for a directive
Recital 13

Text proposed by the Commission

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

Amendment

(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, the competent authority, following an application by the company, ***should appoint two experts from a pre-selected list, that have no past or current link with the company concerned and are paid a pre-set fee by the company. The experts should not work for the same firm and should together have expertise in the fields of company law, taxation and fiscal law, social security and workers' rights. The independent experts should be appointed within one month following the application by the company and should deliver their report within two months after their appointment.*** 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 ***experts*** should be able to obtain all the relevant company information and documents, ***meet with employees and employee representatives***, and carry out all necessary investigations in order to gather all the evidence required. The ***experts*** 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.

Or. en

Amendment 177

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 13

Text proposed by the Commission

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

Amendment

(13) ***The competent national authorities shall be able*** to assess the accuracy of the information contained in the draft terms of conversion and in the reports addressed to the members and employees. ***Where the competent authority consider, based on reasonable grounds, that there is a risk that the cross-border conversion represents*** an artificial arrangement ***it shall draw up a*** report in order to assess the proposed cross-border conversion ***with all necessary factual elements provided*** by the company. ***In such case, the authority can have recourse to an independent expert.*** In this context, the report should ***contain*** all relevant information to enable the competent authority in the departure Member State to take an informed decision as to whether or not to issue the pre-conversion certificate. To this end, the ***competent authority*** should be able to obtain all the relevant company information, ***such as*** net turnover and profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States, ***and documents and carry out all necessary investigations in order to gather all the evidence required.*** However, in

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.

order to protect any confidential information, including business secrets of the company, such information should not form part of the final report which itself would be publically available.

Or. en

Amendment 178
Sajjad Karim

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 179
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 14

Text proposed by the Commission

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

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).

Amendment

(14) With a view to avoiding disproportionate costs and burdens for smaller companies carrying out the cross-border conversion, ***Member States can set lower procedural and independent expert fees for*** micro and small enterprises, as defined in the Commission Recommendation 2003/361/EC⁴⁵.

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 180

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

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

Amendment 181

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

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

Amendment 182

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 16

Text proposed by the Commission

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

Amendment

(16) It is appropriate that those members who held voting rights and who ***voted against or were unable to attend the general meeting but expressed their intention before the meeting to vote against the approval of*** the draft terms of conversion and those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should

Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.

be able to leave the company and receive cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.

Or. en

Amendment 183
Daniel Buda

Proposal for a directive
Recital 16

Text proposed by the Commission

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

Amendment

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

Or. ro

Amendment 184
Daniel Buda

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) The company carrying a cross-

Amendment

(17) The company carrying a cross-

border conversion should also set out in the draft terms of conversion measures to ensure the protection of creditors. In addition, in order to strengthen the protection of creditors in the case of insolvency of the company following the cross-border conversion, Member States should be allowed to require the company to make a declaration of solvency stating that it is not aware of any reason why the converted company should not be able to meet its liabilities. In those circumstances, Member States should be able to make the members of the management organ personally liable for the accuracy of that declaration. As legal traditions vary amongst Member States with regard to the use of solvency declarations and their possible consequences, it should be up to Member States to draw appropriate consequences for inaccurate or misleading declarations, including effective and proportionate sanctions and liabilities in compliance with Union law.

border conversion should also set out in the draft terms of conversion measures to ensure the *adequate* protection of creditors. In addition, in order to strengthen the protection of creditors in the case of insolvency of the company following the cross-border conversion, Member States should be allowed to require the company to make a declaration of solvency stating that it is not aware of any reason why the converted company should not be able to meet its liabilities *following the cross-border conversion*. In those circumstances, Member States should be able to make the members of the management organ personally liable for the accuracy of that declaration. As legal traditions vary amongst Member States with regard to the use of solvency declarations and their possible consequences, it should be up to Member States to draw appropriate consequences for inaccurate or misleading declarations, including effective and proportionate sanctions and liabilities in compliance with Union law.

Or. ro

Amendment 185
Jiří Maštálka, Kostas Chrysogonos

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

Amendment

(19) ***It is a fundamental principle and stated aim of this Directive to secure employees' participation rights. Therefore, in the company resulting from the cross border conversion, at least the same level of all elements of employee participation rights should continue to apply.*** In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border conversion,

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.

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 ***fundamental principle to secure employees' participation rights***. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply, mutatis mutandis. 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 ***ten*** years.

Or. en

Amendment 186

Pascal Durand

on behalf of the Verts/ALE Group

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-

Amendment

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

border conversion is operating under an employee participation system in the departure Member State, the company should be obliged to take a legal form allowing for the exercise of such participation, including through the presence of representatives of the employees in the appropriate management or supervisory organ of the company in the destination Member State. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place, along the lines of the procedure provided for in *Directive 2001/86/EC*, with a view to finding an amicable solution *reconciling the right of the company to carry out a cross-border conversion with* the employees' rights of participation. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules *as set out in the Annex to Directive 2001/86/EC* should apply, mutatis mutandis. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out subsequent domestic or cross-border conversion, merger or division within *three* years.

conversion is operating under an employee participation system in the departure Member State, the company should be obliged to take a legal form allowing for the exercise of such participation, including through the presence of representatives of the employees in the appropriate management or supervisory organ of the company in the destination Member State. Moreover, in such a case, a bona fide negotiation between the company and its employees should take place, along the lines of the procedure provided for in *Directive 2001/86/EC*, with a view to finding an amicable solution *to ensure* the employees' rights of *information, consultation and* participation. *The agreement should ensure that at least the same level of all elements of employee involvement as applicable in the company before the conversion, continues to apply.* As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, the application of standard rules should apply, mutatis mutandis. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the *information, consultation and* participation rights through carrying out subsequent domestic or cross-border conversion, merger or division within *ten* years.

Or. en

Amendment 187

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) In order to prevent the

Amendment

(20) In order to prevent the

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

circumvention of employee participation rights by means of a cross-border conversion, the company carrying out a conversion which is registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border conversion without first entering into negotiations with its employees or their representatives.

Or. en

Amendment 188
Răzvan Popa

Proposal for a directive
Recital 20

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 189

Sajjad Karim

Proposal for a directive

Recital 20

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 190

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border conversions, both the departure and the destination Member States should designate the appropriate competent authorities. In particular, the competent authorities of the departure Member States should have the power to issue a pre-conversion certificate without which the competent authorities in the destination Member State should not be

Amendment

(21) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante *and ex-post* control of cross-border conversions, both the departure and the destination Member States should designate the appropriate competent authorities. In particular, the competent authorities of the departure Member States should have the power to issue a pre-conversion certificate without which the competent authorities in the destination Member State should not be

able to complete the cross-border conversion procedure.

able to complete the cross-border conversion procedure. *A list of national competent authorities in the Member States shall be prepared and published by the Commission. Member States' competent authorities are expected to collaborate together in cases of cross-border conversions.*

Or. en

Amendment 191

Răzvan Popa

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border conversions, both the departure and the destination Member States should designate the appropriate competent authorities. In particular, the competent authorities of the departure Member States should have the power to issue a pre-conversion certificate *without* which the competent authorities in the destination Member State should *not* be able to complete the cross-border conversion procedure.

Amendment

(21) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border conversions, both the departure and the destination Member States should designate the appropriate competent authorities. In particular, the competent authorities of the departure Member States should have the power to issue a pre-conversion certificate which the competent authorities in the destination Member State should *require in order to* be able to complete the cross-border conversion procedure.

Or. en

Amendment 192

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 22

Text proposed by the Commission

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

Amendment

(22) The issue of the pre-conversion certificate by the departure Member State should be scrutinised to ensure the legality of the cross-border conversion of the company. The competent authority of the departure Member State should decide on the issue of the pre-conversion certificate within one month of the **reception of report** by the **independent experts**, unless it has serious 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 serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of **factors** laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within **five** months of informing the company that the in-depth assessment will be carried out.

Or. en

Amendment 193
Sajjad Karim

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) The issue of the pre-conversion

Amendment

(22) The issue of the pre-conversion

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

certificate by the departure Member State should be scrutinised to ensure the legality of the cross-border conversion of the company. The competent authority of the departure Member State should decide on the issue of the pre-conversion certificate within one month of the application by the company, unless it has serious concerns as to the existence of an artificial arrangement unduly prejudicing the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an assessment. However, this assessment should not be carried out systematically, but it should be conducted on a case-by-case basis, ***should not create disproportionate burdens, and should only be carried out*** where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities ***may*** take into account a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment. In order not to burden companies with an overly lengthy procedure, ***an*** assessment should in any event be concluded ***without delay and with minimal administrative burdens***;

Or. en

Amendment 194

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) The issue of the pre-conversion certificate by the departure Member State

Amendment

(22) The issue of the pre-conversion certificate by the departure Member State

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

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 *date of receipt of the report* by the *independent expert*, unless it has serious concerns as to the existence of an artificial arrangement aimed at obtaining undue tax advantages or unduly prejudicing the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically, but it should be conducted on a case-by-case basis, where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within *five* months of informing the company that the in-depth assessment will be carried out.

Or. en

Amendment 195

Pascal Durand

on behalf of the Verts/ALE Group

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

Amendment

(22) The issue of the pre-conversion certificate by the departure Member State should be scrutinised to ensure the legality

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

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

Or. en

Amendment 196 **Emil Radev**

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

Amendment

(22) The issue of the pre-conversion certificate by the departure Member State should be scrutinised to ensure the legality of the cross-border conversion of the company. The competent authority of the

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

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 ***tax abuses or abuses in respect of*** 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.

Or. bg

Amendment 197

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 23

Text proposed by the Commission

(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

Amendment

(23) After having received a pre-conversion certificate ***and the full report of the independent experts***, and after verifying that the incorporation requirements in the destination Member State are fulfilled, the competent authorities of the destination Member State

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.

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 be possible for the competent authority of the destination Member State to challenge the accuracy of the information provided by the pre-conversion certificate *within a month after receiving the certificate, based on information that was not included in the report. The destination Member State should communicate this information to the departure Member State, after which it can decide to withdraw the certificate or to maintain it. If the departure Member State decides to maintain the certificate, the destination Member State should respect that decision. This is without prejudice to the possibility to take actions against the company when new elements have emerged that indicate the existence of an artificial arrangement, after the conclusion of the conversion.* 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 198
Sajjad Karim

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In order to provide for the appropriate level of transparency and use of digital tools and processes, the decisions of competent authorities in the departure

Amendment

(24) In order to provide for the appropriate level of transparency and use of digital tools and processes, the decisions of competent authorities in the departure

and destination Member States *should* be exchanged by means of the system of interconnection of business registers *and should be made publically available*.

and destination Member States *may* be exchanged by means of the system of interconnection of business registers.

Or. en

Amendment 199
Daniel Buda

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) The exercise of the freedom of establishment by a company includes also the possibility of a company merge cross-border. Directive 2017/1132 of the European Parliament and of the Council provides, amongst other matters, for rules to enable the cross-border mergers of limited liability companies established in different Member States. These rules represent a significant milestone in improving the functioning of the Single Market for companies by enabling them to exercise the freedom of establishment through the mechanism of cross-border merger.

Amendment

(25) The exercise of the freedom of establishment by a company includes also the possibility of a company merge cross-border. Directive 2017/1132 of the European Parliament and of the Council provides, amongst other matters, for *harmonised* rules to enable the cross-border mergers of limited liability companies established in different Member States. These rules represent a significant milestone in improving the functioning of the Single Market for companies by enabling them to exercise the freedom of establishment through the mechanism of cross-border merger *promoting increased company mobility and the exploitation of new internal market opportunities*.

Or. ro

Amendment 200
Daniel Buda

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) The evaluation of the

Amendment

(26) The evaluation of the

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

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 (*by 173% between 2008 and 2012*), *accompanied by reduced costs and less cumbersome administrative proceedings*. However, this evaluation has also revealed certain shortcomings in relation specifically to creditor protection and *minority* shareholder *and employee* protection, *especially when it comes to the disclosure of details regarding mergers and the implications thereof*, as well as to the lack of simplified *or streamlined* procedures *and the insufficient assimilation of digital tools and procedures*, which impede the full effectiveness and efficiency of those cross-border merger rules.

Or. ro

Amendment 201 **Răzvan Popa**

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 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 202

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 26

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 203

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to oblige the management or administrative organs of the merging companies to prepare separate reports detailing the legal and economic aspects of the cross-border merger for **both** members

Amendment

(28) In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to **align the rules for cross-border mergers with those on cross-border conversions and divisions, and to** oblige the management or administrative organs of the merging companies to prepare

and *for* employees. ***The obligation on the management or administrative organ of the company to prepare the report for the members may however be waived, where those members are already informed about legal and economic aspects of the proposed merger. However, the report prepared for employees may only be waived where the merging companies and their subsidiaries do not have any employees other than those who form part of the management or administrative organ.***

separate reports detailing the legal and economic aspects of the cross-border merger for members, *creditors* and employees.

Or. en

Amendment 204
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to oblige the management or administrative organs of the merging companies to prepare ***separate reports detailing*** the legal and economic aspects of the cross-border merger for both members and for employees. The obligation on the management or administrative organ of the company to ***prepare the report*** for the members may however be waived, where those members are already informed about legal and economic aspects of the proposed merger. However, the ***report prepared for*** employees may only be waived where the merging companies and their subsidiaries

Amendment

(28) In order to further enhance the existing cross-border merger procedure, it is necessary to simplify those merger rules, where appropriate, whilst at the same time ensuring that stakeholders, and in particular employees, are adequately protected. Therefore, the existing cross-border merger rules should be modified in order to oblige the management or administrative organs of the merging companies to prepare ***a detailed report on*** the legal and economic aspects of the cross-border merger for both members and for employees. The obligation on the management or administrative organ of the company to ***provide specific information*** for the members may however be waived, where those members are already informed about legal and economic aspects of the proposed merger. However, the ***requirement to provide information related to*** employees may only be waived

do not have any employees other than those who form part of the management or administrative organ.

where the merging companies and their subsidiaries do not have any employees other than those who form part of the management or administrative organ.

Or. en

Amendment 205
Răzvan Popa

Proposal for a directive
Recital 28

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 206
Răzvan Popa

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) Furthermore, in order to enhance the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the company report setting out the implications of the cross-border merger for them. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC⁴⁸, Directive 2002/14/EC or Directive 2009/38/EC.

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

Amendment

(29) Furthermore, in order to enhance the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the company report setting out the implications of the cross-border merger for them. The provision of the report should be ***carried out in due time in order for the employees or their representatives to be able to submit their comments*** without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC⁴⁸, Directive 2002/14/EC or Directive 2009/38/EC.

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

Or. en

Amendment 207
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) Furthermore, in order to enhance

Amendment

(29) Furthermore, in order to enhance

the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the *company report setting out the* implications of the cross-border merger for them. The provision *of the report* should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC⁴⁸, Directive 2002/14/EC or Directive 2009/38/EC.

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

the protection afforded to the employees of the merging company or companies, employees or their representatives may provide their opinion on the implications of the cross-border merger for them. The provision should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Council Directive 2001/23/EC⁴⁸, Directive 2002/14/EC or Directive 2009/38/EC.

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

Or. en

Amendment 208

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 31

Text proposed by the Commission

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

Amendment

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

requirements.

the harmonised measures, such as transparency requirements.

Or. en

Amendment 209

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 32

Text proposed by the Commission

(32) In order to ensure that members of the companies participating in the cross-border merger are treated equally, it is appropriate that members who held voting rights and who did not ***vote to approve*** the common draft terms of merger or those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should be able to leave the company and receive cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.

Amendment

(32) In order to ensure that members of the companies participating in the cross-border merger are treated equally, it is appropriate that members who held voting rights and who ***voted against or did not attend the general meeting but expressed their intention before the meeting to vote against approval of*** the common draft terms of merger or those members without voting rights, who could not present their position, should be afforded the right to exit the company. Those members should be able to leave the company and receive cash compensation for their shares equivalent to the value of their shares. Furthermore, they should have a right to challenge the calculation and adequacy of that cash compensation offered before a court.

Or. en

Amendment 210

Daniel Buda

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) Companies involved in a cross-

Amendment

(34) Companies involved in a cross-

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

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

Or. ro

Amendment 211

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) In order to assess the accuracy of the information contained in the draft terms of merger and in the reports addressed to the members and employees and to provide factual elements necessary to assess whether the proposed merger constitutes an artificial arrangement, an independent expert report should be

required to be prepared in order to assess the proposed cross-border merger. In order to secure the independence, the competent authority, following an application by the company, should appoint two experts from a pre-selected list, that have no past or current link with the company concerned and are paid a pre-set fee by the company. The experts should not work for the same firm and should together have expertise in the fields of company law, taxation and fiscal law, social security and workers' rights. The independent experts should be appointed within one month following the application by the company and should deliver their report within two months after their appointment. 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-merger certificate. To this end, the experts should be able to obtain all the relevant company information and documents, meet with employees and employee representatives, and carry out all necessary investigations in order to gather all the evidence required. The experts 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.

Or. en

Amendment 212
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 35 b (new)

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Text proposed by the Commission

Amendment

(35b) A list of national competent authorities in the Member States shall be prepared and published by the Commission. Member States' competent authorities are expected to collaborate together in cases of cross-border mergers.

Or. en

**Amendment 213
Sajjad Karim**

**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 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

(40) Companies carrying out a cross-border division should pay due regard to the principle of subsidiarity and the competences of Member States involved regarding employment, social security and tax laws.

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 214

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 40

Text proposed by the Commission

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

Amendment

(40) The right of companies to carry out a cross-border division may in certain circumstances be used for abusive purposes such as for the circumvention of labour standards, social security payments, tax obligations, creditors' or members' rights or rules on employees participation. In order to combat such abuses, as a general principle of Union law, Member States are required to ensure that companies do not use the cross-border division procedure in order to create artificial arrangements. The fight against abuses must be based on an individual assessment of all relevant circumstances. A *common* procedural and substantive framework which *sets* out the requirements to streamline the actions to be taken by national authorities to fight abuses in conformity with Union law should be laid down, *whilst describing, where strictly necessary, the margin of discretion allowed for Member States.*

Amendment 215
Emil Radev

Proposal for a directive
Recital 40

Text proposed by the Commission

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

Amendment

(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 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 ***tax abuses or abuses in respect of*** 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. bg

Amendment 216
Sajjad Karim

Proposal for a directive
Recital 41

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 217
Răzvan Popa

Proposal for a directive
Recital 42

Text proposed by the Commission

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

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.

cross-border division should be notified *in due time in order for them to be able to* submit comments with regard to the division.

Or. en

Amendment 218
Sajjad Karim

Proposal for a directive
Recital 43

Text proposed by the Commission

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

Amendment

(43) In order to provide information to its members, the company being divided should prepare a *summary* 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. .

Or. en

Amendment 219
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Recital 43

Text proposed by the Commission

(43) In order to provide information to

Amendment

(43) In order to provide information to

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

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

Or. en

Amendment 220 **Răzvan Popa**

Proposal for a directive **Recital 43**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 221

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 44

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 222

Răzvan Popa

Proposal for a directive

Recital 44

Text proposed by the Commission

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

Amendment

(44) In order to provide information its employees, the company being divided should prepare a report explaining the implications of the proposed cross-border division for employees. 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 ***carried out in due time in order for the employees or their representatives to be able to submit their comments*** without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.

Or. en

Amendment 223

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 44

Text proposed by the Commission

(44) ***In order to provide information its employees, the company being divided*** should ***prepare a report explaining*** the implications of the proposed cross-border division for employees. ***The report*** should ***explain*** in particular the implications of the proposed cross-border division on the safeguarding of the jobs of the employees, whether there would be any material change in the conditions of employment and the locations of the companies' places

Amendment

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

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.

subsidiaries of the company. The provision of the report should be without prejudice to the applicable information and consultation proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.

Or. en

Amendment 224
Sajjad Karim

Proposal for a directive
Recital 44

Text proposed by the Commission

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

Amendment

(44) In order to provide information its employees, the company being divided should prepare a *summary* 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.

Or. en

Amendment 225
Sajjad Karim

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 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.

deleted

Or. en

Amendment 226

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 45

Text proposed by the Commission

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

Amendment

(45) In order to **assess** 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, an independent expert report should be required to be prepared **in order to assess the proposed cross-border division**. In order to secure the independence, the competent authority, following an application by the company, **should appoint two experts from a pre-selected list, that have no past or current link with the company concerned and are paid a pre-set fee by the company. The experts should not work for the same firm and should together have expertise in the fields of company law, taxation and fiscal law, social security and workers' rights. The independent experts should be appointed within one month following the application by the company and should deliver their report within two months after their appointment.** 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-division certificate. To this end, the **experts** should be able to obtain all the relevant company information and documents, **meet with employees and employee representatives**, and carry out all necessary investigations in order to gather all the evidence required. The **experts** 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.

Or. en

Amendment 227

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Recital 45

Text proposed by the Commission

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

Amendment

(45) ***The competent national authority shall be able to evaluate*** the accuracy of the information contained in the draft terms of division and in the ***report*** addressed to the members and employees. ***Where the competent authority considers, based on reasonable grounds that there is a risk that the cross-border division represents*** an artificial arrangement, ***it shall draw up a report in order to assess the proposed division with all necessary factual elements. In such case,*** the competent authority ***can have recourse to an independent expert.*** In this context, the 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 ***competent authority*** should be able to obtain all the relevant company information, ***such as*** net turnover and profit or loss, number of employees and the composition of balance sheet collected by the company in view of the preparation of financial statements in accordance with Union law and the law of Member States ***and documents and carry out all necessary investigations in order to gather all the evidence required.*** However, in

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.

order to protect any confidential information, including business secrets of the company, such information should not form part of the final report which itself would be publically available.

Or. en

Amendment 228
Sajjad Karim

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 independent expert.*

deleted

Or. en

Justification

No companies at all should be required to commission an independent report.

Amendment 229
Sajjad Karim

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*

deleted

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.

Or. en

Amendment 230
Sajjad Karim

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

deleted

Or. en

Amendment 231
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Recital 48

Text proposed by the Commission

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

Amendment

(48) It is appropriate that members who held voting rights and who ***voted against or did not attend the general meeting but expressed their intention before the meeting to vote against the approval of*** the draft terms of the cross-border 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 division either to pay additional cash compensation or to issue additional shares.

Or. en

Amendment 232

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive
Recital 51

Text proposed by the Commission

(51) To ensure the proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border divisions, the competent authority of the Member State of the company being divided should have the

Amendment

(51) To ensure the proper allocation of tasks among Member States and an efficient and effective ex-ante ***and ex-post*** control of cross-border divisions, the competent authority of the Member State of the company being divided should have

power to issue a pre-division certificate without which the authorities of the Member States of the recipient companies should not be able to complete the cross-border-division procedure.

the power to issue a pre-division certificate without which the authorities of the Member States of the recipient companies should not be able to complete the cross-border-division procedure. ***A list of national competent authorities in the Member States shall be prepared and published by the Commission. Member States' competent authorities are expected to collaborate together in cases of cross-border divisions.***

Or. en

Amendment 233

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 52

Text proposed by the Commission

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

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 ***date of receipt of the report*** by the ***independent expert***, unless it has serious 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 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

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.

and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within **five** months informing the company that the in-depth assessment will be carried out.

Or. en

Amendment 234

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 52

Text proposed by the Commission

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

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 **date of receipt of the report** by the **independent expert**, 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.

indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within **five** months informing the company that the in-depth assessment will be carried out.

Or. en

Amendment 235
Emil Radev

Proposal for a directive
Recital 52

Text proposed by the Commission

(52) The issue of the pre-division certificate by the Member State of the company being divided should be scrutinised to ensure the legality of the cross-border division. The competent authority should decide whether to issue a pre-division certificate within one month of the application by the company has been submitted, unless it has serious concerns as to the existence of an artificial arrangement aimed at **obtaining undue tax advantages or at unduly prejudicing** the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically but it should be conducted on a case-by-case basis where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order

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 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 **tax abuses or abuses in respect of** 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.

not to burden companies with an overly lengthy procedure, this in-depth assessment should in any event be concluded within two months informing the company that the in-depth assessment will be carried out.

Or. bg

Amendment 236

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 52

Text proposed by the Commission

(52) The issue of the pre-division certificate by the Member State of the company being divided should be scrutinised to ensure the legality of the cross-border division. The competent authority should decide whether to issue a pre-division certificate within one month of the ***application by the company has been submitted***, unless it has serious concerns as to the existence of an artificial arrangement aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or members. In such a case, the competent authority should carry out an in-depth assessment. However, this in-depth assessment should not be carried out systematically but it should be conducted on a case-by-case basis where there are serious concerns as to the existence of an artificial arrangement. For their assessment, competent authorities should take into account at least a number of factors laid down in this Directive which however should be only considered as indicative factors in the overall assessment and not be considered in isolation. In order not to burden companies with an overly lengthy procedure, this in-depth assessment

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 ***receipt of the report of the independent expert***, 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.

should in any event be concluded within *five* months informing the company that the in-depth assessment will be carried out.

Or. en

Amendment 237

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 55

Text proposed by the Commission

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

Amendment

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

subsequent domestic or cross-border conversions, mergers or divisions within **3** years.

order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the *information, consultation and* participation rights through carrying out subsequent domestic or cross-border conversions, mergers or divisions within **10** years.

Or. en

Amendment 238

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 56

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 239

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 58

Text proposed by the Commission

(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.

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. ***Departure Member States shall for example have the right to impose taxes on hidden reserves of departing companies that have not yet been subject to taxation in the departing member state, in accordance with the case law of the European Court of Justice.***

Or. en

Amendment 240

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 58 a (new)

Text proposed by the Commission

Amendment

(58a) Companies willing to make full use of the benefits of the internal market through cross-border conversions, mergers or divisions shall submit in return to an adequate level of transparency and good corporate governance. Public Country by Country Reporting is an efficient and appropriate tool to increase transparency of multinational enterprises activities and to enable the public to assess their impact on the real economy. It will also improve shareholders ability to properly evaluate the risks taken by companies, lead to investment strategies based on accurate information and enhance decision-makers possibility to assess the efficiency and the impact of national legislations. Therefore,

a set of financial information shall be published ahead of the cross-border operation ahead of its execution.

Or. en

Amendment 241
Daniel Buda

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 *ensures full respect for* the fundamental rights and the principles recognised in the Charter of Fundamental Rights of the European Union, *including the right to establishment in any Member State (Article 15(2)), freedom to conduct a business (Article 16), workers' right to information and consultation within the undertaking (Article 27), the right of collective bargaining and action (Article 28), 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 the right to protection of personal data (Article 8).*

Or. ro

Amendment 242
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 63

Text proposed by the Commission

(63) The Commission should carry out

Amendment

(63) The Commission should carry out

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

⁵² OJ L123, 12.5. 2016, p. 1.

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

This evaluation should pay particular attention to the impact of this Directive in detecting and preventing cases of cross-border conversions, mergers or divisions representing artificial arrangements.

⁵² OJ L123, 12.5. 2016, p. 1.

Or. en

Amendment 243

Daniel Buda

Proposal for a directive

Recital 63

Text proposed by the Commission

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

Amendment

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

implementation of this Directive.

⁵² OJ L123, 12.5. 2016, p. 1.

⁵² OJ L123, 12.5. 2016, p. 1.

Or. ro

Amendment 244
Sajjad Karim

Proposal for a directive
Recital 63

Text proposed by the Commission

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

⁵² OJ L123, 12.5. 2016, p. 1.

Amendment

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

⁵² OJ L123, 12.5. 2016, p. 1.

Or. en

Amendment 245
Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

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

Text proposed by the Commission

Amendment

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

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 or, improperly or fraudulently taking advantage of provisions of Union and national law, such as through the circumvention of legal and contractual rights of employees, creditors', or minority shareholders', avoidance of rules on employee involvement, social security payments or tax obligations normally due on profits generated, through for example through a fictitious establishment or a company with delegated management not*

carrying out any substantive economic activity supported by staff, equipment, assets and premises, in particular in the case of a 'letterbox' or 'front' company;

(15) "Delegated management" means management of a company delegated to directors, officers or legal representatives either hired from an independent third party through a service contractor hired through and monitored by an independent party through a service contract.

Or. en

Amendment 246
Kosma Zlotowski

Proposal for a directive
Article 1 – paragraph 1 – point 1
Directive (EU) 2017/1132
Article 24 – point (e)

Text proposed by the Commission

(e) the detailed list of data to be transmitted for the purpose of exchange information between registers, as referred to in Articles 20, 34, **86h, 86o, 86p, 86q**, 123, 127, 128, 130, 160j, 160q, 160r and 160s;

Amendment

(e) the detailed list of data to be transmitted for the purpose of exchange information between registers, as referred to in Articles 20, 34, **86o, 86p**, 123, 127, 128, 130, 160j, 160q, 160r and 160s;

Or. en

Amendment 247
Daniel Buda

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

Text proposed by the Commission

Amendment

(ea) cross-border conversions of companies with liability limited to the amount of the subscribed share capital

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. ro

Amendment 248

Sergio Gaetano Cofferati, Evelyn Regner, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

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

Directive (EU) 2017/1132

Article 1 a (new)

Text proposed by the Commission

Amendment

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

Article 1a

Procedures for cross-border company restructuring

The measures laid down in this Directive shall constitute the only legally admissible procedures for cross-border company restructuring. Cross-border company restructuring measures beyond those defined in points (2) and (9) of Article 1b (new) are not permitted.

Or. en

Amendment 249

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

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

Directive (EU) 2017/1132

Article 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 250

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

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

Directive (EU) 2017/1132

Article 1 b (new)

Text proposed by the Commission

Amendment

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

Article 1b

Definitions

For the purposes of this Directive

[...]

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

Or. en

Amendment 251

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

Article 1 – paragraph 1 – point 1 c (new)

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Directive (EU) 2017/1132
Article 1 c (new)

Text proposed by the Commission

Amendment

(1c) After Article 1b (new), the following Article 1c (new) is inserted:

Article 1c

Sanctions and judicial review

Member States shall provide for adequate sanctions in the event of infringements of this Directive. Those sanctions shall be effective, proportionate and dissuasive and shall include, inter alia, the possibility to declare the relevant conversion, merger or division null and void.

Member States shall introduce into their national legal systems such measures as are necessary to enable all employees and representatives of employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process.

Or. en

Amendment 252

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3 – introductory part

Directive (EU) 2017/1132

Article 86 (new)

Text proposed by the Commission

Amendment

(3) in Title II, the following Chapter -I is inserted:

(3) in Title II, the following Chapter -I is inserted:

New In Title II of the directive before the beginning of Chapter I in Title II the following provision has to be introduced as a new Art. 86a:

(1) to safeguard sustainable stakeholder protection, cross-border

restructuring measures beyond Art. 86b (2), Art. 119(2) and Art.160b (3) are not allowed.

(2) as far as in the relevant company subject to Title II a Company Works Council according to Directive 2009/38/EC does not exist, the management is obliged if the prerequisites of Art. 1(2) Directive 2009/38/EC are fulfilled to initiate negotiations according to Art. 4 and Art. 5 Directive 2009/38/EC. The latter directive is applicable in these cases.

Or. en

Amendment 253
Kosma Zlotowski

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

Text proposed by the Commission

1. This Chapter shall apply to the conversion of a limited liability company formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Union into a company governed by the law of another Member State.

Amendment

1. This Chapter shall apply to the conversion of a limited liability company formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Union into a **limited ability** company governed by the law of another Member State **and listed in Annex II of the Directive 2017/1132 of 14 June 2017 relating to certain aspects of company law**.

Or. en

Amendment 254
Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 a – paragraph 1

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 255

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 a – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall take the necessary measures to establish a procedure for cross-border conversion referred to in paragraph 1.

2. Member States shall take the necessary measures to establish a **harmonised** procedure for cross-border conversion referred to in paragraph 1.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. ro

Amendment 256

Jiří Maštálka

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 a – 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 257

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 258

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(6a) new (7) "employee participation" means the influence 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. en

Amendment 259

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(6a) "participation" means the influence 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. en

Amendment 260

Pascal Durand

on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 261
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(6d) *"artificial arrangement" means any structure, transaction, scheme, action, operation or agreement or a series of these put in place to avoid or circumvent companies' obligations, where the company has an intention to avoid or circumvent these obligations or where the action is considered to lack genuine economic substance, regardless of the*

intentions of the company. This includes, but is not limited to, obligations related to legal or contractual rights of employees, creditors or members, employees' participation or obligations related to taxation or social security;

Or. en

Amendment 262

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 b – paragraph 6 e (new)

Text proposed by the Commission

Amendment

(6e) "economic substance" means factual criteria, which can be used to define the taxable presence of an undertaking, such as the existence of human and physical resources specific to the entity, its management autonomy, its legal reality, the revenues it generates and, where appropriate, the nature of its assets;

Or. en

Amendment 263

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 b – paragraph 6 f (new)

Text proposed by the Commission

Amendment

(6f) "head office" means the place

where key management, and commercial decisions are made that are necessary for the conduct of the entity's business as a whole;

Or. en

Amendment 264
Luis de Grandes Pascual

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1132
Article 86 c– 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 relevant court, notary or other competent authority*** of the departure and destination Member States verify that the cross-border conversion complies with the conditions laid down in paragraph 2.

Or. es

Amendment 265
Jiří Maštálka

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

Text proposed by the Commission

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

Amendment

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

Amendment 266

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 267

Kosma Zlotowski

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 268

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 269
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

(c) *the suspension of payments is on-going;* *deleted*

Or. en

Amendment 270
Emil Radev

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

Text proposed by the Commission

Amendment

(c) *the suspension of payments is on-going;* *deleted*

Or. bg

Amendment 271

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(ca) the company is subject to proceedings related to not paying social security contributions and/or income taxes and/or infringements of workers' rights or there is a suspicion that such fraud or infringement of workers' rights have taken place

Or. en

Amendment 272

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 273

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 274

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(ea) disciplinary or administrative actions or criminal sanctions and decisions have been taken involving fraudulent practices which are directly relevant to the companies' competence or reliability

Or. en

Amendment 275

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 276

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(ec) the company is under investigation, is being prosecuted or has been convicted in the last 3 years for causing environmental damage;

Or. en

Amendment 277

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 278
Kosma Złotowski

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

Text proposed by the Commission

Amendment

2a. A company subject to preventive restructuring proceedings initiated because of the likelihood of insolvency shall be subject to a scrutiny by the competent authorities of the Member States as to whether its conversion or division themselves might serve the purpose of restructuring and avoiding insolvency. Following the scrutiny, the competent authorities of the Member States shall make an autonomous decision whether the company in question is entitled to carry out a cross border conversion or not.

Or. en

Amendment 279
Luis de Grandes Pascual, Francis Zammit Dimech, Axel Voss

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

Text proposed by the Commission

Amendment

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

deleted

or at unduly prejudicing the legal or contractual rights of employees, creditors or minority members.

Or. en

Amendment 280

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2017/1132

Article 86 c – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, 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, to have a fixed establishment and to pursue genuine and substantial economic activity in the destination Member State for an indefinite period.

The company carrying out the cross-border conversion shall not be considered to have a fixed establishment and to pursue genuine and substantial economic activity in the destination Member State unless it can demonstrate that:

– *the company has a fixed establishment in the destination Member State which has the objective appearance of permanency and performs substantial*

business activities, conducts its business in relevant premises, with a relevant number of employees employed on a permanent basis, and has a management body that is materially equipped to negotiate business with third parties; and

– *the consolidated EBIDTA generated by the operations of the company in the destination Member State in the last two fiscal years corresponds at least to 25% of the consolidated EBIDTA generated by the company in the European Union.*

The head office of the converted company shall be located in the destination Member State within 5 months from the date on which the cross-border conversion takes effect according to Article 86r. In case this condition has not been complied with, the cross-border conversion shall be declared null and void. The competent authority of the destination Member State shall verify that this condition has been respected and shall communicate the result of such verification to the competent authority of the departure Member State.

Or. en

Amendment 281

Jiří Maštálka

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 3

Text proposed by the Commission

3. *Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, after an examination of the*

Amendment

3. *Companies carrying out the cross-border conversion shall prove to have a real establishment and to pursue genuine and substantial economic activities in the destination Member State according to the*

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.

following criteria which needs to be met in an ongoing way:

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

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

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

Or. en

Amendment 282
Kosma Złotowski

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

Text proposed by the Commission

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, after an examination of the specific case and having regard to all relevant facts and

Amendment

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, after an examination of the specific case and having regard to all relevant facts and

circumstances, that it constitutes an artificial arrangement *aimed at* obtaining *undue tax advantages or at unduly* prejudicing the legal or contractual rights of employees, creditors or minority members.

circumstances, that it constitutes an artificial arrangement, *that should be understood as a non-genuine arrangement or a series of arrangements which have been put into place for the main purpose or one of the main purposes of* obtaining a tax advantage that *defeats the object or purpose of the applicable tax law* prejudicing the legal or contractual rights of employees, creditors or minority members.

Or. en

Amendment 283
Sajjad Karim

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

Text proposed by the Commission

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

Amendment

3. *With due regard and respect for subsidiarity and Member States competences regarding tax and employment laws,* Member States shall *aim to prevent* artificial *arrangements* aimed at unduly prejudicing the legal or contractual rights of employees, creditors or minority members.

Or. en

Amendment 284
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States shall ensure that the competent authority of the departure Member State shall not authorise the cross-border conversion where it determines, after an examination of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement ***or has a strong suspicion that it constitutes such an arrangement.***

Or. en

Amendment 285

Emil Radev

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. bg

Amendment 286

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 c – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The company carrying out the cross-border conversion shall provide substantive information to demonstrate it has an actual establishment and pursues genuine and substantial economic activity in the destination Member State. To this end, at least the following conditions have to be met:

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

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

In any case, the head office of the converted Company shall be relocated to the destination Member state within 5 months from the date on which the cross-border conversion takes effect, according to article86r

Or. en

Amendment 287

Kosma Zlotowski

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

Text proposed by the Commission

Amendment

3a. *For the purpose of paragraph 3, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.*

Or. en

Amendment 288
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

4a. *This Directive is without prejudice to the enforcement of tax rules in national law, including the possibility for the departure Member States to impose a tax on hidden reserves of the converting company before the conversion takes effect, in accordance with the jurisprudence of the European Court of Justice.*

Or. en

Amendment 289
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

4b. *Departure Member States may tax unrealised capital gains at the time of the cross-border conversion of a company. The company may then choose between immediate payment of the amount of tax and a deferred payment of the amount of tax, together with interest in accordance with the applicable national legislation. If the company opts for the latter, the departure Member State may request the provision of a bank guarantee.*

Or. en

Amendment 290
Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

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

Text proposed by the Commission

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 shall include at least the following:

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

Or. en

Amendment 291
Jiří Maštálka

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

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, ***including employee board level representatives***, which intends to carry out a cross-border conversion shall draw up the draft terms of a cross-border conversion. The draft terms of a cross-border conversion shall include at least the following:

Or. en

Amendment 292
Jiří Maštálka, Kostas Chrysogonos

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 293
Daniel Buda

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

Text proposed by the Commission

Amendment

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

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

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. ro

Amendment 294
Emil Radev

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

Text proposed by the Commission

Amendment

(d) the proposed timetable for the cross-border conversion;

deleted

Or. bg

Amendment 295
Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

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

Text proposed by the Commission

Amendment

(da) detailed information on the transfer of the head office of the company to the destination Member State, in case it is not already located there;

Or. en

Amendment 296

Jiří Maštálka

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 297

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 298

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(db) The reasons for the conversion;

Or. en

Amendment 299
Angelika Niebler

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

Text proposed by the Commission

Amendment

(g) *the date from which the transactions of the company formed and registered in the departure Member State will be treated for accounting purposes as being those of the converted company;*

deleted

Or. de

Justification

In cases where the form of a company changes but it retains its identity, a conversion date is pointless because the entity remains the same.

Amendment 300
Jiří Maštálka, Kostas Chrysogonos

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

Text proposed by the Commission

Amendment

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

(h) any special advantages, *salaries and bonuses, especially in relation to the conversion* granted to members of the administrative, management, supervisory or controlling organ of the converted company;

Or. en

Amendment 301
Emil Radev

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

Text proposed by the Commission

(i) details of the offer of cash compensation for the members ***opposing the cross-border conversion*** in accordance with Article 86j;

Amendment

(i) details of the offer of cash compensation for the members in accordance with Article 86j;

Or. bg

Amendment 302
Jiří Maštálka, Kostas Chrysogonos

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

Text proposed by the Commission

Amendment

(ia) concrete description and likely changes of the organisation of the workers as a result of the conversion, including figures of the workers and posts including its subsidiaries and likely changes of the organisation of the workers as a result of the conversion, including figures of the workers and posts including its subsidiaries;

Or. en

Amendment 303
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 304
Daniel Buda

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

Text proposed by the Commission

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

Amendment

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

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. ro

Amendment 305
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 306

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 307

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point k c (new)

Text proposed by the Commission

Amendment

(kc) fixed assets other than cash or cash equivalents; the amount of the net turnover, including a distinction between the turnover made with related parties and the turnover made with unrelated

parties;

Or. en

Amendment 308

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(kd) the amount of profit or loss before income tax;

Or. en

Amendment 309

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point k e (new)

Text proposed by the Commission

Amendment

(ke) the amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;

Or. en

Amendment 310

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point k f (new)

Text proposed by the Commission

Amendment

(kf) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;

Or. en

Amendment 311

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 – paragraph 1 – point k g (new)

Text proposed by the Commission

Amendment

(kg) the amount of accumulated earnings and stated capital;

Or. en

Amendment 312

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 1 – point k h (new)

Text proposed by the Commission

Amendment

(kh) details of public subsidies received and any donations made to politicians, political organisations or political foundations;

Or. en

Amendment 313

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(ki) whether undertakings, subsidiaries or branches benefit from preferential tax treatment, from a patent box or equivalent regimes;

Or. en

Amendment 314

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 2

Text proposed by the Commission

Amendment

2. In addition to the official languages of the departure and destination Member States, Member States shall allow the company carrying out the cross-border conversion to use a language customary in the sphere of international business and

2. In addition to the official languages of the departure and destination Member States, Member States shall allow the company carrying out the cross-border conversion to use a language customary in the sphere of international business and

finance in order to draw up the draft terms of a cross-border conversion and all other related documents. Member States shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those documents.

finance in order to draw up the draft terms of a cross-border conversion and all other related documents. Member States shall specify which language will prevail in the case of discrepancies identified between the different linguistic versions of those documents. ***Members, employees or creditors shall have the possibility to comment on these draft terms. The comments shall be included in the final report and be made public.***

Or. en

Amendment 315
Daniel Buda

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

Text proposed by the Commission

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

Amendment

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

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. ro

Amendment 316

Emil Radev

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 d – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. bg

Amendment 317

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – title

Text proposed by the Commission

Article 86e
Report of the management or administrative organ to the members

Amendment

Article 86e
Report of the management or administrative organ to the members **and to the employees**

Or. en

Amendment 318

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132
Article 86 e – title

Text proposed by the Commission

Article 86e
Report of the management or
administrative organ to the members

Amendment

Article 86e
Report of the management or
administrative organ to the members ***and
to the employees***

Or. en

Amendment 319
Geoffroy Didier

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

Text proposed by the Commission

Article 86e:
Report of the management or
administrative organ to the members

Amendment

Article 86e:
Report of the management or
administrative organ to the members ***and
employees***

Or. fr

Amendment 320
Kosma Zlotowski

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

Text proposed by the Commission

Article 86e
Report of the management or
administrative organ ***to the members***

Amendment

Article 86e
Report of the management or
administrative organ

Amendment 321

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 322

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 323
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

Amendment 324
Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 325
Jiří Maštálka, Kostas Chrysogonos

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

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

Text proposed by the Commission

Amendment

(aa) *The reasons of the conversion*

Or. en

Amendment 326

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the rights and remedies available to members opposing the conversion in accordance with Article 86j.

(c) the rights and remedies available to members opposing the conversion in accordance with Article 86j, ***if any***

Or. en

Amendment 327

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 328

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 329

Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 330

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Amendment 331
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 332
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 333
Jens Rohde, António Marinho e Pinto

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

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 334

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 335

Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(cc) whether the factors set out in points (a), (d) and (e) affect any subsidiaries of the company.

Or. fr

Amendment 336
Kosma Złotowski

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

Text proposed by the Commission

Amendment

2a. The report, referred to in paragraph 1 of this Article, shall be accompanied with a statement of the management or administrative organ of the company about places of business after the cross-border conversion, including information about a partial or complete carrying on of business in the departure Member State and, in appropriate circumstances, marking a fact of further conduct of operations only in the departure Member State.

Or. en

Amendment 337
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

3. The report referred to in paragraph 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.

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

Or. en

Amendment 338

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 339

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 3

Text proposed by the Commission

Amendment

3. The report referred to in paragraph 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.

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 *and the trade unions in the company*.

Or. en

Amendment 340

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 341

Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132
Article 86 e – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 342
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

3a. Where the management or administrative organ of the company carrying out the cross- border conversion receives, in good time, an opinion from the representatives of their employees or, where there are 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 343

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 3 (new)

Text proposed by the Commission

Amendment

3a. Where the management or administrative organ of the company carrying out the cross-border conversion receives, in good time, an opinion from the representatives of their employees or, where there are 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 344

Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where the management or administrative organ of the company carrying out the cross-border conversion receives, in good time, an opinion from the representatives of their employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that report.

Or. fr

Amendment 345

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The European Works Council, where applicable, the national employees' representative bodies and the trade unions represented in the company shall have appropriate resources to conduct an analysis of the report;

Or. en

Amendment 346

Kosma Zlotowski

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – 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 347

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132
Article 86 f – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 348
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 349
Luis de Grandes Pascual, Axel Voss

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

Article 86 f – paragraph 4

Text proposed by the Commission

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

Amendment

4. However, that report shall not be required where **at least two thirds** the members of the company carrying out the cross-border conversion have agreed to waive this requirement **information referred to in paragraph 1 (b) and (c) of this article shall not be required**

Or. en

Amendment 350
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 351
Geoffroy Didier

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

Text proposed by the Commission

Amendment

4a. However, where a company

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

Or. fr

Amendment 352

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where a company carrying out the cross- border conversion and its subsidiaries, if any, have no employees other than those who form part of the management or administrative organ, information referred to in paragraph 1 (d), (e) and (f) shall not be required.

Or. en

Amendment 353

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Paragraphs 1 to 4 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC or

2009/38/EC.

Or. en

Amendment 354

Geoffroy Didier

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 e – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Paragraphs 1 to 6 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC or 2009/38/EC.

Or. fr

Amendment 355

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Paragraphs 1 to 4a are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the transposition of Directives 2002/14/EC or 2009/38/EC.

Or. en

Amendment 356
Geoffroy Didier

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

Text proposed by the Commission

Amendment

Article 86f
Report of the management or
administrative organ to the employees

deleted

Or. fr

Amendment 357
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

Article 86f
Report of the management or
administrative organ to the employees

deleted

Or. en

Amendment 358
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

Article 86f
Report of the management or
administrative organ to the employees

deleted

Amendment 359
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 360
Luis de Grandes Pascual, Axel Voss

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2017/1131
Article 86 f – paragraph 1

Text proposed by the Commission

Amendment

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

Or. en

Amendment 361
Jens Rohde, António Marinho e Pinto

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

Directive (EU) 2017/1132
Article 86 f – paragraph 1

Text proposed by the Commission

Amendment

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

Or. en

Amendment 362
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

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

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

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

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

Or. fr

Amendment 363

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2017/1132

Article 86 f – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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

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

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

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

Or. en