



2018/0114(COD)

25.9.2018

AMENDMENTS

594 - 812

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 594

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 595

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3

Text proposed by the Commission

3. The report shall be made available, at least electronically, to the members of

Amendment

3. The report shall be made available, at least electronically, to the members of

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

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

Or. en

Amendment 596

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3

Text proposed by the Commission

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

Amendment

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

date of the general meeting of the other merging company or companies.

Or. en

Amendment 597

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3 (new)

Text proposed by the Commission

Amendment

3a. Where the management or administrative organ of one or more of the merging companies 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 the report.

Or. en

Amendment 598

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where the management or administrative organ of one or more of the merging companies receives, in goodtime, 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 the report.

Or. en

Amendment 599

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 600

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 paragraph 4

Text proposed by the Commission

Amendment

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

4. However, *point b, c and d* referred to in paragraph 1 shall not be required where all the members of the merging companies have agreed to waive this requirement. *Where the merging companies and their subsidiaries, if any, have no employees, other than those who form part of the management or*

administrative organ, the information referred in paragraph 1 points e,f,g,h shall not be required to be provided in the report.

Or. en

Amendment 601

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 4

Text proposed by the Commission

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

Amendment

4. However, ***information*** referred to in paragraph 1 ***(b), (c), (d) and (e)*** shall not be required where ***at least two thirds of*** the members of the merging companies have agreed to waive this requirement.;

Or. en

Amendment 602

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where the merging companies and their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the information referred in paragraph 1 (f), (g) and (h) shall not be required to be drawn up.

Or. en

Amendment 603

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The submission of the report is without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC

Or. en

Amendment 604

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive (EU) 2017/1132

Article 124– paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. The submission of the report is without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.

Or. en

Amendment 605

Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

(10) the following Article 124a is inserted: **deleted**

‘Article 124a Report of the management or administrative organ to the employees

1. The management or administrative organ of each of the merging companies shall draw up a report explaining the implications of the cross-border merger for employees.

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

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

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

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

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

3.

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging

companies.

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

4. Where the management or administrative organ of one or more of the merging companies 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 the report.

5. However, where the merging companies and their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred in paragraph 1 shall not be required to be drawn up.

6. The submission of the report is without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.;

Or. en

Amendment 606
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

Article 124a
**Report of the management or
administrative organ to the employees**

deleted

Or. en

Amendment 607
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

**1. The management or administrative
organ of each of the merging companies
shall draw up a report explaining the
implications of the cross-border merger
for employees.**

deleted

Or. en

Amendment 608
Jens Rohde, António Marinho e Pinto

Proposal for a directive
Article 1 – paragraph 1 – point 10
Directive (EU) 2017/1132
Article 124a – 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
merger on the future business of the
company and on the management's
strategic plan;**

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

employment relationships;

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

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

Or. en

Amendment 609

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 610

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) the implications of the cross-border merger on *employees and on* the safeguarding of employment relationships;
(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 611

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) any material changes in the conditions of employment ***laid down by law, collective agreements and Transnational Company Agreements (TCAs)*** and in the locations of the companies' places of business;

Or. en

Amendment 612

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 613

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 614

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

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

Or. ro

Amendment 615

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(da) the rights and remedies available to members opposing the conversion in accordance with Article 126a;

Or. en

Amendment 616

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 617

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(d c) the implications of the cross-border conversion on the future business of the company and on the management's

strategic plan;

Or. en

Amendment 618

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

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

Text proposed by the Commission

Amendment

(d d) the implications of the cross-border conversion for members;

Or. en

Amendment 619

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

deleted

Or. en

Amendment 620

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 – subparagraph 1

Text proposed by the Commission

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

Amendment

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to ***European Works Council***, the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves ***and the trade unions in the company***, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

Or. en

Amendment 621

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 – subparagraph 1

Text proposed by the Commission

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than one month before

Amendment

The report referred to in paragraph 1 of this Article, shall be made available, at least electronically, to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, ***and to the European Works***

the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

Council, where applicable, not less than one month before the date of the general meeting referred to in Article 126. The report shall also be made similarly available to the members of each of the merging companies.

Or. en

Amendment 622

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 623

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

The European Works Councils, where applicable, the national employee representation bodies and the trade unions represented in the company shall

have appropriate resources to conduct a thorough analysis on the report.

Or. en

Amendment 624

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 4

Text proposed by the Commission

Amendment

4. *Where the management or administrative organ of one or more of the merging companies 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 the report.*

deleted

Or. en

Amendment 625

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. *The Executive management or the administrative organ of the company which intends to carry out the cross-border merger, shall provide a motivated and written response to the employee*

opinion before the date of the general meeting referred to in Article 126.

Or. en

Amendment 626

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 5

Text proposed by the Commission

Amendment

5. However, where the merging companies and their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred in paragraph 1 shall not be required to be drawn up.

deleted

Or. en

Amendment 627

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 5

Text proposed by the Commission

Amendment

5. However, where the merging companies and their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred in paragraph 1 shall not be required to be drawn up.

deleted

Amendment 628

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive (EU) 2017/1132

Article 124a – paragraph 6

Text proposed by the Commission

Amendment

6. *The submission of the report is without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.;*

deleted

Amendment 629

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10 a (new)

Directive (EU) 2017/1132

Article 124b (new)

Text proposed by the Commission

Amendment

(10 a) The following new article 124b is inserted:

Article 124b

Examination by an independent expert

1. Member States shall ensure that the companies carrying out the cross-border merger apply not less than two months before the date of the general meeting referred to in Article 126 to the competent authorities of the Member States, to

appoint two experts to examine and assess the draft terms of the cross-border merger and the reports referred to in this chapter, subject to the proviso set out in paragraph 6 of this Article. The application for the appointment of an expert shall be accompanied by the following:

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

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

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

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

(a) the experts or the legal person on whose behalf he or she is operating, shall not have performed work, in whatever

capacity, for the company applying for the merger in the five years prior to his or her appointment or vice versa; and

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

3. The experts shall draw up a written report within two months after their appointment, providing at least: (a) a detailed assessment of the accuracy of both the draft terms and the reports as well as information submitted by the company carrying out the cross-border merger;

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

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

(ii) the number of employees working in the countries concerned, the number of employees working in another country grouped according to the country of work, the number of employees posted or sent in the year prior to the merger within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004,

(iii) the tax residence,

(iv) the assets and their location

, (v) the habitual place of work of the employees and of specific groups of employees,

(vi) the places where social contributions

are due;

(vii) the commercial risks assumed by the merged company in the Member States concerned

(viii) the composition of the balance sheet and of the financial statement in the destination member state and in all member States in which the company operates in the last two fiscal years.

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

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

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

*6. Member States may apply a lower independent expert fee for 'micro' and 'small enterprises' as defined in Commission Recommendation 2003/361/EC (**).*

Or. en

Amendment 630

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 10 b (new)

Directive (EU) 2017/1132

Article 125 – title

Text proposed by the Commission

Amendment

(10 b) The title of Article 125 is amended as follows:

"Independent expert report for the members"

Or. en

Amendment 631

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

Article 1 – paragraph 1 – point 11 a (new)

Directive (EU) 2017/1132

Article 125a (new)

Text proposed by the Commission

Amendment

(11 a) After Article 125 the following Article 125a (new) is inserted:

Article 125a

Approval by the employees

After taking note of the reports referred to in Articles 124, 124a and 125, the representatives of the employees of each merging company or, if there are no representatives, the employees themselves, shall decide, by simple majority, whether to approve the draft terms of the cross-border merger. In case the representatives of the employees or, where applicable, the employees themselves, of at least one of the merging companies reject the draft

terms, the general meeting of the merging companies shall not proceed to vote on the resolution referred to in Article 126.

Or. en

Amendment 632

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 12 – point a

Directive (EU) 2017/1132

Article 126 – paragraph 1

Text proposed by the Commission

1. After taking note of the reports referred to in Articles 124, 124a and 125, as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger.;

Amendment

1. After taking note of the reports referred to in Articles 124, 124a and 125, as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger. ***Before a decision is taken, any preceding applicable to information and consultation rights have to be met in such a way and such a time that an opinion by the employee representatives can be taken into consideration***

Or. en

Amendment 633

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 12 – point a

Directive (EU) 2017/1132

Article 126 – paragraph 1

Text proposed by the Commission

1. After taking note of the reports referred to in Articles 124, 124a and 125,

Amendment

1. After taking note of the reports referred to in Articles 124, 124a and 125,

as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger.;

as appropriate, the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of the common draft terms of the cross-border merger. ***Prior to taking a decision, all applicable information and consultation rights have to be met in a way and at such a time that an opinion by the employees can be taken into consideration.***;

Or. en

Amendment 634

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the members holding shares with 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 common draft terms of the cross-border merger;

Or. en

Amendment 635

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 1 – point a

Text proposed by the Commission

(a) the members holding shares with voting rights ***and who did not vote*** for the

Amendment

(a) the members holding shares with voting rights ***who at the general meeting***

approval of the common draft terms of the cross-border merger;

voted for the approval of the common draft terms of the cross-border merger *and voiced their intent to make use of the exit right*;

Or. en

Amendment 636

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 1 – point b

Text proposed by the Commission

(b) the members holding shares without voting rights.

Amendment

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

Or. en

Amendment 637

Angelika Niebler

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – Paragraph 3

Text proposed by the Commission

Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. Member States shall also establish the period for the acceptance of the offer,

Amendment

Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. Member States shall also establish the period for the acceptance of the offer,

which shall not in any event exceed one month after the general meeting referred to in Article 126 or, in cases where the approval of the general meeting is not required, within two months after the disclosure of the common draft terms of merger referred to in Article 123. Member States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

which shall not in any event exceed one month after the general meeting referred to in Article 126 or, in cases where the approval of the general meeting is not required, within two months after the disclosure of the common draft terms of merger referred to in Article 123. Member States shall further ensure that the merging companies are able to accept an offer *valid for information purposes and* communicated electronically to an address provided by those companies for that purpose. *National law on the form and validity of contracts for the sale and transfer of shares in undertakings shall remain unaffected.*

Or. de

Amendment 638

Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 3

Text proposed by the Commission

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

Amendment

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

States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

Or. en

Amendment 639

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 640

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. **Members shall express their intention to make use of their exit right before the general meeting or, in cases where the approval of the general meeting is not required, within one month after the disclosure of the common draft terms of merger referred to in Article 123.** Member States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

Or. en

Amendment 641

Geoffroy Didier

Proposal for a directive

Article premier – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 3

Text proposed by the Commission

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

Amendment

Member States shall ensure that each of the merging companies makes an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1)(m), to those members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shareholdings. **Members shall express their intention of invoking their exit right before** the general meeting or, in cases where the approval of the general meeting is not required, within **one month** after the disclosure of the common draft terms of merger referred to in Article 123. Member States shall further ensure that the merging companies are able to accept an offer communicated electronically to an address provided by those companies for that purpose.

Or. fr

Amendment 642

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126a – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the cash compensation has not been adequately set, is entitled to demand the recalculation of the cash compensation offered before a national court within **one month** of the acceptance of the offer.

Amendment

6. Member States shall ensure that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the cash compensation has not been adequately set, is entitled to demand the recalculation of the cash compensation offered before a national court within **15 days** of the acceptance of the offer. **The court shall be**

assisted by an expert to recalculate the cash compensation.

Or. en

Justification

Members should be allowed to demand the calculation of the cash compensation within 15 days of the acceptance of the offer. A too lengthy delay could jeopardise the entire operation while making it tough for the firm to anticipate how much liquidity is required. In addition, it would be useful the court be assisted by an independent expert to calculate the cash compensation in case of exit right's use to ensure a fair price to shareholders.

Amendment 643

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017 / 1132

Article 126 b – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Creditors whose rights originate after the operation are only in relation with the company resulting from the operation and therefore should not have a right to seek safeguards before an administrative or judicial authority because the patrimony of the company is not affected by that past operation.

Amendment 644

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive (EU) 2017/1132

Article 126b – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Keeping the original value of the claim as a reference could lead to disproportionate creditors' claims. Indeed, the value of a claim changes as time goes by: it can diminish if partial payments are made, or it can increase or decrease with interest rate for example. It would be more fair to use the actualised value of the claim as reference (the real value of the claim at the date when the draft of the operation is made public).

Amendment 645

Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

Proposal for a directive

Article 1 – paragraph 1 – point 14 – point –a (new)

Directive (EU) 2017/1132

Article 127 – paragraph 1

Text proposed by the Commission

Amendment

(-a) paragraph 1 is replaced by the following:

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the

procedure which concerns each merging company subject to its national law and the provisions of this Directive. Member States shall ensure that the competent authorities do not authorise the cross-border merger 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. This examination shall be carried out by the competent authorities in accordance with the procedure in Article 86 g, mutatis mutandis.

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

Or. en

Amendment 646

Sergio Gaetano Cofferati, Jytte Guteland, Evelyne Gebhardt

Proposal for a directive

Article 1 – paragraph 1 – point 14 – point a – introductory part

Directive (EU) 2017/1132

Article 127 – paragraph 1

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

(a) paragraph 1 is replaced by the following:

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each merging company subject to its national law and the provisions of this Directive.

Member States shall ensure that the authority referred to in the first subparagraph shall not authorise the cross-border merger 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. This examination shall be carried out by the authority in accordance with the procedures in Article 86g, Article 86m(7)(c) and Article 86n, mutatis mutandis. The authorities of the Member States of the merging companies shall cooperate and exchange information during this process.

The merging companies 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 merging companies shall not be considered to have a fixed establishment and to pursue genuine and substantial economic activity in the destination Member State unless they can demonstrate that:

- they have 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 combined EBIDTA generated by the operations of the merging companies in the destination Member State in the last two fiscal years corresponds at least to 25% of the combined consolidated EBIDTA generated by the merging companies in the European Union.

The head office of the company resulting from the cross-border merger shall be located in the destination Member State within 5 months from the date on which the cross-border merger takes effect according to Article 129. In case this condition has not been complied with, the cross-border merger shall be declared null and void. The authority referred to in the first subparagraph of the destination Member State shall verify that this condition has been respected and shall communicate the result of such verification to the authorities of the Member States of the merging companies.

Or. en

Amendment 647

Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

Proposal for a directive

Article 1 – paragraph 1 – point 14 – point a

Directive (EU) 2017/1132

Article 127 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 648

Evelyn Regner, Sergio Gaetano Cofferati, Jytte Guteland

Proposal for a directive

Article 1 – paragraph 1 – point 15 – point b

Directive (EU) 2017/1132

Article 128 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

Member States shall lay down detailed rules for the online application referred to in paragraph 1. Article 86h paragraph 4 subparagraph 2 and Article 13f paragraph 3 and 4 shall apply accordingly.

Or. en

Amendment 649

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 18 – introductory part

Directive (EU) 2017/1132

Article 133

Text proposed by the Commission

(18) Article 133 is *amended as follows*:

Amendment

(18) Article 133 is *replaced by the following*:

1. The information, consultation and participation of employees in the converted company and their involvement in the definition of such rights shall be the object of an agreement between the employees and the management and shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 2 to 5 of this Article, in accordance with the principles and procedures laid down in Article 12(2) and

(4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

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

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

(c) Article 5;

(d) Article 6;

(e) Article 7(1); (f) Articles 8, 9, 10 and 12;

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

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

2. The agreement reached shall provide for at least the same level of employee participation as operated in the company prior to the conversion as well as at least the level that would apply following the rules in force concerning employee participation, if any, in the destination Member State. This level shall be measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation.

3. When regulating the principles and procedures referred to in paragraph 1, Member States shall ensure that the rules

on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (g) of paragraph 1.

4. When regulating the principles and procedures referred to in paragraph 3, Member States shall ensure that the rules on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (g) of paragraph 1.

5. Where the company carrying out the conversion is operating under an employee participation system, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

7. Where the converted company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic merger, division or conversion for a period of three ten years after the cross-border conversion has taken effect, by applying mutatis mutandis the rules laid down in paragraphs 1 to 4.

8. A company shall communicate to its employees the outcome of the negotiations concerning employee participation without undue delay.

Or. en

Amendment 650
Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

PE628.354v01-00

40/128

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Text proposed by the Commission

Amendment

(a a) New paragraph 1 has to be introduced :

It is a fundamental principle and stated aim of this Article to secure employees' participation rights. Therefore, in the company resulting from the cross border restructuring, at least the same level of all elements of employees' participation rights should continue to apply.

Paragraph 2 is amended as follows :

However the rules in force concerning employee participation in the member state, where the company resulting from the cross border merger has its registered office, shall not apply, where at least one of the merging companies has in the 6 months prior to the publication of the draft terms of the cross border merger as referred in Article 122 of this Directive an average number of employees equivalent to four fifths of the applicable threshold laid down in the law of the relevant Member State, which triggers the participation of employees within the meaning of Article 119 (3), or where the national law of the destination Member State does not.

Paragraph 3 point b is amended as follows:

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

Paragraph 3 point c is amended as follows:

'the first subparagraph of Article 7(1)'

Or. en

Amendment 651

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

Proposal for a directive

Article 1 – paragraph 1 – point 18 – point a a (new)

Directive (EU) 2017/1132

Article 133 – paragraph 3 – point (e)

Text proposed by the Commission

Amendment

(a a) Point (e) of paragraph 3 is amended as follows:

(e) Article 7(1);

Or. en

Amendment 652

Kosma Złotowski

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive (EU) 2017/1132

Article 133a – title

Text proposed by the Commission

Amendment

Article 133a
Liability of independent experts

Article 133a
Liability of independent experts **and members of management or administrative organ**

Or. en

Amendment 653

Kosma Złotowski

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive (EU) 2017/1132

Article 133 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall lay down rules

I. Member States shall lay down rules

governing the civil liability of the independent experts responsible for drawing up the report referred to in Articles 125 and 126b(2)(a), including in respect of misconduct on their part in the performance of their duties.;

governing the civil liability of the independent experts responsible for drawing up the report referred to in Articles 125 and 126b(2)(a), including in respect of misconduct on their part in the performance of their duties.;

Or. en

Amendment 654
Kosma Zlotowski

Proposal for a directive
Article 1 – paragraph 1 – point 19
Directive (EU) 2017/1132
Article 133 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall lay down rules governing the penal liability of members of management or administrative organ of company responsible for submitting a false statement about the places of business referred to in art. 86e par. 3.

Or. en

Amendment 655
Kosma Zlotowski

Proposal for a directive
Article 1 – paragraph 1 – point 19
Directive (EU) 2017/1132
Article 133

Text proposed by the Commission

Amendment

3. A member of the management or administrative body does not bear the responsibility referred to in paragraph 2 of this article, when a change of places of business activity results from economic reasons that could not have been known

to the member of company's organ at the time when the statement was submitted.

Or. en

Amendment 656

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

Proposal for a directive

Article 1 – paragraph 1 – point 19 a (new)

Directive (EU) 2017/1132

Article 134a (new)

Text proposed by the Commission

Amendment

(19 a) After Article 133 the following Article 134a (new) is inserted:

Article 134a

Collective agreements following the cross-border merger, the company resulting from the cross-border merger shall continue to observe the terms and conditions agreed in any collective agreements on the same terms applicable to the merging companies before the cross-border merger, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.

Or. en

Amendment 657

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160b – point 3 a (new)

Text proposed by the Commission

Amendment

(3 a) "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 658

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160b – point 3 a (new)

Text proposed by the Commission

Amendment

(3 a) "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 659

Pascal Durand

on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(3 b) "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 660
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(3 c) "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;

Amendment 661

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160b – point 3 d (new)

Text proposed by the Commission

Amendment

(3 d) “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 662

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160b – point 3 e (new)

Text proposed by the Commission

Amendment

(3 e) ‘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 663

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160b – point 3 f (new)

Text proposed by the Commission

Amendment

(3 f) “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 664

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) proceedings have been instituted for the winding-up, liquidation, insolvency of that company *or genuine suspicion of social fraud or infringements of workers’ rights*

Amendment 665
Kosma Zlotowski

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 666
Emil Radev

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

Text proposed by the Commission

Amendment

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

Or. bg

Amendment 667
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(e a) 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 668

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) 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 669

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

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

Amendment 670

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 671

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(e d) 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 672

Kosma Zlotowski

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. 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 673

Luis de Grandes Pascual, Axel Voss, Francis Zammit Dimech

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 674
Kosma Zlotowski

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 675
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

3. The Member State of the company being divided shall ensure that the competent authority shall not authorise the division when it determines, after an

Amendment

3. The Member State of the company being divided shall ensure that the competent authority shall not authorise the division when it determines, after an

examination of the specific case and having regard to all relevant facts and circumstances, that it constitutes an artificial arrangement *aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or members.*

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 676
Emil Radev

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

Text proposed by the Commission

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

Amendment

3. The Member State of the company being divided shall ensure that the competent authority shall not authorise the division when it determines, 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 members.

Or. bg

Amendment 677
Jiří Maštálka

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 678

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The company carrying out the cross-border division 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.

Or. en

Amendment 679
Kosma Złotowski

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

Text proposed by the Commission

Amendment

3 a. *For the purposes 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 680
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 681

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4 b. Member States may tax unrealised capital gains at the time of the cross-border division 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 Member State of origin may request the provision of a bank guarantee.

Or. en

Amendment 682

Emil Radev

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160d, paragraph 1, point d

Text proposed by the Commission

Amendment

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

deleted

Or. bg

Amendment 683

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160e – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) detailed information on the head office;

Or. en

Amendment 684

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160e – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) The reasons for the division;

Or. en

Amendment 685

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160e – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the likely repercussions of the cross-border division on employment;

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

representatives;

Or. en

Amendment 686
Emil Radev

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

Text proposed by the Commission

(q) details of the offer of cash compensation for the members ***opposing the cross-border division*** in accordance with Article 160l;

Amendment

(q) details of the offer of cash compensation for the members in accordance with Article 160l;

Or. bg

Amendment 687
Pascal Durand
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

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

(rc) 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;

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

(re) 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;

(rf) 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;

(rg) the amount of accumulated earnings; stated capital;

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

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

Or. en

Amendment 688

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160e – paragraph 4

Text proposed by the Commission

Amendment

4. In addition to the official languages

4. In addition to the official languages

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

of the Member States of the recipient companies and the one being divided, Member States shall allow the company to use a language customary in the sphere of international business and finance in order to draw up the draft terms of cross-border division and all other related documents. Member States shall specify which language will prevail in case of discrepancies among different linguistic versions of those documents. ***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 689
Kosma Złotowski

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

Text proposed by the Commission

(a) it may not be earlier than the date of the balance sheet of the last annual financial statements drawn up and ***published*** by the company being divided;

Amendment

(a) it may not be earlier than the date of the balance sheet of the last annual financial statements drawn up and ***made available*** by the company being divided;

Or. en

Amendment 690
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

Article 160g
Report of the management or
administrative organ to the members

Article 160g
Report of the management or
administrative organ to the members ***and
to the employees***

Or. en

Amendment 691

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – title

Text proposed by the Commission

Amendment

Article 160g Report of the management or
administrative organ to the members

Article 160g

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

Or. en

Amendment 692

Kosma Zlotowski

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160 – title

Text proposed by the Commission

Amendment

Article 160g
Report of the management or
administrative organ ***to the members***

Article 160g
Report of the management or
administrative organ

Or. en

Amendment 693

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 694

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 695

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 1

Text proposed by the Commission

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

Amendment

1. The management or administrative organ, ***including employee board level representatives***, of the company being divided shall draw up a report explaining and justifying the legal and economic aspects of the cross-border division.

Or. en

Amendment 696

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(e a) (f) the implications of the cross-border division on the future business of the recipient companies and, in the case of a partial division, also of the company being divided and on the management's strategic plan;

Or. en

Amendment 697

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(e b) (g) the implications of the cross-border division on the safeguarding of the

employment relationships;

Or. en

Amendment 698

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 699

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(e d) (j) whether the factors set out in points(f), (g) and (h) also relate to any subsidiaries of the company being divided.

Or. en

Amendment 700

Kosma Złotowski

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132
Article 160g – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

2 a. *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 701
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

2 a. *the implications of the cross-border division on the safeguarding of the employment relationships;*

Or. en

Amendment 702
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

2 b. *any material change in the conditions of employment and the locations of the companies' places of business;*

Or. en

Amendment 703

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 2 – point c (new)

Text proposed by the Commission

Amendment

2 c. *whether the factors set out in points (a), (f) and (g) also relate to any subsidiaries of the company being divided.*

Or. en

Amendment 704

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g– 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 of the company being divided not less than two months before the date of the general meeting referred to in Article 160k. That report shall also be made similarly available to the representatives of the employees of the company being divided

3. The report referred to in paragraph 1 of this Article shall be made available, at least electronically, to the members of the company being divided, ***and to the representatives of the employees of the company carrying out the merger conversion or, where there are no such representatives, to the employees themselves*** not less than two months before

or, where there are no such representatives, to the employees themselves.

the date of the general meeting referred to in Article 160k. That report shall also be made similarly available to the representatives of the employees of the company being divided or, where there are no such representatives, to the employees themselves.

Or. en

Amendment 705

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 706

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 707

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 3

Text proposed by the Commission

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

Amendment

3. The report referred to in paragraph 1 of this Article shall be made available, at least electronically, to the members of the company being divided ***and*** to the representatives of the employees of the company being divided 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 160k.***

Or. en

Amendment 708

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Where the management or administrative organ of the company being divided 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 709

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Where the management or administrative organ of the company being divided 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 710

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 711

Kosma Zlotowski

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 712

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4

Text proposed by the Commission

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

Amendment

4. However, **points (b), (c), (d) and (e) of** the report referred to in paragraph 1, shall not be required where all the members of the company being divided have agreed to waive this **obligation**. **Where the company being divided and all of their 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 (f), (g) and (h), shall not be required.**

Or. en

Amendment 713

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Article 160g

Article 160g – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 714

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. *Where the management or administrative organ of the company being divided 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 715

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. *Paragraphs 1 to 4 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.*

Or. en

Amendment 716

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4 b. *However, where the company being divided and all of their 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. en

Amendment 717

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160g – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4 c. *Paragraphs 1 to 5 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.*

Or. en

Amendment 718

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – title

Text proposed by the Commission

Amendment

Article 160h

Report of the management or administrative organ to the employees

deleted

Or. en

Amendment 719

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – title

Text proposed by the Commission

Amendment

Article 160h

deleted

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

Or. en

Amendment 720

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 1

Text proposed by the Commission

Amendment

***1. The management or administrative
organ of the company being divided shall
draw up a report explaining the
implications of the cross-border division
for employees.***

deleted

Or. en

Amendment 721

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 1

Text proposed by the Commission

Amendment

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

Or. en

Amendment 722

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – 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 division on the future business of the recipient companies and, in the case of a partial division, also of the company being divided and on the management's strategic plan;

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

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

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

Or. en

Amendment 723

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – 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 division on the future business of the recipient companies and, in the case of a partial division, also of the company being divided and on the management's strategic plan;

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

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

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

Or. en

Amendment 724

Jiří Maštálka

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

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

Amendment 725

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) any material change in the conditions of employment, ***including the conditions laid down in law and collective agreements***, and the locations of the companies' places of business;

Or. en

Amendment 726

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) any material change in the conditions of employment ***laid down by law and collective agreements and in*** the locations of the companies' places of business;

Or. en

Amendment 727

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 728

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 729

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the implications of the cross-border conversion for members;

Or. en

Amendment 730

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

(d b) 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 160j and on the possible options for such arrangements;

Or. en

Amendment 731

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d b (new)

Text proposed by the Commission

Amendment

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

Amendment 732

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d c (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 733

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d c (new)

Text proposed by the Commission

Amendment

(d c) the implications of the cross-border conversions for members

Or. en

Amendment 734

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d d (new)

Text proposed by the Commission

Amendment

(d d) the rights and remedies available to members opposing the conversion in accordance with Article 160l

Or. en

Amendment 735

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 2 – point d d (new)

Text proposed by the Commission

Amendment

(d d) the implications of the cross-border conversion for members;

Or. en

Amendment 736

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 3

Text proposed by the Commission

Amendment

3. The report referred to in paragraph 1 shall be made available, at least electronically, to the representatives of the employees of the company being divided 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 160k. The report shall also be made similarly available to

deleted

the members of the company being divided.

Or. en

Amendment 737

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 3

Text proposed by the Commission

Amendment

3. The report referred to in paragraph 1 shall be made available, at least electronically, to the representatives of the employees of the company being divided 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 160k. The report shall also be made similarly available to the members of the company being divided.

deleted

Or. en

Amendment 738

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 3

Text proposed by the Commission

Amendment

3. The report referred to in paragraph 1 shall be made available, at least electronically, to the representatives of the employees of the company being divided

3. The report referred to in paragraph 1 shall be made available, at least electronically, to the *European Works Council, the* representatives of the

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 160k. The report shall also be made similarly available to the members of the company being divided.

employees of *the company and the trade unions in* the company being divided 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 160k. The report shall also be made similarly available to the members of the company being divided.

Or. en

Amendment 739

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 3

Text proposed by the Commission

3. The report referred to in paragraph 1 shall be made available, at least electronically, to the representatives of the employees of the company being divided 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 160k. The report shall also be made similarly available to the members of the company being divided.

Amendment

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

Or. en

Amendment 740

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132
Article 160h – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 741
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

4. Where the management or administrative organ of the company being divided 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.

deleted

Or. en

Amendment 742
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

4. *Where the management or administrative organ of the company being divided 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.*

deleted

Or. en

Amendment 743

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. *The Executive management or the administrative organ of the company which intends to carry out the cross-border conversion, shall provide a motivated and written response to the employee opinion before the date of the general meeting referred to in Article 160k.*

Or. en

Amendment 744

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 5

Text proposed by the Commission

Amendment

5. *However, where the company being divided and all of their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred to in paragraph 1, shall not be required.* **deleted**

Or. en

Amendment 745

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 5

Text proposed by the Commission

Amendment

5. *However, where the company being divided and all of their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred to in paragraph 1, shall not be required.* **deleted**

Or. en

Amendment 746

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160h – paragraph 5

Text proposed by the Commission

Amendment

5. *However, where the company being divided and all of their subsidiaries, if any, have no employees, other than those who form part of the management or administrative organ, the report referred to in paragraph 1, shall not be required.* *deleted*

Or. en

Amendment 747
Jens Rohde, António Marinho e Pinto

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

Text proposed by the Commission

Amendment

6. *Paragraphs 1 to 5 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.* *deleted*

Or. en

Amendment 748
Luis de Grandes Pascual, Axel Voss

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

Text proposed by the Commission

Amendment

6. *Paragraphs 1 to 5 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level following the implementation of Directives 2001/23/EC,* *deleted*

2002/14/EC or 2009/38/EC.

Or. en

Amendment 749

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – title

Text proposed by the Commission

Amendment

Article 160i

Examination by *an independent expert*

Article 160i

Examination by *the competent authority*

Or. en

Amendment 750

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – title

Text proposed by the Commission

Amendment

Article 160i Examination by *an independent expert*

Article 160i

Examination by independent *experts*

Or. en

Amendment 751

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 752

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 753

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 754

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

The application shall be accompanied by the following

Or. en

Amendment 755

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 2

Text proposed by the Commission

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

Amendment

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

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

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

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

person.

Or. en

Amendment 756

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 2

Text proposed by the Commission

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

Amendment

2. *If* the competent authority *has recourse to* an independent expert, *that* expert shall be independent from the company being divided and may be a natural or a legal person depending upon the law of the Member State concerned. Member States shall take into account, in assessing the independence of the expert, the framework established in Articles 22 and 22b of Directive 2006/43/EC

Or. en

Amendment 757

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3

Text proposed by the Commission

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

Amendment

3. *Where the competent authority considers, based on reasonable grounds, that the cross-border division could represent an artificial arrangement as*

referred in Article 160d(3), it shall draw up a written report providing at least:

Or. en

Amendment 758

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3

Text proposed by the Commission

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

Amendment

3. The expert shall draw up a written report *within two months after his or her appointment*, providing at least:

Or. en

Amendment 759

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3 – point f

Text proposed by the Commission

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

Amendment

deleted

investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member States of the recipient companies.

Or. en

Amendment 760

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3 – point f

Text proposed by the Commission

(f) a description of all factual elements necessary for the competent authority designated in accordance with Article 160o(1), to carry out an in-depth assessment to determine whether the intended cross-border division constitutes an artificial arrangement in accordance with Article 160p, at a minimum the following: the characteristics of the *establishments* in the Member *States concerned of the recipient companies*, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, *the composition of the balance sheet*, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, *the place* where social contributions are due *and* the commercial risks assumed by the company *being divided* in the Member

Amendment

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

States *of the recipient companies*.

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

(ii) *the number of employees working in the country of destination, the number of employees working in another country grouped according to the country of work, the number of employees posted or sent in the year prior to the conversion within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004,*

(iii) the tax residence,

(iv) the assets and their location,

(v) the habitual place of work of the employees and of specific groups of employees,

(vi) *the places* where social contributions are due;

(vii) the commercial risks assumed by the *converted company in the destination Member State and the departure Member State*

(viii) *the composition of the balance sheet and of the financial statement in the destination member state and in all member States in which the company operates in the last two fiscal years.*

Or. en

Amendment 761

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3 – point f

Text proposed by the Commission

(f) a description of all factual elements necessary ***for the competent authority designated in accordance with Article 160o(1)***, to carry out an in-depth assessment to determine whether the intended cross-border division constitutes an artificial arrangement in accordance with Article 160p, at a minimum the following: the characteristics of the establishments in the Member States concerned of the recipient companies, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member States of the recipient companies.

Amendment

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

Or. en

Amendment 762

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Whenever relevant, the independent experts shall ask questions to and receive information from the competent authority of the destination Member State. The competent authority shall ensure communication between the

independent expert and other authorities in that Member State responsible for any of the areas touched upon by this Directive.

Or. en

Amendment 763

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 764

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that information submitted to the independent expert can only be used for the purpose of drafting the report ***and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the expert may submit a separate document containing confidential information to the competent authority designated in accordance with Article 160o(1) and that separate document shall only be made available to the company being divided and not be disclosed to any third party.***

Amendment

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

Or. en

Amendment 765

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that information submitted to the ***independent expert*** can only be used for the purpose of drafting the report and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the ***expert may submit*** a separate document containing confidential information ***to the competent authority designated in accordance with Article 160o(1)*** and that separate document shall only be made available to the company being divided and not be disclosed to any third party.

Amendment

5. Member States shall ensure that information submitted to the ***competent authority*** can only be used for the purpose of drafting the report and that confidential information, including business secrets, shall not be disclosed. Where appropriate, the ***competent authority may produce*** a separate document containing confidential information and that separate document shall only be made available to the company being divided and not be disclosed to any third party.

Or. en

Amendment 766

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Amendment 767

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160i – paragraph 6

Text proposed by the Commission

Amendment

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

6. Member States may apply lower independent expert fees for micro and small enterprises as defined in Commission Recommendation 2003/361/EC ().**

Or. en

Amendment 768

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160j – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the *assessment on the accuracy of the report and information submitted by the company as* referred to in Article 160i(1) *and* where applicable, *the report drawn up by the competent authority in accordance with Article 160i(2) without however disclosing any confidential information;*

Or. en

Amendment 769

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160k – paragraph 1

Text proposed by the Commission

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

Amendment

1. After taking note of the reports referred to in Articles 160g, 160h and 160i, where applicable, the general meeting of the company being divided shall decide by means of a resolution, whether to approve the draft terms of cross-border division. ***Before a decision is taken, any preceding applicable information and consultation rights have to be met in such a way and at such a time that an opinion by the employee representatives can be taken into consideration.*** The company shall inform the competent authority designated in accordance with Article 160o(1) of the decision of the general meeting.

Or. en

Amendment 770

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160k – paragraph 1

Text proposed by the Commission

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

Amendment

1. After taking note of the reports referred to in Articles 160g, 160h and 160i, where applicable, the general meeting of the company being divided shall decide by means of a resolution, whether to approve the draft terms of cross-border division. ***Prior to taking a decision, all applicable information and consultation rights have to be met in a way and at such a time that an opinion by the employees can be taken into consideration.*** The company shall inform the competent authority designated in accordance with Article 160o(1) of the decision of the general meeting.

Or. en

Amendment 771

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 772

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 1– point a

Text proposed by the Commission

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

Amendment

(a) the members holding shares with voting rights, **who at the general meeting voted against** the approval of the draft terms of the cross-border division **and voiced their intent to make use of the exit right**;

Or. en

Amendment 773

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 1– point b

Text proposed by the Commission

(b) the members holding shares without voting rights.

Amendment

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

Or. en

Amendment 774

Angelika Niebler

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 775

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 3

Text proposed by the Commission

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

Amendment

Member States shall ensure that a company being divided makes an offer of adequate cash compensation in the draft terms of the cross-border division as specified in Article 160e(1)(q) to the members, referred to in paragraph 1 of this Article, who wish to exercise their right to dispose of their shareholdings. ***Without prejudice to the exercise of the exit right, members shall communicate their intention to make use of it before the general meeting.*** Member

meeting referred to in Article 160k.
Member States shall further ensure that a company is able to accept an offer communicated electronically to an address provided by the company for that purpose.

States shall also establish the period for the acceptance of the offer which shall not in any event exceed one month after the general meeting referred to in Article 160k. Member States shall further ensure that a company is able to accept an offer communicated electronically to an address provided by the company for that purpose.

Or. en

Amendment 776

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160l – paragraph 5

Text proposed by the Commission

5. Member States shall provide that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the compensation has not been adequately set, is entitled to demand the recalculation of the cash compensation offered before a national court within *one month* of the acceptance of the offer.

Amendment

5. Member States shall provide that any member who has accepted the offer of cash compensation referred to in paragraph 3, but who considers that the compensation has not been adequately set, is entitled to demand the recalculation of the cash compensation offered before a national court within *15 days* of the acceptance of the offer.

Or. en

Amendment 777

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160m – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that

Amendment

2. Member States shall ensure that

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

creditors, *whose rights predate the cross-border division plan, and*, who are dissatisfied with the protection of their interests provided for in the draft terms of the cross-border division, as provided for in Article 160e, may apply to the appropriate administrative or judicial authority for adequate safeguards within one month of the disclosure referred to in Article 160j.

Or. en

Amendment 778

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160m – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 779

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to paragraph 2, each recipient company shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

deleted

Or. en

Amendment 780

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 1 (new)

Text proposed by the Commission

Amendment

1 a. It is a fundamental principle and stated aim of this Article to secure employees' participation rights. Therefore, in companies resulting from the cross border division, at least the same level of all elements of employee participation rights should continue to apply.

Or. en

Amendment 781

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 2

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply, where the company being divided, in the six months prior to the publication of the draft terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State of the company being divided, which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

deleted

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

(b) provide for employees of establishments of the recipient companies that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the recipient company has its registered office.

Or. en

**Amendment 782
Kosma Zlotowski**

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

Text proposed by the Commission

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply, where the company being divided, in the six months prior to the **publication of** the draft terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State of the company being divided, which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

Amendment

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply, where the company being divided, in the six months prior to the **date of making available** the draft terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State of the company being divided, which triggers the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

Or. en

Amendment 783
Jiří Maštálka, Kostas Chrysogonos

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

Text proposed by the Commission

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply, where the company being divided, in the six months prior to the publication of the draft

Amendment

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply, where the company being divided, in the six months prior to the publication of the draft

terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State of the company being divided, which triggers the participation of employees within the meaning of *point (k) of Article 2 of Directive 2001/86/EC*, or where the national law applicable to each of the recipient companies does not:

terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees equivalent to four fifths of the applicable threshold, laid down in the law of the Member State of the company being divided, which triggers the participation of employees within the meaning of *Article 160b paragraph 4*, or where the national law applicable to each of the recipient companies does not:

Or. en

Amendment 784

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 3

Text proposed by the Commission

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

Amendment

3. *The information, consultation and* participation of employees in the companies resulting from the cross-border division and their involvement in the definition of such rights *shall be the object of an agreement between the employees and the management and* shall be regulated by the Member States, mutatis mutandis and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

Or. en

Amendment 785

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 786

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 3 – point e

Text proposed by the Commission

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

Amendment

(e) Article 7(1);

Or. en

Amendment 787

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 3 – point g

Text proposed by the Commission

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

Amendment

(g) ***the Annex, with the exclusion of points (a) en (b) of Part 3, instead of which the following will apply as a***

minimum:

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

Or. en

Amendment 788
Jiří Maštálka

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

Text proposed by the Commission

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

Amendment

(g) point (a) of part 3 of the Annex. *In the cases referred to in paragraph 2 the national employee participation rules, which have been in force in the company which has been divided, are applicable as standard rules automatically, if the relevant thresholds of these rules are met within a time period of ten years after the conversion*

Or. en

Amendment 789
Pascal Durand
on behalf of the Verts/ALE Group

Proposal for a directive
Article 1 – paragraph 1 – point 20

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Text proposed by the Commission

Amendment

3 a. *The agreement reached shall provide for at least the same level of employee participation as operated in the company prior to the conversion as well as at least the level that would apply following the rules in force concerning employee participation, if any, in the destination Member State. This level shall be measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation.*

Or. en

Amendment 790

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

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

companies;

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

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

Or. en

Amendment 791

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

recipient companies;

Or. en

Amendment 792

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 793

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) shall ensure that the rules on

(c) shall ensure that the rules on

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

participation that applied prior to the cross-border division continue to apply until the date of application of any subsequently agreed rules or in the absence of agreed rules until the application of default rules in accordance with point (g) of paragraph 3.

Or. en

Amendment 794

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 795

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160n – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 796

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160o – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall designate the national authority competent to scrutinise the legality of the cross-border divisions as regards the part of the procedure which is governed by the law of the Member State of the company being divided, and to issue a pre-division certificate attesting compliance with all relevant conditions, and the proper completion of all procedures and formalities in that Member State. ***The competent authority shall set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields covered by this Directive.***

Or. en

Amendment 797

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160o – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 798

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160o – paragraph 2 – point b

Text proposed by the Commission

(b) the reports referred to in Articles 160g, 160h and 160i, as appropriate;

Amendment

(b) the reports referred to in Articles 160g, 160h and 160i, as appropriate, ***and including the employees' opinion and response of the management;***

Or. en

Amendment 799

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure in order to assess whether the cross-border division constitutes an artificial arrangement within the meaning of Article 160d(3) of this Directive, the competent authority of the company being divided shall carry out an in-depth assessment of all relevant facts and circumstances and shall take into account at a minimum the following: the characteristics of the establishment in the Member *States concerned*, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, *the place* where social contributions are due and the commercial risks assumed by the company *being divided* in the Member State *of that company and* Member States *of recipient companies*.

Amendment

Member States shall ensure in order to assess whether the cross-border division constitutes an artificial arrangement within the meaning of Article 160d(3) of this Directive, the competent authority of the company being divided shall carry out an in-depth assessment of all relevant facts and circumstances and shall take into account at a minimum the following:

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

(ii) *the number of employees working in the country of destination, the number of employees working in another country grouped according to the country of work, the number of employees posted in the year prior to the conversion within the meanings of Regulation (EC) No 883/2004 and Directive 96/71/EC, the number of employees working*

simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004, the composition of the balance sheet,

(iii) the tax residence,

(iv) the assets and their location,

(v) the habitual place of work of the employees and of specific groups of employees, (vi) the places where social contributions are due,

(vii) and the commercial risks assumed by the converted company in the destination Member State and the departure Member State., and

(viii) the composition of the balance sheet and of the financial statement in the destination member state and in all member States in which the company operates in the last two fiscal years.

Or. en

Amendment 800

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure in order to assess whether the cross-border division constitutes an artificial arrangement within the meaning of Article 160d(3) of this Directive, the competent authority of the company being divided shall carry out an in-depth assessment of all relevant facts and circumstances ***and shall take into account at a minimum the following: the characteristics of the establishment in the Member States concerned, including the intent, the sector, the investment, the net***

Amendment

Member States shall ensure in order to assess whether the cross-border division constitutes an artificial arrangement within the meaning of Article 160d(3) of this Directive, the competent authority of the company being divided shall carry out an in-depth assessment of all relevant facts and circumstances..

turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member State of that company and Member States of recipient companies.

Or. en

Amendment 801

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States *shall* ensure *in order to assess whether the cross-border division constitutes an artificial arrangement within the meaning of Article 160d(3) of this Directive*, the competent authority of the company being divided *shall* carry out an in-depth assessment of all relevant facts and circumstances *and* shall take into account at a minimum the following: the characteristics of the establishment in the Member States concerned, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member State of that company and Member States of recipient

Amendment

Member States *may* ensure, *that* the competent authority of the company being divided carry out an in-depth assessment of all relevant facts and circumstances, *if there are strong, objective suspicions that the company is conducting the cross-border division in order to avoid or breach the law of its Member State. An in-depth assessment* shall take into account at a minimum the following: the characteristics of the establishment in the Member States concerned, including the intent, the sector, the investment, the net turnover and profit or loss, number of employees, the composition of the balance sheet, the tax residence, the assets and their location, the habitual place of work of the employees and of specific groups of employees, the place where social contributions are due and the commercial risks assumed by the company being divided in the Member State of that company and Member States

companies.

of recipient companies.

Or. en

Amendment 802

Jens Rohde, António Marinho e Pinto

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 1 – subparagraph 2

Text proposed by the Commission

Those elements may be only considered as indicative factors in the overall assessment and therefore shall not be considered in isolation.

Amendment

The elements *referred to in Article 160i(3)(f)* shall be taken into account but may be only considered as indicative factors in the overall assessment and therefore shall not be considered in isolation.

Or. en

Amendment 803

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 804

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160p – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that where the competent authority referred to in paragraph 1 of this Article decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article 160j(1) in accordance with national law. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-division certificate within *two* months from the start of the in-depth assessment.

Amendment

2. Member States shall ensure that where the competent authority referred to in paragraph 1 of this Article decides to carry out an in-depth assessment, it is able to hear the company and all parties that have submitted observations pursuant Article 160j(1) in accordance with national law. The competent authorities referred to in paragraph 1 may also hear any other interested third parties in accordance with national law. The competent authority shall take its final decision regarding the issue of the pre-division certificate within *five* months from the start of the in-depth assessment.

Amendment 805

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160r – paragraph 1

Text proposed by the Commission

Member States shall designate an authority competent to scrutinise the legality of the cross-border divisions as regards that part

Amendment

Member States shall designate an authority competent to scrutinise the legality of the cross-border divisions as regards that part

of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed.

of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed. ***The competent authority shall set up appropriate coordination mechanisms with other authorities and bodies in that Member State working in the policy fields covered by this Directive.***

Or. en

Amendment 806

Luis de Grandes Pascual, Axel Voss

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160r – paragraph 1

Text proposed by the Commission

Member States shall designate ***an*** authority competent to scrutinise the legality of the cross-border divisions as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed.

Amendment

Member States shall designate ***the court, notary or other*** authority competent to scrutinise the legality of the cross-border divisions as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division where it complies with all the relevant conditions and all the procedures and formalities in that Member State have been properly completed.

Or. en

Amendment 807

Kosma Złotowski

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

Text proposed by the Commission

Article 160v
Liability of the independent experts

Amendment

Article 160v
Liability of the independent experts ***and members of management or administrative organ***

Or. en

Amendment 808
Kosma Złotowski

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

Text proposed by the Commission

Amendment

Member States shall lay down rules governing the penal liability of members of management or administrative organ of company responsible for submitting a false statement about the places of business referred to in art. 86e par. 3.

Or. en

Amendment 809
Kosma Złotowski

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

Text proposed by the Commission

Amendment

A member of the management or administrative body does not bear the

responsibility referred to in paragraph 2 of this article, when a change of places of business activity results from economic reasons that could not have been known to the member of company's organ at the time when the statement was submitted.

Or. en

Amendment 810

Pascal Durand

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive (EU) 2017/1132

Article 160w – paragraph 2 (new)

Text proposed by the Commission

Amendment

However, if during the year following the date on which the cross-border conversion takes effect, new information on this cross-border conversion are brought to the attention of the competent authorities alleging of genuine suspicion of fraud, the competent authorities shall proceed to a revised assessment of the facts of the case and can take effective, proportionate and dissuasive sanctions, including financial penalties, in cases of artificial arrangements.

Or. en

Amendment 811

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1 a

Definitions

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

(2) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the company, at 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 the measures envisaged and to meet with the Executive management and obtain a response, and the reasons for that response, to any opinion they might formulate by the competent organ before the final decision is adopted. Executive management shall take into account employee's opinion in the decision-making process within the company;

(3) "artificial arrangement" means a company structure set up for abusive purposes, improperly or fraudulently taking advantage of provisions of Union and national law, such as the circumvention of legal and contractual rights of employees, creditors', or minority shareholders', avoidance of rules on employee involvement, social security payments or tax obligations normally due on profits generated, through for example a fictitious establishment not carrying out

any substantive economic activity supported by staff, equipment, assets and premises, or aimed at obscuring ownership relations, in particular in the case of a 'letterbox' or 'front' subsidiary

(4) the "head office" is the place where key management, and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made

Or. en

Amendment 812
Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en