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From:	Presidency
To:	Company Law Working Party
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions. - Presidency compromise proposal

Delegations will find in Annex a Presidency compromise proposal in view of the Working Party on Company Law on 7 January 2019.

Changes in Articles are compared to doc. 14872/18 and are marked in **bold underlined** and ~~strikethrough~~. They integrate the 3-column document changes set out in WK 15543/2018.

Changes in Recitals are compared to WK 14594/18 REV 1.

ANNEX

2018/0114 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 (1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

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

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

(3) In the absence of harmonisation of Union law, the definition of the connecting factor that determines the national law applicable to a company or firm falls, in accordance with Article 54 of the TFEU, within the competence of each Member State to ~~so~~ define. Article 54 of the TFEU places the connecting factors of the registered office, the central administration and the principal place of business of a company or firm at the equal footing. Therefore, as clarified in case-law, ~~where the Member State of new establishment, namely the destination Member State, requires only the transfer of the registered office as a connecting factor for the existence of a company under its national legislation,~~ the fact that only the registered office (and not the central administration or principal place of business) is transferred does not as such exclude the applicability of the freedom of establishment under Article 49 of the TFEU.

(4) These developments in the case-law have opened up new opportunities for companies in the Single Market in order to foster economic growth, effective competition and productivity. At the same time, the objective of a Single Market without internal borders for companies must also be reconciled with other objectives of European integration such as social protection (in particular the protection of ~~workers~~**employees**), the protection of creditors and the protection of members.

(5) The lack of **a** legal framework on cross-border conversions and divisons leads to legal fragmentation and legal uncertainty, and thus to barriers to the exercise of the freedom of establishment. It also leads to a suboptimal protection of employees, creditors and minority members within the Single Market.

(6) *deleted*~~(6) It is appropriate therefore to provide procedural and substantive rules on cross-border conversions which would contribute to the abolition of restrictions on freedom of establishment and provide at the same time adequate and proportionate protection for stakeholders such as employees, creditors and minority members.~~[2]

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

(8) As regards the existing rules on cross-border mergers, the Commission announced in its Communication entitled 'Upgrading the Single Market: more opportunities for people and business', that it would assess the need to update those rules in order to make it easier for SMEs to choose their preferred business strategy and to better adapt to changes in market conditions, whilst at the same time not weakening the existing employment protection. In its Communication entitled 'Commission Work Programme 2017 Delivering a Europe that protects, empowers and defends', the Commission announced an initiative to facilitate the implementation of cross-border mergers.

[2] Covered by Recital 5.

(9) Besides the new rules on conversions this **D**~~d~~irective lays down rules on cross-border divisions, both for partial and full divisions, but only through the formation of new companies. ~~However,~~ **T**~~t~~his **D**~~d~~irective does not provide a harmonised framework for cross-border divisions in which a company transfers assets and liabilities to more than one existing company as these instances had been viewed as being very complex, requiring the involvement of competent authorities from several Member States and entailing additional risks in terms of the circumvention of national and EU-rules. **The possibility to form a company through a division by separation as provided for in this Directive offers companies a new harmonised procedure in the Single Market, however, companies should be free to directly set up subsidiaries in other Member States.**

(10) *deleted*~~In case of a cross-border division the newly formed recipient companies, which are governed by the laws of Member States other than those of the Member State of the company being divided, should be required to comply with the incorporation requirements of those Member States. Such conditions include those related to the disqualification of directors.~~ [3]

(11) **This Directive should not apply to the procedure of liquidation of insolvent companies. In addition, Member States should also be able to choose not to apply this Directive to companies subject to other insolvency proceedings or** ~~Member States may decide to apply this Directive~~ to preventive restructuring **frameworks** ~~proceedings~~ no matter whether such proceedings are part of a national insolvency framework or regulated outside of it.

(12) Given the complexity of cross-border conversions, mergers or divisions (hereinafter referred to as cross-border operations) and the multitude of the interests concerned, it is appropriate to provide for a scrutiny of the legality of the cross-border operation before it takes effect in order to create legal certainty. To that effect, the competent authorities of the Member States involved should ensure that a decision on the approval of a cross-border operation is taken in a fair, objective and non-discriminatory manner on the basis of all elements required by national and EU law.

[3] Covered by Recital 38.

(13) To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border operation, the company should disclose the draft terms of the ~~cross-border~~ **proposed** operation containing the most important information about **it** ~~the proposed cross-borderoperation~~. Such information should at least include the envisaged legal form of the company or companies, the instrument of constitution**, where applicable the statutes** and details of **the** safeguards offered to members and creditors. Member States ~~wishing all stakeholders to be well informed about the cross-border operation~~ may among others require that the draft terms include information on the reasons for the planned operation**.** ~~,~~ **I**~~i~~n that respect information on the head office, the place of effective management and the place of significant economic activity of the company can be of a special interest. Member States may also decide that the independent expert report and a notice to the stakeholders inviting them to submit comments on the proposed cross-border operation are disclosed.

(13a) *deleted* ~~(13) Divergences in accounting rules may impede the operation of cross-border mergers and may lead to legal uncertainty where there is a difference in the date on which the acquired company's transactions become treated for accounting purposes as those of the company resulting from the merger between Member States. This may lead to a situation where, during a specific time, transactions related to the merging company are not reported at all or during that period there is a duplication of reporting obligations for that merging company in its original Member State as a separate accounting entity and in the Member State of the company resulting from the merger. Therefore, the accounting date should be determined according to clear rules and Member States should ensure that this date is treated, for accounting purposes, as the single definite date by the national laws of all parties to the merger.~~

(14) In order to provide information to its members, the company carrying out the cross-border operation should prepare a report **for members**. The report should explain the legal and economic aspects of the proposed cross-border operation, in particular the implications of the cross-border operation for members with regard to the future business of the company. It should also include potential remedies available to members, especially information about their exit right. This report should also be made available to the employees of the company carrying out the cross-border operation.

(15) In order to provide information to its employees, the company carrying out the cross-border operation should prepare a report explaining the implications of the proposed cross-border operation for employees. The report should explain in particular the implications of the proposed cross-border operation on the employment situation, whether there would be any material change in the employment relationships and the locations of the companies' places of business and how each of these factors would affect any subsidiaries of the company. This requirement should not however apply where the only employees of the company are in its administrative organ. Furthermore, in order to enhance the protection afforded to the employees, employees or their representatives should be able to provide their opinion on the report setting out the implications of the cross-border merger for them. The provision of the report and the possibility to provide an opinion should be without prejudice to the applicable information and consultation proceedings instituted at national level including those following the implementation of Directive 2002/14/EC of the European Parliament and of the Council or Directive 2009/38/EC of the European Parliament and of the Council .This report should also be available to the members of that company

(16) In order to alleviate the administrative burden for companies, the companies should be allowed to combine the reports to members and employees and draw up a single report containing all the required information and explanations.

(17) The draft terms of cross-border operation, the offer of cash compensation by the company to those members who wish to exit the company and**,** where applicable**,** the share-exchange ratio including the amount of a possible complementary cash payment included in the draft terms should be examined by an expert who is independent from the company. With regard to the independence of the expert ~~from the company,~~ Member States should take into account the principles laid down in Articles 22 and 22b of Directive 2006/43/EC.

(18) The information disclosed by the company should be comprehensive and make it possible for stakeholders to assess the implications of the intended cross-border operation. However, companies should not be obliged to disclose confidential information, the disclosure of which would be prejudicial to their business position. Such non-disclosure should not undermine the other requirements under this ~~d~~**D**irective.

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

(20) The lack of harmonisation of safeguards for members has been identified as an obstacle for cross border operations. Companies and members face a wide variety of different forms of protection leading to complexity and legal uncertainty. Members should, therefore, be offered the same minimum level of protection regardless of the Member State in which the company is situated. Member States may therefore maintain or introduce additional protection rules for members, unless they are in conflict with those provided by this Directive or with the freedom of establishment. Members‘ individual rights to information remain unaffected.

(21) As a consequence of a cross-border operation, members often face a situation whereby the law applicable to their rights would change, because they would become members in a company governed by the law of a Member State other than the law applicable to the company before the operation. Therefore, Member States should, at least, offer the right to exit the company and receive a cash compensation for their shares equivalent to their value for such members who voted against the approval of the draft terms or who hold shares without voting rights. However, Member States may decide to offer this right also to other members, for example for members who, as a result of a cross-border division, would acquire shares in the company in different proportions than what they held before the operation or to ~~those~~ members for whom there was no change of applicable law **but for whom certain rights have changed due to the operation**.

(22) Where, in accordance with national law members holding shares without voting rights have a right to vote on the approval of the draft terms of the cross-border conversion, merger or division, they should have the right to dispose of their shares only if they have voted against the approval of the draft terms or if they have otherwise expressed their opposition to the draft terms and their intention to exercise their exit right.

(23) Companies should be able to estimate, to the extent possible, the costs related to the cross-border operation. Members should therefore be required to declare to the company, whether they exercise the right to dispose of their shares. This should be without prejudice to any formal requirements set up by national law. Members could also be required to indicate together with the declaration or within a specific time limit, whether they intend to challenge the offered cash compensation and demand additional cash compensation.

(24) The calculation of the offer of cash compensation should be based on generally accepted valution methods. Members should have a right to challenge the calculation and question the adequacy of the cash compensation before a competent administrative or judicial authority or a body mandated under national law including arbitral tribunals. **Member States should be able to provide that members who have exercised the right to dispose of the shares are entitled to join the proceedings and Member States should be able to establish time limits for doing it in national law. Member States should also be able provide that the final decision on the adequacy of the cash compensation is valid for all members who have exercised the right to dispose of their shares.**

(25) In case of a cross-border merger or division, members who did not have or did not exercise an exit right should, however, have a right to challenge the share exchange ratio. When assessing the adequacy of the share-exchange ratio, the competent administrative or judicial authority or a body mandated under national law should also take into account the amount of a possible complementary cash payment included in the draft terms.

(26) Following a cross-border operation, the former creditors of the company or companies carrying out that operation may see their claims affected where the company which is liable for the debt is thereafter governed by the law of another Member State. Currently, creditor protection rules vary across Member States which adds significant complexity to the cross-border operation process and leads to uncertainty both for the companies involved and for their creditors in relation to the recovery or satisfaction of their claim.

(27) In order to guarantee the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms, creditors may apply for safeguards to the competent authority. When assessing these safeguards, the appropriate authority should take into account whether the creditor's claim against the company or a third party is of at least equivalent value and of a commensurate credit quality as before the cross-border operation and whether the claim may be brought in the same jurisdiction.

(28) Member States should ensure adequate protection for those creditors, who entered into a relationship with the company before the company had made public its intention to carry out a cross-border operation. After the draft terms have been disclosed, creditors should be able to take into account the potential impact of the change of jurisdiction and applicable law as a result of the cross-border operation. Creditors of a company to be protected could also be active and former employees with occupational vested pension rights and persons receiving occupational pension benefits.

(29) In addition, in order to protect the creditors against the risk of insolvency of the company following the cross-border operation, Member States should be allowed to require the company or companies to make a declaration of solvency stating that they are not aware of any reason why the company or companies resulting from the cross-border operation should not be able to meet their liabilities. In those circumstances, Member States should be able to make the members of the management organ personally liable for the accuracy of that declaration. As legal traditions vary amongst Member States with regard to the use of solvency declarations and their possible consequences, it should be up to Member States to draw appropriate consequences for providing inaccurate or misleading declarations, including effective and proportionate sanctions and liabilities in compliance with Union law.

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

(31) *deleted* ~~(31) In order to prevent the circumvention of employee participation rights by means of a cross-border conversion or division, the company carrying out a conversion or division which is registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border conversion without first entering into negotiations with its employees or their representatives when the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee participation.~~

(32) To ensure a proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border operations, the competent authorities of the Member States of the company or companies carrying out the cross-border operation should have the power to issue a pre-conversion, pre-merger or pre-division certificate (herein referred to as 'pre-operation certificate'). Without such a certificate the competent authorities of the Member States of the converted company or of the company or companies resulting from the cross-border operation should not be able to complete the cross-border operation procedures.

(33) Before issuing the pre-operation certificate the Member States of the company or companies carrying out the cross-border operation should scrutinise the legality of the operation. Member States should designate a competent authority or several authorities, which could also involve a tax authority or financial service authority, to assess the compliance with all relevant conditions and the proper completion of all procedures and formalities in that Member State. The competent authority or authorities should decide whether to issue a pre-operation certificate within three months of the application by the company, unless the examination requires further inquiries or assessment of relevant facts. The procedures initiated by members or creditors in accordance with this Directive should not **by itself** ~~as such~~ constitute grounds for delaying the issuance of the pre-operation certificate. **However, a possible effect of the procedures to protect members and creditors on the issuance of the pre-operation certificate should be assessed on a case-by-case basis.**

(34) The right of companies to carry out a cross-border operation may, in certain circumstances, be used for abusive or fraudulent purposes such as for circumvention of ~~labour law~~**the rights of employees**, social security payments or tax obligations or for criminal purposes. Since it may be difficult to establish the abusive or fraudulent nature of the operation ex ante, it should be left to Member States how to best tackle this risk. Member States may decide that their competent authorities should refuse to issue the pre-operation certificate where they find that the cross-border operation is to be set up for abusive or fraudulent purposes, leading or aimed to lead to the evasion or circumvention of national or EU law or for criminal purposes.

(35) With a view to a possible refusal to issue the pre-operation certificate where a Member State finds that the cross-border operation is to be set up for abusive or fraudulent purposes, Member States may grant their competent authorities the power to carry out an in-depth assessment which may need more than three months to be completed. The competent authority should consider in its assessment all relevant facts and circumstances and may take into account, for instance, the characteristics of the establishment in the Member State in which the company or companies are to be registered after the cross-border operation, including the intent of the operation, 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 or companies before and after the cross-border operation. All these elements should only be considered as indicative factors in the overall assessment and therefore should not be regarded in isolation. The competent authority may consider it as an indication of absence of circumstances leading to abuse or fraud if the cross-border operation results in having the place of the effective management and/or the economic activity of the company in the Member State, where the company or companies are to be registered after the cross-border operation.

(36) Member States should provide for procedural safeguards, in particular for the possibility to review the decisions of the competent authorities in the proceedings concerning cross-border operations in line with the general principles of access to justice.

(37) In order to provide for the appropriate level of transparency and use of digital tools and processes, the ~~decisions~~ **pre-operation certificates issued by** ~~of~~ **the** competent authorities in different Member States should be shared by means of the system of interconnection of business registers and should be made publically available. **In accordance with the general principle underlying this Directive, such exchange of information should always be free of charge.**

(38) The carrying out of a cross-border conversion entails a change of the legal form for a company without losing its legal personality. However, neither a cross-border conversion nor a cross-border merger or division should lead to the circumvention of the requirements for incorporation in the Member State in which the company is to be registered after the operation. Such conditions, including the requirements to have ~~a~~ **the** head office in the destination Member State and those relating to the disqualification of directors, should be fully respected by the company. However, in case of cross-border conversions, the application of such conditions by the destination Member State may not affect the continuity of the converted company's legal personality.

(39) After having received a certificate, and after verifying that the incorporation requirements of the Member State in which the company is to be registered after the operation are fulfilled, including the check whether the transaction constitutes a circumvention of national or EU law where such check is laid down in national law, the competent authorities should register the company in the business register of that Member State. Only after this registration should the competent authority of the former Member State of the company or companies carrying out the cross-border operation strike the company off its own register. It should not be possible for the competent authorities of the Member State in which the company is to be registered after the cross-border operation to challenge the information provided by the pre-operation certificate.

(40) To enhance the transparency about the cross-border operations, it is important that the registers of the Member States involved contain necessary information from the other register or registers about the companies involved in the cross-border operation in order to be able to track the history of those companies. In particular, the file in the register of the company where it was registered prior to the cross-border operation should contain the new registration number of the company attributed to it after the cross-border operation. Similarly, the file in the register of the company where it was registered after the cross-border operation should contain the initial registration number of the company attributed to it prior to the cross-border operation.

(41) As a consequence of the cross-border conversion, the converted company should retain its legal personality, its assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions.

(42) As a consequence of the cross-border merger, the assets and liabilities and all rights and obligations, including rights and obligations arising from contracts, acts or omissions should be transferred to the acquiring company or to the new company and the members of the merging companies, who do not exercise the exit-right, should become members of the acquiring or the new company respectively.

(43) As a consequence of the cross-border division, the assets and liabilities of the company being divided should be transferred to the recipient companies in accordance with the allocation specified in the draft terms of division and the members of the company being divided who do not exercise the exit-right should become members of the recipient companies or remain members of the company being divided or should become members of both.

(44) Any cross-border operation should be without prejudice to the liablity for tax obligations related to the company's or companies' activity before that operation.

(45) To guarantee the employees' rights other than rights of participation, Directive 2009/38/EC, Council Directive 98/59/EC , Directive 2001/23/EC, and Directive 2002/14/EC, are not affected by this Directive. National laws should also apply to matters outside the scope of this Directive such as tax or social security.

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

(47) This Directive is without prejudice to Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, Council Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, Council Directive (EU) 2015/2376 as regards mandatory automatic exchange of information on advance tax rulings and advance pricing arrangements between Member States, Council Directive (EU) 2016/881 on mandatory automatic exchange of information in the field of taxation and Council Directive (EU) 2018/822 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

(48) This Directive does not affect the provisions of Directive (EU) 2015/849 of the European Parliament and the Council addressing risks of money laundering and terrorist financing, in particular the obligations related to carrying out the appropriate customer due diligence measures on a risk-sensitive basis and to identifying and registering the beneficial owner of any newly created entity in the Member State of its incorporation.

(49) The Directive does not affect Union legislation and national rules made or introduced pursuant to such Union legislation regulating transparency and rights of shareholders in listed companies.

(50) This Directive does not affect Union legislation regulating credit intermediaries and other financial undertakings and national rules made or introduced pursuant to such Union legislation.

(51) Since the objectives of this Directive, to facilitate and regulate cross-border conversions, mergers and divisions cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the T**FEU** ~~reaty on European Union~~. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

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

(53) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(54) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added and should provide the basis for impact assessments of possible further measures.

(55) Information should be collected in order to assess the performance of the legislation against the objectives its pursues and in order to inform an evaluation of the legislation in accordance with paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016.

(56) Directive (EU) 2017/1132 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive (EU) 2017/1132

Directive (EU) 2017/1132 is amended as follows:

(-1) in Article 18 paragraph 3 the following point (aa) is inserted:

“(aa) the documents and information referred to in Article 86h, 86o, 86q, 123, 127a, 160j, 160q;”

(1) in Article 24, point (e) is replaced by the following:

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

(2) the title of Title II is replaced by the following:

"CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES";

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

"CHAPTER -I

Cross-border conversions

Article 86a

Scope

1. This Chapter shall apply to the conversion of a limited liability company formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Union into a limited liability company governed by the law of another Member State (hereinafter referred to as ‘cross-border conversion’).

Article 86b

Definitions

For the purposes of this Chapter:

(1) 'limited liability company' hereinafter referred to as "company", means a company of a type listed in Annex II carrying out a cross-border conversion;

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

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

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

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

(6) 'converted company' means the company formed in the destination Member State as a result of the process of the cross-border conversion.

Article 86c

Scope and conditions relating to cross-border conversions

1. This Chapter shall not apply to cross-border conversions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption. *[moved from Article 86a (4)]*

2. Member States shall ensure that this Chapter does not apply in any of the following circumstances:

(a) proceedings have been instituted **relating to** ~~for~~ the winding-up **of insolvent companies**, ~~liquidation, or insolvency of the company~~;

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

2a. Member States may **decide not to** apply this Chapter to companies subject to **insolvency proceedings other than those referred to in paragraph 2 point (a) or to preventive** restructuring ~~proceedings~~ **frameworks.** ~~initiated because of the likelihood of insolvency;~~

4. The national law of the departure Member State shall govern that part of the procedures and formalities to be complied with in connection with the cross-border conversion in order to obtain the pre-conversion certificate, and the national law of the destination Member State shall govern that part of the procedures and formalities to be complied with following receipt of the pre-conversion certificate, in compliance with Union law.

Article 86d

Draft terms of cross-border conversions

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

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

(b) the legal form, name and registered office proposed for the converted company in the destination Member State;

(c) the instrument of constitution, **where applicable,** and the statutes if they are contained in a separate instrument, of a company in the destination Member State;

(e) the rights conferred by the converted company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;

(f) safeguards, such as guarantees or pledges, where offered to creditors;

(g) the date from which the transactions of the company will be treated for accounting purposes as being those of the converted company;

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

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

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

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

~~Member States may among others require that the draft terms include information on the reasons for the conversion, the head office, the place of effective management and the place of significant economic activity of the converted company.~~ **(to be found in recital 13)**

Article 86e

Report of the management or administrative organ to the members

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

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

(a) the implications of the cross-border conversion on the future business of the company;

(aa) *an explanation of the cash compensation and of the method used to arrive at it;*

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

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

3. The report referred to in paragraph 1 of this Article, shall be made available in any case electronically, together with the draft terms of cross-border conversion to the members not less than one month before the date of the general meeting referred to in Article 86i. That report shall also be made similarly available to the representatives of the employees of the company or, where there are no such representatives, to the employees themselves.

4. However, the report referred to in paragraph 1 shall not be required where all the members of the company have agreed to waive this requirement. **Member States may exclude single member companies from the provisions of this Article.**

Article 86f

Report of the management or administrative organ to the employees

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

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

   (a) the implications of the cross-border conversion on the future business of the company;

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

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

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

3. The report referred to in paragraph 1 of this Article, shall be made available in any case electronically, together with the draft terms of cross-border conversion to the representatives of the employees of the company or, where there are no such representatives, to the employees themselves not less than one month~~s~~ before the date of the general meeting referred to in Article 86i. That report shall also be made similarly available to the members of the company.

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

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

6. Paragraphs 1 to 5 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level, including those following the transposition of Directives 2002/14/EC or 2009/38/EC.

Article 86g

Independent expert report

1. Member States shall ensure that an independent expert examines the draft terms of the cross-border conversion and draws up a report intended for members which is made available to them not less than one month before the date of the general meeting referred to in Article 86i. Depending on the law of Member States, the expert may be a natural person or a legal person.

2. *deleted, content added to paragraph 1*

3. The report referred to in paragraph 1 shall in any case include the expert's opinion whether the cash compensation is adequate. With regard to the cash compensation referred to in Article 86**d**~~(1)~~ **point** (i), the expert shall consider any market price of those shares in the company prior to the announcement of the conversion proposal or to the value of the company excluding the effect of the proposed conversion as determined according to generally accepted valuation methods. Its statement shall at least:

   (a) indicate the method used to arrive at the cash compensation proposed;

   (b) state whether such method is adequate for the assessment of the cash compensation and indicate the value arrived at using that method and give an opinion on the relative importance **attributed** to that method in arriving at the value decided on;

   (c) describe any special valuation difficulties which have arisen.

   The expert shall be entitled to secure from the company all information he considers necessary for the discharge of his duties

4. Neither an examination of the draft terms of cross-border conversion by an independent expert nor an expert report shall be required if all the members of the company have so agreed. Member States may exclude single member companies from the provisions of this Article.

Article 86h

Disclosure

1. Member States shall ensure that the draft terms of the cross-border conversion are disclosed and made publically available in the register, at least one month before the date of the general meeting referred to in Article 86i.

   Member States may also require that the following documents are disclosed and made publically available in the register:

(a) the independent expert report referred to in Article 86g;

(b) a notice informing the members, creditors and employees of the company that they may submit to the company, at the latest 7 working days before the date of the general meeting, comments concerning the draft terms of the cross-border conversion.

Member States shall ensure that the company is able to exclude confidential information from the disclosure in accordance with this paragraph.

The documents disclosed in accordance with this paragraph shall also be accessible by means of the system referred to in Article 22.

2. Member States may exempt the company from the disclosure requirement referred to in paragraph 1 where, for a continuous period beginning at least one month~~s~~ before the date fixed for the general meeting referred to in Article 86i and ending not earlier than the conclusion of that meeting, it makes the documents referred to in paragraph 1, available on its website free of charge to the public.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of those documents unless and only to the extent that they are proportionate in order to achieve those objectives.

3. Where the company ~~intending to carry out the cross-border conversion~~ discloses the draft terms of the cross-border conversion in accordance with paragraph 2 **of this Article**, it shall submit at least one month~~s~~ before the date of the general meeting referred to in Article 86i to the register of the departure Member State, the following information which has to be disclosed:

(a) the legal form, name and registered office of the company in the departure Member State as well as those proposed for the converted company in the destination Member State;

(b) the register in which the documents referred to in Article 14 are filed in respect of the company, and the registration number in that register;

(c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members;

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

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be completed online in their entirety in accordance with Article 13i.

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border conversion, or the information referred to in paragraph 3 is published in their national gazette or through a central electronic platform in accordance with Article 16 paragraph 3.

6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible by the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the company by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 5 shall not exceed the recovery of costs of providing such services.

Article 86i

Approval by the general meeting

1. After taking note of the reports referred to in Articles 86e, 86f and 86g, where applicable, the general meeting of the company shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.

2. The general meeting of the company may reserve the right to make implementation of the cross-border conversion conditional on express ratification by it of the arrangements referred to in Article 86l.

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

4. Member States shall ensure that the approval of the cross-border conversion by the general meeting cannot be challenged solely on the following grounds:

   (a) the cash compensation referred to in Article 86d (1) (i) has been inadequately set; or

   (b) the information given on point (a) did not comply with the legal requirements.

Article 86j

Protection of members

1. Member States shall ensure that at least the following members of a company have the right to dispose of their shares, under the conditions laid down in paragraphs 2 to 6:

   (a) the members holding shares with voting rights who voted against the approval of the draft terms of the cross-border conversion

   (b) the members holding shares without voting rights.

   Member States may provide such a right also to other members of the company.

Member States may require that ~~in any event~~ the explicit opposition to the draft terms of the cross-border conversion and/or the members' intention to exercise their right to dispose of their shares shall be appropriately documented at the latest at the general meeting referred to in Article 86i. **Member States may allow to consider the recording of the objection to the draft terms of the cross-border conversion as proper documentation of explicit opposition.**

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

~~(a) the converted company;~~

~~(b) the remaining members of that company;~~

~~(c) third parties in agreement with the company.~~

~~The acquisition by the converted company of its own shares shall be without prejudice to national rules governing the acquisition by a company of its own shares.~~

2a. Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 86i. **Member States shall ensure that the company provides an electronic address for receiving this declaration electronically.**

~~3. Member States shall ensure that the company makes an offer of adequate cash compensation in the draft terms of the cross-border conversion as specified in Article 86d(1)~~**point** ~~(i) to the members, referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shares. Member States shall also ensure that the offer of cash compensation is conditional upon the cross-border conversion taking effect in accordance with Article 86r.~~

3. Member States shall further establish the period within which the cash compensation specified in the draft terms of cross-border conversion is to be paid, which shall not exceed two months after the cross-border conversion takes effect according to Article 86r.

(moved from paragraph 4)

3a. Member States shall ensure that any member who has declared the decision to exercise the right to dispose of the shares but who considers that the compensation offered by the company ~~according to paragraph 3~~ has not been adequately set, is entitled to demand additional cash compensation before competent authorities or bodies mandated under national law. Member States shall establish a time limit for the demand relating to additional cash compensation.

~~3b Member States shall ensure that the company provides an electronic address for receiving the declaration according to paragraph 2a electronically.~~

(moved to paragraph 2a)

~~4. Member States shall further establish the period within which the cash compensation offered according to paragraph 3 is to be paid, which shall not exceed two months after the cross-border conversion takes effect according to Article 86r.~~

5. *deleted*

6. Member States shall ensure that the law of the departure Member State governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the departure Member State**.**~~, including for those members who did not exercise the right to dispose of the shares, if they have any rights under the law of the departure Member State. Member States may provide that any member who has exercised the right to dispose of the shares shall be entitled to join the proceedings referred to in paragraph 3a and, if this is the case Member States shall provide for a time limit for joining the proceedings. Member States may also provide that the final decision on the adequacy of the cash compensation is valid for all members who have exercised the right to dispose of their shares according to paragraph 2a.~~ **(moved to recital 24)**

Article 86k

Protection of creditors

1. *(moved to para 3.)*

2. Member States shall provide for an adequate system of protection of the interest of creditors, whose claims antedate the disclosure of the draft terms of the cross-border conversion and have not fallen due at the time of such disclosure. Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the draft terms of the cross-border conversion, as provided for in Article 86d (1) point (f), may apply within three months of the **disclosure of the draft terms of cross-border conversion**~~general meeting~~ referred to in Article 86**h**~~i~~ to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the cross-border conversion the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

   Member States shall ensure that the safeguards are dependent on the cross-border conversion taking effect in accordance with Article 86r.

3. Member States may require that the management or administrative organ of the company provides a declaration accurately reflecting the current financial status of the company at the date of the declaration, which shall not be earlier than one month before its disclosure. The declaration shall declare that, on the basis of the information available to the management or administrative organ of the company at the date of the declaration, and after having made reasonable enquiries, they are unaware of any reason why the company should, after the conversion takes effect, be unable to meet the liabilities when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border conversion in accordance with Article 86h.

[moved from para 1]

3a. Paragraphs 2 and 3 are without prejudice to the application of national laws of the departure Member State concerning the satisfaction of or securing payments or ~~securing~~ non-pecuniary ~~duties~~ **obligations** due to public bodies.

4. ~~[The converted company shall be considered, for three years from the day of the conversion taking effect, in respect of any cause of action arising prior to the conversion in relation to creditors as having its registered office in the departure Member State.]~~

Without prejudice to the rules on exclusive jurisdiction arising from national or EU law or from a contractual agreement, Member States shall ensure that creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion and have not fallen due at the time of such disclosure are able to institute proceedings against the company also in the departure Member State within three years from the day the conversion has taken effect.

Article 86l

Employee participation

1. Without prejudice to paragraph 2, the converted company shall be subject to the rules in force concerning employee participation, if any, in the destination Member State.

2. However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply, where the company has, in the six months prior to the disclosure of the draft terms of the cross-border conversion as referred to in Article 86d of this Directive, an average number of employees **that exceeds 500 and is operating under an** ~~equivalent to four fifths of the applicable threshold, laid down in the law of the departure Member State, which triggers the participation of~~ employees **participation system** within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law of the destination Member State does not:

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

   (b) provide for employees of establishments of the converted company that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the destination Member State.

3. In the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2), 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 two sentences of Article 3(4), Article 3(5) and Article 3(7);

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

(c) Article 5;

(d) Article 6;

(e) Article 7 paragraph 1 except the second indent of (b);

(f) Articles 8, 10, 11 and 12;

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

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

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

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

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

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

6. Where the company 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 years after the cross-border conversion has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.

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

Article 86m

Pre-conversion certificate

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

   Such completion of procedures and formalities may include the satisfaction of payments, **or** securing payments or ~~securing~~ non-pecuniary obligations due to public bodies or the compliance with special sectoral requirements.

2. Member States shall ensure that the application to obtain a pre-conversion certificate by the company is accompanied by the following:

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

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

(ba) any comments submitted by members, creditors and employees referred to in Article 86h (1) (b), where applicable;

(c) information on the approval by the general meeting referred to in Article 86i.

3. Member States shall ensure that the application referred to in paragraph 2, including submission of any information and documents may be completed online in its entirety in accordance with Article 13i.

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

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

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

(c) an indication by the company that the procedure referred to in Article 86l (3) and (4) has started, where relevant.

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

(a) where the competent authority determines that the cross-border conversion complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the competent authority shall issue the pre-conversion certificate;

(b) where the competent authority determines that the cross-border conversion does not comply with all the relevant conditions and that not all necessary procedures and**/or** formalities have been completed, the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision. **In that case, the competent authority may give the company the possibility to fulfil the relevant conditions and/or to complete the procedures and formalities within an appropriate period of time.**

8. Member States may provide that the competent authority shall refuse to issue a pre-conversion certificate, if the cross-border conversion is set up for abusive or fraudulent purposes, leading or aimed to lead to the evasion or circumvention of national or EU law or for criminal purposes.

Article 86n

In-depth assessment

DELETED

Article 86o

Transmission of the pre-conversion certificate

1. *deleted*

2. Member States shall ensure that the pre-conversion certificate is shared with the authorities referred to in Article 86p (1) through the system of interconnection of registers set up in accordance with Article 22.

Member States shall also ensure that the ~~decisions to issue or refuse to issue a~~ pre-conversion certificate ~~are~~ **is** available through the system of interconnection of registers set up in accordance with Article 22.

3. The access to the information referred to in paragraph 2 shall be free of charge or the competent authorities referred to in Article 86p(1) and registers.

Article 86p

Scrutiny of the legality of the cross-border conversion by the destination Member State

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

   The competent authority of the destination Member State shall in particular ensure that the proposed converted company complies with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 86l.

2. For the purpose of paragraph 1, the company shall submit to the authority, referred to in paragraph 1, the draft terms of the cross-border conversion approved by the general meeting referred to in Article 86i.

3. Each Member State shall ensure that the application referred to in paragraph 1, including the submission of any information and documents, may be completed online in its entirety in accordance with Article 13i.

4. The competent authority referred to in paragraph 1 shall ~~issue a decision to~~ approve the cross-border conversion as soon as it has completed its assessment of the relevant conditions.

5. The pre-conversion certificate referred to in Article 86o (2) shall be accepted by the competent authority, referred to in paragraph 1, **as** conclusively attesting to the proper completion of the procedures and formalities under the national law of the departure Member State without which the cross-border conversion cannot be approved.

Article 86q

Registration

1. The law of the departure and destination Member States shall determine, with respect to the territory of those States, the arrangements to disclose the completion of the cross-border conversion in the register.

2. Member States shall ensure that at least the following information shall be entered in their registers, which are made publically available and accessible by means of the system referred to in Article 22:

   (a) in the register of the destination Member State - that the registration of the converted company is a result of a cross-border conversion;

   (b) in the register of the destination Member State - the date of registration of the converted company;

   ca) in the register of the departure Member State – that the striking off or removal of the company from the register is the result of a cross-border conversion.

   (c) in the register of the departure Member State - the date of striking off or removal of the company from the register;

   (d) in the registers of the departure and the destination Member States **respectively** - the registration number~~s in the departure Member State~~ of the company **in the departure Member State** and **the registration number** of the converted company in the destination Member State.

3. Member States shall ensure that the registry in the destination Member State notifies the registry in the departure Member State by means of the system referred to in Article 22, that the **cross-border conversion has taken effect.** ~~converted company has been registered.~~ Member States shall also ensure that the registration of the company ~~be~~ **is** removed immediately upon receipt of that notification ~~but not before~~.

4. The exchange of the information referred to in paragraph 3 shall be free of charge for the registers.

Article 86r

Date on which the cross-border conversion takes effect

The law of the destination Member State shall determine the date on which the cross-border conversion takes effect. That date shall be after the scrutiny referred to in Article 86p has been carried out.

~~The cross-border conversion shall take effect from the date of registration of the converted company in the destination Member State, following the scrutiny of legality and approval referred to in Article 86p.~~

Article 86s

Consequences of the cross-border conversion

1. A cross-border conversion, carried out in compliance with the national provisions transposing this Directive, shall **by reason of the cross-border conversion taking effect and from the date referred to in Article 86r** have the following consequences:

   (a) all the assets and liabilities of the company including all contracts, credits, rights and obligations shall continue with the converted company;

   (b) the members of the company ~~which carried out the conversion~~ shall continue to be members of the converted company, unless they exercise the exit right referred to in Article 86j(2*)*;

(c) the rights and obligations of the company arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect shall, by reason of that cross-border conversion taking effect, continue with the converted company on the date on which the cross-border conversion takes effect.

(d) the place of the registered office of the converted company in the departure Member State may be relied upon until such time as the company has been struck off from the register in the departure Member State, unless it may be proven that a third party knew, or ought to have known, of the registered office in the destination Member State.

2. Any activity of the converted company carried out after the date of registration in the destination Member State and before the company has been struck off from the register in the departure Member State shall be treated as the activity of the converted company.

~~*Article 86t*~~

~~***Liability of the independent expert***~~

~~Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the report referred to in Article 86g.~~

Article 86u

Validity

A cross-border conversion which has taken effect in compliance with the procedures transposing this Directive may not be declared null and void.

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

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

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

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

(5) Article 120 is amended as follows:

(-aa) the tittle is replaced by the following:

"Further provisions concerning the scope"

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

"4. Member States shall ensure that this Chapter does not apply in any of the following circumstances:

(a) proceedings have been instituted **relating to** ~~for~~ the winding-up **of insolvent companies**~~, liquidation, or insolvency of the company or companies~~;

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

(f) the following paragraph 4a is added:

"4a. Member States may **decide not to** apply this Chapter to companies subject to **insolvency proceedings other than those referred to in paragraph 4 point (a) or to preventive** restructuring ~~proceedings~~ **frameworks**. ~~initiated because of the likelihood of insolvency~~;"

(6) Article 121 is amended as follows:

(a) in paragraph 1, point (a) is deleted;

(b) paragraph 2 is deleted

(7) Article 122 is amended as follows:

(-a) point (h) is replaced by the following:

"(h) any special advantages granted to members of the administrative, management, supervisory or controlling organs of the merging companies;"

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

"(i) the instrument or instruments of constitution, **where applicable,** and the statutes if they are contained in a separate instrument, of the company resulting from the cross-border merger";

(aa) points (a) and (b) are replaced by the following:

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

(b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment, where appropriate;"

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

"(m) details of the offer of cash compensation for the members in accordance with Article 126a;

(n) safeguards, such as guarantees or pledges, where offered to creditors.";

~~(c) the following second subparagraph is added:~~

~~"Member States may among others require that the common draft terms include information on the reasons for the merger, the head office, the place of effective management and the place of significant economic activity of the company resulting from the merger."~~ **(to be found in recital 13)**

~~(8) the following Article 122a is inserted:~~

~~*"Article 122a*~~

~~*Accounting date*~~

~~1. Where the company resulting from the cross-border merger prepares financial annual statements in accordance with the international accounting standards provided for in Regulation (EC) No 1606/2002 of the European Parliament and of the Council(*), the date from which the transactions of the merging companies shall be treated as those of the company resulting from the cross-border merger shall be determined in accordance with those accounting standards.~~

~~Notwithstanding the first subparagraph, the accounting date provided in the common draft terms of the cross-border merger, shall be the date on which the cross-border merger takes effect, as referred to in Article 129, unless the merging companies determine another date in order to facilitate the merger process. In that case the accounting date shall comply with the following requirements:~~

~~(a) it may not be earlier than the date of the balance sheet of the last annual financial statements drawn up and published by any of the merging companies;~~

~~(b) it shall enable the company resulting from the cross-border merger to draw up its annual financial statements, including the effects of the merger, in accordance with Union law and the law of Member States as at the balance sheet date immediately after the date upon which the cross-border merger takes effect.~~

~~2. Member States shall ensure that the date referred to in paragraph 1, is treated for accounting purposes as being the date from which the transactions of the merging companies will be treated as being those of the company resulting from the cross-border merger by the national laws of all merging companies.~~

~~3. Member States shall ensure that for the recognition and valuation of assets and liabilities in the financial statements to be transferred pursuant to the cross-border merger by acquisition, the accounting regime of the acquiring company shall be used as a common basis by all of the merging companies from the date specified in paragraph 1.~~

~~(*) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).";~~

(9) Articles 123 and 124 are replaced by the following:

"Article 123

Disclosure

1. Member States shall ensure that the common draft terms of the cross-border merger are disclosed and made publically available in their respective national registers, at least one month before the date of the general meeting referred to in Article 126.

   Member States may also require that the following documents are disclosed and made publically available in the register:

   (a) the independent expert report, referred to;

(b) a notice informing the members, creditors and employees of the **merging** compani**es**~~y~~, that they may submit to the respective company, at the latest 7 working days before the date of the general meeting, comments concerning the common draft terms of the cross-border merger.

Member States shall ensure that the companies are able to exclude confidential information from the disclosure in accordance with this paragraph. The documents disclosed in accordance with this paragraph shall also be accessible by means of the system referred to in Article 22.

2. Member States may exempt merging companies from the requirement referred to in paragraph 1 where, for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 126 and ending not earlier than the conclusion of that meeting, those companies make the **documents referred to in paragraph 1,** ~~common draft terms of cross-border merger~~ available on their websites free of charge.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of the documents unless and only to the extent that they are proportionate in order to achieve those objectives.

3. Where merging companies disclose the common draft terms of the cross-border merger in accordance with paragraph 2 of this Article, they shall submit at least one month before the date of the general meeting referred to in Article 126 to the respective national registers the following information which has to be disclosed:

(a) the legal form, name and registered office of each of the merging companies and the legal form, name and registered office proposed for any newly created company;

(b) the register in which the documents referred to in Article 14 are filed in respect of each of the merging companies and the registration number in that register;

(c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors, employees and members;

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

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be completed online in their entirety in accordance with Article 13i.

5. Where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the disclosure referred to in paragraphs 1, 2 and 3 of this Article shall be made at least one month before the date of the general meeting of the other merging company or companies.

6. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3 that the common draft terms of the cross-border merger, or the information referred to in paragraph 3, is published in their national gazette or through a central electronic platform in accordance with Article 16 paragraph 3.

7. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible by the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the merging companies by the registers for the disclosure referred to in paragraph 1 and 3 and, where applicable, for the publication referred to in paragraph 6 shall not exceed the recovery of costs of providing such services.

Article 124

Report of the management or administrative organ to the members

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

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 resulting from the merger;

   (aa) an explanation of the cash compensation and of the method or methods used to arrive at it;

   (b) an explanation of the share exchange ratio and of the method or methods used to arrive at it, where applicable;

   ~~(c) a description of any special valuation difficulties which have arisen;~~

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

   (e) the rights and remedies available to members in accordance with Article 126a.

3. The report referred to in paragraph 1 of this Article, shall be made available in any case electronically, together with the common draft terms of cross-border merger 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 the 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.

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. **Member States may exclude single member companies from the provisions of this Article.**";

(10) the following Article 124a is inserted:

"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;

   (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) how the factors set out in points (a), (b) and (c) affect also any subsidiaries of the merging companies.

3. The report referred to in paragraph 1 of this Article, shall be made available in any case electronically, together with the common draft terms of cross-border merger 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 the 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. Paragraphs 1 to 5 are without prejudice to the applicable information and consultation rights and proceedings instituted at national level, including those following the transposition of Directives 2001/23/EC, 2002/14/EC or 2009/38/EC.";

(11) Article 125 is amended as follows:

(-a) in paragraph 1 the following second subparagraph is added:

However, where the approval of the merger is not required by the 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.

(a) paragraph 3 is replaced by the following:

"(3) The report referred to in paragraph 1 shall in any case include the experts' opinion whether the cash compensation and the share exchange ratio are adequate. With regard to the cash compensation referred to in Article 122~~(1)~~ **point** (m), the experts shall consider any market price of those shares in the merging companies prior to the announcement of the merger proposal or to the value of the companies excluding the effect of the proposed merger as determined according to generally accepted valuation methods. Their statement shall at least:

(a) indicate the method or methods used to arrive at the cash compensation proposed;

(b) indicate the method or methods used to arrive at the share exchange ratio proposed;

(c) state whether the method or methods used are adequate for the assessment of the cash compensation and the share exchange ratio and indicate the value arrived at using each such methods and give an opinion on the relative importance **attributed** to such methods in arriving at the value decided on; and in case different methods are used in the merging companies, also whether the use of different methods was justified;

(d) describe any special valuation difficulties which have arisen.

The experts shall be entitled to secure from the **merging** compan**ies**~~y~~ all information he considers necessary for the discharge of his duties."

(b) in paragraph 4, the following sentence is added:

"Member States may exclude single member companies from the provisions of this Article."

(12) Article 126 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. After taking note of the reports referred to in Articles 124, 124a and 125, where applicable, 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 and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate document.";

(b) the following paragraph 4 is added:

"4. Member States shall ensure that the approval of the cross-border merger by the general meeting cannot be challenged solely on the following grounds:

(a) the share exchange ratio referred to in Article 122(b) has been inadequately set;

(b) the cash compensation referred to in Article 122(m) has been inadequately set;

(d) the information given on points (a) or (b) did not comply with the legal requirements.

(13) the following Articles 126a and 126b are inserted:

"Article 126a

Protection of members

1. Member States shall ensure that at least the following members of the merging companies have the right to dispose of their shares under the conditions laid down in paragraphs 2 to 6, ~~provided that as a result of the merger they would acquire shares in the company resulting from the merger which would be governed by the law of a Member State other than the Member State of the respective merging company~~:

(a) the members holding shares with voting rights who voted against the approval of the common draft terms of the cross-border merger;

(b) the members holding shares without voting rights.

provided that as a result of the merger they would acquire shares in the company resulting from the merger which would be governed by the law of a Member State other than the Member State of the respective merging company.

Member States may provide such a right also to other members of the company.

Member States may require that ~~in any event~~ the explicit opposition to the common draft terms of the cross-border merger and/or the members' intention to exercise their right to dispose of their shares shall be appropriately documented at the latest at the general meeting referred to in Article 126. **Member States may allow to consider the recording of the objection to the draft terms of the cross-border conversion as proper documentation of explicit opposition.**

2. Member States shall ensure that the members referred to in paragraph 1 of this Article, may dispose of their shares**, in consideration of adequate cash compensation paid** once the cross-border merger has taken effect in accordance with Article 129**.**~~, to at least one of the following:~~

~~(a) the company resulting from the merger;~~

~~(b) the remaining members of that company;~~

~~(c) third parties in agreement with that company.~~

~~The acquisition by the merging company of its own shares shall be without prejudice to national rules governing the acquisition by a company of its own shares.~~

2a. Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the merging company concerned their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 126. **Member States shall ensure that the merging companies provide an electronic address for receiving this declaration electronically.**

~~3. Member States shall ensure that the merging companies concerned make an offer of adequate cash compensation in the common draft terms of the cross-border merger, as specified in Article 122(1) **point** (m), to the members referred to in paragraph 1 of this Article who wish to exercise their right to dispose of their shares. Member States shall also ensure that the offer of cash compensation is conditional upon the cross-border merger taking effect in accordance with Article 129.~~

3. Member States shall further establish the period within which the cash compensation specified in the draft terms of cross-border merger is to be paid, which shall not exceed two months after the cross-border merger takes effect according to Article 129.

(moved from paragraph 4)

3a. Member States shall ensure that any member who has declared the decision to exercise the right to dispose of the shares but who considers that the cash compensation offered by the **merging** company **concerned** ~~according to paragraph 3~~ has not been adequately set, is entitled to demand additional cash compensation before competent authorities or bodies mandated under national law. Member States shall establish a time limit for the demand relating to additional cash compensation.

~~3b. Member States shall ensure that the merging companies provide an electronic address for receiving the declaration according to paragraph 2a electronically.~~

(moved to paragraph 2a)

~~4. Member States shall further establish the period within which the cash compensation offered according to paragraph 3 is to be paid, which shall not exceed two months after the cross-border merger takes effect according to Article 129.~~

7. Member States shall ensure that the national law of the Member State to which a merging company is subject, governs the rights referred to in paragraphs 1 to 6 and that the exclusive competence to resolve any disputes relating to those rights lies within the Member State concerned**.**~~, including for those members who did not exercise of the right to dispose of the shares, if they have any rights under the law of that Member State. Member States may provide that any member, who has exercised the right to dispose of the shares, shall be entitled to join the proceedings referred to in paragraph 3a and, if this is the case Member States shall provide for a time limit for joining the proceedings. Member States may also provide that the final decision on the adequacy of the cash compensation is valid for all members who have exercised the right to dispose of the shares according to paragraph 2a.~~ **(moved to recital 24)**

8. Member States shall also ensure that members of the merging companies who did not exercise the right to dispose of their shares, but who consider that the share-exchange ratio is inadequate may challenge that share-exchange ratio, set out in the common draft terms of the cross-border merger referred to Article 122, before competent authorities or bodies mandated under national law within the time limit laid down in the national law, which shall in any event start not earlier than the date the cross-border merger takes effect.

9. Member States shall ensure that where the competent authority or body mandated under national law finds that a share-exchange ratio has not been adequately set, the competent authority or body mandated under national law has the power to order the company resulting from the cross-border merger to **provide for** ~~pay~~ compensation to those members who successfully challenged the ratio. This compensation shall be ~~calculated~~ **based** on the basis of an adequate ratio applicable to the exchange of securities or shares as determined by the competent authority or body mandated under national law.

~~Member States may provide that upon request by any of these members or by the company resulting from the merger, the competent authority or body mandated under national law shall be empowered to order the company resulting from the cross-border merger to provide additional shares instead of the cash payment.~~

10. Member States shall ensure that the law applicable to the company resulting from the cross-border merger governs the obligation to **provide for** ~~pay~~ compensation **and that the exclusive competence to resolve any disputes relating to this obligation lies within the Member State of the company resulting from the merger.**~~or to provide additional shares.~~

Article 126b

Protection of creditors

1. *[moved to paragraph 3]*

2. Member States shall provide for an adequate system of protection of the interest of creditors, whose claims antedate the disclosure of the common draft terms of the cross-border merger and have not fallen due at the time of such disclosure.

   Member States shall ensure that the creditors who are dissatisfied with the safeguards offered in the common draft terms of the cross-border merger, as provided for in Article 122 point (m), may apply within three months of the **disclosure of the common draft terms of cross-border merger** ~~general meeting~~ referred to in Article 12**3**~~6~~ to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the cross-border merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the **merging** compan**ies**~~y~~.

   Member States shall ensure that the safeguards are dependent on the cross-border merger taking effect in accordance with Article 129.

3. Member States may require that the management or administrative organ of the merging compan**ies**~~y~~ provides a declaration accurately reflecting the current financial status of the**se** compan**ies**~~y~~ at the date of the declaration, which shall not be earlier than one month before its disclosure. The declaration shall declare that, on the basis of the information available to the management or administrative organ of the **merging** compan**ies**~~y~~ at the date of that declaration, and having made reasonable enquiries, they are unaware of any reason why the company resulting from the merger would be unable to meet the liabilities when those liabilities fall due. The declaration shall be disclosed together with the common draft terms of the cross-border merger in accordance with Article 123.

4. Paragraphs 2 and 3 are without prejudice to the application of national laws of the Member State of the merging companies concerning the satisfaction of or securing payments or ~~securing~~ non-pecuniary ~~duties~~ **obligations due to public bodies**."

(14) Article 127 is replaced by the following:

"Article 127

Pre-merger certificate

1. Member States shall designate an authority or authorities ("the competent authority"), to scrutinise the legality of the cross-border merger as regards that part of the procedure which is governed by the law of the Member State of the merging company and to issue a pre-merger certificate attesting compliance with all the relevant conditions and the proper completion of all procedures and formalities in the Member State of the merging company.

   Such completion of procedures and formalities may include the satisfaction of payments, **or** securing payments or ~~securing~~ non-pecuniary obligations due to public bodies or the compliance with special sectoral requirements.

2. Member States shall ensure that the application to obtain a pre-merger certificate by each company merging cross-border is accompanied by the following:

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

(b) the reports referred to in Articles 124, 124a, and 125, where applicable;

(ba) any comments submitted by members, creditors and employees referred to in Article 123(1)(b), where applicable;

(c) information on the approval by the general meeting referred to in Article 126.

3. Member States shall ensure that the application referred to in paragraph 2, including submission of any information and documents may be completed online in its entirety in accordance with Article 13i.

4. In respect of compliance with the rules concerning employee participation as laid down in Article 133, the **competent authority in the** ~~departure~~ Member State **of the merging company** shall verify that the common draft terms of cross-border merger, referred to in paragraph 2 of this Article, include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

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

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

(c) an indication by the **merging** compan**ies**~~y~~ that the procedure referred to in Article 133(3) and (4) has started, where relevant.

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

(a) where the competent authority determines that the cross-border merger complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the competent authority shall issue the pre-merger certificate;

(b) where the competent authority determines that the cross-border merger does not comply with all the relevant conditions and that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-merger certificate and shall inform the **merging** compan**ies**~~y~~ of the reasons for its decision. **In that case, the competent authority may give the merging companies the possibility to fulfil the relevant conditions and/or to complete the procedures and formalities within an appropriate period of time.**

8. Member States may provide that the competent authority shall refuse to issue a pre-merger certificate, if the cross-border merger is set up for abusive or fraudulent purposes, leading or aimed to lead to the evasion or circumvention of national or EU law or for criminal purposes.

(14a) The following Article 127a is inserted:

"Article 127a

Transmission of the pre-merger certificate

1. Member States shall ensure that the pre-merger certificate is shared with the authorities referred to in Article 128(1) through the system of interconnection of registers set up in accordance with Article 22.

Member States shall also ensure that the ~~decisions to issue or refuse to issue a~~ pre-merger certificate ~~are~~ **is** available through the system of interconnection of registers set up in accordance with Article 22.

2. The access to the information referred to in paragraph 1 shall be free of charge for the competent authorities referred to in Article 128(1) and registers."

(15) Article 128 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. For the purpose of paragraph 1 ~~of this Article~~, each merging company shall submit to the authority referred to in paragraph 1 the common draft terms of cross-border merger, approved by the general meeting referred to in Article 126 or, in case the **approval of the** general meeting is not required in accordance with Article 132 paragraph 3, the draft terms of the cross-border merger approved by **each** ~~the~~ **merging** company in accordance with national law."

(b) the following paragraphs 3, **3a** and 4 are added:

"3. Each Member State shall ensure that the application referred to in paragraph 1, by any of the merging companies, including the submission of any information and documents may be completed online in its entirety in accordance with Article 13i.

3a. The competent authority referred to in paragraph 1 shall approve the cross-border merger as soon as it has completed its assessment of the relevant conditions.

4. The pre-merger certificate or certificates referred to in Article 127a(1) shall be accepted by a competent authority of a Member State of a company resulting from the cross-border merger, **as** conclusively attesting to the proper completion of the pre-merger acts and formalities in the respective Member State or Member States.";

(15a) Article 130 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The law of ~~each of~~ the Member States ~~to whose jurisdiction~~ **of** the merging companies **and of the company resulting from the merger** ~~were subject~~ shall determine, with respect to the territory of that State, the arrangements, in accordance with Article 16, for publishing the completion of the cross-border merger in the public register in which each of the companies is required to file documents."

(b) paragraph 1a is inserted:

"1a. Member States shall ensure that at least the following information shall be entered in their registers, which are made publically available and accessible by means of the system referred to in Article 22:

(a) in the register of the Member State of the company resulting from the merger - that the registration of the company resulting from the merger is a result of a cross-border merger;

(b) in the register of the Member State of the company resulting from the merger - the date of registration of the company resulting from the merger

(c) in the register of the Member State of each merging company - the date of striking off or removal of the company from the register

(d) in the register of the Member State of each merging company - that the striking off or removal of the company is a result of a cross-border merger;

(e) in the registers of the Member States of each merging company and the company resulting from the merger respectively - the registration numbers of each merging company and of the company resulting from the merger.

(16) Article 131 is amended as follows:

(a) in paragraph 1, points (a) and (b) are replaced by the following:

"(a) all the assets and liabilities of the company being acquired herein including all contracts, credits, rights and obligations shall be transferred to and shall continue with the acquiring company;

(b) the members of the company being acquired shall become members of the acquiring company, unless they exercise the exit right referred to in Article 126a(2);";

(b) in paragraph 2, points (a) and (b) are replaced by the following:

"(a) all the assets and liabilities of the merging companies herein including all contracts, credits, rights and obligations shall be transferred to and shall continue with the new company;

(b) the members of the merging companies shall become members of the new company, unless they exercise the exit right referred to in Article 126a(2);";

(17) Article 132 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Where a cross-border merger by acquisition is carried out by either a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired or by a person who holds directly or indirectly all the shares in the acquiring company and in the companies being acquired and the acquiring company does not allot any shares under the merger:

– points (b), (c), (e) and (m) of Article 122 , Article 125, and point (b) of Article 131(1) shall not apply;

– Article 124 and Article 126(1) shall not apply to the company or companies being acquired.";

(b) the following paragraph 3 is added:

"3. Where the laws of Member States of all of the merging companies provide for the exemption from the approval by general meeting in accordance with Article 126(3) and paragraph 1 of this Article, the common draft terms of cross-border merger or the information referred to in paragraphs 1 to 3 of Article 123 respectively and the reports referred to in Articles 124 and 124a, shall be made available at least one month before the decision on the merger is taken by the company in accordance with national law.";

(18) Article 133 is amended as follows:

(a) paragraph 7 is replaced by the following:

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

(b) the following paragraph 8 is added:

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

~~(19) the following Article 133a is inserted:~~

~~*"Article 133a*~~

~~*Liability of independent experts*~~

~~Member States shall lay down rules governing the civil liability of the independent experts responsible for drawing up the report referred to in Article 125.";~~

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

"CHAPTER IV

Cross-border divisions of limited liability companies

Article 160a

Scope

This Chapter shall apply to the cross-border division of a limited liability company, formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Union provided that at least two of the limited liability companies involved in the division are governed by the laws of different Member States (hereinafter referred to as 'cross-border division').

Article 160b

Definitions

For the purposes of this Chapter:

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

(2) ‘company being divided’ means a company which in a process of the cross-border division in case of a full division transfers all its assets and liabilities to **two**~~one~~ or more companies, or in case of a partial division or division by separation transfers part of its assets and liabilities to one or more companies;

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

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

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

(c) a company being divided transfers part of its assets and liabilities to one or more newly formed companies ('the recipient companies'), in exchange for the issue of securities or shares in the recipient companies to the company being divided ('division by separation').

Article 160c

Further provisions concerning the scope

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

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

4. Member States shall ensure that this Chapter does not apply in any of the following circumstances:

   (a) proceedings have been instituted **relating to** ~~for~~ the winding-up **of insolvent companies**~~, liquidation, or insolvency of the company~~;

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

[moved from Article 160d (2)]

5. Member States may **decide not to** apply this Chapter to companies subject to **insolvency proceedings other than those referred to in paragraph 4 point (a) or to preventive** restructuring ~~proceedings~~ **frameworks.** ~~initiated because of the likelihood of insolvency.~~ *[moved from Art 160d (2a)]*

6. The national law of the Member State of the company being divided shall govern the part of the procedures and formalities to be complied with in connection with the cross-border division in order to obtain the pre-division certificate, and the national laws of the Member States of the recipient companies shall govern the part of the procedure and the formalities to be complied with following receipt of the pre-division certificate in compliance with Union law. [*moved from Art 160d (4)]*

Article 160d

Scope and conditions relating to cross-border divisions

[deleted, content moved to Art 160c]

Article 160e

Draft terms of cross-border divisions

1. The management or administrative organ of the company being divided shall draw up the draft terms of a cross-border division. The draft terms of cross-border division shall include at least the following particulars:

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

   (b) the ratio applicable to the exchange of securities or shares representing the companies' capital and the amount of any cash payment, where appropriate;

   (c) the terms for the allotment of securities or shares representing the capital of the recipient companies or of the company being divided;

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

(f) the date from which the holding of securities or shares representing the companies' capital will entitle the holders to share in profits and any special conditions affecting that entitlement;

(g) the date or dates from which the transactions of the company being divided will be treated for accounting purposes as being those of the recipient companies;

(h) any special advantages granted to members of the administrative, management, supervisory or controlling organs of the company being divided;

(i) the rights conferred by the recipient companies on members of the company being divided enjoying special rights or on holders of securities other than shares representing the divided company capital, or the measures proposed concerning them;

(k) the instruments of constitution, and the statutes if they are contained in a separate instrument, of the recipient companies and any changes to the instrument of constitution of the company being divided in case of a partial division;

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

(m) the precise description of the assets and liabilities of the company being divided and a statement of how these assets and liabilities are to be allocated between the recipient companies, or retained by the company being divided in the case of a partial division, including a provision for the treatment of assets or liabilities not explicitly allocated in the draft terms of cross-border division, such as assets or liabilities which are unknown on the date on which the draft terms of cross-border division are drawn up;

(n) information on the evaluation of the assets and liabilities which are allocated to each company involved in a cross-border division;

(o) the date of the account of the company being divided, which is used to establish the conditions of the cross-border division;

(p) where appropriate the allocation to the members of the company being divided of shares and securities in the recipient companies or in the company being divided or in the combination of the recipient company and company being divided and the criterion upon which such allocation is based;

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

(r) safeguards, such as guarantees or pledges, where offered to creditors.

~~Member States may among others require that the draft terms include information on the reasons for the division, the head office, the place of effective management and the place of significant economic activity of the company being divided and the companies resulting from the division.~~

~~*Article 160f*~~

~~***Accounting date***~~

~~1. The management or administrative organ of the company being divided shall be entitled to determine the accounting date or dates in the draft terms of the cross-border division, in order to facilitate the division process.~~

~~The accounting date provided in the draft terms of the cross-border division shall be the date on which the cross-border division takes effect, as referred to in Article 160t unless the company determines other dates in order to facilitate the division process.~~

~~In that case each accounting date shall comply with the following requirements:~~

(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;

(b) in respect of each recipient company, it may not be earlier than the date on which the recipient company was formed;

(c) the dates referred to in points (a) and (b) shall enable the recipient companies, and in case of partial division the company being divided, to draw up their respective annual financial statements including the effects of the division, in accordance with Union law and the law of Member States as at the respective balance sheet date of the companies involved in the division immediately after the date upon which the cross-border division takes effect.

For the purposes of points (a) and (b), the determination of the accounting date may have regard to the accounting regime in use by a recipient company.

2. Member States shall ensure that the dates referred to in paragraph 1 are treated for accounting purposes as being the dates from which the transactions transferred by the company being divided will be treated as being those of each recipient company by the national laws of all companies resulting from the cross-border division.

3. Member States shall ensure that for the recognition and valuation of assets and liabilities in the financial statements to be transferred pursuant to the cross-border division, the accounting regimes of the recipient companies shall be used from the respective dates specified in paragraph 1.

Article 160g

Report of the management or administrative organ to the members

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

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

   (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;

   (aa) an explanation of the cash compensation and of the method used to arrive at it;

   (b) an explanation of the share exchange ratio and of the method used to arrive at it, where applicable;

   ~~(c) a description of any special valuation difficulties which have arisen;~~

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

   (e) the rights and remedies available to members in accordance with Article 160l.

3. The report referred to in paragraph 1 of this Article shall be made available in any case electronically, together with the draft terms of cross-border division to the members of the company being divided not less than one month 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.

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 requirement. **Member States may exclude single member companies from the provisions of this Article.**

Article 160h

Report of the management or administrative organ to the employees

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.

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

   (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;

   (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) how the factors set out in points (a), (b) and (c) affect also any subsidiaries of the company being divided.

3. The report referred to in paragraph 1 shall be made available in any case electronically, together with the draft terms of cross-border division 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 one month 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.

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.

5. However, where the company being divided and all of **its**~~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.

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

Article 160i

Independent expert report

1. Member States shall ensure that an independent expert examines the draft terms of cross-border division and draws up a report intended for members which is made available to them not less than one month before the date of the general meeting referred to in Article 160k. Depending on the law of each Member State, **the**~~such~~ experts may be **a** natural person~~s~~ or **a** legal person~~s~~.

2. The report referred to in paragraph 1 shall in any case include the expert's opinion whether the cash compensation and the share exchange ratio are adequate. With regard to the cash compensation referred to in Article 160e~~(1)~~ **point** (q), the expert shall consider any market price of those shares in the company being divided prior to the announcement of the division proposal or to the value of the company excluding the effect of the proposed division as determined according to generally accepted valuation methods. Its statement shall at least:

   (a) indicate the method used to arrive at the cash compensation proposed;

   (b) indicate the method used to arrive at the share exchange ratio proposed;

   (c) state whether such method **or methods used are** ~~is~~ adequate for the assessment of the cash compensation and share exchange ratio and indicate the value arrived at using each such methods and give an opinion on the relative importance **attributed** to such methods in arriving at the value decided on;

   (d) describe any special valuation difficulties which have arisen.

The expert shall be entitled to secure from the company **being divided** all information he considers necessary for the discharge of his duties.

3. Neither an examination of the ~~common~~ draft terms of cross-border division by an independent expert nor an expert report shall be required if all the members of the company **being divided** have so agreed. Member States may exclude single member companies from the provisions of this Article.

Article 160j

Disclosure

1. Member States shall ensure that the draft terms of the cross-border division are disclosed and made publicly available in the register, at least one month before the date of the general meeting referred to in Article 160k.

   Member States may also require that the following documents are disclosed and made publically available in the register:

   (**a**~~b~~) the independent expert report referred to in Article 160i;

   (**b**~~c~~) a notice informing the members, creditors and employees of the company being divided that they may submit to the company, at the latest 7 working days before the date of the general meeting, comments concerning the draft terms of the cross-border division.

   Member States shall ensure that the company is able to exclude confidential information from the disclosure in accordance with this paragraph.

   The documents disclosed in accordance with ~~in~~ this paragraph shall be also accessible by means of the system referred to in Article 22.

2. Member States may exempt the company being divided from the disclosure requirement referred to in paragraph 1 where, for a continuous period beginning at least one month before the date fixed for the general meeting **referred to in Article 160k** ~~which is to decide on the draft terms of division~~ and ending not earlier than the conclusion of that meeting, it makes the documents referred in paragraph 1, available on its website free of charge to the public.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of those documents unless and only to the extent that they are proportionate in order to achieve those objectives.

3. Where the company being divided discloses the draft terms of the cross-border division in accordance with paragraph 2 of this Article, it shall submit, at least one month before the date of the general meeting referred to in Article 160k, to the **respective national** register, the following information which has to be disclosed:

(a) the legal form, name and registered office of the company being divided and the legal form, name and registered office proposed for any newly created company resulting from the cross-border division;

(b) the register in which the documents referred to in Article 14 are filed in respect of the company being divided and the registration number in that register;

(c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members;

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

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be completed online in their entirety in accordance with Article 13i.

5. Member States may require in addition to the disclosure referred to in paragraphs 1, 2 and 3, that the draft terms of the cross-border division, or the information referred to in paragraph 3, is published in their national gazette or through a central electronic platform in accordance with Article 16 paragraph 3.

6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible by the public free of charge through the system of interconnection of registers.

   Member States shall further ensure that any fees charged to the company being divided by the registers for the disclosure referred to in paragraph 1 and 3 and, where applicable, for the publication referred to in paragraph 5 shall not exceed the recovery of costs of providing such services.

Article 160k

Approval by the general meeting

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 and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.

2. The general meeting may reserve the right to make implementation of the cross-border division conditional on express ratification by it of the arrangements referred to in Article 160n.

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

5. Member States shall ensure that the approval of the cross-border division by the general meeting cannot be challenged solely on the following grounds:

(a) the share exchange ratio referred to in Article 160e **(b)** has been inadequately set;

(b) the cash compensation referred to in Article 160e **(q)** has been inadequately set;

(c) the information given on points (a) or (b) did not comply with the legal requirements.

Article 160l

Protection of members

1. Member States shall ensure that at least the following members of a company being divided have the right to dispose of their shares under the conditions laid down in paragraphs 2 to 6~~, provided that as a result of the division they would acquire shares in a recipient company which is governed by the law of a Member State other than the company being divided~~:

(a) the members holding shares with voting rights who voted against the approval of the draft terms of the cross-border division;

(b) the members holding shares without voting rights.

provided that, as a result of the division, they would acquire shares in the recipient companies which would be governed by the law of a Member State other than the company being divided.

Member States may provide such a right also to other members of the company.

Member States may require that in any event the explicit opposition to the draft terms of the cross-border division and/or the members' intention to exercise their right to dispose of their shares shall be appropriately documented at the latest at the general meeting referred to in Article 160k. **Member States may allow to consider the recording of the objection to the draft terms of the cross-border conversion as proper documentation of explicit opposition.**

2. Member States shall ensure that the members referred to in paragraph 1, may dispose of their shares, in consideration of adequate cash compensation paid, once the cross-border division has taken effect in accordance with Article 160t**.**~~, to at least one of the following:~~

~~(a) the company being divided or the recipient company or companies;~~

~~(b) the remaining members of that company;~~

~~(c) third parties, in agreement with the company being divided.~~

~~The acquisition by the company being divided of its own shares shall be without prejudice to national rules governing the acquisition by a company of its own shares.~~

2a Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company being divided their decision to exercise the right to dispose of the shares. That period shall not exceed one month after the general meeting referred to in Article 160k. **Member States shall ensure that a company being divided provides an electronic address for receiving this declaration electronically.**

~~3. Member States shall ensure that the 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)~~**point**~~(q) to the members, referred to in paragraph 1 of this Article, who wish to exercise their right to dispose of their shares. Member States shall also ensure that the offer of cash compensation is conditional upon the cross-border division taking effect in accordance with Article 160t.~~

3. Member States shall further establish the period within which the cash compensation specified in the draft terms of cross-border division is to be paid, which shall not exceed two months after the cross-border division takes effect according to Article 160t.

(moved from paragraph 4)

3a. Member States shall ensure that any member who has declared the decision to exercise the right to dispose of the shares but who considers that the cash compensation offered by the company **being divided** ~~according to paragraph 3~~ has not been adequately set, is entitled to demand additional cash compensation before competent authorities or bodies mandated under national law. Member States shall establish a time limit for the demand relating to additional cash compensation.

~~3b. Member States shall ensure that a company being divided provides an electronic address for receiving the declaration according to paragraph 2a electronically.~~

(moved to paragraph 2a)

~~4. Member States shall further establish the period within which the cash compensation offered according to paragraph 3 is to be paid, which shall not exceed two months after the cross-border division takes effect according to Article 160t.~~

6. Member States shall ensure that the national law of the Member State of a company being divided governs the rights referred to in paragraphs 1 to 5 and that the exclusive competence to resolve any disputes relating to those rights lies within the Member State of the company being divided**.**~~, including for those members who did not exercise the right to dispose of the shares, if they have any rights under the law of the Member State of the company being divided. Member States may provide that any member, who has exercised the right to dispose of the shares, shall be entitled to join the proceedings referred to in paragraph 5 and, if this is the case, Member States shall provide for a time limit for joining the proceedings. Member States may also provide that the final decision on the adequacy of the cash compensation is valid for all members who have exercised the right to dispose of the shares according to paragraph 3.~~ **(moved to recital 24)**

7. Member States shall also ensure that members of the company being divided who did not exercise the right to dispose of their shares, but consider that the share-exchange ratio is inadequate may challenge that share-exchange ratio set out in the draft terms of the cross-border division **referred to in Article 160e** before competent authorities or bodies mandated under national within the time limit laid down in the national law, which shall in any event start not earlier than the date the cross-border division takes effect.

8. Member States shall ensure that where the competent authorities or bodies mandated under national law find that a share-exchange ratio has not been adequately set, the competent authorities or bodies mandated under national law have court has the power to order the recipient company to **provide for** ~~pay~~ compensation to those members who succesfully challenged the ratio. This compensation shall be ~~calculated~~ based on ~~the basis of~~ an adequate ratio applicable to the exchange of securities or shares as determined by the competent authorities or bodies mandated under national law.

~~Member States may provide that upon request by any of these members or the companies resulting from the division, the competent authorities or bodies mandated under national law shall be empowered to order the recipient company to provide additional shares instead of the cash payment.~~

9. Member States shall ensure that the law applicable to **the company being divided** ~~each recipient company~~ shall govern the obligation to **provide for** ~~pay~~ compensation **and that the exclusive competence to resolve any disputes relating to this obligation lies within the Member State of the company being divided.**~~or to provide additional shares.~~

Article 160m

Protection of creditors

1. *[moved to paragraph 3]*

2. Member States shall provide for an adequate system of protection of the interest of creditors, whose claims antedate the disclosure of the draft terms of the cross-border division and have not fallen due at the time of such disclosure. Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the draft terms of the cross-border division, as provided for in Article 160e point (r), may apply within three months of the **disclosure of the draft terms of cross-border division** ~~general meeting~~ referred to in Article 160**j**~~k~~ to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the cross-border division the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

   Member States shall ensure that the safeguards are dependent on the cross-border division taking effect in accordance with Article 160t.

4. Where a creditor of the company to be divided whose claim is transferred to a recipient company does not obtain satisfaction from that recipient company, the other recipient companies, and in the case of a partial division the company being divided, shall be jointly and severally liable with the recipient companies for that obligation. However, the maximum amount of joint and several liability of any company involved in the division shall be limited to the value, at the date on which the division takes effect, of the net assets allocated to that company.

5. Member States may require that the management or administrative organ of the company being divided provides a declaration accurately reflecting the current financial status of the company at the date of the declaration, which shall not be earlier than one month before its disclosure. The declaration shall declare that, on the basis of the information available to the management or administrative organ of the company **being divided** at the date of the declaration, and after having made reasonable enquiries, they are unaware of any reason why any recipient company and, in the case of a partial division, the company being divided, should, after the division takes effect, be unable to meet the liabilities allocated to them under the draft terms of the cross-border division when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border division in accordance with Article 160j. *[moved from paragraph 1]*

6. Paragraphs 2 to 5 are without prejudice to the application of national laws of the Member State of the dividing company concerning the satisfaction of or securing payments or ~~securing~~ non-pecuniary ~~duties~~ **obligations** to public bodies.

Article 160n

Employee participation

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.

2. However, the rules in force concerning employee participation, if any, in the Member State where the recipient company has its registered office shall not apply, where the company being divided, in the six months prior to the disclosure of the draft terms of the cross-border division as referred to in Article 160e of this Directive, has an average number of employees **that exceeds 500 and is operation under and** ~~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~~ employee~~s~~ **participation system** 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:

   (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.

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) 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 two sentences of Article 3(4), Article 3(5) and Article 3(7);

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

(c) Article 5;

(d) Article 6;

(e) Article 7 paragraph 1 except the second indent of (b);

(f) Articles 8, 10, 11 and 12;

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

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

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

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

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

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.

6. Where any of the recipient companies is to be governed by an employee participation system in accordance with the rules referred to in paragraph 2, those companies shall be obliged to take a legal form allowing for the exercise of participation rights,

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

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

Article 160o

Pre-division certificate

1. Member States shall designate a national authority or authorities ("the competent authority"), 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.

Such completion of procedures and formalities may include the satisfaction of payments, **or** securing payments or ~~securing~~ non-pecuniary obligations due to public bodies or the compliance with special sectoral requirements.

2. Member States shall ensure that the application for obtaining the pre-division certificate by the company being divided is accompanied by the following:

   (a) the draft terms of division referred to in Article 160e;

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

   (ba) any comments submitted by members, creditors and employees referred to in Article ~~86h(1)(b)~~ **160j (1) (c)**, where applicable;

   (c) information on the approval by the general meeting referred to in Article 160k.

3. Member States shall ensure that the application referred to in paragraph 2, including submission of any company information and documents, may be completed online in its entirety in accordance with Article 13i.

4. In respect of compliance with the rules concerning employee participation as laid down in Article 160n, the **competent authority in the** Member State of the company being divided shall verify that the draft terms of cross-border division referred to in Article 160e include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

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

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

   (c) an indication by the company **being divided** that the procedure referred to in Article 160n(3) and (4) has started, where relevant.

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

(a) where the competent authority determines that the cross-border division complies with the all the relevant conditions and all necessary procedures and formalities have been completed, the competent authority shall issue the pre-division certificate;

(b) where the competent authority determines that the cross-border division does not comply with all the relevant conditions and**/or** that not all necessary procedures and formalities have been completed the competent authority shall not issue the pre-division certificate and shall inform the company of the reasons of its decision. **In that case, the competent authority may give the company being divided the possibility to fulfil the relevant conditions and/or to complete the procedures and formalities within an appropriate period of time.**

8. Member States may provide that the competent authority shall refuse to issue a pre-division certificate, if the cross-border division is set up for abusive or fraudulent purposes, leading or aimed to lead to the evasion or circumvention of national or EU law or for criminal purposes.

Article 160q

Transmission of the pre-division certificate

2. Member States shall ensure that the pre-division certificate is shared with the authorities referred to in Article 160r(1) through the system of interconnection of registers set up in accordance with Article 22.

Member States shall also ensure that the ~~decisions to issue or refuse to issue the~~ pre-division certificate ~~are~~ **is** available through the system of interconnection of registers set up in accordance with Article 22.

3. The access to the information referred to in paragraph 2 shall be free of charge for the competent authorities referred to in Article 160r(1) and registers.

Article 160r

Scrutiny of the legality of the cross-border division

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

   The competent authority or authorities shall in particular ensure that the proposed recipient companies comply with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 160n.

2. For the purpose of paragraph 1, **the company being divided** ~~each recipient company~~ shall submit to **each** ~~the~~ authority referred to in ~~that~~ paragraph **1**, the draft terms of the cross-border division approved by the general meeting referred to in Article 160k.

3. Each Member State shall ensure that the application referred to in paragraph 1, by **the company being divided** ~~any of the recipient companies~~ including the submission of any information and documents may be completed online in its entirety in accordance with Article 13i.

4. The competent authority referred to in paragraph 1 of this Article shall ~~issue a decision to~~ approve the cross-border division as soon as it has completed its assessment of the relevant conditions.

5. The pre-division certificate, referred to in Article 160q(2), shall be accepted by any competent authority, referred to in paragraph 1 of this Article, as conclusively attesting evidence of the proper completion of the pre-division procedures and formalities in the Member State of the company being divided without which the cross-border division cannot be approved.

Article 160s

Registration

1. The law of ~~each of~~ the Member States ~~governing~~ **of the company being divided and** the recipient companies, ~~and in case of a partial division the recipient companies and the company being divided,~~ shall determine, with respect to the territory of that State, the arrangements to disclose the completion of the cross-border division in the register referred to in Article 16.

2. Member States shall ensure that at least the following information shall be entered in their registers, which are made publically available and accessible by means of the system referred to in Article 22:

   (a) in the register of the Member States of the recipient companies - that the registration of the recipient company is a result of a cross-border division;

   (b) in the register of the Member State of the recipient companies - the dates of registration of the recipient companies;

   (c) in the register of the Member State of the company being divided - in case of a full division, the date of striking off from the register;

   (ca) in the register of the Member State of the company being divided - that the striking off or removal of the company is a result of a cross-border division;

   (d) in the registers of the Member States of the company being divided and **of** the recipient companies **respectively** - the registration numbers ~~in the Member State~~ of the company being divided and ~~the Member States~~ of the recipient companies.

3. Member States shall ensure that the registers in the Member States of the recipient companies notify the registry in the Member State of the company being divided, by means of the system referred to in Article 22, that the recipient companies have been registered. In the case of a full division, the striking off of the company being divided from the register shall ~~take~~ **be** effect**ed** immediately upon the receipt of that notification.

3a. Member States shall ensure that the register in the Member States of the company being divided notifies the registers in the Member States of the recipient companies by means of the system referred to in Article 22, that the cross-border division has taken effect.

4. The exchange of the information referred to in paragraph 3 shall be free of charge for the registers.

Article 160t

Date on which the cross-border division takes effect

The law of the Member State of the company being divided shall determine the date on which the cross-border division takes effect. The date shall be after the scrutiny referred to in Articles 160o~~,~~ ~~160p~~ and 160r has been carried out and after having received all notifications referred to in Article 160s(3).

Article 160u

Consequences of the cross-border division

1. A full cross-border division carried out in compliance with the national provisions transposing this Directive, shall, **by reason of the cross-border division taking effect and from the date referred to in Article 160t** have the following consequences:

   (a) all the assets and liabilities of the company being divided, including all contracts, credits, rights and obligations**, are** ~~shall be~~ transferred to ~~and shall continue with~~ the recipient companies in accordance with the allocation specified in the draft terms of the cross-border division;

(b) the members of the company being divided ~~shall~~ become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of **the** cross-border division, unless they exercise the exit right referred to in Article 160l(2);

(c) the rights and obligations of the company being divided arising from the contracts of employment or from employment relationship**s** and existing at the date on which **the** cross-border division takes effect ~~shall~~ **are**~~, by reason of that cross-border division taking effect, be~~ transferred to the ~~respective~~ recipient ~~company or~~ companies ~~on the date on which the cross-border division takes effect~~;

(d) the company being divided shall cease to exist;

~~(e) the place of the registered office of the company being divided may be relied upon by third parties until such time as the company carrying out the division has been struck off from the register in the departure Member State, unless it may be proven that a third party knew, or ought to have known, of the registered office in the Member States of the recipient companies.~~

~~2. Any activity of the company being divided carried out after the date of registration in the Member States of the recipient companies and before the company carrying out the division has been struck off from the register in that Member State shall be treated as the activity of the company being divided.~~

3. A partial cross-border division carried out in compliance with the national provisions transposing this Directive, shall**, by reason of the cross-border division taking effect and from the date referred to in Article 160t,** have the following consequences:

(a) ~~the~~ part of the assets and liabilities of the company being divided including contracts, credits, rights and obligations **is** ~~shall be~~ transferred to ~~and shall continue with~~ the recipient **company or** companies and the remaining part **continues with** ~~shall be retained by~~ the company being divided in accordance with the allocation specified in the draft terms of cross-border division;

(b) **at least some of** the members of the company being divided ~~shall~~ become members of the recipient **company or** companies and at least some of the members ~~shall~~ remain in the company being divided or ~~shall~~ become members of both in accordance with the allocation of shares specified in the draft terms of cross-border division, unless they exercise the exit right referred to in Article 160l(2);

(c) the rights and obligations of the company being divided arising from the contracts of employment or from employment relationship and existing at the date on which cross-border division takes effect, allocated to the recipient **company or** companies in accordance with the ~~allocation specified in the~~ draft terms of cross-border division ~~shall~~ **are** ~~, by reason of that cross-border division taking effect, be~~ transferred to the respective recipient company or companies ~~on the date on which the cross-border division takes effect~~.

3a. A cross-border division by separation carried out in compliance with the national provisions transposing this Directive, shall**, by reason of the cross-border division taking effect and from the date referred to in Article 160t,** have the following consequences:

(a) the part of the assets and liabilities of the company being divided including contracts, credits, rights and obligations ~~shall be~~ **is** transferred to ~~and shall continue with~~ the recipient **company or** companies and the remaining part ~~shall be retained by~~ **continues with** the company being divided in accordance with the allocation specified in the draft terms of cross-border division;

(aa) the shares of the recipient company or companies are allocated to the company being divided.

(b) the rights and obligations of the company being divided arising from the contracts of employment or from employment relationship and existing at the date on which cross-border division takes effect, allocated to the recipient **company or** companies in accordance with ~~the allocation specified in~~ the draft terms of cross-border division ~~shall, by reason of that cross-border division taking effect, be~~ **are** transferred to the respective recipient company or companies**.** ~~on the date on which the cross-border division takes effect.~~

3b. Member States shall ensure that where an asset **or a liability** of the company being divided is not explicitly allocated under the draft terms of cross-border division as referred to in Article 160e point (m) and where the interpretation of these terms does not make a decision on its allocation possible, the asset**,** ~~or~~ the consideration therefor**e or the liability** is allocated to all the recipient companies or, in the case of a partial division **or a division by separation**, to all the recipient companies and the company being divided in proportion to the share of the net assets allocated to each of those companies under the draft terms of cross-border division. **In any event, Article 160m (4) applies.**

~~3c. Member States shall also ensure that where a liability of the company being divided is not explicitly allocated under the draft terms of cross-border division as referred to in Article 160e point(m) the liability is allocated to the recipient companies and the company being divided, in proportion to the share of the net assets allocated to each of those companies under the draft terms of cross-border division. Similarly, any joint and several liability shall be limited to the value of the net assets allocated to each company at the date of the division.~~

4. Where**, in the case of a cross-border division covered by this chapter,** the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the company being divided becomes effective as against third parties, those formalities shall be carried out by the company being divided or by the recipient companies, as appropriate.

5. Member States shall ensure that shares in a recipient company may not be exchanged for shares in the company being divided which are either held by the company itself or through a person acting in his or her own name but on behalf of the company.

Article 160ua

Simplified formalities

Where a division is carried out as a 'division by separation' as referred to in Article 160b point (c) letter (c) then Article 160e (1) points b, c, f, i, p and q and Articles 160g, 160i and 160l shall not apply.

~~*Article 160v*~~

~~***Liability of the independent expert***~~

~~Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 160i.~~

Article 160w

Validity

A cross-border division which has taken effect in compliance with the procedures transposing this Directive may not be declared null and void."

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [*OP set the date = the last day of the month of 24 months after entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Reporting and review

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.

2. The report shall in particular evaluate the procedures referred to in Chapter -I of Title II and Chapter IV of Title II, notably in terms of their duration and costs.

3. The report shall include an assessment of the feasibility of providing rules for types of cross-border divisions which are not covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*