Council of the European Union

Brussels, 29 October 2019
(OR. en)

8499/19

Interinstitutional File:
2018/0114(COD)

CODEC 930
DRS 32
IA 133
PE 190

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading and Corrigendum procedure (Strasbourg, 18 April 2019 and 22 October 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the codecision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

1 OJ C 145, 30.6.2007, p.5

This file was expected[2] to undergo the Corrigendum procedure[3] in the new European Parliament after adoption by the previous Parliament of its position at first reading.

II. VOTES

At its sitting of 18 April 2019, and following informal interinstitutional negotiations, the European Parliament adopted amendment number 340 (without legal linguistic revision) to the Commission proposal and a legislative resolution with a view to the adoption of the abovementioned proposal, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, on 22 October 2019 the European Parliament approved a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex[4] hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the Parliament's position.

---

2 8507/19

3 Rule 241, EP Rules of Procedure.

4 The text of the corrigendum is set out in the Annex. It is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol " ▌ " indicates deleted text.

Cross-border conversions, mergers and divisions ***I

European Parliament legislative resolution of 18 April 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (COM(2018)0241 – C8-0167/2018 – 2018/0114(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0241),

– having regard to Article 294(2) and Article 50(1) and (2), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0167/2018),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 17 October 2018[1],

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 27 March 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and also the opinions of the Committee on Employment and Social Affairs and the Committee on Economic and Monetary Affairs (A8-0002/2019),

1 OJ C 62, 15.2.2019, p. 24.

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2018)0114

Position of the European Parliament adopted at first reading on 18 April 2019 with a view to the adoption of Directive (EU) 2019/… 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[6],

Acting in accordance with the ordinary legislative procedure[7],

[6] OJ C 62, 15.2.2019, p. 24.

[7] Position of the European Parliament of 18 April 2019.

Whereas:

(1) Directive (EU) 2017/1132 of the European Parliament and of the Council[8] regulates cross-border mergers of limited liability companies. The rules on cross-border mergers represent a significant milestone in improving the functioning of the internal market for companies and firms and their exercise of the freedom of establishment. However, evaluation of those rules shows that they need to be changed. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions***, since Directive (EU) 2017/1132 only provides for rules on domestic divisions of public limited liability 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 with its national legal order is satisfied.

---

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

(3) In the absence of harmonisation of Union law, defining 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 ▌. 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 on an ***equal footing.*** Therefore, as clarified in case-law▌, ▌ 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) Developments in the case-law have opened up new opportunities for companies ▌ in the internal market to foster economic growth, effective competition and productivity. At the same time, the objective of an internal market without internal borders for companies has also to be reconciled with other objectives of European integration, such as social protection ***as set out in Article 3 of the Treaty on European Union (TEU) and Article 9 of the TFEU, as well as the promotion of social dialogue as set out in Articles 151 and 152 of the TFEU. The rights of companies to convert, merge and divide across borders should go hand in hand, and be properly balanced, with the protection of employees, creditors and members.***

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

(6) ***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 ***while*** at the same time ***providing*** adequate ▌ protection for stakeholders such as employees, creditors and ***members***.

▌

(7) ***The Commission announced in*** its Communication of 28 October 2015 entitled 'Upgrading the Single Market: more opportunities for people and business' ▌ that it would assess the need to update ***the existing rules on cross-border mergers*** ▌ in order to make it easier for SMEs to choose their preferred business strategies and to better adapt to changes in market conditions, but without weakening existing employment protection. In its Communication of 25 October 2016 entitled 'Commission Work Programme 2017: Delivering a Europe that protects, empowers and defends', the Commission announced an initiative to facilitate cross-border mergers.

(8) ***In addition to new rules on conversions, this Directive*** lays down rules on cross-border divisions, both for partial and full divisions, but those rules only relate to cross-border divisions that involve the formation of new companies. ***This Directive*** does not provide a harmonised framework for cross-border divisions in which a company transfers assets and liabilities to one or more existing companies, as such cases have 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 Union and national rules. The possibility of forming a company through a division by separation as provided for in this Directive offers companies a new harmonised procedure in the internal market. However, companies should be free to directly set up subsidiaries in other Member States.***

(9) This Directive should not apply to companies in liquidation where the distribution of assets has begun. In addition, Member States should be able to choose to exclude companies subject to other liquidation proceedings from the application of this Directive. Member States should also be able to choose not to apply this Directive to companies subject to insolvency proceedings, as defined by national law, or to preventive restructuring frameworks, as defined by national law, irrespective of whether such proceedings are part of a national insolvency framework or regulated outside of it. Also, Member States should be able to choose not to apply this Directive to companies that are subject to crisis prevention measures as defined in Directive 2014/59/EU of the European Parliament and of the Council[9]. This Directive should be without prejudice to Directive (EU) 2019/1023 of the European Parliament and of the Council[10].

---

9 ***Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).***

10 ***Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (OJ L 172, 26.6.2019, p. 18).***

(10) Given the complexity of cross-border conversions, ***mergers and divisions (collectively, 'cross-border operations')*** and the multitude of the interests concerned, it is appropriate to provide for the ***scrutiny of the legality of cross-border operations before they take effect,*** in order to provide 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 and on the basis of all relevant elements ***required*** by ***Union and national law***.

(11) ***This Directive should be without prejudice to Member States' powers to provide strengthened protection for employees in accordance with the existing social acquis.***

(12) To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border ***operation***, the company should ***draw up and*** disclose the draft terms of the ***proposed operation,*** containing the most important information about ***it. The administrative or management body should, where provided for in national law or in accordance with national practice, or both, include board level employee representatives in the decision on the draft terms of a cross-border operation. Such information should at least include*** the ***legal form*** envisaged ***for the*** company ***or companies***, the instrument of constitution ***where applicable, the statutes,*** the proposed ***indicative*** timetable for the ***operation and details of any safeguards offered to members and*** creditors. ***A notice should be disclosed in the register informing the members, creditors*** and ***representatives of the*** employees***, or, where there are no such representatives, the employees themselves,*** that they ***may*** submit comments with regard to the proposed ***operation. Member States could also decide that the independent expert report required by this Directive has to be disclosed.***

(13) In order to provide information to its members ***and employees,*** the company carrying out the cross-border ***operation*** should prepare a report ***for them.*** The report should explain and ***justify the legal and economic*** aspects of the proposed cross-border ***operation and*** the implications of the ***proposed*** cross-border ***operation*** for ***employees. In particular, the report should explain the implications of the cross-border operation*** with regard to the future business of the company, ***including its subsidiaries. As far as members are concerned, the report should include remedies available to them, especially information about their right to exit the company. For employees, the report should explain the implications of the proposed cross-border operation on the employment situation. In particular, the report should explain whether there would be any material change to the employment conditions laid down by law, to collective agreements or to transnational company agreements, and in the locations of the company's places of business, such as the location of the head office. In addition, the report should include information on the management body and, where applicable, on staff, equipment, premises and assets before and after the cross-border operation and the likely changes to the organisation of work, wages and salaries, the location of specific posts and the expected consequences for the employees occupying those posts, as well as on the company-level social dialogue, including, where applicable, board level employee representation. The report should also explain how those changes would affect any subsidiaries of the company. No section for employees should be required where the only employees of the company are in its administrative or management body. Furthermore, in order to enhance the protection afforded to employees, either the employees themselves or their representatives should be able to provide their opinion on the report's section setting out the implications of the cross-border operation for them.***

The provision of the report ***and of any opinion*** should be without prejudice to applicable information and consultation procedures provided for at national level ***including those*** following the implementation of Directive 2002/14/EC of the European Parliament and of the Council[11] or Directive 2009/38/EC of the European Parliament and of the Council[12]***. The report or, where drawn up separately, the reports,*** should ▌ be ▌ available to the ***members and to the representatives of the*** employees of the company carrying out ***the*** cross-border ***operation or, where there are no such representatives, the employees themselves.***

---

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

12 Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

(14) The draft terms of the cross-border operation, the offer of cash compensation made by the company to those members who wish to exit the company and, where applicable, the share-exchange ratio, including the amount of any 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, Member States should take into account the requirements laid down in Articles 22 and 22b of Directive 2006/43/EC of the European Parliament and of the Council[13].

(15) 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, in accordance with Union or national law. Such non-disclosure should not undermine the other requirements provided for in this Directive.

▌

[13] ***Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).***

(16) 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 required majority for the vote be sufficiently large in order to ensure that the decision ▌ is ***taken by*** a ***solid majority***. 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.

▌

(17) The lack of harmonisation of safeguards for members ▌ has been identified ***as*** an obstacle to cross-border ***operations. Companies and their 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 should be able therefore to maintain or introduce additional*** rules on ***protection for members, unless such rules conflict with those provided for under this Directive*** or ***with the freedom of establishment. Members' individual rights to information should remain unaffected.***

(18) As a consequence of a cross-border operation, members often face a situation whereby the law applicable to their rights changes because they become members of a company governed by the law of a Member State other than the Member State the law of which was applicable to the company before the operation. Member States should, therefore, at least provide for members holding shares with voting rights and who voted against the approval of the draft terms to have the right to exit the company and receive cash compensation for their shares that is equivalent to the value of those shares. However, Member States should be free to decide to extend that right also to other members, for example, to members holding shares without voting rights or members who, as a result of a cross-border division, would acquire shares in the recipient company in proportions different from those they held before the operation, or to members for whom there would be no change of applicable law but for whom certain rights would change due to the operation. This Directive should not affect national rules on the validity of contracts for the sale and transfer of shares in companies or special legal form requirements. Member States should, for example, be able to require a notarial deed or a confirmation of signatures.

(19) 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 have decided to exercise the right to dispose of their shares. That requirement should be without prejudice to any formal requirements laid down in national law. Members might also be required to indicate, together with that declaration or within a specific time limit, whether they intend to dispute the cash compensation offered and claim additional cash compensation.

(20) The calculation of the offer of cash compensation should be based on generally accepted valuation methods. Members should have a right to dispute 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 declared their decision to exercise the right to dispose of their shares are entitled to join such proceedings. Member States should also be able to establish time limits in national law for joining those proceedings.

(21) ***As far as cross-border mergers or divisions are concerned, members who did not have or did not exercise the right to exit the company should, nevertheless, have a right to dispute 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 any complementary cash payment included in the draft terms.***

(***22)*** Following a cross-border ***operation***, the former creditors of the ***company or*** companies ***carrying out that operation*** could see their claims ***affected*** where the ▌ company that is liable for the debt is, following that operation, 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.

(23) In order to ensure that creditors have appropriate protection in cases where they are not satisfied with the protection offered by the company in the draft terms ***and where they may not have found a satisfactory solution with the company***, creditors, ***who have notified the company beforehand***, should be able to apply ***for safeguards*** to the appropriate ▌ authority. ***When assessing such safeguards,*** the ***appropriate authority*** should ***take into account whether a creditor's claim*** against the ▌ company or ▌ a third party ***is*** of ***at least*** an equivalent value ***and of a commensurate credit quality as it was before the cross-border operation and whether the claim may*** be brought in the same jurisdiction ▌.

(24) ***Member States should ensure that creditors who entered into a relationship with the company before the company had made public its intention to carry out a cross-border operation have adequate protection. After the draft terms of the cross-border operation 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 to be protected could comprise current and former employees with occupational vested pension rights and persons receiving occupational pension benefits. In addition to the general rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council[14], Member States should provide that such creditors have the right to file a claim in the departure Member State for a period of two years after a cross-border conversion has taken effect. The two-year protection period provided for in this Directive with respect to the jurisdiction to which creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion may apply, should be without prejudice to national law determining the limitation periods for claims.***

(25) ▌ In addition, in order to ***protect*** ▌ creditors ***against*** the ***risk*** of the insolvency of the company following a 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*** would not be able to meet ***their*** liabilities. In those circumstances, Member States should be able to make the members of the management body 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 the Member States to decide on the appropriate consequences of providing inaccurate or misleading declarations, which should include effective and proportionate penalties and liabilities in compliance with Union law.

---

14 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(26) It is important to ensure that the rights of employees to be informed and consulted in the context of cross-border operations are fully respected. The information and consultation of employees in the context of cross-border operations should be carried out in accordance with the legal framework provided for in Directive 2002/14/EC and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC, as well as, where the cross-border merger or cross-border division is considered to be a transfer of an undertaking within the meaning of Council Directive 2001/23/EC[15], in accordance with Directive 2001/23/EC. This Directive does not affect Council Directive 98/59/EC[16], Directive 2001/23/EC, Directive 2002/14/EC or Directive 2009/38/EC. However, given that this Directive lays down a harmonised procedure for cross-border operations, it is appropriate to specify, in particular, the time frame within which the information and consultation of employees related to the cross-border operation should take place.

(27) Employee representatives provided for in national law or, where applicable, in accordance with national practice should also include any relevant bodies established in accordance with Union law, such as the European Works Council established in accordance with Directive 2009/38/EC and the representative body established in accordance with Council Directive 2001/86/EC[17].

---

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

16 ***Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16).***

17 *Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22).*

(28) Member States should ensure that employee representatives, when carrying out their functions, enjoy adequate protection and guarantees in accordance with Article 7 of Directive 2002/14/EC to enable them to perform properly the duties which have been assigned to them.

(29) In order to conduct an analysis of the report for employees, a company carrying out a cross-border operation should provide employee representatives with the resources necessary to enable them to exercise the rights arising from this Directive in an appropriate manner.

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

(31) In order to prevent the circumvention of employee participation rights by means of a cross-border ***operation***, the company ***or companies*** carrying out ***the cross-border operation and*** registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border ***operation*** 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) The involvement of all stakeholders in cross-border operations, in particular the involvement of employees, contributes to a long-term and sustainable approach being taken by companies across the internal market. In this regard, safeguarding and promoting the participation rights of employees within the board of a company plays an important role, in particular when a company moves or restructures across borders. Therefore, the successful completion of negotiations on participation rights in the context of cross-border operations is essential and should be encouraged.

(33) To ensure that there is 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 ***(hereinafter referred to as 'pre-operation certificate'). T***he competent authorities ***of the Member States of the company or companies resulting from the cross-border operation*** should not be able to approve the cross-border ***operation without such a certificate.***

(34) In order to issue a pre-operation certificate, the Member States of the company or companies carrying out the cross-border operation should designate, in accordance with national law, an authority or authorities competent to scrutinise the legality of the operation. The competent authority could comprise courts, notaries or other authorities, a tax authority or a financial service authority. Where there is more than one competent authority, the company should be able to apply for the pre-operation certificate to one single competent authority, as designated by the Member States, which should co-ordinate with the other competent authorities. The competent authority should assess compliance with all relevant conditions and the proper completion of all procedures and formalities in that Member State, and should decide whether to issue a pre-operation certificate within three months of the application by the company, unless the competent authority has serious doubts indicating that the cross-border operation is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, and the assessment requires additional information to be considered or additional investigative activities to be performed.

(35) In certain circumstances, the right of companies to carry out a cross-border operation could be used for abusive or fraudulent purposes, such as for the circumvention of the rights of employees, social security payments or tax obligations, or for criminal purposes. In particular, it is important to counteract 'shell' or 'front' companies set up for the purpose of evading, circumventing or infringing Union or national law. Where, in the course of the scrutiny of the legality of a cross-border operation, the competent authority becomes aware, including through consultation of relevant authorities, that the cross-border operation is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it should not issue the pre-operation certificate . The relevant procedures, including any assessment, should be carried out in accordance with national law. In such cases, the competent authority should be able to extend the period of assessment by a maximum of three months.

(36) Where the competent authority has serious doubts indicating that the cross-border operation is set up for abusive or fraudulent purposes, the assessment should consider all relevant facts and circumstances, and should take into account, where relevant, at a minimum, indicative factors relating to 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 intention of the operation, the sector, the investment, the net turnover and profit or loss, the number of employees, the composition of the balance sheet, the tax residence, the assets and their location, equipment, the beneficial owners of the company, the habitual places of work of the employees and of specific groups of employees, the place where social contributions are due, the number of employees posted in the year prior to the cross-border operation within the meaning of Regulation (EC) No 883/2004 of the European Parliament and of the Council[18] and of Directive 96/71/EC of the European Parliament and of the Council [19], the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004, and the commercial risks assumed by the company or companies before and after the cross-border operation. The assessment should also take into account relevant facts and circumstances related to employee participation rights, in particular as regards negotiations on such rights where those negotiations were triggered by reaching four fifths of the applicable national threshold. All of those elements should be considered only as indicative factors in the overall assessment and therefore should not be regarded in isolation. The competent authority may consider that if the cross-border operation were to result in the company having its place of effective management or place of economic activity in the Member State in which the company or companies are to be registered after the cross-border operation, that would be an indication of an absence of circumstances leading to abuse or fraud.

---

18 *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).*

19 *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).*

(37) The competent authority should also be able to obtain from the company carrying out the cross-border operation, or from other competent authorities, including those of the destination Member State, all relevant information and documents, with a view to carrying out the scrutiny of the legality of the cross-border operation within the procedural framework laid down in national law. Member States should be able to stipulate the possible consequences for the issuance of the pre-operation certificate of the procedures initiated by members and creditors in accordance with this Directive.

(38) In the assessment required to obtain a pre-operation certificate, the competent authority should be able to have recourse to an independent expert. Member States should lay down rules to ensure that the expert, or the legal person on whose behalf the expert is operating, is independent from the company applying for the pre-operation certificate. The expert should be appointed by the competent authority and should have no past or current link with the company concerned which might affect the expert's independence.

(39) ***In order to ensure that the company carrying out the cross-border operation does not prejudice its creditors, the competent authority should be able to check, in particular, whether the company has fulfilled its obligations towards public creditors and whether any open obligations have been sufficiently secured. In particular, the competent authority should be able to check whether the company is the subject of any ongoing court proceedings concerning, for example, infringement of social, labour or environmental law, the outcome of which might lead to further obligations being imposed on the company, including in respect of citizens and private entities.***

(40) ***Member States should provide for procedural safeguards in line with the general principles of access to justice, including providing for the possibility of reviewing the decisions of the competent authorities in the proceedings concerning cross-border operations, the possibility of delaying the time when a pre-operation certificate takes effect in order to allow parties to bring an action before the competent court and the possibility of having interim measures granted, where appropriate.***

(41) Member States should ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for a pre-operation certificate as well as the submission of any information and documents for the scrutiny of the legality of the cross-border operation by the destination Member State, can be completed fully online, without the necessity for the applicants to appear in person before a competent authority in the Member States. The rules on the use of digital tools and processes in company law, including the relevant safeguards, should apply as appropriate. The competent authority should be able to receive the application for the pre-operation certificate online, including the submission of any information and documents, unless, exceptionally, it is technically impossible for the competent authority.

(42) In order to cut costs and reduce the length of the procedures and administrative burden for companies, Member States should apply the 'once-only' principle in the area of company law, which entails that companies are not required to submit the same information to more than one public authority. For example, companies should not have to submit the same information both to the national register and to the national gazette.

(43) In order to provide for an appropriate level of transparency and the use of digital tools and processes, ***the pre-operation certificates issued by the*** competent authorities in ***different*** Member States should be ***shared*** through the system of interconnection of registers and should be made publicly available. ***In accordance with the general principle underlying Directive (EU) 2017/1132, such exchange of information should always be free of charge.***

(44) The carrying out of a cross-border conversion entails a change of ***the*** legal form of a company without that company 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 that cross-border operation.*** Such conditions, including the requirements to have ***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 the case of cross-border conversions,*** the application of such conditions by the destination Member State should not affect the continuity of the converted company's legal personality. ▌

(45) Once a pre-***operation*** certificate has been received, and after verifying that the ***legal*** requirements ***of*** the ▌ Member State ***in which the company is to be registered after the cross-border operation*** are fulfilled, ***including a possible check as to whether the cross-border operation constitutes a circumvention of Union or national law,*** the competent authorities ▌ should register the company in the 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 dispute the ▌ information provided by the pre-***operation*** certificate. ▌

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

▌

(47) ***As a consequence of the cross-border conversion, the company resulting from the conversion (the 'converted company') should retain its legal personality, its assets and liabilities, and all its rights and obligations, including any rights and obligations arising from contracts, acts or omissions. In particular, the converted company should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.***

(48) ***As a consequence of the cross-border merger, the assets and liabilities and all rights and obligations, including any 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 their exit rights should become members of the acquiring company or the new company respectively. In particular, the acquiring company or the new company should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.***

(49) As a consequence of the cross-border division, the assets and liabilities ***and all rights and obligations, including any rights and obligations arising from contracts, acts or omissions, 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 their exit rights should*** become members of the recipient companies, should remain members of the company being divided or ***should*** become members of both. ***In particular, recipient companies should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.***

▌

(50) In order to ensure legal certainty, it should not be possible to declare a cross-border operation which has taken effect in accordance with the procedure laid down in this Directive null and void. That restriction should be without prejudice to Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement under national laws, in particular in the event that the competent or other relevant authorities establish, in particular through new substantive information, after the cross-border operation took effect, that the cross-border operation was set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law or for criminal purposes. In this context, the competent authorities could also assess whether the applicable national threshold for employee participation of the Member State of the company carrying out the cross-border operation was met or exceeded in the years following the cross-border operation.

(51) ***Any cross-border operation should be without prejudice to liablity for tax obligations related to a company's activity before that operation.***

(52) To guarantee the rights of employees other than rights of participation, Directives 98/59/EC, 2001/23/EC, 2002/14/EC and 2009/38/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.

(53) This Directive does not affect the legal or administrative provisions of national law relating to the taxes of Member States or their territorial and administrative subdivisions, including the enforcement of tax rules in cross-border operations.

(54) ***This Directive is without prejudice to Council Directives 2009/133/EC[20], (EU) 2015/2376[21], (EU) 2016/881[22], (EU) 2016/1164[23] and (EU) 2018/822[24].***

(55) This Directive is without prejudice to the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council[25] that address risks of money laundering and terrorist financing, in particular the obligations provided for therein relating to the carrying out of appropriate customer due diligence measures on a risk-sensitive basis, and those relating to identifying and registering the beneficial owner of any newly created entity in the Member State of its incorporation.

---

20 ***Council Directive 2009/133/EC of 19 October 2009 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 (OJ L 310, 25.11.2009, p. 34).***

21 ***Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 332, 18.12.2015, p. 1).***

22 ***Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).***

23 ***Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).***

24 ***Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1).***

25 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(56) ***This Directive does not affect Union law concerning transparency and the rights of shareholders in listed companies, or national rules laid down or introduced pursuant to such Union law.***

(57) ***This Directive does not affect Union law regulating credit intermediaries and other financial undertakings, or national rules laid down or introduced pursuant to such Union law.***

(58) Since the objectives of this Directive, namely to facilitate and regulate cross-border conversions, mergers and divisions, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, 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 ***TEU***. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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

(60) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[26], 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.

(61) The Commission should carry out an evaluation of this Directive, ***including an evaluation of the implementation of the provisions on employee information, consultation and participation in the context of cross-border operations. The evaluation should, in particular, aim to assess cross-border operations where negotiations on employee participation were triggered by reaching four fifths of the applicable threshold, and to see whether, after the cross-border operation, those companies met or exceeded the applicable threshold for employee participation of the Member State of the company which carried out the cross-border operation***. Pursuant to paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[27] (the 'Interinstitutional Agreement'), 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.

---

26 OJ C 369, 17.12.2011, p. 14.
27 OJ L 123, 12.5.2016, p. 1.

(62) Information should be collected in order to assess the performance of the provisions of this Directive in relation to the objectives it pursues and in order to provide the basis for an evaluation of Directive (EU) 2017/1132 in accordance with paragraph 22 of the Interinstitutional Agreement.

(63) 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 1, the sixth indent is replaced by the following:

"- cross border conversions, cross-border mergers and cross-border divisions of limited liability companies,";

(2) in Article 18(3), the following point is inserted:

"(aa) the documents and information referred to in Articles 86g, 86n, 86p, 123, 127a, 130, 160g, 160n and 160p;";

(3) ▌Article 24 ***is amended as follows:***

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

"(e) the detailed list of data to be transmitted for the purpose of exchanging information between registers, as referred to in Articles 20, 28a, 28c, 30a ***and*** 34***;";***

(b) the following point is inserted:

“(ea) the detailed list of data to be transmitted for the purpose of exchanging information between registers ***and for the purposes of disclosure***, as referred to in Articles 86g, 86n, 86p, 123, ***127a***, 130 ▌, 160g, 160n and 160p;";

(c) in the third paragraph, the following sentence is added:

"The Commission shall adopt the implementing acts referred to in point (ea) by … [18 months after the date of entry into force of this amending Directive].";

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

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

(5) in Title II, the following Chapter is inserted before Chapter I:

"CHAPTER -I
Cross-border conversions

Article 86a
Scope

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

2. 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.

3. ***Member States shall ensure that this Chapter does not apply*** to companies in either of the following circumstances:

(a) ***the company is in*** liquidation ***and has begun to distribute assets to its members***;

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

4. Member States may decide not to apply this Chapter to companies which are:

(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;

(b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 3, or

(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.

Article 86b

Definitions

For the purposes of this Chapter:

(1) 'company' means a limited liability company of a type listed in Annex II that ***carries out a cross-border conversion;***

(2) 'cross-border conversion' means an operation whereby a company, without being dissolved or 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, ***as listed in Annex II, and*** transfers at least its registered office to the destination Member State, while retaining its legal personality;

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

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

▌

(5) 'converted company' means a ▌ company ***formed*** in a destination Member State ***as a result of*** a cross-border conversion ▌ .

Article 86c

Procedures and formalities

▌

In compliance with Union law, the law of the departure Member State shall govern those parts 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 law of the destination Member State shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate.

Article 86d

Draft terms of cross-border ***conversions***

The administrative or management body 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 and name of the company in the departure Member State and the ***location of*** its registered office in that Member State;

(b) the legal form and name proposed for the ***converted*** company ▌ in the destination Member State and the proposed location of its registered office in that Member State;

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

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

(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) ▌ any safeguards offered to ▌ creditors, ***such as guarantees or pledges***;

▌

(g) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the ▌ company;

(h) whether any incentives or subsidies were received by the company in the departure Member State in the preceding five years;

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

(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▌ .

▌

Article 86e

Report of the administrative or management body for members ***and employees***

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

   It shall, in particular, explain the ***implications of the cross-border conversion for the future business of the company.***

2. The report ***shall also include a section for members and a section for employees***.

   The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

   (a) the cash compensation and the method used to determine the cash compensation;

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

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

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:

(a) the implications of the cross-border conversion for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;

(b) any material changes to the applicable conditions of employment or to the location of the company's places of business;

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

6. The report ***or reports*** shall be made available ***in any case*** electronically, ***together with the draft terms of the cross-border conversion, if available,*** to the members ***and*** to the representatives of the employees ▌ or, where there are no such representatives, to the employees themselves***, not less than six weeks before the date of the general meeting referred to in Article 86h.***

7. Where the administrative or management body of the company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the 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.

8. The section of the report for employees shall not be required where a company and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.

9. ***Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8,*** the report ***shall*** not be required.

10. ***Paragraphs 1 to 9 of this Article shall be*** without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

Article 86f

Independent expert report

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

2. The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation is adequate. When assessing the cash compensation, the expert shall ***consider any market price of the shares in the company prior to the announcement of the conversion proposal or the value of the company excluding the effect of the proposed conversion, as determined in accordance with generally accepted valuation methods. The report shall*** at least:

(a) ***indicate the method or methods used to determine the cash compensation proposed***;

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

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

▌The ***expert shall be*** entitled to ***obtain from the company all information necessary for the discharge of the duties of the expert.***

3. Neither an examination of the draft terms of cross-border conversion by an independent expert nor an independent expert report shall be required if all the members of the company have so agreed.

Member States may exclude single-member companies from the application of this Article.

▌

Article 86g

Disclosure

1. Member States shall ensure that ***the following documents are disclosed by the company*** and ***made*** publicly available in the register ***of the departure Member State***, at least one month before the date of the general meeting ***referred to in Article 86h***:

   (a) the draft terms of the cross-border conversion; and

   (b) a notice informing the members, creditors and ***representatives of the*** employees of the company***, or, where there are no such representatives, the employees themselves,*** that they may submit ***to the company, at the latest five working days*** before the date of the general meeting, comments concerning ***the draft terms of the cross-border conversion.***

   Member States may require that the independent expert report be disclosed and made publicly available in the register.

   Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report.

The documents ***disclosed in accordance with this paragraph*** shall also be accessible through the system ***of interconnection of registers***.

2. Member States may exempt a company ▌ from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting ***referred to in Article 86h*** and ending not earlier than the conclusion of that meeting, that company makes the documents referred ***to*** in paragraph 1 of this Article 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 to ensure the security of the website and the authenticity of ***the*** documents, and which are proportionate to achieving those objectives.

3. Where the company ▌ makes the draft terms of the cross-border conversion available in accordance with paragraph 2 ***of this Article***, it shall submit to the register of the departure Member State, at least one month before the date of the general meeting ***referred to in Article 86h***, the following information:

(a) the legal form and name of the company and the location of its registered office in the departure Member State and the legal form and name proposed for the converted company in the destination Member State and the proposed location of its registered office in that Member State;

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

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

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

The register of the departure Member State shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in the departure Member State, ***in accordance with the relevant provisions of Chapter III of Title I.***

▌

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3 of this Article, that the draft terms of the cross-border conversion, or the information referred to in paragraph 3 of this Article, be published in their national gazette ***or through a central electronic platform in accordance with Article 16(3)***. In that instance***,*** Member States shall ensure that the register transmits the relevant information to the national gazette or to a central electronic platform.

6. Member States shall ensure that the documentation referred to in paragraph 1 ***or the information referred to in paragraph 3*** is accessible to 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 do not exceed the ***recovery of*** the cost of providing ***such services***.

Article 86h

Approval by the general meeting

1. After taking note of the reports referred to in Articles 86e ▌ and 86f, where applicable, ***employees' opinions submitted in accordance with Article 86e and comments submitted in accordance with Article 86g,*** 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, ***and of any amendment to those draft terms,*** 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 general 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. ***Where a clause in the draft terms of the cross-border conversion or any amendment to the instrument of constitution of the converting company leads to an increase of the economic obligations of a member towards the company or third parties, Member States may require, in such specific circumstances, that such clause or the amendment to the instrument of constitution be approved by the member concerned, provided that such member is unable to exercise the rights laid down*** in Article 86i.

5. 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 point (i) of Article ***86d*** has been inadequately set***; or***

(b) ***the information given with regard to the cash compensation referred to in point (a) did not comply with the legal requirements.***

Article 86i

Protection of members

1. Member States shall ensure that ***at least*** the ▌ members of a company ***who voted against the approval of the draft terms of the*** cross-border conversion have the right to dispose of their ***shares for adequate cash compensation,*** under the conditions laid down in paragraphs 2 to 5**.**

Member States may also provide for other members of the company to have the right referred to in the first subparagraph.

Member States may require that express opposition to the draft terms of the cross-border conversion, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented, at the latest at the general meeting referred to in Article 86h. Member States may allow the recording of opposition to the draft terms of the cross-border conversion to be considered proper documentation of a negative vote.

2. 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 86h. Member States shall ensure that the company provides an electronic address for receiving that declaration electronically.***

3. Member States shall ***further establish the period within which the cash*** compensation ***specified*** in the draft terms of ***the*** cross-border conversion ***is to be paid***. ***That*** period ***shall not end later than two months after the cross-border conversion takes effect in accordance with Article 86q.***

4. Member States shall ***ensure*** that any members who have ***declared their decision to exercise the right to dispose of their shares,*** but who consider that the cash compensation ***offered by the company*** has not been adequately set, are entitled to claim ***additional cash compensation before*** the ***competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.***

Member States may provide that the final decision to provide additional cash compensation is valid for all members who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

5. 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 jurisdiction of that departure Member State.

Article 86j

Protection of creditors

1. Member States shall provide for an adequate system of protection of the interests 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 ***point*** (f) of Article 86d, may apply, ***within three months of the disclosure of the draft terms of the cross-border conversion referred to in Article 86g,*** to the appropriate administrative or judicial authority for adequate safeguards, ***provided that such creditors can credibly demonstrate that, due to the cross-border conversion, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.***

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

2. Member States may require that the administrative or management body of the company ▌ provide a declaration that accurately reflects its ***current*** financial status ***at a date no earlier than one month before the disclosure of that declaration.*** The declaration shall state that, on the basis of the information available to the administrative or management body of the company at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company would, after the conversion takes effect, be unable to meet its 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 86g.

3. Paragraphs ▌ 1 and 2 shall be without prejudice to the application of the law of the departure Member State concerning the satisfaction or securing of pecuniary ***or non-pecuniary obligations*** due to public bodies.

4. Member States shall ensure that creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion are able to institute proceedings against the company also in the departure Member State within two years of the date the conversion has taken effect, without prejudice to the jurisdiction rules arising from Union or national law or from a contractual agreement. The option of instituting such proceedings shall be in addition to other rules on the choice of jurisdiction that are applicable pursuant to Union law.

Article 86k
Employee information and consultation

1. Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border conversion and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.

2. Notwithstanding Article 86e(7) and point (b) of Article 86g(1), Member States shall ensure that employees' rights to information and consultation are respected, at least before the draft terms of the cross-border conversion or the report referred to in Article 86e are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 86h.

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.

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, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the departure Member State, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the 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 cross-border conversion, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body 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), points (a)(i) and (b) of Article 3(2), Article 3(3), the first ***two sentences of*** Article 3(4),▌ and Article 3(5) and (7);

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

(c) Article 5;

(d) Article 6;

(e) ▌ Article 7(***1), with the exception of the second indent of point (b);***

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

(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 body of the converted company. However, if, in the company, ▌ employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body 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 to Directive 2001/86/EC.

5. The extension of participation rights to employees of the converted company employed in other Member States, as 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 ***converted*** company ▌ is ***to be governed by*** an employee participation system, ***in accordance with the rules referred to in paragraph 2, it*** 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, it shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of ***four*** 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 the ***court, notary or other*** authority ***or authorities*** competent to scrutinise the legality of cross-border conversions as regards those parts of the procedure which are governed by the law of the departure Member State and to issue a pre-conversion certificate attesting to compliance with all relevant conditions and to the proper completion of all procedures and formalities in the departure Member State ***('the competent authority')***.

Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.

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 the cross-border conversion;

(b) the ***report and the appended opinion, if any,*** referred to in ***Article*** 86e, ***as well as the report referred to in Article*** 86f, ***where they are available;***

(c) any comments submitted in accordance with Article 86g(1); and

(d) information on the ***approval by*** the general meeting ▌ referred to in Article 86h.

3. Member States may require that the application to obtain a pre-conversion certificate by the company is accompanied by additional information, such as, in particular:

(a) the number of employees at the time of the drawing up of the draft terms of the cross-border conversion;

(b) the existence of subsidiaries and their respective geographical location;

(c) information regarding the satisfaction of obligations due to public bodies by the company.

For the purposes of this paragraph, competent authorities may request such information, if not provided by the company, from other relevant authorities.

4. Member States shall ensure that the application referred to in paragraphs 2 ***and 3***, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority***, in accordance with the relevant provisions of Chapter III of Title I.***

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

6. As part of the scrutiny referred to in paragraph 1, the competent authority shall examine the following:

(a) ***all*** documents and information ***submitted to the competent authority in accordance with*** paragraphs 2 ***and 3;***

(b) 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 scrutiny ***referred to in paragraph 1*** is carried out within ***three months*** of the date of receipt of the ***documents and*** information concerning the approval of the ***cross-border*** conversion by the general meeting of the company. That scrutiny shall have one of the following outcomes:

(a) where ***it is determined*** 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 ***it is determined that*** the cross-border conversion does not ***comply with all the relevant conditions or that not all necessary procedures and 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 opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.***

8. Member States shall ensure that the competent authority does not issue the pre-conversion certificate where it is determined in compliance with national law that a cross-border conversion is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.

9. ***Where*** the competent authority, ***during the scrutiny referred to in paragraph 1,*** has serious ***doubts indicating*** that the cross-border conversion ***is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.***

10. ***Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.***

11. ***Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.***

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those of the destination Member State, and obtain from those authorities and from the company, information and documents necessary to scrutinise the legality of the cross-border conversion, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.

▌

Article 86n

▌Transmission of the pre-conversion certificate

1. Member States shall ensure that the ▌ pre-conversion certificate is ***shared with*** the authorities referred to in Article 86o(1) through the system of interconnection of registers***.***

Member States shall also ensure that the pre-conversion certificate is available through the system of interconnection of registers.

2. Access to the pre-conversion certificate shall be free of charge for the authorities referred to in Article 86o(1) and for the registers.

Article 86o

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

1. Member States shall designate ***the court, notary or other*** authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the destination Member State and to approve the cross-border conversion

   That authority shall in particular ensure that the 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 purposes of paragraph 1 of this Article, the company shall submit to the authority referred to in paragraph 1 of this Article the draft terms of the cross-border conversion approved by the general meeting referred to in Article 86h.

3. Each Member State shall ensure that any application for the purposes of paragraph 1, by the company, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority referred to in paragraph 1, ***in accordance with the relevant provisions of Chapter III of Title I.***

4. The authority referred to in paragraph 1 shall ▌ approve the cross-border conversion as soon as it has determined that all relevant conditions have been properly fulfilled and formalities properly completed in the destination Member State.

5. The pre-conversion certificate shall be accepted by the authority referred to in paragraph 1 as ***conclusively attesting to*** the proper completion of the applicable pre-conversion procedures and formalities in the departure Member State, without which the cross-border conversion cannot be approved.

Article 86p

Registration

1. The laws of the departure Member State and of the destination Member State shall determine, with regard to their respective territories, the arrangements, in accordance with Article 16, for disclosing the completion of the cross-border conversion in their registers.

2. Member States shall ensure that at least the following information is entered in their registers:

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

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

   (c) ***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 ▌ ;

(d) in the ***register of the*** departure Member State, ***the date of striking off or removal*** of the company ***from the register*****;**

(e) ***in the registers of the departure Member State and of the destination Member State, respectively, the registration number, name and legal form of the company and the registration number, name and legal form*** of the converted company.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the register in the destination Member State notifies the register in the departure Member State, through the system of interconnection of registers, that the ***cross-border conversion*** has ***taken effect.*** Member States shall also ensure that the registration of the company ***is*** struck off or removed from the register immediately upon receipt of that notification ▌.

Article 86q
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 Articles 86m and 86o ***has been carried out.***

Article 86r

Consequences of a cross-border conversion

A cross-border conversion shall, ***from the date referred to in Article 86q,*** have the following consequences:

(a) all the assets and liabilities of the company, ▌ including all contracts, credits, rights and obligations, shall ▌ be those of the converted company***;***

(b) the members of the company ▌ shall ***continue to be*** members of the converted company, unless they have disposed of their shares as referred to in Article 86i***(1)***;

(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 ***be those of*** the ***converted*** company ▌ .

▌

Article 86s

Independent experts

1. 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*** 86f ▌.

2. Member States shall have rules in place to ensure that:

(a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-conversion certificate; and

(b) the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.

Article 86t

Validity

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

The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border conversion took effect.";

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

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

(b) the following point 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 securities and shares in the same proportion in all merging companies.";

(7) Article 120 is amended as follows:

(a) paragraph 4 is replaced by the following:

"4. Member States shall ensure that this Chapter does not apply ***to companies in either of the following circumstances:***

(a) ***the company is in*** liquidation ***and has begun to distribute assets to its members;***

▌

(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU."***;***

▌

(b) the following paragraph is added:

"5. Member States may decide not to apply this Chapter to companies which are:

(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;

(b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 4, or

1.

(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.";

(8) Article 121 is amended as follows:

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

▌

(b) paragraph 2 is replaced by the following:

"2. The provisions and formalities referred to in point (b) of paragraph 1 of this Article shall, in particular, include those concerning the decision-making process relating to the merger and the protection of employees as regards rights other than those governed by Article 133.";

(9) Article 122 is amended as follows:

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

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

(***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*** ***points (h) and (i) are replaced by the following:***

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

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

(c) the following points are added:

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

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

▌

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

″Article 123

Disclosure

1. Member States shall ensure that the ***following documents*** are disclosed by the company and made publicly available in ▌ the register ***of the Member State of each of the merging companies***, at least one month before the date of the general meeting ***referred to in Article 126***:

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

(b) a notice informing the members, creditors and ***representatives of the*** employees of the merging company***, or, where there are no such representatives, the employees themselves,*** that they may submit to their respective company, at the latest five working days before the date of the general meeting, comments concerning the common draft terms of the cross-border merger.

Member States may require that the independent expert report be ***disclosed and made publicly available in the register.***

Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report .

The documents disclosed in accordance with this paragraph shall also be accessible through the system of interconnection of registers.

2. Member States may exempt merging companies from the disclosure requirement referred to in paragraph 1 of this Article 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 of this Article*** available on their websites 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 to ensure the security of the website and the authenticity of the documents, and which are proportionate to achieving those objectives.

3. Where merging companies make the common draft terms of the cross-border merger available in accordance with paragraph 2 of this Article, ***they*** shall ***submit to*** their respective register, at least one month before the date of the general meeting ***referred*** to in ***Article 126, the following information***:

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

(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 of the respective company 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; and

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

The register of the Member State of each of the merging companies shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in ▌ the ***Member States of the merging companies, in accordance with the relevant provisions of Chapter III of Title I.***

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 of this Article, that the common draft terms of the cross-border merger, or the information referred to in paragraph 3 of this Article, be published in their national gazette ***or through a central electronic platform in accordance with Article 16(3)***. In that instance***,*** Member States shall ensure that the register transmits the relevant information to the national gazette ***or to a central electronic platform.***

7. Member States shall ensure that the documentation referred to in paragraph 1 ***or the information referred to in paragraph 3*** is accessible to 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 do not exceed the ***recovery of*** the cost of providing ***such service*****s.**

Article 124

Report of the ▌ administrative ***or management body*** for members ***and employees***

1. The administrative or management body of each of the merging companies shall draw up a report ***for members and employees*** explaining and justifying the legal and economic aspects of the cross-border merger, ***as well as explaining the implications of the cross-border merger for employees***.

It shall, in particular, explain the ***implications of the cross-border merger for the future business of the company.***

2. The report ***shall also include a section for members and a section for employees.***

The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

(a) the cash compensation and the method used to determine the cash compensation;

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

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

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

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:

(a) the implications of the cross-border merger for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;

(b) any material changes to the applicable conditions of employment or to the location of the company's places of business;

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

6. The report or reports shall be made available in any case electronically, ***together with the common draft terms of the cross-border merger, if available,*** to the members ***and*** to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves***, not less than six weeks before the date of the general meeting referred to in Article 126.***

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 ***six weeks*** before the date of the general meeting of the other merging company or companies.

7. Where the administrative or management body of the merging company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the 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.

8. The section of the report for employees shall not be required where a merging company and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.

9. ***Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8, the report shall not be required.***

10. Paragraphs 1 to 9 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.";

▌

(11) Article 125 is amended as follows :

(a) in paragraph 1, the following 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.";

(b) paragraph 3 is replaced by the following:

"3. ***The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the merging companies prior to the announcement of the merger proposal or the value of the companies excluding the effect of the proposed merger, as determined in accordance with generally accepted valuation methods. The report shall at least:***

(a) indicate the method or methods used to determine 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, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on; and in the event that different methods are used in the merging companies, state also whether the use of different methods was justified; and

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

The expert shall be entitled to obtain from the merging companies all information necessary for the discharge of the duties of the expert.";

(c) in paragraph 4, the following subparagraph is added:

"Member States may exclude single-member companies from the application 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 ▌ and 125, ***where applicable, employees' opinions submitted in accordance with Article 124 and comments submitted in accordance with Article 123,*** the general meeting of each of the merging companies shall decide, by means of a resolution, whether to approve 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 instrument***.";

(b) the following paragraph 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 point (b) of Article 122 has been inadequately set;

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

▌

(c) the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in point (b) did not comply with the legal requirements.";

(13) the following Articles ▌ are inserted:

"Article 126a
Protection of members

1. Member States shall ensure that ***at least*** the ▌ members of the merging companies ***who voted against the approval of the common draft-terms of the cross-border merger*** have the right to dispose of their ***shares for adequate cash compensation,*** 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 their respective merging company.***

Member States may also provide for other members of the merging companies to have the right referred to in the first subparagraph.

Member States may require that express opposition to the common draft terms of the cross-border merger, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented, at the latest at the general meeting referred to in Article 126. Member States may allow the recording of opposition to the common draft terms of the cross-border merger to be considered proper documentation of a negative vote.

2. 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 that declaration electronically.

3. Member States shall further establish the period within which the cash compensation specified in the common draft terms of the cross-border merger is to be paid. That period shall not end later than two months after the cross-border merger takes effect in accordance with Article 129.

4. Member States shall ensure that any members who have declared their decision to exercise the right to dispose of their shares, but who consider that the cash compensation offered by the merging company concerned has not been adequately set, are entitled to claim additional cash compensation before the competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.

Member States may provide that the final decision to provide additional cash compensation is valid for all members of the merging company concerned who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

5. Member States shall ensure that the law of the Member State to which a merging company is subject 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 jurisdiction of that Member State.***

6. Member States shall ▌ ensure that members of the merging companies who did not ***have or did not exercise*** the ***right to dispose of their shares***, but who consider that the share exchange ratio set out in the common draft terms of the cross-border merger is inadequate, may dispute that ▌ ratio ▌ ***and claim a cash payment. Proceedings in that regard shall be initiated*** *before* ***the competent authority or body mandated under the law of the Member State to which the relevant merging company is subject,*** within ***the time limit laid down in that national law and such proceedings shall not prevent the registration of the cross-border merger. The decision shall be binding on the company resulting from the cross-border merger***.

Member States may also provide that the share exchange ratio as established in that decision is valid for any members of the merging company concerned who did not have or did not exercise their right to dispose of their shares.

7. ***Member States may also provide that the*** company resulting from the cross-border merger ***can*** provide shares ***or other compensation*** instead of ***a*** cash payment.

▌

Article 126b

Protection of creditors

1. Member States shall provide for an adequate system of protection of the interests 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 creditors who are dissatisfied with the safeguards offered in the common draft terms of the cross-border merger, as provided for in point (n) of Article 122, may apply, within three months of the disclosure of the common draft terms of the cross-border merger referred to in Article 123, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border merger, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the merging companies.

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

2. Member States may require that the administrative or management body of each of the merging ***companies*** provides a declaration that accurately reflects its ***current*** financial status ***at a date no earlier than one month before the disclosure of that declaration.*** The declaration shall state that, on the basis of the information available to the administrative or management body of the ***merging companies*** at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company resulting from the merger would be unable to meet its 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.

3. Paragraphs ▌ 1 and 2 shall be without prejudice to the application of the laws of the Member States of the merging companies concerning the satisfaction or securing of pecuniary ***or non-pecuniary obligations*** due to public bodies***.***

Article 126c

Employee information and consultation

1. ***Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border merger and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC, and Directive 2001/23/EC where the cross-border merger is considered to be a transfer of an undertaking within the meaning of Directive 2001/23/EC, and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.***

2. ***Notwithstanding point (b) of Article 123(1) and Article 124(7), Member States shall ensure that employees' rights to information and consultation are respected, at least before the common draft terms of the cross-border merger or the report referred to in Article 124 are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 126.***

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.";

(14) Article 127 is ***replaced by the following***:

"***Article 127***

Pre-merger certificate

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

Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.

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

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

   (b) the ***report and the appended opinion, if any, referred to in Article 124***, ***as well as the report referred to in Article 125***, ***where they are available;***

   (c) any comments submitted in accordance with Article 123(1); and

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

3. Member States may require that the application to obtain a pre-merger certificate by the merging company is accompanied by additional information, such as, in particular:

(a) the number of employees at the time of the drawing up of the common draft terms of the cross-border merger;

(b) the existence of subsidiaries and their respective geographical location;

(c) information regarding the satisfaction of obligations due to public bodies by the merging company;

For the purposes of this paragraph, competent authorities may request such information, if not provided by the merging company, from other relevant authorities.

4. ***Member States shall ensure that the application referred to in paragraphs 2 and 3, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority, in accordance with the relevant provisions of Chapter III of Title I.***

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

6. As part of the scrutiny referred to in paragraph 1, the competent authority shall examine the following:

(a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 3;

(b) an indication by the merging companies that the procedure referred to in Article 133(3) and (4) has started, where relevant.

7. Member States shall ensure that the scrutiny referred to in paragraph 1 is carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border merger by the general meeting of the merging company. That scrutiny shall have one of the following outcomes:

(a) where it is determined 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 it is determined that the cross-border merger does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-merger certificate and shall inform the company of the reasons for its decision; in that case, the competent authority may give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

8. Member States shall ensure that the competent authority does not issue the pre-merger certificate where it is determined in compliance with national law that a cross-border merger is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.

9. Where the competent authority, during the scrutiny referred to in paragraph 1, has serious doubts indicating that the cross-border merger is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.

10. Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.

11. Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border merger, including those of the Member State of the company resulting from the merger, and obtain from those authorities and from the merging company, information and documents necessary to scrutinise the legality of the cross-border merger, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.";

(15) the following article 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.

Member States shall also ensure that the pre-merger certificate is available through the system of interconnection of registers.

2. Access to the pre-merger certificate shall be free of charge for the authorities referred to in Article 128(1) and for the registers.";

(16) Article 128 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) the following paragraphs ▌ are added:

"3. Each Member State shall ensure that any application for the purposes of paragraph 1, by any of the merging companies, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority ***referred to in paragraph 1, in accordance with the relevant provisions of Chapter III of Title I.***

4. The authority referred to in paragraph 1 shall approve the cross-border merger as soon as it has determined that all relevant conditions have been fulfilled.

5. The pre-merger certificate shall be accepted by the authority referred to in paragraph 1 as ***conclusively attesting to*** the proper completion of the applicable pre-merger ***procedures*** and formalities in its respective Member State, without which the cross-border merger cannot be approved ▌**.";**

(17) Article 130 is replaced by the following:

"Article 130

Registration

1. ***The laws of the Member States*** of the merging companies ***and*** of the company resulting from the merger ***shall determine, with regard to*** their respective ***territories, the arrangements,*** in accordance with Article ***16, for disclosing the completion of the cross-border merger in their registers.***

2. ***Member States shall ensure that at least the following information is entered in their registers:***

(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 the 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, that the striking off or removal of the merging company from the register is the result of a cross-border merger;

(d) in the register of the Member State of each merging company, the date of striking off or removal of the merging company from the register;

(e) in the registers of the Member States of each merging company and of the Member State of the company resulting from the merger, respectively, the registration number, name and legal form of each merging company and of the company resulting from the merger.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the register in the Member State of the company resulting from the cross-border merger notifies the register in the Member State of each of the merging companies, through the system of interconnection of registers, that the cross-border merger has taken effect. Member States shall also ensure that the registration of the merging company is struck off or removed from the register immediately up***on receipt of that notification.";***

(18) Article 131 is amended as follows:

(a) ▌paragraph 1 ***is replaced by*** the following:

"1. A cross-border merger carried out as laid down in subpoints (a)***,*** (c) ***and (d)*** of point (2) of Article 119 shall, from the date referred to in Article 129, have the following consequences:

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

(b) the members of the company being acquired shall become members of the acquiring company***, unless they have disposed of their shares as referred to in Article 126a(1);***

(c) the company being acquired shall cease to exist.";

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

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

(b) the members of the merging companies shall become members of the new company, ***unless they have disposed of their shares as referred to in Article 126a(1);";***

(19) 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 either by 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 company or 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 is added:

"3. Where the laws of the Member States of all of the merging companies provide for the exemption from the approval by the 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 Article 123(1) to (3) respectively and the reports referred to in Articles 124 and 125, shall be made available at least one month before the decision on the merger is taken by the company in accordance with national law.";

(20) Article 133 is amended as follows:

(a) in paragraph 2, the introductory part is replaced by the following:

"2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply where at least one of the merging companies has, in the six months prior to the disclosure of the common draft terms of the cross-border merger, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State to whose jurisdiction the merging company is subject, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not:";

(b) in paragraph 4, point (a) is replaced by the following:

"(a) shall confer on the relevant bodies of the merging companies, in the event that at least one of the merging companies is operating under an employee participation system within the meaning of point (k) of Article 2 of Directive 2001/86/EC, the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in point (b) of Part 3 of the Annex to that Directive, as laid down by the legislation of the Member State in which the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;";

(c) 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 conversion, merger or division, be it cross-border or domestic, for a period of ***four years*** after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.";

(d) the following paragraph 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."***;***

(21) the following Article is inserted:

"Article 133a
Independent experts

1. 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 125.***

2. Member States shall have rules in place to ensure that:

(a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-merger certificate; and

(b) the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.";

(22) in Article 134, the following paragraph is added:

"The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border merger took effect.";

(23) in Title II, the following Chapter is added:

"CHAPTER IV
Cross-border divisions of limited liability companies

Article 160a
Scope

1. This Chapter shall apply to cross-border divisions of limited liability companies formed in accordance with the law of a Member State and having their 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").

2. Notwithstanding point 4 of Article 160b, this Chapter shall also apply to cross-border divisions where the law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of point 4 of Article 160b 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 to companies in either of the following circumstances:

(a) the company is in liquidation and has begun to distribute assets to its members;

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

5. Member States may decide not to apply this Chapter to companies which are:

(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;

(b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 4; or

(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.

▌

Article 160b

Definitions

For the purposes of this Chapter:

(1) ‘company’ means a limited liability company ***of a type*** listed in Annex II;

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

(3) 'recipient company' means a company newly formed in the course of a cross-border division;

(4) ‘division’ means an operation whereby:

(a) a company being divided, ***on being dissolved*** without going into liquidation, transfers all its assets and liabilities to two or more 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 applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of those securities or shares ('full division');

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

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

Article 160c

Procedures and formalities

In compliance with Union law, the law of the Member State of the company being divided shall govern those parts 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 laws of the Member States of the recipient companies shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-division certificate.

Article 160d

Draft terms of cross-border divisions

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

(a) the legal form and name **o*f the company being divided*** and the ***location of its*** registered office, ***and the legal form and name*** proposed for the new company or companies resulting from the cross-border division and the proposed location of their registered offices;

(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;

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

(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 ***bodies*** 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;

▌

(j) the instruments of constitution of the recipient companies***, where applicable, and the statutes if they are contained in a separate instrument,*** and any changes to the instrument of constitution of the company being divided in the case of a partial division or a division by separation;

(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 recipient companies are determined pursuant to Article160l ▌;

(l) a precise description of the assets and liabilities of the company being divided and a statement of how those assets and liabilities are to be allocated between the recipient companies, or are to be retained by the company being divided in the case of a partial division or a division by separation, including provisions on 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;

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

(n) the date of the accounts of the company being divided used to establish the conditions of the cross-border division;

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

(p) details of the offer of cash compensation for members ▌ in accordance with Article 160i;

(q) ▌ any safeguards offered to creditors, ***such as guarantees or pledges***.

▌

Article 160e

Report of the administrative or management body for members ***and employees***

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

   It shall, in particular, explain the ***implications of the cross-border division for the future business of the companies.***

2. The report ***shall also include a section for members and a section for employees.***

   The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

   (a) the cash compensation and the method used to determine the cash compensation;

   (b) the share exchange ratio ***and the method or methods used to arrive at the share exchange ratio,*** where applicable;

▌

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

(d) the rights and remedies available to members ▌ in accordance with Article 160i.

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:

(a) the implications of the cross-border division for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;

(b) any material changes to the applicable conditions of employment or to the location of the company's places of business;

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

6. The report ***or reports*** shall be made available ***in any case*** electronically, ***together with the draft terms of the cross-border division, if available,*** to the members ***and*** to the representatives of the employees of the company being divided or, where there are no such representatives, to the employees themselves***, not less than six weeks before the date of the general meeting referred to in Article 160h.***

7. Where the administrative or management body of the company being divided receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the 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.

8. The section of the report for employees shall not be required where a company being divided and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.

9. ***Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8, the report shall not be required.***

10. Paragraphs 1 to 9 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

Article 160f

Independent expert report

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

2. The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the company being divided prior to the announcement of the division proposal or the value of the company excluding the effect of the proposed division, as determined in accordance with generally accepted valuation methods. The report shall at least:

(a) indicate the method or methods used to determine 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 are adequate for the assessment of the cash compensation and the share exchange ratio, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on; and

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

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

3. Neither an examination of the draft terms of cross-border division by an independent expert nor an independent 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 application of this Article.

Article 160g

Disclosure

1. Member States shall ensure that the ***following documents are disclosed by the company and made*** publicly available in the register ***of the Member State of the company being divided***, at least one month before the date of the general meeting ***referred to in Article 160h****:*

   (a) the draft terms of the cross-border division; ***and***

   (b) a notice informing the members, creditors and ***representatives of the*** employees of the company being divided, ***or, where there are no such representatives, the employees themselves,*** that they may submit ***to the company, at the latest five working days*** before the date of the general meeting**,** comments concerning the ***draft terms*** of the ***cross-border division*****.**

   Member States may require that the independent expert report be disclosed and made publicly available in the register**.**

Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report.

The documents ***disclosed*** in ***accordance with this paragraph*** shall be also accessible through the system of interconnection of registers.

2. Member States may exempt a company being divided from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting ***referred to in Article 160h*** and ending not earlier than the conclusion of that meeting, that company makes the documents referred to in paragraph 1 of this Article 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 to ensure the security of the website and the authenticity of the documents, and which are proportionate to achieving those objectives.

3. Where the company being divided makes the draft terms of the cross-border division available in accordance with paragraph 2 of this Article, it shall submit to the register, at least one month before the date of the general meeting ***referred*** to ***in Article 160h***, the following information:

(a) the legal form and name of the company being divided and the location of its registered office and the legal form and name proposed for the newly created company or companies resulting from the cross-border division and the proposed location of their registered office;

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

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

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

The register shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in the Member State concerned, ***in accordance with the relevant provisions of Chapter III of Title I.***

5. Member States may require***,*** in addition to the disclosure referred to in paragraphs 1, 2 and 3 of this Article, that the draft terms of the cross-border division, or the information referred to in paragraph 3 of this Article, be published in their national gazette ***or through a central electronic platform in accordance with Article 16(3)***. In that instance***,*** Member States shall ensure that the register transmits the relevant information to the national gazette ***or to a central electronic platform***.

6. Member States shall ensure that the documentation referred ***to*** in paragraph 1 ***or the information referred to in paragraph 3*** is accessible to 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 do not exceed the ***recovery of*** the cost of providing ***such service*****s**.

Article 160h

Approval by the general meeting

1. After taking note of the reports referred to in Articles 160e ▌ and 160f***,*** where applicable, ***employees' opinions submitted in accordance with Article 160e and comments submitted in accordance with Article 160g,*** 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 of the company being divided 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 160l.

3. Member States shall ensure that the approval of ▌ the draft terms of the cross-border division, ***and of any amendment to those draft terms,*** 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 general 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. Where a clause in the draft terms of the cross-border division or any amendment to the instrument of constitution of the company being divided leads to an increase of the economic obligations of a member towards the company or third parties, Member States may require, in such specific circumstances, that such clause or the amendment to the instrument of constitution of the company being divided be approved by the member concerned, provided that such member is unable to exercise the rights laid down in Article 160i.

▌

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 point ***(b)*** of Article 160d has been inadequately set;

(b) the cash compensation referred to in point (p) of Article ***160d*** has been inadequately set; or

(c) ***the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in point (b) did not comply with the legal requirements.***

Article 160i

Protection of members

1. Member States shall ensure that ***at least*** the ▌ members of a company being divided ***who voted against*** the approval of the draft terms of the cross-border division have the right to dispose of their ***shares for adequate cash compensation,*** under the conditions laid down in paragraphs 2 to 6, ***provided that, as a result of the cross-border division, they would acquire shares in the recipient companies which would be governed by the law of a Member State other than the Member State of the company being divided.***

Member States may also provide for other members of the company being divided to have the right referred to in the first subparagraph.

Member States may require that express opposition to the draft terms of the cross-border division, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented at the latest at the general meeting referred to in Article 160h. Member States may allow the recording of opposition to the draft terms of the cross-border division to be considered proper documentation of a negative vote.

2. ***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 their shares. That period shall not exceed one month after the general meeting referred to in Article 160h. Member States shall ensure that the company being divided provides an electronic address for receiving that declaration electronically.***

3. ***Member States shall further establish the period within which the cash compensation specified in the draft terms of the cross-border division is to be paid. That period shall not end later than two months after the cross-border division takes effect in accordance with Article 160q.***

4. ***Member States shall ensure that any members who have declared their decision to exercise the right to dispose of their shares, but who consider that the cash compensation offered by the company being divided has not been adequately set, are entitled to claim additional cash compensation before the competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.***

Member States may provide that the final decision to provide additional cash compensation is valid for all members of the company being divided who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

▌

5. Member States shall ensure that the law of the Member State of a company being divided 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 jurisdiction of that Member State***.

6. Member States shall ▌ ensure that members of the company being divided who did not ***have or did not exercise*** the ▌ ***right to dispose of their shares****,* but who consider that the share-exchange ratio set out in the draft terms of the cross-border division is inadequate, may dispute that ▌ ratio ***and claim a cash payment. Proceedings in that regard shall be initiated*** *before* ***the competent authority or body mandated under the law of the Member State to which the company being divided is subject,*** within ***the time limit laid down in that national law and such proceedings shall not prevent the registration of the cross-border division. The decision shall be binding on the recipient companies and, in the event of a partial*** division***, also on the company being divided.***

7. ***Member States may also provide that the*** recipient company ***concerned and, in the event of a partial division, also the company being divided, can provide shares or other*** compensation ▌ instead of ***a*** cash payment.

▌

Article 160j

Protection of creditors

1. Member States shall provide for an adequate system of protection of the interests 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 point (q) of Article 160d, may apply, within three months of the disclosure of the draft terms of cross-border division referred to in Article 160g, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border division, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.

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

▌

2. Where a creditor of the company being divided ▌ does not obtain satisfaction from ***the company to which the liability is allocated,*** the other recipient companies, and in the case of a partial division ***or a division by separation,*** the company being divided, shall be jointly and severally liable with the ***company to which the liability is allocated*** 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.

3. Member States may require that the administrative or management body of the company being divided provides a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the company being divided at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why any recipient company and, in the case of a partial division, the company being divided, would, 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 160g.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the application of the law of the Member State of the company being divided concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies.

Article 160k
Employee information and consultation

1. Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border division and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC, and Directive 2001/23/EC where the cross-border division is considered to be a transfer of an undertaking within the meaning of Directive 2001/23/EC, and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.

2. Notwithstanding Article 160e(7) and point (b) of Article 160g(1), Member States shall ensure that employees' rights to information and consultation are respected, at least before the draft terms of the cross-border division or the report referred to in Article 160e are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 160h.

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.

Article 160l

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 company resulting from the cross-border division has its registered office shall not apply where the company being divided has, in the six months prior to the disclosure of the draft terms of the cross-border division, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State of the company being divided, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

(a) provide for at least the same level of employee participation as operated in the company being divided prior to its cross-border division, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body 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 of this Article, 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)[redacted] and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

(a) Article 3(1), points (a)(i) and (b) of Article 3(2) , Article 3(3), the first ***two sentences*** of Article 3(4), and Article 3(5) **)** and (7);

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

(c) Article 5;

(d) Article 6;

(e) Article 7(1), ***with the exception of the second indent of point (b)***;

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

(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 body of the recipient companies. However, if, in the company being divided, employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third;

(c) shall ensure that the rules on employee 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 ***standard*** rules in accordance with point (a) of Part 3 of the Annex to Directive 2001/86/EC.

5. The extension of participation rights to employees of the recipient companies employed in other Member States, as 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, that company 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 conversion, merger or division, be it cross-border or domestic, for a period of ***four*** 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 160m

Pre-division certificate

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

   Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.

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

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

(b) the ***report and the appended opinion, if any,*** referred to in Article 160e, ***as well as the report referred to in Article 160f, where they are available;***

(c) any comments submitted in accordance with Article 160g(1); and

(d) information on the ***approval by*** the general meeting ▌ referred to in Article 160h.

▌

3. Member States may require that the application to obtain a pre-division certificate by the company being divided is accompanied by additional information, such as, in particular:

(a) the number of employees at the time of the drawing up of the draft terms of the cross-border division;

(b) the existence of subsidiaries and their respective geographical location;

(c) information regarding the satisfaction of obligations due to public bodies by the company being divided.

For the purposes of this paragraph, competent authorities may request such information, if not provided by the company being divided, from other relevant authorities.

4. Member States shall ensure that the application referred to in paragraphs 2 ***and 3***, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority***, in accordance with the relevant provisions of Chapter III of Title I.***

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

6. As part of the scrutiny ▌ referred to in paragraph 1, the competent authority shall examine the following:

(a) ***all*** documents and information ***submitted to the competent authority*** in accordance with paragraphs 2 ***and 3;***

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

▌

7. Member States shall ensure that the scrutiny referred to in paragraph 1 is carried out within ***three months*** of the ***date of*** receipt of ***the documents and*** information concerning the approval of the cross-border division by the general meeting of the company being divided. That scrutiny shall have one of the following outcomes:

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

(b) where ***it is determined*** that the cross-border division does not ***comply with all*** the relevant conditions 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 for its decision; in that case, the competent authority may give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.***

8. ***Member States shall ensure that the competent authority does not issue the pre-division certificate where it is determined in compliance with national law that a cross-border division is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.***

9. ***Where*** the competent authority, ***during the scrutiny referred to in paragraph 1,*** has serious ***doubts*** indicating that the cross-border division ***is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.***

10. Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.

11. Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border division, including those of the Member State of the recipient companies, and obtain from those authorities and from the company being divided, information and documents necessary to scrutinise the legality of the cross-border division, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.

Article 160n

Transmission of the pre-division certificate

1. ***Member States shall ensure that the pre-division certificate is shared with*** the authorities referred to in Article 160o(1) ***through*** the ***system of interconnection of registers.***

Member States shall also ensure that the pre-division certificate ***is*** available through the system of interconnection of registers.

2. ***Access to the pre-division certificate shall be free of charge for the authorities referred to in Article 160o(1) and for the registers.***

Article 160o

Scrutiny of the legality of the cross-border division

1. Member States shall designate ***the court, notary or other*** authority competent to scrutinise the legality of the cross-border ***division*** 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.

   That authority or authorities shall in particular ensure that the 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 160l.

2. For the purposes of paragraph 1 of this Article, ***the*** company ***being divided*** shall submit to ***each*** authority referred to in ▌ paragraph ***1*** of this Article the draft terms of the cross-border division approved by the general meeting referred to in Article 160h.

3. Each Member State shall ensure that any application for the purposes of paragraph 1, by ***the company being divided ,*** including ***the*** submission of any information and documents, may be completed fully online without the necessity ***for the applicants*** to appear in person before the authority referred to in paragraph 1, ***in accordance with the relevant provisions of Chapter III of Title I.***

4. The authority referred to in paragraph 1 shall ▌ approve the cross-border division as soon as it has determined that all relevant conditions have been properly fulfilled and formalities properly completed in the Member States of the recipient companies.

5. The pre-division certificate shall be accepted by the authority referred to in paragraph 1 as ***conclusively attesting*** to the proper completion of the applicable pre-division procedures and formalities in the Member State of the company being divided, without which the cross-border division cannot be approved.

Article 160p

Registration

1. The laws of ▌ the Member States ***of the company being divided and of*** the recipient companies ▌ shall determine, with regard to their respective territories, the arrangements***, in accordance with Article 16,*** for disclosing the completion of the cross-border division in their registers▌ **.**

2. Member States shall ensure that at least the following information is entered in their registers:

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

   (b) ***in the register of the Member States 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 the event of a full division, ***that the striking off or removal of the company being divided from the register is the result of a cross-border division*****;**

(d) ***in the register of the Member State of the company being divided*** in the event of a full division, the date of striking off or removal of the company being divided from the register ▌ ;

(e) in the registers of the Member State of the company being divided and of the Member States of the recipient companies, respectively, the registration number, name and legal form of the company being divided and of the recipient companies.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the registers in the Member States of the recipient companies notify the register in the Member State of the company being divided, through the system of interconnection of registers, that the recipient companies have been registered. Member States shall also ensure that, in the event of a full division, the company being divided ***is*** struck off or removed from the register immediately upon receipt of ***all those notifications.***

4. Member States shall ensure that the register in the Member State of the company being divided notifies the registers in the Member States of the recipient companies, through the system of interconnection of registers, that the cross-border division has taken effect.

Article 160q

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. That date shall be after the scrutiny referred to in Articles 160m ▌ and 160o has been carried out and after the registers have received all notifications referred to in Article 160p(3).

Article 160r

Consequences of a cross-border division

1. A cross-border full division ***shall, from the date referred to in Article 160q***, have the following consequences:

   (a) all the assets and liabilities of the company being divided, including all contracts, credits, rights and obligations, shall be transferred to ▌ 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 have disposed of their shares as referred to in Article 160i(***1***);

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

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

▌

2. A cross-border partial division shall, ***from the date referred to in Article 160q,*** have the following consequences:

(a) ***part of*** the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, shall be transferred to ▌ the recipient ***company or*** companies, while ***the remaining part*** shall ***continue to be that of*** the company being divided in accordance with the allocation specified in the draft terms of the 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 the cross-border division***, unless those members have disposed of their shares as referred to in Article 160i(1);***

(c) the ***rights*** and ***obligations of*** the company being divided ***arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect, allocated to the recipient company or companies under the draft*** terms of the ***cross-border division, shall be transferred to the respective recipient company or companies.***

3. A cross-border division by separation shall, from the date referred to in Article 160q, have the following consequences:

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

(b) the shares of the recipient company or companies shall be allocated to the company being divided;

(c) the rights and obligations of the company being divided arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect, allocated to the recipient company or companies under the draft terms of the cross-border division, shall be transferred to the respective recipient company or companies.

4. Without prejudice to Article 160j(2), 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 the cross-border division, as referred to in point (l) of Article 160d, and where the interpretation of those terms does not make a decision on its allocation possible, the asset, the consideration therefor 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 the cross-border division.

5. Where, in the case of a ▌ cross-border division, 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.

6. Member States shall ensure that shares in a recipient company cannot 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 160s

Simplified formalities

Where a cross-border division is carried out as a division by separation, points (b), (c), (f), (i), (o) and (p) of Article 160d and Articles 160e, 160f and 160i shall not apply.

Article 160t

Independent experts

1. 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 160f***.

2. Member States shall have rules in place to ensure that:

(a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-division certificate; and

(b) the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.

Article 160u
Validity

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

The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border division took effect.";

(24) the title of Annex II is replaced by the following:

"Types of companies referred to in Articles 7(1), 13, 29(1), 36(1), 67(1), points (1) and (2) of Article 86b, point (a) of Article 119(1), and point (1) of Article 160b".

Article 2
Penalties

Member States shall lay down the rules on measures and penalties to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Member States may provide for criminal penalties for serious infringements.

The measures and penalties provided for shall be effective, proportionate and dissuasive.

Article ***3***

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [the last day of the ***36th*** month after the date of entry into force of this amending Directive]. They shall immediately inform the Commission thereof .

   When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article ***4***

Reporting and review

1. The Commission shall, no later than … [***four*** years after the date of the end of the transposition period of the amending Directive], carry out an evaluation of this Directive***, including an evaluation of the implementation of the provisions on employee information, consultation and participation in the context of cross-border operations, including an assessment of the rules on the proportion of employee representatives in the administrative body of the company resulting from the cross-border operation, and of the effectiveness of the safeguards regarding negotiations of employee participation rights, taking into consideration the dynamic nature of companies growing cross-border,*** and shall present a report to the European Parliament, the Council and the European Economic and Social Committee ***on the findings of that evaluation, in particular considering the possible need to introduce a harmonised framework on board level employee representation in Union law,*** 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, ***data on the cases in which a pre-operation certificate was refused, as well as statistical aggregated data on the number of negotiations on employee participation rights in cross-border operations. The Member States shall also provide the Commission with data on the functioning and effects of jurisdiction rules applicable in cross-border operations.***

2. The report shall in particular evaluate the procedures referred to in Chapters -I and IV of Title II of Directive (EU) 2017/1132, 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***, including in particular cross-border divisions by acquisition.***

Article ***5***

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 ***6***

Addressees

This Directive is addressed to the Member States.

Done at ...,

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