



Council of the European Union
General Secretariat

Brussels, 17 September 2019

**Interinstitutional files:
2018/0114(COD)**

WK 10071/2019 INIT

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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law Package
N° Cion doc.:	COM (2018) 241
Subject:	DIRECTIVE (EU) 2019/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions - Premeeting text in view of the Legal/Linguistic meeting on 24 September 2019

Delegations will find annexed the following documents : the premeeting text in view of the Legal/Linguistic meeting on 24 September 2019 (annex 1) together with a 4-column table with identical or very similar full text provisions of each of the three new chapters and a column for the recitals (annex 2) and a table indicating the numbers of Articles that are similar or identical (annex 3).

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new changes or changes undone compared to version of July; typos not highlighted

The three chapters have been aligned. For your comfort, you will find the parallel provisions in a separate table with four columns, three for the chapters and one for the recitals.

Clarification concerning the words disclose, make available, publish: company discloses, register makes available (not that it is always like that, but the drafters have constructed it like this).
from the third party perspective : accessible. publish only used with "gazette".

PE-CONS 84/19 – 2018/0114(COD)

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DIRECTIVE (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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 Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 62, 15.2.2019, p. 24, p.

² Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) ~~The~~ Directive (EU) 2017/1132 of the European Parliament and of the Council³ regulates cross-border mergers of limited liability companies. ~~These rules~~ on cross-border mergers represents a significant milestone in improving the functioning of the ~~internal~~ Single Market for companies and firms and ~~their to~~ exercise of the freedom of establishment. However, ~~the~~ evaluation of ~~these~~ rules shows that ~~they need to be changed~~ there is a need for changes to those modifications in cross border merger rules. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions, *since Directive (EU) 2017/1132 only provides for rules for 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 ~~to~~with its national legal order is satisfied.

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³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, (codification) (OJ L 169, 30.6.2017, p. 46).

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ANNEX 1

PUBLIC

- (3) In the absence of harmonisation of Union law, ~~the definition of 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 ~~to~~ ~~define~~. Article 54 of the TFEU places the *connecting factors* of the registered office, the central administration and the principal place of business of a company or firm ~~at~~ ~~on an equal footing~~. Therefore, as clarified in case-law¹, ¹ 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. ¹
- (4) ~~These 3~~ ~~Developments~~ in the case-law have opened up new opportunities for companies ¹ in ~~the internal market~~ ~~the Single Market~~ ~~in order~~ to foster economic growth, effective competition and productivity. At the same time, the objective of an ~~Single Market~~ ~~internal market~~ without internal borders for companies ~~must~~ ~~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 should be properly~~ ~~balanced~~ ~~with the protection of employees, creditors and members.~~

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- (5) *The lack of a legal framework ~~on~~ 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 a ~~the~~ suboptimal protection of employees, creditors and minority *members* within the ~~Single Market~~ 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 whilst at the same time providing adequate protection for stakeholders such as employees, creditors and members.*

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- (744) *As regards ~~the existing rules on cross-border mergers,~~ 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~~ those rules in order to make it easier for SMEs to choose their preferred business strategies and to better adapt to changes in market conditions, whilst at the same time not but without weakening the 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 the implementation of cross-border mergers.*

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We will present a company law initiative to facilitate the use of digital technologies throughout a company's lifecycle and cross-border mergers and divisions

This is how the recital was in the COM proposal:
In its Communication entitled ‘Commission Work Programme 2017 Delivering a Europe that protects, empowers and defends’⁸, the Commission announced an initiative to facilitate the implementation of cross-border mergers.

(847) *Besides ~~In addition to the~~ 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 ~~concern~~ involve through 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 more than one existing company, ~~as these~~ such instances/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 ~~national and EU~~ rules and national rules. *The possibility ~~to~~ of forming a company through a division by separation as provided for in this Directive offers companies a new harmonised procedure in the Single Market/internal market.* ~~However, companies should be free to directly set up subsidiaries in other Member States.~~

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

(9) This Directive should not apply to companies in liquidation where the distribution of assets has begun. In addition, Member States ~~may~~ **are free should be able to choose** ~~decide also~~ 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 ~~the~~ **national law**, or to preventive restructuring frameworks, as defined by ~~the~~ **national law**, ~~no matter~~ **irrespective of** whether such proceedings are part of a national insolvency framework or regulated outside of it, ~~and~~ **in addition** **Also**, Member States should be able to choose not to apply this Directive to companies ~~that are~~ **subject to crisis prevention measures in the meaning of as defined in Directive 2014/59/EU of the European Parliament and of the Council⁴. This Directive should be without prejudice to ~~the~~ Directive (EU) 2019/1023⁵ of the European Parliament and of the Council⁵ on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.**

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⁴ 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).

⁵ Directive (EU) 2019/1023⁵ 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. 18⁵).

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

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

(124) 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 and/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 *envisaged 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 #the any safeguards offered to members and* creditors. *A notice should be disclosed in the #business register 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 comments with regard to the proposed *operation*. *Member States #may/could also decide that the independent #expert's report required by this Directive #has to be disclosed.*

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(1312) 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*. *ConcerningAs far as members are concerned, the report should, in particular, include potential remedies available to them, especially information about their exit right to exit the company. As to theFor employees, the report should also explain, in particular, 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 in to the employment conditions laid down by law, to collective agreements and or to transnational company agreements, and in the locations of the companyies's places of business, such as the location of the head office. In addition, the report should include, as well as 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, the wages and salaries, the location place of specific posts and the expected consequences for the employees occupying such 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. This requirement should not however applyNo section for employees should be required where the only employees of the company are in its administrative or management organbody. Furthermore, in order to enhance the protection afforded to the 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 the possibility to provide an of any opinion* should be without prejudice to *the* applicable information and consultation *proceeduresings provided forinstituted* at national level *including those* following the implementation of Directive 2002/14/EC of the European Parliament and of the Council⁶ or Directive 2009/38/EC of the European Parliament and of the Council⁷. *The report or,*

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⁶ 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).

⁷ 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

where drawn up separately, the reports, in case they are established separately, should be available to the *members and to the representatives of the* employees of the company carrying out *the* cross-border *conversion operation* or, *where there are no such representatives, the employees themselves.*

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undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [\(Recast\)](#) (OJ L 122, 16.5.2009, p. 28).

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(143) *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 possible~~ complementary cash payment included in the draft terms, should be examined by an expert who is independent from the company. With regard to the independence of the expert, Member States should take into account the ~~principles requirements~~ laid down in Articles 22 and 22b of Directive 2006/43/EC of the European Parliament and of the Council⁸.*

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(154) *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 ~~national or~~ Union ~~or national~~ law. Such non-disclosure should not undermine the other requirements ~~provided for in~~ this Directive.*

⁸ 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).

(165) 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 ~~requirement~~ for ~~such a~~ the vote ~~should~~ be sufficiently large ~~high~~ in order to ensure that the decision ■ is ~~based on~~ **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.

(174) The lack of harmonisation of safeguards for members ■ has been identified *as* an obstacle ~~for 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 may therefore to maintain or introduce additional rules on protection rules for members, unless they such rules are in conflict with those provided for under by this Directive or with the freedom of establishment. Members' individual rights to information should remain unaffected*.

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(186) As a consequence of a cross-border operation, members often face a situation whereby the law applicable to their rights ~~would change~~, because they ~~would become members~~ ~~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.~~ ~~Therefore, Member States should, therefore, at least, offer provide for members holding shares with voting rights and who voted against the approval of the draft terms, at least to have the right to exit the company and receive a cash compensation for their shares that is equivalent to their value of those shares for members holding shares with voting rights and who voted against the approval of the draft terms.~~ However, Member States ~~should be able to~~ ~~may decide to offer extend this that~~ right also to other members, for example, ~~for 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 ~~different~~ proportions ~~different from those than what~~ they held before the operation, or to members for whom there ~~was would be~~ no change of applicable law but for whom certain rights have changed 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 ~~nor~~ special legal form requirements. ~~For example, Member States should, for example, be able to~~ ~~continue to require~~ a notarial deed or a confirmation of signatures.

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- (197) 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. ~~This~~ that requirement should be without prejudice to any formal requirements ~~set up by~~ laid down in national law. Members ~~might~~ could also be required to indicate, together with ~~that~~ their declaration or within a specific time limit, whether they intend to ~~dispute~~ challenge the ~~offered~~ cash compensation offered and claim demand additional cash compensation.
- (201~~8~~) The calculation of the offer of cash compensation should be based on generally accepted valuation methods. Members should have a right to ~~challenge~~ 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 exercised declared their decision to exercise the right to dispose of their shares are entitled to join ~~the such~~ proceedings, ~~and~~ Member States should also be able to establish time limits in national law ~~for doing so~~ for joining those proceedings in national law.

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(2119) ~~In case of~~ *As far as* ~~a~~ *cross-border mergers or divisions* ~~is~~ *are concerned*, members who did not have or did not exercise ~~an exit the right to exit the company~~ should, ~~however nevertheless~~, have a right to *dispute* ~~challenge~~ the share-exchange ratio. When assessing the adequacy of the share-exchange ratio, the competent administrative or judicial authority or a body mandated under national law should also take into account the amount of ~~any possible~~ *complementary cash payment included in the draft terms.*

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(2246) Following a cross-border *operation*, the former creditors of the *company or* companies carrying out that operation ~~may could~~ see their claims *affected* where the ~~the~~ -company ~~which that~~ is liable for the debt is, ~~thereafter 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.

(2+3) In order to ~~guarantee~~*ensure that creditors have the* appropriate protection ~~of creditors~~ 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*, ~~they should be able to~~*may* apply *for safeguards* to the ~~competent~~*appropriate* authority. *When assessing these such safeguards*, the *appropriate authority* should *take into account whether the 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.

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(242) Member States should ensure *that creditors adequate protection for those creditors, who entered into a relationship with the company before the company had made public its intention to carry out a cross-border conversion operation have adequate protection.* ~~In addition to the general rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council⁹ the Brussels Ia Regulation, Member States should, therefore, provide that such creditors should have the choice right to file of filing a claim in the departure Member States for a period of two years after the disclosure of the draft terms of the cross-border conversion has taken effect.~~ 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 ~~of a company~~ to be protected could ~~also be include comprise~~ active-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 Council¹⁰ the Brussels Ia Regulation, Member States should, therefore, provide that such creditors should have the choice right to file of filing a claim in the departure Member States for a period of two years after the a disclosure of the draft terms of the cross-border conversion has taken effect.~~ Also, ~~the~~ two-year protection ~~period measure~~ envisaged provided for ~~by~~ in this ~~D~~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, ~~shall should~~ be without prejudice to national law determining the ~~statute of limitations periods~~ of claims.

(245) In addition, in order to protect ~~the~~ creditors against the risk of ~~the~~ insolvency of the company following ~~the 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 ~~sh~~would not be able to meet their liabilities. In those circumstances, Member States should be able to make the members of the management ~~organ~~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

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⁹ 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).

¹⁰ 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).

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ANNEX 1

to ~~the~~ Member States to ~~draw~~decide on ~~the~~ appropriate consequences ~~for of~~ providing inaccurate or misleading declarations, ~~including which should include~~ effective and proportionate ~~sanctions~~penalties and liabilities in compliance with Union law.

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(236) 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 ~~set out by provided for in the~~ Directive 2002/14/EC and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC, ~~and 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/EC¹¹, ~~in accordance with Directive 2001/23/EC where the cross-border merger or cross-border division is considered to be as transfer of an undertaking within the meaning of that Directive.~~ This Directive does not affect ~~Directive 2009/38/EC~~, Council Directive 98/59/EC¹², Directive 2001/23/EC, ~~and~~ Directive 2002/14/EC ~~and/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.

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(247) Employees' representatives provided for ~~in by~~ national law ~~and/or, where applicable,-~~ in accordance with national practice, ~~or both where applicable,~~ should also include ~~also any~~ relevant bodies established in accordance with ~~EU~~ Union law, if any, 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/EC¹³.

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¹¹ 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).

¹² 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).

¹³ 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).

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- (258) *Member States should ensure that employee's 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.*
- (296) *In order to conduct an analysis of the **report for employees**, ~~the~~ company carrying out ~~the~~ cross-border operation should provide ~~the~~ employee representatives with the resources necessary ~~as~~ to enable them to **apply exercise** the rights arising from this Directive in an appropriate manner.*

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(3027) 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 ~~organ~~**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* ~~along the lines of~~**in line with** the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution ~~that reconciles~~**ing** 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, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply, *mutatis mutandis*. In order to protect **either** the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out **a** subsequent **domestic or cross-border** conversion, merger or division **be it cross-border or domestic**, within *four* years.

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(3128) In order to prevent the circumvention of employee participation rights **by means of a cross-border operation**, where a company is registered in a Member State which provides for such rights, then that company **or those companies** carrying out **such an cross-border operation and** registered in the Member State which provides for the employee participation rights, should not be able to **perform carry out** a cross-border **operation conversion or division** without first entering into negotiations with its employees or their representatives **when where** the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee participation.

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(3229) *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 **Single Market** internal market. In this regard, safeguarding and promoting **the employees' participation rights of employees within the board of a company's board**, **plays an important role**, in particular when **a company's moves or restructures** **cross-border**, **plays an important role**. Therefore, the successful completion of negotiations on participation rights in the context of cross-border operations is essential and should be encouraged.*

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

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(34) In order to issue ~~the~~ 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 ~~several~~ authorities competent to scrutinise the legality of the operation. The competent ~~authority or authorities may~~ could comprise courts, notaries or other authorities, a tax authority or ~~a~~ financial service authority. ~~If~~ 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 or authorities~~ should assess the 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 ~~if the competent authority~~ has serious doubts ~~indicating~~ that the cross-border operation is ~~set up~~ set up for abusive or fraudulent purposes leading to or aimed ~~at~~ leading to the evasion or circumvention of ~~national or~~ EU or national law, or ~~otherwise~~ for criminal purposes and the ~~examination~~ assessment requires ~~the consideration of additional information~~ to be considered or ~~performing additional investigative activities~~ to be performed.

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(325) 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 otherwise for criminal purposes. In particular, it is important to counteract 'shell' or 'front' companies set up for the purpose of evading, circumventing or infringing national and/or Union or national law. Where, in the course of the scrutiny of the legality of a cross-border operation, the competent authority has become aware, including through consultation of relevant authorities, that the cross-border operation is set up set up for abusive or fraudulent purposes, leading to or aimed to lead to at the evasion or circumvention of national or EU Union or national law, or otherwise for criminal purposes, it should not issue the pre-operation certificate authorise the cross-border operation. The relevant procedure, including any detailed assessment prior to the issue of any pre-operation certificate, should be carried out in accordance with national law. In such cases, the competent authority should be able to may extend the period of assessment up to by a maximum of further three months.

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(336) Where the competent authority has serious doubts **indicating** that the cross-border operation is ~~set up~~ **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 behind** 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 **place** 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 **conversion-cross-border operation** within the meanings of Regulation (EC) No 883/2004 of the European Parliament and of the Council¹⁴ and ~~of~~ Directive 96/71/EC of the European Parliament and of the Council¹⁵, ~~and~~ 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 ~~the~~ relevant facts and circumstances related to employee participation rights, in particular as regards negotiations on such rights ~~where those~~ **negotiations** were triggered by ~~reaching the~~ four fifths of the applicable national threshold. All ~~of these~~ elements should **only** be considered **only** as indicative factors in the overall assessment and therefore should not be regarded in isolation. ~~The competent authority may consider the fact that if the cross-border operation were to results in the company having the its place of the effective management and/or the place of economic activity of the company in the Member State in which the company or companies are to be registered after the cross-border operation, as that would be an indication of an absence of circumstances leading to abuse or fraud if the if the cross-border operation results in having the place of the effective management and/or the economic activity of the company in the Member State, where the company or companies are to be registered after the cross-border operation.~~

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¹⁴ 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).
¹⁵ 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).

ANNEX 1



(374) 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 ~~from of~~ the destination Member State, all relevant information and ~~documents~~, with ~~the~~ view to carrying out the ~~control~~ 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 ~~which are the~~ possible consequences on the issuance of the pre-operation certificate on the issuance on the pre-operation certificate of the procedures initiated by members and creditors in accordance with this ~~Directive on the issuance of the pre-operation certificate~~.

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

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(369) 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 ~~or~~ and whether any open obligations **are have been** sufficiently secured. In particular, the competent authority should **also** be able to check whether the company is subject to any on-going court proceedings concerning, for example, infringement of social, labour or environmental law, **the outcome of** which **as an outcome might** lead to establish further obligations **being imposed** on the company, including **towards in respect of** citizens and private entities.

(4037) Member States should provide for procedural safeguards in line with the general principles of access to justice, including **providing** for the possibility **to of reviewing** the decisions of the competent authorities in the proceedings concerning cross-border operations, the possibility **to of delaying** the time when effectiveness of the **a pre-operation** certificate **takes effect in order** to allow parties to bring an action before the competent court and the possibility **to of having obtain, where appropriate,** interim measures **granted, where appropriate.**

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(4139) Member States should ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for ~~a pre-conversion, pre-merger or pre-division certificate (herein referred to as ‘pre-operation certificate’)~~ as well as the submission of any information and documents for **the** scrutiny of the legality of the cross-border ~~conversion, merger or division operation~~ by the destination Member State, ~~may~~**can** be completed **fully online, in their entirety** without the necessity for the applicants to appear in person before **any** 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-conversion operation certificate~~ **online**, including **the** submission of any information and documents, ~~online~~, unless, exceptionally, **it is** technically impossible for the **competent** authority.

(420) 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 ~~asked~~ **required** to submit the same information to **more than one** public ~~authorities~~ **more than once**. For example, companies should not have to submit the same information both to the national register and to the national gazette.

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(423) In order to provide for ~~the 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* ~~by means of through~~ the system of interconnection of ~~business~~ registers and should be made publically available. *In accordance with the general principle underlying ~~this~~ Directive (EU) 2017/1132, such exchange of information should always be free of charge.*

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(448) The carrying out of a cross-border conversion entails a change of *the* legal form ~~of for~~ 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~~ ~~the operation~~ ~~the conversion, merger or division~~*. 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 case of cross-border conversions~~ *in the case of cross-border conversions*, the application of such conditions by the destination Member State ~~may should~~ not affect the continuity of the converted company's legal personality ~~as regards cross-border conversions~~. **█**

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(453) ~~After having received~~ 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 the a possible check as to whether the cross-border operation transaction constitutes a circumvention of national or EU or national law~~, the competent authorities [] should register the company in the ~~business~~ register of that Member State. Only after this registration should the competent authority of the former Member State *of the company or companies carrying out the cross-border operation* strike the company off its own register. It should not be possible for the competent authorities of the [] Member State *in which the company is to be registered after the cross-border operation* to ~~dispute challenge~~ the [] information provided by the pre-operation certificate. []

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

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(47) As a consequence of **the** cross-border conversion, the **converted 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 **the any** rights and obligations arising from contracts of employment or from employment relationships, including **the terms and conditions agreed in** any collective agreements.

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(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 **the any** rights and obligations arising from contracts of employment or from employment relationships, including **the terms and conditions agreed in** any collective agreements.

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(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 of the company being divided* should be transferred to the recipient companies in accordance with the allocation specified in the draft terms of division, and the members of the company being divided *who do not exercise their exit-rights* should become members of the recipient ~~companies~~ *or should* remain members of the company being divided or *should* become members of both. *In particular, ~~the~~ recipient companies should respect ~~the any~~ rights and obligations arising from contracts of employment or from employment relationships, including ~~the terms and conditions agreed in~~ any collective agreements.*

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(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 is~~ should be without prejudice to Member States' powers, inter alia, in ~~the field of relation to~~ criminal law, ~~the~~ prevention and combatting of terrorist financing, social law, taxation and law enforcement ~~in accordance under with~~ national laws, in particular in ~~ease~~ ~~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~~ ~~set up~~ for abusive or fraudulent purposes leading to or aimed ~~at to lead to the~~ evasion or circumvention of ~~national or~~ ~~E~~Union or national law or ~~otherwise 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 ~~subsequent~~ years following the cross-border operation.*

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- (51) *Any cross-border operation should be without prejudice to ~~the~~ liability for tax obligations related to ~~the~~ company's ~~or companies'~~ activity before that operation.*
- (52) To guarantee ~~the~~ rights of employees' rights other than rights of participation, ~~Directive 2009/38/EC~~, Council Directive 98/59/EC¹⁶, Directive 2001/23/EC, ~~and~~ Directive 2002/14/EC ~~and~~ ~~Directive 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) ~~The provisions of t~~his Directive does not affect the legal or administrative provisions, ~~including the enforcement of tax rules in cross-border conversions, mergers and divisions,~~ of national law relating to the taxes of Member States, or ~~its~~ ~~their~~ territorial and administrative subdivisions, ~~including the enforcement of tax rules in cross-border operations.~~

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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. 1).~~

(54) *This Directive is without prejudice to ~~Council Directive (EU) 2016/1164¹⁷ laying down rules against tax avoidance practices that directly affect the functioning of the internal market, Council Directive 2009/133/EC¹⁸ on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, Council Directive (EU) 2015/2376¹⁹ as regards mandatory automatic exchange of information on advance tax rulings and advance pricing arrangements between Member States, Council Directive (EU) 2016/881²⁰, Council Directive (EU) 2016/1164²¹ on mandatory automatic exchange of information in the field of taxation and Council Directive (EU) 2018/822²² as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.~~*

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(55) This Directive ~~is without prejudice to~~ ~~does not affect~~ the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council²³ ~~that~~ addressing risks of money laundering and terrorist financing, in particular the obligations ~~provided for therein~~ relating to ~~the~~ carrying out of ~~the~~ 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.

¹⁷ [OJ L 193, 19.7.2016, p. 1](#).

¹⁸ 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).

¹⁹ 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).

²⁰ 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).

²¹ [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 \(OJ L 193, 19.7.2016, p. 1\)](#).

²² 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).

²³ 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 (Text with EEA relevance) (OJ L 141, 5.6.2015, p. 73).

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ANNEX 1



- (56) *This Directive does not affect Union ~~legislation~~ law concerning transparency and the rights of shareholders in listed companies, ~~and/or~~ national rules ~~made laid down~~ or introduced pursuant to such Union ~~legislation~~ law regulating concerning transparency and the rights of shareholders in listed companies.*
- (57) *This Directive does not affect Union ~~law~~ legislation regulating credit intermediaries and other financial undertakings, ~~and/or~~ national rules ~~made laid down~~ or introduced pursuant to such Union ~~legislation~~ 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 *TFEU*. 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.

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(60) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁴, 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.

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(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 ~~the~~ cross-border operations. The evaluation should, in particular, aim to assess ~~those~~ cross-border operations where ~~the~~ negotiations on employee participation were triggered by reaching the four fifths 4/5 of the applicable threshold, and to see whether after the cross-border operation, those companies, after the cross-border operation, 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 ~~between the European Parliament, the Council of the European Union and the European Commission~~ on Better Law-Making of 13 April 2016²⁵ (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.*

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²⁴ OJ C 369, 17.12.2011, p. 14.

²⁵ 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** ~~legislation (EU) 2017/1132 against vis-à-vis relation to~~ the objectives it pursues and in order to ~~inform~~ **provide the basis for** an evaluation of ~~the~~ **legislation** Directive (EU) 2017/1132 in accordance with paragraph 22 of the Interinstitutional Agreement ~~between the European Parliament, the Council of the European Union and the European Commission on Better Law Making of 13 April 2016.~~

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(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,";

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

"(aa) the documents and information referred to in **Articles 20, 28a, 28c, 30a, 34, 86g, 86n, 86p, 123, 127a, 128, 130, 160g, 160n, 160p, and 160ps;**"

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(3) Article 24 is amended as follows:

(a) ~~the following~~ point **(c)** ~~(ea)~~ is ~~inserted~~ replaced by the following:

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

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(ea) the detailed list of data to be transmitted for the purpose of exchange of information between registers ~~and for the purposes of disclosure~~, as referred to in ~~Articles 20, 34, 86g, 86n, 86p, 86q, 123, 127a, 128, 130, 160g, 160n, 160p and 160ps~~;

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(b) in the ~~second~~ **third** subparagraph, the following sentence is added:

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

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

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

(54) in Title II, the following Chapter ~~1~~ is inserted **before Chapter 1**:

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"CHAPTER -I

Cross-border conversions

Article 86a

Scope

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

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~~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.*

32. *Member States shall ensure that this Chapter does not apply to companies in any* **Formatted: Highlight**
either of the following circumstances:
- (a) *the company is in liquidation and has begun to distribute assets to its membershareholders;*
 - (b) *the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council*.*
43. *Member States may decide not to apply this Chapter to companies which*
are subject to:
- (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 32, or*
 - (~~c~~) *the subject of crisis prevention measures in the meaning of as defined in point (101) of Article 2-paragraph (1)-point (101) of Directive 2014/59/EU of the European Parliament and of the Council.*

Article 86b

Definitions

For the purposes of this Chapter:

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- (1) 'limited liability company' hereinafter referred to as "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 listed in Annex II of the destination Member State, and as listed in Annex II, and transfers at least its registered office into the destination Member State, whilst retaining its legal personality;
- (3) 'departure Member State' means a Member State in which a company is registered in its legal form prior to the cross-border conversion;
- (4) 'destination Member State' means a Member State in which a converted company shall be registered as a result of the cross-border conversion;
- (5) 'converted company' means the company formed in the destination Member State as a result of the process of the cross-border conversion.

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Article 86c

Procedures and formalities ~~in the departure and destination Member States~~ Further provisions concerning the scope

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

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Article 86d

Draft terms of cross-border *conversions*

1. — The ~~administrative or management or administrative organ 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 ~~and location of its registered office~~ 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 ~~and location of its registered office~~ 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, of a company in the destination Member State~~;
- (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;

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

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

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(h) ~~whether~~ *if any incentives or subsidies were received by the company in the departure Member State in the ~~last~~ preceding ~~5~~ five years*;

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

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(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-█ .

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Article 86e

Report of the ~~management or administrative~~ or management body ~~organ to~~ for the members and the employees

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1. The ~~administrative or management~~ or administrative body ~~organ~~ of the company shall draw up a report ~~to~~ 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.

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

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2. The report ~~referred to in paragraph 1,~~ shall, in particular, explain the implications of the cross-border conversion on for the future business of the company.

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~~It shall also include a section for members and a section for employees.~~

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~~8. The company may decide whether either to draw up one report containing those two sections referred to in paragraphs 3 and 5.4 or whether to draw up separate reports for members and employees respectively containing the relevant section.~~

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

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~~(a) an explanation of the cash compensation offered referred to in Article 86i and of the method used to arrive at determine the cash compensation;~~

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

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

4. ~~By way of derogation from paragraph 2,~~ **The section of the report for members shall not be required where all the members of the company have agreed to waive thats requirement. Member States may exclude single member companies from the application provisions of this Article.**

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

(~~e~~a) *the implications of the cross-border conversion for employment relationships, as well as, where applicable, any measures ~~in order to~~for safeguarding those relationships;*

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

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

96. The report referred to in paragraph 1 or the reports referred to in paragraph 582 shall at least 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 of the company or, where there are no such representatives, to the employees themselves, not less than 6 six weeks before the date of the general meeting referred to in Article 86hi.

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67. Where the administrative or management or administrative organbody of the company receives, in good time, an opinion on the parts information of the report referred to in paragraphs 1, 2 and 54 in good time from the representatives of the company's their employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that the report.

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87. By way of derogation from paragraph 2, The section of the report for to 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 or administrative organbody.

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8. The company may decide whether to draw up one report containing the two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for to members and employees respectively.

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9. The report referred to in paragraph 1 or the reports referred to in paragraph 582 shall at least 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 of the company or, where there are no such representatives, to the employees themselves, not less than 6 weeks before the date of the general meeting referred to in Article 86hi.

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109. *Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 43 and the section for employees referred to in paragraph 45 is not required ~~in accordance with under~~ paragraph 874a, the report referred to in paragraph 1 ~~is~~ shall not be required.*

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110. *Paragraphs 1 to ~~9108~~ of this Article shall be without prejudice to the applicable information and consultation rights and procedures ~~sings instituted provided for~~ at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.*

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Article 86f~~g~~

Independent expert report

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

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

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- (a) *indicate the method ~~or methods~~ used to ~~arrive at~~ determine the amount of the cash compensation proposed;*

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

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

▮ The expert shall be entitled to ~~secure~~ **obtain** from the company all ~~the necessary~~ information **necessary** for the discharge of ~~his or her~~ **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 ~~to dispense with same~~.

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

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Article 86gh

Disclosure

1. Member States shall ensure that *the following documents are disclosed by the company* and made publically 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*

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(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's report, if drafted in accordance with Article 86fg, is disclosed and made publically available in the register.

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

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

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

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

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3. Where the company ~~discloses~~ makes the draft terms of the cross-border conversion *available* in accordance with paragraph 2 *of this Article*, it shall submit ~~at least one month before the date of the general meeting referred to in Article 86i~~ 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 ~~which has to be disclosed~~:

- (a) the legal form ~~and~~; name of the company and the location of its registered office of the company in the departure Member State ~~as well as and~~ the legal form and name ~~these~~ 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 ~~the 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~~ where ~~the~~ draft terms of the cross-border conversion, the notice referred to in paragraph 1 ~~and the independent expert's report referred to in paragraph 1~~ and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

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

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

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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, **are** published in their national gazette **or through a central electronic platform in accordance with Article 16 paragraph (3)**. In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette or to the 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 **shall do** not exceed the **recovery of the cost** of providing *such services*.

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Article 86h[†]

Approval by the general meeting

1. After taking note of the reports referred to in Articles 86e █ and 86f^e, where applicable, ~~and the employees' opinions submitted in accordance with Article 86e and comments submitted in accordance with Article 86g^e~~, the general meeting of the company █ shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion *and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.*
2. The general meeting of the company █ may reserve the right to make implementation of the cross-border conversion conditional on express ratification by it of the arrangements referred to in Article 86l.
3. Member States shall ensure that the approval of █ the draft terms of the cross-border conversion ~~or and of any amendment thereof of 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.

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4. Where a clause ~~in~~ the draft terms of the cross border conversion or any amendment ~~of~~ the instrument of constitution of the converting company leads to an increase of the economic obligations of a ~~membershareholder~~ towards the company or third parties, Member States may ~~provide~~ require, in such specific circumstances, ~~for a requirement that this~~ such clause or the amendment ~~of~~ the instrument of constitution ~~shall be approved~~ requires approval by the ~~membersshareholder~~ concerned, provided that ~~this~~ such ~~membersshareholder~~ is unable to exercise the rights laid down in Article 86j.

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5. Member States shall ensure that the approval of the cross-border conversion by the general meeting cannot be ~~disputed~~ challenged solely on ~~one or more of~~ the following grounds:

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(a) the cash compensation referred to in Article 86d(i) has been ~~inadequately set at~~ an inadequate amount; ~~or~~

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

Article 86j

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 *in consideration exchange for adequate cash compensation*, under the conditions laid down in paragraphs 2 to 56.

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

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

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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 86*hi*. Member States shall ensure that the company provides an electronic address for receiving this at 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*. *This* ~~at~~ period ~~may~~ *shall not end later* ~~exceed more~~ *than two months after the cross-border conversion takes effect* ~~in accordance with~~ ~~according to~~ *Article 86g*.

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

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Member States may provide that the final decision ~~to provide~~ ~~ing an~~ *additional cash compensation is valid for* ~~those~~ ~~all~~ *members who have declared* ~~their~~ *decision to exercise the right to dispose of their shares* ~~according to~~ *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~~k~~

Protection of creditors

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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* ~~(f) point (f)~~, may apply *within three months of the disclosure of the draft terms of cross-border conversion referred to in Article 86g to the appropriate administrative or judicial authority for adequate safeguards, *provided that ~~they~~ 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 no adequate safeguards have been obtained from the company.**

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

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2. Member States may require that the administrative or management body or administrative organ of the company **provides** a declaration **that** accurately **reflects** ~~ing the~~ **its** current financial status **of the company at the a date of the declaration, which shall not be earlier than one month before its the disclosure of that declaration.** The declaration shall ~~state to the effect~~ **declare** that, on the basis of the information available to the administrative or management or administrative organ body of the company at the date of ~~the that~~ declaration, and after having made reasonable enquiries, **that administrative or management body it** ~~is they are~~ unaware of any reason why the company ~~should would~~, after the conversion takes effect, be unable to meet ~~the 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 86~~h~~.

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3. Paragraphs **12** and **23** ~~are shall be~~ without prejudice to the application of the national laws of the departure Member State concerning the satisfaction ~~of payments~~ or ~~the~~ securing of pecuniary payments 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 ~~from of~~ the date the conversion has taken effect, without prejudice to the **rules on jurisdiction rules** arising from ~~national or EU Union or national~~ law or from a contractual agreement. The ~~possibility~~**option of instituting** such proceedings shall be in addition to other rules on **the choice of jurisdiction that are applicable** pursuant to Union law.

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Article 86ka

Employee's information and consultation

1. Member States shall ensure that employees' **rights to rights to information and consultation rights** are respected in relation to the cross-border conversion and are exercised in accordance with the legal framework ~~set out by the~~ **laid down 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 to apply information and consultation rights with respect to other the employees of companies other than those referred to in Article 3-paragraph (1) of the Directive 2002/14/EC.**

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2. Notwithstanding Article 86e(6) and point (b) of Article 86g~~h~~(1)(b), Member States shall ensure that ~~rights of 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~~i.
3. Without prejudice to any provisions in force and/or ongoing practices that are in force more favourable to employees, ~~the~~ Member States shall determine the practical arrangements for exercise of exercising ~~exercising~~ the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.

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" In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article."

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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 **carrying out the conversion** has, in the six months prior to the **disclosure publication** of the draft terms of the cross-border conversion **as referred to in Article 86d of this Directive being made publically available**, an average number of employees equivalent to four fifths of the applicable threshold, **as** laid down in the law of the departure Member State, **which for** triggerings the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the **national** law of the destination Member State does not:
 - (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 **amongst** the members of the administrative or supervisory **organbody** or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

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- (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)(a)(i), 2(b), and Article 3(3), the first *two sentences of* Article 3(4), ■ and Article 3(5) and Article 3(7);
- (b) Article 4(1), points (a), (g) and (h) of Article 4(2)(a), (g) and (h), and Article 4(3) and Article 4(4);
- (c) Article 5;
- (d) Article 6;
- (e) ■ Article 7(-paragraph 1), with the exception of the second indent of point (b);

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- (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;

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- (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 of 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.

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7. Where the converted company is operating under an employee participation system, ~~that company~~ it shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent ~~cross-border or domestic conversion, merger, or division, be it cross-border or domestic, or conversion~~ 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 (~~"the competent authority"~~) to scrutinise the legality of ~~the~~ cross-border ~~conversions~~ (*'the competent authority'*) as regards ~~that those parts~~ of the procedure which ~~is~~ are governed by the law of the departure Member State and to issue a pre-conversion certificate attesting ~~to~~ compliance with all ~~the~~ relevant conditions and ~~to~~ the proper completion of all procedures and formalities in the departure Member State.

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Such completion of procedures and formalities may comprise the satisfaction of ~~payments, or securing payments or~~ pecuniary and non-pecuniary obligations due to public bodies or ~~the~~ compliance with specific~~at~~ sectorial requirements, including securing ~~payments or~~ 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 ~~referred to in Article 86d~~;
- (b) the *report and the appended opinion, if any*, referred to in Article 86e, as well as the report referred to in Article 86f~~g~~, where ~~those reports they~~ they are available;

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

~~(d)~~ information on the approval by the general meeting ■ referred to in Article 86h~~i~~.

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

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- (b) ~~on the existence of subsidiaries and their respective geographical location;~~
- (c) information regarding the satisfaction fulfilment of obligations due to public bodies by the company.;

For the purposes of this paragraph, competent authorities may request ~~this~~ 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 ~~in its entirety~~ without the necessity for the applicants to appear in person before the competent authority ~~referred to in paragraph 1~~, in compliance 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 861, the competent authority of the departure Member State shall verify that the draft terms of the cross-border conversion ~~referred to in paragraph 2 of this Article~~ include information on the procedures by which the relevant arrangements for compliance with the rules concerning employee participation as laid down in Article 861 are determined and on the possible options for such arrangements.

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6. As part of the ~~assessment 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 861(3) and (4) has started, where relevant.
7. Member States shall ensure that the ~~scrutiny assessment~~ 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/or formalities have been completed*, the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision; *if in that case, the competent authority may give the company the possibility/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 shall does not issue the pre-conversion certificate where, if it is determined in compliance with national law that a cross-border conversion is set-up-set up for abusive or fraudulent purposes leading to or aimed to lead to the evasion or circumvention of national or E-Union or national law, or otherwise for criminal purposes.*

9. *Where~~f~~ the competent authority, ~~through~~ during the scrutiny ~~of legality~~ referred to in paragraph 1, has serious doubts **indicating** that the cross-border conversion is ~~set-up~~ **set up** for abusive or fraudulent purposes leading to or aimed ~~to~~ **lead to** the evasion or circumvention of ~~national or E~~ **Union or national** law, or ~~otherwise~~ 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 ~~of legality~~ 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 determination and** assessment under paragraphs 8 and 9 to take into account additional information or ~~necessary to~~ performing additional investigative activities, the period of three months ~~as provided for~~ in paragraph 7 may be extended ~~by~~ for a maximum of ~~three~~ **further 3** months.*
11. *Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines ~~as provided for~~ in paragraphs 7 and ~~10~~ **this Article**, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of ~~those original~~ deadlines.*

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12. Member States shall ensure that **the competent authorities designated in accordance with paragraph 1** may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those from the destination Member State, and obtain from **these authorities, as well as and** from the company, information and documents necessary to **carry out the scrutinise control of the legality of the cross-border conversion**, within the procedural framework laid down in national law. **For the purposes of the assessment the assessment this Article**, the competent authority may have recourse to an independent expert.

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Article 86ne

Transmission of the pre-conversion certificate

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

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Member States shall also ensure that the pre-conversion certificate is **available** through the system of interconnection of registers **set up in accordance with Article 22**.

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2. ~~The **Access** to the **pre-conversion certificate information referred to in paragraph 4** shall be free of charge for the **competent** authorities referred to in Article 86op(1) and for the registers.~~

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Article 86op

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

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

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

2. For the purposes of paragraph 1 ~~of this Article~~, the ~~company carrying out the cross-border conversion~~ 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 ~~the any application for the purposes of referred to in paragraph 1~~, by the ~~company carrying out the cross border conversion, which includes~~ing the submission of any information and documents, may be completed ~~fully online in its entirety~~ without the necessity for the applicants to appear in person before the ~~competent~~ authority ~~referred to in paragraph 1~~, ~~in compliance accordance with the relevant provisions of Chapter III of Title I.~~
4. The ~~competent~~ 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~~ completed its assessment of the relevant conditions.
5. The pre-conversion certificate ~~referred to in Article 86on(1)~~ shall be accepted by the ~~competent~~ authority, referred to in paragraph 1; as ~~conclusively attesting to~~ the proper completion of the ~~applicable pre-conversion~~ procedures and formalities ~~under the national law of in~~ the departure Member State, without which the cross-border conversion cannot be approved.

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Article 86^{pe}

Registration

1. The laws of the departure Member State and of the destination Member States shall determine, with respect-regard to their respective territories of those Member States, the arrangements, in accordance with Article 16, ~~to for disclosing~~ the completion of the cross-border conversion in their registers.
2. Member States shall ensure that at least the following information ~~shall be is~~ entered in their registers ~~as follows, which are made publically available and accessible by means of the system referred to in Article 22:~~
 - (a) *in the* register of the destination Member State, ~~the fact that the registration of the~~ converted company *is* ~~a 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, ~~the fact that the~~ striking off or removal of the company *from the register is the result of a* cross-border conversion ;*

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

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

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

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3. Member States shall ensure that the registry in the destination Member State notifies the registry in the departure Member State by means of through the system of interconnection of registers, referred to in Article 22, 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 .

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Article 86qf

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 86qf has been carried out.

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Article 86~~rs~~

Consequences of ~~a~~the cross-border conversion

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

- (a) all the assets and liabilities of the company ~~shall~~ including all contracts, credits, rights and obligations, ~~shall~~ ~~continue with~~ ~~become~~ those of the converted company;
- (b) the members of the company ~~shall continue to be~~ members of the converted company, unless they ~~exercise the exit right have disposed of their shares as~~ referred to in Article 86~~q~~(1);
- (c) the rights and obligations of the company ~~shall~~ arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect ~~shall~~ ~~continue~~ ~~become~~ those ~~of~~ ~~with~~ the converted company ~~shall~~.

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Article 86~~st~~~~Liability of the i~~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 86*~~fg~~ .
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 from with the company applying for the pre-conversion certificate, and*
 - (b) ~~and that~~ *the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance compliance with the independence and impartiality requirements under the applicable law or and professional standards to which the expert is subject.*

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Article 86^{1a}

Validity

Member States shall ensure that a cross-border conversion which has taken effect in compliance with the procedures transposing this Directive may ~~can~~ not be declared null and void.

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

(*) — 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).”;

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

- (a) at the end of point (c) "~~or~~" ~~the following~~ is added "~~or~~";
- (b) the following point ~~(d)~~ is added:

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

(7) *Article 120 is amended as follows:*

~~(6)~~ *Article 120 is amended as follows:*

~~(a)~~ *the title is replaced by the following:*

"Article 120

Further provisions concerning the scope";

(ab) ~~in Article 120~~ paragraph 4 is replaced by the following:

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

(a) ~~the company or companies that the company is~~ are in liquidation, ~~and have has begun to distribute assets to their its members shareholders;~~

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

(feb) *the following paragraph is added:*

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

(a) the subject of insolvency proceedings or subject to preventive

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restructuring frameworks;"

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

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- (c) ***the subject of crisis prevention measures as defined in the meaning of point (101) of Article 2 paragraph (1) point (101) of Directive 2014/59/EU of the European Parliament and of the Council.***”;

(678) 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 **the** 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.";

(789) Article 122 is amended as follows:

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

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

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

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

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

~~(e)~~ *point (i) is replaced by the following:*

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

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~~(#)~~ *the following points ~~(m)~~ and ~~(n)~~ are added:*

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

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

(2910) 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 registers 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 the respective company, at the latest **5five** 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's report, if drafted in accordance with Article 125, is disclosed and made publicly available in the register.

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Member States shall ensure that the company is able to exclude confidential information from ~~the disclosure of~~ ~~the disclosure of~~ the independent expert's report prior to it being disclosed.

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

2. Member States may exempt merging companies from the disclosure requirement referred to in paragraph 1 where, for a continuous period beginning at least one month before the date fixed for the general meeting *referred to in Article 126* and ending not earlier than the conclusion of that meeting, those companies make the *documents referred to in paragraph 1*, 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 ~~in order~~ to ensure the security of the website and the authenticity of the documents, ~~unless~~ and ~~which only to the extent that they~~ are proportionate ~~in order to achieving~~ ~~achieve~~ those objectives.

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

- (a) for each of the merging companies the its legal form ~~and~~ name ~~and registered office of each of the merging companies~~ and the location of ~~their~~ its registered office and the legal form ~~and~~ name ~~and registered office~~ proposed for ~~any~~ the 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 where the common draft terms of the cross-border merger, **the notice** referred to in paragraph 1, and the independent expert's report referred to in paragraph 4 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.

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4. Member States shall ensure that the requirements information referred to in paragraphs 1 and 3 can be ~~completed~~ submitted fulfilled fully online in their entirety without the necessity for the applicants to appear in person before any competent authority in **the Member States of the merging companies, in compliance 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 available 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, is to be published in their national gazette *or through a central electronic platform in accordance with Article 16 (paragraph 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.

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

Article 124

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

1. The ~~administrative or~~ management ~~or administrative organ~~body of each of the merging companies shall draw up a report ~~to~~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 ~~referred to in paragraph 1,~~ shall, in particular, explain the *implications of the cross-border merger on*for the future business of the company.

~~It~~ shall also include a section for members and a section for employees.

~~§~~ — The company may decide *whether either to draw up one report containing those two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports to*for members *and employees respectively containing the relevant section.*

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

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(a) ~~an explanation of the cash compensation referred to in Article 126a and of the method used to arrive at determine the cash compensation;~~

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

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

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

3a4. ~~By way of derogation from paragraph 2, The section of the report for members shall not be required where all the members of the company have agreed to waive this that requirement. Member States may exclude single-member companies from the provisions application of this Article.~~

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

- (ea) the implications of the cross-border merger for employment relationships, as well as, where applicable, any measures in order to for safeguarding them those relationships;
- (eb) any material changes to in the applicable conditions of employment or to, and in the location of the company's places of business;
- (ec) how the factors set out in points (ea) and (eb) affect also any subsidiaries of the company.

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69. The report referred to in paragraph 1 or the reports referred to in paragraph 8-5 shall at least 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 6-six weeks before the date of the general meeting referred to in Article 126.

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

4aa67. Where the administrative or management or administrative organbody of the merging company receives, in good time, an opinion on the information parts of the report referred to in paragraphs 1, 2 and 54, in good time from the representatives of theirs ~~their~~ employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that the report.

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4a78. By way of derogation from paragraph 2, 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 or administrative organbody.

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ANNEX 1

~~58.~~ Each merging company may decide whether to draw up one report containing the two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for members and employees respectively.

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96. The report referred to in paragraph 1 or the reports referred to in paragraph 85 shall at least 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 6 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 6 weeks before the date of the general meeting of the other merging company or companies.

9108. Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 43 and the section for employees referred to in paragraph 54 is not required under in accordance with paragraph 874a, the report referred to paragraph 1 is shall not be required.

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109. Paragraphs 1 to ~~910~~ of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for in national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

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110 Article 125 is amended as follows :

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

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"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 **at least any case** include the **experts's** opinion **as to** whether the cash compensation **referred to in Article 122a** and the share exchange ratio are adequate. ~~When assessing~~ ~~With regard to the cash compensation referred to in Article 122 point (m), the~~ **experts** shall consider **any the** market price, **if any**, of those shares in the merging companies prior to the announcement of the merger proposal or ~~to~~ the value of the companies excluding the effect of the proposed **merger**, as determined ~~according in accordance with~~ generally accepted valuation methods. The **reports** shall at least:
- (a) indicate the method or methods used to ~~arrive at~~ **determine the cash compensation proposed**;
 - (b) indicate the method or methods used to arrive at the share exchange ratio proposed;

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

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

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The experts shall be entitled to obtain from the merging companies all the necessary information necessary for the discharge of his his or her their the duties of the expert.":

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

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

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(124~~9~~) 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~~7~~ and 125, *where applicable, ~~and the employees' opinions submitted in accordance with Article 124(6)~~ and comments submitted in accordance with Article 123~~(4)~~*, the general meeting of each of the merging companies shall decide, by means of a resolution, ~~on the approval of 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 ~~document/instrument~~*";

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(b) the following paragraph~~_4~~ is added:

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

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

(b) the cash compensation referred to in Article 122(m) has been ~~set at an~~
inadequately set ~~amount~~; ~~or~~

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

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(1312) the following Articles are inserted:

"Article 126a

Protection of members

- 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, in consideration exchange 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 subject to the law of a Member State other than the Member State of the respective merging company.*

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

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

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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~~ **this** declaration electronically.

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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. ~~This~~ ~~at~~ period ~~may~~ ~~shall~~ not ~~end~~ ~~later~~ ~~exceed~~ ~~more~~ than two months after the cross-border merger takes effect ~~according to~~ in accordance with Article 129.

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

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

5. Member States shall ensure that ~~the national~~ law of the Member State to which a merging company is subject, governs the rights referred to in paragraphs 1 to 46 and that the *exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that Member State concerned.*

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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* challenge that ratio, *set out in the common draft terms of the cross-border merger* and *demand claim* cash payment. ~~That~~ *The* ~~Proceedings~~ *in that regard shall be initiated before the competent authorities or bodies mandated under the national law of the Member State to which the respective merging company is subject, within the time limit laid down in that national law of that Member State, and these 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.*

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Member States may also provide that the share exchange ratio as established in that decision is valid for those 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 ~~for~~ 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 ~~the~~ 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 ~~point (m)~~, may apply, within three months of the disclosure of the common draft terms of cross-border merger, referred to in Article 123, to the appropriate administrative or judicial authority for adequate safeguards, provided that ~~they~~ 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 ~~no~~ adequate safeguards ~~have been obtained~~ from the merging companies.

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

2. Member States may require that the administrative or management ~~or administrative organbody~~ of each of the merging *companies* provides a declaration that accurately reflects ~~ing its~~their current financial status ~~of these respective companies at the a~~ date of the declaration, which shall not be earlier than one month before its the disclosure of that declaration. The declaration shall state ~~declare~~ be to the effect that, on the basis of the information available to the administrative or management ~~or administrative organbody~~ of the *merging companies* at the date of that declaration, and after having made reasonable enquiries, they that administrative or management body ~~is are~~ unaware of any reason why the company resulting from the merger would be unable to meet the 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.

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3. Paragraphs **■** 12 and 23 ~~are~~shall be without prejudice to the application of the ~~national~~ laws of the Member States of the merging companies concerning the satisfaction ~~of payments~~ or securing of payments ~~pecuniary or non-pecuniary obligations~~ due to public bodies. **■**

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*Article 126c**Employees' information and consultation*

1. Member States shall ensure that employees' **rights to information and consultation** ~~rights~~ are respected in relation to the cross-border merger and are exercised in accordance with the legal framework ~~set out~~ *provided for by* ~~in the~~ Directive 2002/14/EC, and Directive 2001/23/EC, where the cross-border merger is considered ~~to be~~ *as* 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** ~~to apply~~ *information and consultation rights* ~~with respect to other the employees of~~ companies ~~other~~ than those referred to in Article 3 ~~paragraph (1)~~ of ~~the~~ Directive 2002/14/EC.
2. Notwithstanding ~~point (b) of Article 123(1) and Article 124(64aa) and Article 123(1)(b)~~, Member States shall ensure that ~~rights of employees'~~ **rights to information and consultation** ~~rights~~ are respected, at least before the common draft terms of the cross-border merger or the report referred to in Article 124, ~~are~~ *is* 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.

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3. Without prejudice to any provisions **in force and/or ongoing practices that are in force** more favourable to employees, ~~the~~ Member States shall determine the practical arrangements for **exercising exercise of using the right to information and consultation rights** in accordance with Article 4 of Directive 2002/14/EC." 1

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(1432) 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 (~~"the competent authority"~~), to scrutinise the legality of **the** cross-border **mergers ("the competent authority")**, as regards ~~that those part~~ of the procedure which **is 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 **the relevant** conditions and **to** the proper completion of all procedures and formalities in the Member State of the merging company.

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

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

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(a) *the ~~common~~ draft terms of ~~the~~ cross-border merger ~~referred to in Article 122;~~*

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(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 ~~those reports they~~ they are available;*

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(~~cb~~) 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) ~~on~~ the number of employees at the time of the drawing up of the common draft terms of the cross-border merger;
- (b) ~~on~~ the existence of subsidiaries and their respective geographic-al location;
- (c) information regarding the fulfilment satisfaction of obligations due to public bodies by the merging company;

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

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4. Member States shall ensure that the application referred to in paragraphs 2 and 3~~2~~, including the submission of any information and documents, may be completed fully online ~~in its entirety~~ without the necessity for the applicants to appear in person before the competent authority ~~referred to in paragraph 1~~, in compliance accordance with the relevant provisions of Chapter III of Title I.

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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, referred to in paragraph 2 of this Article, include information on the procedures by which the relevant arrangements for compliance with the rules concerning employee participation as laid down in Article 133 are determined and on the possible options for such arrangements.*
6. *As part of the scrutiny assessment 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 3a;*
- (be) any 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 assessment 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 ~~is~~ shall have one of the following outcomes:*

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- (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 ~~for~~ 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; ~~if~~ in that case, the competent authority may give the company the ~~possibility~~ 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 ~~shall~~ does not issue the pre-merger certificate ~~if where~~ it is determined in compliance with national law that a cross-border merger is ~~set up~~ set up for abusive or fraudulent purposes leading to or aimed at ~~to lead to the~~ evasion or circumvention of ~~national or~~ Union or national law, or otherwise for criminal purposes.*

9. ~~If~~Where the competent authority, ~~through~~duringfollowing the scrutiny of legality referred to in paragraph 1, has serious doubts ~~indicating~~ that the cross-border merger is ~~set up~~set up for abusive or fraudulent purposes leading to or aimed to lead to ~~at the~~ evasion or circumvention of ~~national or EU~~Union or national law, or ~~otherwise~~ 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 of legality 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 ~~determination and~~assessment under paragraphs 8 and 9, to take into account additional information or ~~necessary to~~ performing additional investigative activities, the period of three months as provided for in paragraph 76 may be extended byfor a maximum of ~~further 3~~three months.

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11. Where due to the complexity of the cross border procedure it is not possible to carry out the assessment within the deadlines as provided for in this ~~Article~~ paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those ~~original~~ deadlines.
12. Member States shall ensure that the competent authorities designated in accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border merger, including those from the Member State of the company resulting from the merger, and obtain from ~~these~~ such those authorities and, as well as from the merging company, information and documents necessary to ~~carry out the control of~~ scrutinise the legality of the cross-border merger, within the procedural framework laid down in national law. ~~For the purposes of the assessment this Article, In the assessment~~ the competent authority may have recourse to an independent expert."

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(154) The following article is inserted:

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"Article 127a

Transmission of the pre-merger certificate

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

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Member States shall also ensure that the pre-merger certificate is available through the system of interconnection of registers set up in accordance with Article 22.

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

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(1645) 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 case in the event that the approval by of the general meeting is not required in accordance with Article 132 (paragraph 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 **the any** application **referred to in for the purposes of** paragraph 1, by any of the merging companies, **which includes including** the submission of any information and documents, may be completed **fully** online **in its entirety** without the necessity for the applicants to appear in person before the **competent** authority **referred to in paragraph 1, in accordance compliance with the relevant provisions of Chapter III of Title I.**
4. **The competent authority referred to in paragraph 1 shall approve the cross-border merger as soon as it has determined that completed its assessment of the relevant conditions have been fulfilled.**
5. The pre-merger certificate **or certificates** **referred to in Article 127 a(1)** shall be accepted by **a competent the** authority **referred to in paragraph 1 of the Member State of the company resulting from the cross-border merger,** as **conclusively attesting to** the proper completion of the **applicable** pre-merger **procedures** and formalities in the respective Member State, **without which the cross-border merger cannot be approved or Member States ■ ."**

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~~(176)~~ Article 130 is replaced by the amended as follows:

~~(a) — paragraph 1 is replaced by the following:~~

~~"Article 130~~

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~~Registration~~

~~1. The laws of the Member States of the merging companies and of the company resulting from the merger shall determine, with respect-regard to their respective territories of that Member State, the arrangements, in accordance with Article 16, to-for disclosing the completion of the cross-border merger in their public registers, in which each of the companies is required to file documents."~~

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~~(b) — paragraph 1a is inserted:~~

~~"21a. Member States shall ensure that at least the following information shall beis entered in their registers as follows, which are made publically available and accessible by means of the system referred to in Article 22:~~

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~~(a) in the register of the Member State of the company resulting from the merger, the fact that the registration of the company resulting from the merger is a-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;~~

~~(d)~~ in the register of the Member State of each merging company, ~~the fact 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 ~~in the register of the Member State of the company resulting from the merger,~~ respectively, ~~the registration numbers, names 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 ~~by means of~~through the system of interconnection of registers.

~~3.~~ Member States shall ensure that the ~~the~~ register in the Member State for the registration of the company resulting from the cross-border merger ~~shall notify,~~ through the system of interconnection of registers and without delay, ~~the register in the Member State of which each of the merging companies, through the system of interconnection of registers, was required to file documents that the cross-border merger has taken effect. Member States shall also ensure that Deletion the old registration of the merging company is struck off or removed from the register, if applicable, shall be effected immediately on receipt of that notification, and not before.~~”;

(1867) Article 131 is amended as follows:

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

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"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 ~~herein~~, **including all contracts, credits, rights and obligations**, shall be transferred to ~~and shall~~ **become** ~~continue with those of~~ the acquiring company;¹⁵
 - (b) the members of the company being acquired ~~shall~~ become members of the acquiring company, ~~unless they exercise the exit right 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 ~~herein~~, **including all contracts, credits, rights and obligations**, ~~are~~ ~~shall be~~ transferred to ~~and shall~~ ~~continue with~~ **become** ~~those of~~ the new company;¹⁶

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

(1987) Article 132 is amended as follows:

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

"1. Where a cross-border merger by acquisition is carried out ~~by~~ either ~~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 the~~ companies being acquired and the acquiring company does not allot any shares under the merger:

- points (b), (c), (e) and (m) of Article 122 , Article 125, and point (b) of Article 131(1) shall not apply;
- Article 124 and Article 126(1) shall not apply to the company or companies being acquired.";

(b) the following paragraph 3 is added:

"3. Where the laws of Member States of all of the merging companies provide for the exemption from the approval by **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 ~~paragraphs 1 to 3 of~~ Article 123(1) to (3) respectively and the reports referred to in Articles 124 and **1254a**, shall be made available at least one month before the decision on the merger is taken by the company in accordance with ~~the~~ national law.";

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(2019) 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 being made publically available as referred to in Article 123, 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, which 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:**"*

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

“(a) shall confer on the relevant ~~bodies or~~ *organs* 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* ~~paragraph 3 of the Annex of that Directive~~ *this Article*, 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 ~~cross-border or domestic conversion, merger, or division, be it cross-border or domestic, or conversion~~ 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.”

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(d) the following paragraph 8 is added:

"8. A company shall communicate to its employees or their representatives whether ~~it chooses~~~~has chosen~~ to apply standard rules for participation referred to in point (h) of paragraph 3 or whether ~~it enters~~~~has entered~~ 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.";

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(19210) the following Article 133a is inserted:

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"Article 133a

~~Liability of~~ Independent experts

1. Member States shall lay down rules governing at least the civil liability of the independent experts responsible for drawing up the report referred to in *Article 125*.

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

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

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

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~~(2214)~~ in Article 134, the following paragraph is added:

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

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~~(2312)~~ in Title II, the following Chapter IV is added:

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"CHAPTER IV

Cross-border divisions of limited liability companies

Article 160a

Scope

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

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2. Notwithstanding point 3 of Article 160b, this Chapter shall also apply to cross-border divisions where the national law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of point 3 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.

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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 **any** **either** of the following circumstances:*
- (a) the company being divided is in liquidation and has begun to distribute assets to its ~~members~~shareholders;*
 - (b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU ~~of the European Parliament and of the Council.~~*
5. *Member States may decide not to apply this Chapter to companies **which** **are subject to:***

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- (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 ~~point a~~; or
- (~~c~~) **the subject of** crisis prevention measures **in the meaning of as defined in** **point (101)** ~~of~~ **Article 2 paragraph (1) point (101)** of Directive 2014/59/EU of the European Parliament and of the Council.

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Article 160b

Definitions

For the purposes of this Chapter:

- (1) 'limited liability company', hereinafter referred to as 'company', means a limited liability company *of a type* listed in Annex II;
- (2) 'company being divided' means a company which, in a the process of the a cross-border division, in case of involving a full division transfers all its assets and liabilities to *two* or more companies in the case of a full division, or in the event case of a partial division or division by separation 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 for the purposes of a cross-border division;
- (4) 'cross border division' means: an operation whereby either:
- (a) a company being divided, *on being dissolved* without going into liquidation, transfers all its assets and liabilities to two or more newly formed companies (the recipient companies), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if any applicable, a cash payment not exceeding 10 % of the nominal value of those securities or shares or, where they have no in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of those their securities or shares ('full division');

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

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Article 160c

~~Further provisions concerning the scope~~ Procedures and formalities ~~in the Member States~~ Further

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~~In compliance with Union law, 6. ~~The national~~ law of the Member State of the company being divided shall govern ~~the 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 ~~national law~~s of the Member ~~State~~s of the recipient companies shall govern ~~the those parts~~ of the ~~procedures~~ and ~~the~~ formalities to be complied with following receipt of the pre-division certificate ~~in compliance with Union law~~.~~

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ANNEX 1



Article 160de

Draft terms of cross-border divisions

The administrative or management ~~or administrative organ~~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 ~~and location of the registered office of the company being divided~~ ~~and the location of its the~~ registered office ~~of that company~~ ~~and the legal form and name those~~ 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~~ **of the company** 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;

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- (f) the date from which the holding of securities or shares representing the ~~companies~~ **company** 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 *bodiesorgans* 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;
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- (j) the instruments of constitution of the recipient companies, where applicable, and the statutes if they are contained in a separate instrument, of the recipient companies and any changes to the instrument of constitution of the company being divided in 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 Article 160~~1a~~ ;
- (l) the a precise description of the assets and liabilities of the company being divided and a statement of how these assets and liabilities are to be allocated between the recipient companies, or are to be retained by the company being divided in the case of a partial division or a division by separation, including provisions for 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 a the cross-border division;

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ANNEX 1

- (n) the date of the accounts of the company being divided, ~~which is~~ 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, ~~or~~ in the company being divided or in ~~both the combination of the recipient company and company being divided,~~ and the criterion upon which such allocation is based;
- (p) details of the offer of cash compensation for ~~the~~ members in accordance with Article 160i;
- (q) ~~any~~ safeguards, ~~such as guarantees or pledges, where~~ offered to creditors, ~~such as guarantees or pledges.~~

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Article 160~~eg~~

Report of the ~~administrative or management or administrative organ~~ ~~body for~~ ~~the~~ members ~~and the~~ employees

1. The ~~administrative or management or administrative organ~~ ~~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.~~

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

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2. The report ~~referred to in paragraph 1,~~ shall, in particular, ~~explain the implications of the cross-border division on~~ ~~for the future business of the companies.~~

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~~It shall also include a section for members and a section for employees.~~

~~§. — The company may decide whether either to draw up one report containing those two sections referred to in paragraphs 3 and 5.4 or whether to draw up separate reports ~~to~~ for members and employees respectively containing the relevant section.~~

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

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(a) ~~an explanation of the cash compensation referred to in Article 160i and of the method used to arrive at~~ ~~determine it~~ the cash compensation;

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

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- (cd) the implications of the cross-border division for members;
- (de) the rights and remedies available to members in accordance with Article 160j.

4. ~~By way of derogation from paragraph 2, The~~ section of the report for members shall not be required where all the members of the company have agreed to waive ~~this~~ requirement. Member States may exclude single-member companies from the ~~application provisions~~ of this Article.

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

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(ea) the implications of the cross-border division for employment relationships, as well as, where applicable, any measures ~~in order to for safeguarding those relationships~~;

(eb) any material changes ~~in to~~ the applicable conditions of employment, ~~and in~~ ~~or to~~ the location of the company's places of business;

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(cd) how the factors set out in points (ea) and (eb) affect ~~also~~ any subsidiaries of the company.

69. The report referred to in paragraph 1 or the reports referred to in paragraph 5 shall at least 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 ~~6 six~~ weeks before the date of the general meeting referred to in Article 160hk.

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76. Where the administrative or management body or administrative organ of the company being divided receives, in good time, an opinion on the information parts of the report referred to in paragraphs 1, 2 and 54 in good time from the representatives of ~~their~~ the company's employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to ~~that~~ the report.

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87. ~~By way of derogation from paragraph 2, The section of the report to 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 or administrative organ body.

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~~88. The company may decide whether to draw up one report containing the two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for to members and employees respectively.~~

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~~89. The report referred to in paragraph 1 or the reports referred to in paragraph 25 shall at least 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 6 weeks before the date of the general meeting referred to in Article 160hk.~~

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ANNEX 1

910. *Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 34 and the section for employees referred to in paragraph 54 is not required ~~in accordance with~~ ~~under~~ paragraph 874a, the report referred to paragraph 1 ~~is~~ shall not be required.*

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101. *Paragraphs 1 to 9108 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for proceedings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.*

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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 intended for members. That report which is shall be made available to the members* not less than *one month* before the date of the general meeting referred to in Article 160h, ~~the draft terms of cross-border division and~~. *Depending on the law of the Member States, the experts may be a natural person or a legal person.*

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

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(a) indicate the method **or methods** used to **arrive at/determine** the **amount of the** cash compensation proposed;

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

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

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(d) describe any **spec**ific valuation difficulties which have arisen.

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

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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 **to dispense with same**.

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

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Article 160^{gj}

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 160^{hk}:
- (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, if drafted in accordance with Article 160^{fi}, is disclosed and made publicly available in the register.*

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Member States shall ensure that the company is able to exclude confidential information from ~~the disclosure of the independent expert's report prior to it being disclosed.~~

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

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

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

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3. Where the company being divided ~~discloses~~ makes the draft terms of the cross-border division available in accordance with paragraph 2 of this Article, it shall submit, ~~at least one month before the date of the general meeting referred to in Article 160h,~~ to the register, at least one month before the date of the general meeting referred to in Article 160h, the following information ~~which has to be disclosed~~:
- (a) the legal form and, name and ~~registered office~~ of the company being divided and the location of its registered office and the legal form and, name and ~~registered office~~ proposed for any the newly created company or companies resulting from the cross-border division and the proposed location of their registered offices;
 - (b) the register in which the documents referred to in Article 14 are filed in respect of the company being divided, and ~~the~~ 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 ~~where~~ the draft terms of the cross-border division, the notice referred to in paragraph 1, and the independent expert's report referred to in paragraph 1, and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

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

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4. Member States shall ensure that the requirements information referred to in paragraphs 1 and 3 can be ~~completed~~ ~~submitted~~ ~~fulfilled~~ fully online in their entirety without the necessity for the applicants to appear in person before any competent authority in the Member State concerned, *in compliance 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*, ~~to be~~ published in their national gazette *or through a central electronic platform in accordance with Article 16-paragraph (3).* In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette *or to the 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 ~~by~~ to the public free of charge *through the system of interconnection of registers.*

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

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Article 160~~h~~k

Approval by the general meeting

1. After taking note of the reports referred to in Articles 160~~eg~~f and 160~~f~~i, where applicable, ~~and the employees' opinions submitted in accordance with Article 160~~eg~~~~ *and comments submitted in accordance with Article 160~~gi~~*, the general meeting of the company being divided shall decide ~~by~~ 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 160~~h~~a.

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3. Member States shall ensure that the approval of **the draft terms of the cross-border division, ~~or and of any amendment to those draft terms thereof,~~** requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented **at the 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 ~~membershareholder~~ towards the company or third parties, Member States may **provide** require, in such specific circumstances, **for a requirement** that ~~this~~ such clause or the amendment **of** the instrument of constitution of the company being divided ~~shall~~ be approved by the member shareholder concerned, provided that **this such membershareholder is unable to exercise the rights laid down in Article 160i.***

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

- (a) the share exchange ratio referred to in point (b) of Article 160~~de (b)~~ has been inadequately set;
- (b) the cash compensation referred to in Article 160e (q) 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 ~~on points (a) and/or (b)~~ did not comply with the legal requirements.*

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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 of a company being divided** have the right to dispose of their *shares, in consideration, exchange 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 that of the Member State of the company being divided.*
- Member States may also provide such a right also to for other members of the company being divided to have the right referred to in the first subparagraph.*

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ANNEX 1

Member States may require that ~~express the explicit~~ opposition to the draft terms of the cross-border division, ~~and/or the members' intentions~~ to exercise their right to dispose of their shares, ~~or both, shall~~ be appropriately documented at the latest at the general meeting referred to in Article 160~~h~~^k. Member States may allow ~~to~~ consider the recording of ~~the~~ ~~opposition~~ objection to the draft terms of the cross-border division ~~to be considered as~~ proper documentation of a negative vote.

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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 160~~h~~^k. Member States shall ensure that ~~the~~ company being divided provides an electronic address for receiving ~~this~~ declaration electronically.

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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. ~~This~~ period ~~may~~ shall not ~~end later~~ ~~exceed more~~ than two months after the cross-border division takes effect ~~according to~~ ~~in accordance with~~ Article 160~~g~~^q.

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4. Member States shall ensure that any **members** who **have** declared **their** ~~the~~ **his or her** decision to exercise the right to dispose of the shares, but who considers that the cash compensation offered by the ~~merging~~ company ~~being divided~~ concerned has not been adequately set, **is** ~~are~~ entitled to ~~claim~~ **demand** additional cash compensation before ~~a~~ **the** competent authorities ~~ies~~ or ~~a~~ **bodies** mandated under national law. Member States shall establish a time limit for the ~~demand~~ **claim** relating ~~to~~ **for** additional cash compensation.

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Member States may provide that the final decision ~~to providing~~ **an** additional cash compensation is valid for ~~those~~ **all** members of ~~the~~ merging company ~~concerned~~ **being divided** who have declared **their** decision to exercise the right to dispose of their shares ~~according in accordance with~~ **to** paragraph 2~~a~~.

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5. Member States shall ensure that the ~~national~~ law of the Member State of a company being divided governs the rights referred to in paragraphs 1 to ~~4~~ **5** and that the exclusive competence to resolve any disputes relating to those rights lies ~~within~~ **the jurisdiction of that** Member State ~~of the company being divided~~.

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* challenge that ratio *set out in the draft terms of the cross-border division* and *demand claim* cash payment. *That p*~~Proceedings in that regard shall be initiated before the competent authorities or bodies mandated under the national law of the Member State to which the company being divided is subject,~~ within *the time limit laid down in th*~~at e-national law of that Member State 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*~~ease~~ 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*~~ease~~ of a partial division, also the company being divided, can provide *for* shares or other compensation instead of a cash payment.

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Article 160~~m~~

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 160~~de point (r)~~, may apply, within three months of the disclosure of the draft terms of cross-border division referred to in Article 160~~g~~ to the appropriate administrative or judicial authority for adequate safeguards, provided that ~~they~~ 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~~ ~~no~~ adequate safeguards ~~have been obtained~~ from the company.

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

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2. Where a creditor of the company to be divided **■** does not obtain satisfaction from *the company ~~to whom~~ which the liability is allocated ~~to~~*, 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 ~~whom~~ the liability is allocated ~~to~~* 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~~ ~~or administrative organ~~ body of the company being divided provides a declaration ~~that~~ accurately ~~reflects~~ ~~the its~~ current financial status ~~of the company~~ at ~~the~~ ~~a~~ date ~~of the declaration, which shall not be~~ earlier than one month before ~~its the~~ disclosure of that declaration. The declaration shall ~~state declare be to the effect~~ that, on the basis of the information available to the ~~administrative or management~~ ~~or administrative organ~~ body of the company being divided at the date of ~~the that~~ declaration, and after having made reasonable enquiries, ~~that administrative or~~ ~~management body~~ ~~they it~~ ~~are is~~ unaware of any reason why any recipient company and, in the case of a partial division, the company being divided, ~~should 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 160gj.*

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4. Paragraphs 1, 2 and 3 ~~shall be~~ without prejudice to the application of ~~the national laws~~ of the Member State of the dividing company concerning the satisfaction ~~of payments or securing payments of pecuniary~~ or non-pecuniary obligations ~~due~~ to public bodies.

Article 160~~ma~~

Employees' information and consultation

1. Member States shall ensure that employees' ~~rights to~~ ~~rights to information and consultation~~ ~~rights~~ are respected in relation to the cross-border division and are exercised in accordance with the legal framework ~~set out by~~ ~~laid down~~ ~~provided for~~ ~~in the Directive~~ 2002/14/EC and Directive 2001/23/EC where the cross-border division is considered ~~to be as~~ 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~~ ~~to~~ apply ~~information and consultation rights~~ ~~with respect to~~ ~~other the~~ ~~employees of~~ companies ~~other~~ than those referred to in Article 3 ~~paragraph~~ (1) of ~~the~~ Directive 2002/14/EC.

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ANNEX 1

2. *Notwithstanding Article 160~~eg~~(6) and **point (b) of Article 160~~gj~~(1)(b)**, Member States shall ensure that ~~rights of 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 160~~eg~~ 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 160~~hk~~.*
3. *Without prejudice to any provisions **or in force and/or ongoing** practices ~~that are in force~~ more favourable to employees, ~~the~~ Member States shall determine the practical arrangements for ~~exercising~~ **exercising** the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.*

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Article 160~~n~~

Employee participation

1. Without prejudice to paragraph 2, each recipient company shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.
2. However, the rules in force concerning employee participation, if any, in the Member State where the **recipient** company **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, **being made publically available** as referred to in Article 160e of this Directive, **has** 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, **which 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:

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ANNEX 1

- (a) provide for at least the same level of employee participation as operated in the company **being divided** prior to ~~its **it being the cross-border** division~~, measured by reference to the proportion of employee representatives **among** the members of the administrative or supervisory ~~organ~~**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 ~~with~~ 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 **recipient** 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) ~~1~~, ~~(3)~~ and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

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ANNEX 1

- (a) Article 3(1), points (a)(i) and (b) of Article 3(2)(a)(i), 2(b) and Article 3(3), the first *two sentences* of Article 3(4), ~~and~~ Article 3(5) and Article 3(7);
 - (b) Article 4(1), points (a), (g) and (h) of Article 4(2)(a), (g) and (h), ~~and~~ Article 4(3) and Article 4(4);
 - (c) Article 5;
 - (d) Article 6;
 - (e) Article 7(~~paragraph 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:

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ANNEX 1

- (a) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member States of each of the recipient companies;
- (b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative ~~organ~~body of the recipient companies. However, if, in the company being divided, ~~the~~ employee representatives constituted at least one third of the administrative or supervisory ~~board~~, the limitation may never result in a lower proportion of employee representatives in the administrative ~~organ~~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 of Directive 2001/86/EC.

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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, ~~those that companies~~ shall be obliged to take a legal form allowing for the exercise of participation rights.
7. Where the *recipient* company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent ~~cross-border or domestic conversion, merger or division, be it cross-border or domestic, or conversion~~ 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.

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Article 160~~m~~e

Pre-division certificate

1. Member States shall designate the *court, notary or other authority or authorities* competent (~~"the competent authority"~~) to scrutinise the legality of ~~the~~ cross-border divisions (~~"the competent authority"~~) as regards ~~the those part~~ of the procedure which ~~is 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~~s~~ and ~~to~~ the proper completion of all procedures and formalities in that Member State.

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

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

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- (a) the draft terms of the cross-border division referred to in Article 160de;
- (b) the *report and the appended opinion, if any*, referred to in Article 160eg, *as well as the report referred to in Article 160fi, where those reports they they are available*;

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

~~(d) information on the approval by the general meeting~~ referred to in Article 160hk.

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 geographic-al location~~;
- (c) *information regarding the fulfilment satisfaction of obligations due to public bodies by the company being divided*;

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

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4. Member States shall ensure that the application referred to in paragraphs 2 and 3~~a~~, including ~~the~~ submission of any information and documents, may be completed fully online ~~in its entirety~~ without the necessity for the applicants to appear in person before the competent authority ~~referred to in paragraph 1~~, ~~in accordance compliance 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 160~~a~~~~, the competent authority ~~of the~~ Member State of the company being divided shall verify that the draft terms of ~~the~~ cross-border division ~~referred to in Article 160~~e~~~~ include information on the procedures by which the relevant arrangements ~~for compliance with the rules concerning employee participation as laid down in Article 160~~e~~~~ are determined and on the possible options for such arrangements.
6. As part of the scrutiny assessment referred to in paragraph 1, the competent authority shall examine the following information:
- (a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 3~~a~~;
 - (be) an indication by the company ~~being divided~~ that the procedure referred to in Article 160~~a~~(3) and (4) has started, where relevant.

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7. Member States shall ensure that the scrutiny assessment 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**; ~~if~~ **in that case, the competent authority may give the company the opportunity ~~possibility~~ to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.**

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8. Member States shall ensure that the competent authority ~~shall~~ does not issue the pre-division certificate ~~where~~ if it is determined in compliance with national law that a cross-border division is ~~set up~~ set up for abusive or fraudulent purposes leading to or aimed ~~to~~ at the ~~lead to~~ evasion or circumvention of ~~national or~~ Union or national law, or ~~otherwise~~ for criminal purposes.
9. ~~Where~~ If the competent authority, ~~during~~ through the scrutiny ~~of legality~~ referred to in paragraph 1, has serious doubts indicating that the cross-border division is ~~set up~~ set up for abusive or fraudulent purposes leading to or aimed ~~to~~ at the evasion or circumvention of ~~national or~~ Union or national law, or ~~otherwise~~ 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 ~~of legality~~ 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.

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10. Where it is necessary, for the purposes of the determination and assessment under paragraphs 8 and 794 to take into account additional information or necessary to performing additional investigative activities, the period of three months as provided for in paragraph 76 may be extended for by a maximum of further 3three months.
11. Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines as provided for in paragraphs 7 and 10this Article, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of thoseoriginal deadlines.
12. Member States shall ensure that the competent authorities designated in accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border division, including those from the Member State of the recipient companies, and obtain from those authorities, as well as and from the company being divided, information and documents necessary to carry out the control ofscrutinise the legality of the cross-border division, within the procedural framework laid down in national law. For the purposes of the assessment this Article. In the assessment the competent authority may have recourse to an independent expert.

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Article 160nq

Transmission of the pre-division certificate



~~12.~~ *Member States shall ensure that the pre-division certificate is shared with the ~~competent~~ authorities referred to in Article 160nq(1) through the system of interconnection of registers ~~set up in accordance with Article 22.~~*

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Member States shall also ensure that the pre-division certificate is available through the system of interconnection of registers ~~set up in accordance with Article 22.~~

~~23.~~ *~~The~~ ~~access~~ to the ~~pre-division certificate information referred to in paragraph 2~~ shall be free of charge for the ~~competent~~ authorities referred to in Article 160nq(1) and ~~for the~~ registers.*

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Article 160o

Scrutiny of the legality of **the** cross-border division

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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 ~~where~~ **all the relevant conditions** ~~and formalities in that Member State have been properly completed.~~

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

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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 160k.

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ANNEX 1

3. Each Member State shall ensure that ~~the any~~ application ~~for the purposes of referred to in~~ paragraph 1, by ~~the recipient companies and by the company being divided~~ carrying out the cross-border division, ~~which includes including~~ the submission of any information and documents, may be completed ~~fully online in its entirety~~ without the necessity ~~for the applicants~~ to appear in person before the ~~competent~~ authority ~~referred to in paragraph 1~~ referred to in paragraph 1, ~~in compliance~~ ~~accordance~~ with the relevant provisions of Chapter III of Title I.
4. The ~~competent~~ authority referred to in paragraph 1 of this Article 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~~ completed its assessment of the relevant conditions.
5. The pre-division certificate, ~~referred to in Article 160ng (12)~~ shall be accepted by ~~the any competent~~ authority ~~referred to in paragraph 1~~, ~~referred to in paragraph 1 of this Article~~, as ~~conclusively attesting of~~ 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.

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Article 160^{ps}

Registration

1. The laws of the Member States *of the company being divided and of the recipient companies* shall determine, with respect regard to their respective territories of these States, the arrangements, *in accordance with Article 16, to for disclosing* the completion of the cross-border division in their registers .
2. Member States shall ensure that at least the following information ~~shall be is~~ entered in their registers ~~as follows, which are made publically available and accessible by means of the system referred to in Article 22:~~
 - (a) *in the register of the Member States of the recipient companies, the fact that the registration of the recipient company is a the* result of a cross-border division;
 - (b) *in the register of the Member State of the recipient companies,* the dates of registration of the recipient companies;

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(dc) in the register of the Member State of the company being divided in the event of a full division. ~~the fact that the striking off or removal of the company being divided from the register is the a result of a cross-border division;~~

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(ed) in the register of the Member State of the company being divided —in ease the event of a full division, the date of striking off or removal of the company being divided from the register ;

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(e) in the registers of the Member States of the company being divided and the registers of the Member States of the recipient companies, respectively, the registration numbers, 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 by means of through the system of interconnection of registers.

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3. Member States shall ensure that the registers in the Member States of the recipient companies notify the registry in the Member State of the company being divided, by means of through the system referred to in Article 22 of interconnection of registers, that the recipient companies have been registered. Member States shall also ensure that in the ease event of a full division, the striking off or removal of the company being divided is struck off or removed from the register shall be effected immediately upon the receipt of all those those notifications from the registers of the Member States of the recipient companies.

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

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Article 160~~q~~t

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 160~~m~~e, ~~and~~ 160~~o~~r has been carried out and after ~~the registers have~~ing received all notifications referred to in Article 160~~p~~s(3).

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Article 160~~r~~u

Consequences of ~~a~~the cross-border division

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

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

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- (b) the members of the company being divided ~~shall~~ become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of *the* cross-border division, unless they ~~exercise the exit right have disposed of their shares as~~ referred to in Article 160~~i~~(1);
- (c) the rights and obligations of the company being divided arising from ~~the~~ contracts of employment or from employment *relationships* and existing at the date on which *the* cross-border division takes effect ~~shall be~~ e-transferred to the recipient companies;
- (d) the company being divided ~~shall~~ cease to exist.

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

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

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- (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 exercise the exit right have disposed of their shares as referred to in Article 160i(1);*
- (c) *the rights and obligations of the company being divided arising from the 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 in accordance with 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 carried out in compliance with the national provisions transposing this Directive shall, by reason of the cross-border division taking effect and from the date referred to in Article 160g, have the following consequences:*

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- (a) ~~the~~ part of the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, is transferred to the recipient company or companies, ~~and~~ while the remaining part ~~shall continue~~ to be ~~that with~~ 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 are allocated to the company being divided;
- (~~c~~) the rights and obligations of the company being divided, arising from ~~the~~ contracts of employment or from ~~the~~ employment relationships and, and existing at the date on which ~~the~~ cross-border division takes effect, and allocated to the recipient company or companies ~~in accordance with~~ under the draft terms of ~~the~~ cross-border division, ~~are~~ shall be transferred to the respective recipient company or companies.

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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 (m) of Article 160ed point (m), and where the interpretation of these 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. In any event, Article 160jm(2) shall apply.**
5. Where, in the case of a cross-border division ~~covered by this Chapter~~, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the company being divided becomes effective as against third parties, those formalities shall be carried out by the company being divided or by the recipient companies, as appropriate.
6. Member States shall ensure that shares in a recipient company ~~may not~~ be exchanged for shares in the company being divided which are either held by the company itself or through a person acting in his or her own name but on behalf of the company.

Article 160~~suu~~

Simplified formalities

Where a **cross-border** division is carried out as a 'division by separation' **as referred to in point (e) of Article 160b (3), point (e) then, points (b), (c), (f), (i), (o) and (p) and (q) of Article 160d points b, c, f, i, p and q and Articles 160eg, 160fi and 160i** shall not apply.

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Article 160~~tv~~

Liability of the ~~i~~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 160fi*.

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

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

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

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Article 160^{uw}

Validity

~~Member States shall ensure that a~~ A cross-border division which has taken effect in compliance with the procedures transposing this Directive ~~can may may~~ not be declared null and void."

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

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

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~~"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"~~

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Article 2

Penalties

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

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

Article 3

Transposition

Commented [LL-Council61]: adapted to formulas in Joint Handbook, C.4.2.3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ~~by ...~~ ~~[OP set the date=~~the last day of the ~~month~~ ~~of 36th~~ months after ~~the date of~~ entry into force ~~of this amending Directive]~~ ~~at the latest~~. They shall ~~immediately forthwith~~ communicate ~~to the Commission~~ the text of those ~~provisions~~ ~~measures to the Commission~~.
When Member States adopt those ~~provisions~~ ~~measures~~, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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Article 4
Reporting and review

1. The Commission shall, no later than **four years after**... [OP please insert **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 **the cross-border operations, including an** assessment of the rules on the proportion of employee representatives in the administrative ~~organ~~ **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** ~~of~~ **introducing** 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 wherein which a pre-conversion 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, and by providing 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 of Title II and Chapter 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~~^{third} 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
The President

For the Council
The President

<p><i>'cross-border conversion').</i></p>		<p><i>national insolvency framework or regulated outside of it, and in addition. Also, Member States should be able to choose not to apply this Directive to companies that are subject to crisis prevention measures in the meaning of as defined in Directive 2014/59/EU of the European Parliament and of the Council¹. This Directive should be without prejudice to the Directive (EU) 2019/1023... of the European Parliament and of the Council² on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.</i></p>
	<p>Article 120 Further provisions concerning scope</p>	
	<p>1. Notwithstanding Article 119(2), this Chapter shall also apply to cross-border mergers where the law</p>	<p>2. Notwithstanding point 3 of Article 160b(3), this Chapter shall also apply to cross-border</p>

¹ 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).

² 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...)

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	of at least one of the Member States concerned allows the cash payment referred to in Article 119(2)(a) and (b) to exceed 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of the securities or shares representing the capital of the company resulting from the cross-border merger.	divisions where the national law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of point 3 of Article 160b(3) to exceed 10 % of the nominal value, or, in the absence of a nominal value, 10% of the accounting par value of the securities or shares representing the capital of the recipient companies.	
	2. Member States may decide not to apply this Chapter to cross-border mergers involving a cooperative society even in the cases where the latter would fall within the definition of a limited liability company as laid down in Article 119(1).		
21. <i>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'</i>	3. This Chapter shall not apply to cross-border mergers 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	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	

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<p><i>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.</i></p>	<p>equivalent to such repurchase or redemption.</p>	<p>value shall be regarded as equivalent to such repurchase or redemption.</p>	
<p><u>32.</u> <i>Member States shall ensure that this Chapter does not apply to companies in any either of the following circumstances:</i></p>	<p>4. <u>Member States shall ensure that this Chapter does not apply in any of the following circumstances to companies in either of the following circumstances:</u></p>	<p>4. <i>Member States shall ensure that this Chapter does not apply to companies in any either of the following circumstances:</i></p>	<p><i>This Directive should not apply to companies in liquidation where the distribution of assets has begun. In addition, Member States may are free should be able to choose decide also 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 the national law, or to preventive restructuring</i></p>

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		<p>frameworks, as defined by the national law, no matter <u>irrespective of</u> whether such proceedings are part of a national insolvency framework or regulated outside of it, and in addition. <u>Also</u>, Member States should be able to choose not to apply this Directive to companies <u>that are</u> subject to crisis prevention measures in the meaning of as defined in Directive 2014/59/EU of the European Parliament and of the Council³. This Directive should be without prejudice to the Directive (EU) 2019/1023... of the European Parliament and of the Council⁴ on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.</p>
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³ 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).

⁴ 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~~...~~)

<p>(a) <i>the company is in liquidation and has begun to distribute assets to its <u>membershareholders</u>;</i></p>	<p>(a) the company or companies that <u>the company</u> is <u>are</u> in liquidation; and have <u>has</u> begun to distribute assets to their <u>its</u> membershareholders;</p>	<p>(a) <i>the company being divided is in liquidation and has begun to distribute assets to its <u>membershareholders</u>;</i></p>	
<p>(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council*.</p>	<p>(b) the company is that are the <u>company is</u> subject to <u>resolution tools</u>, powers and mechanisms provided for in <u>Title IV of Directive</u></p>	<p>(b) <i>the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council.</i></p>	

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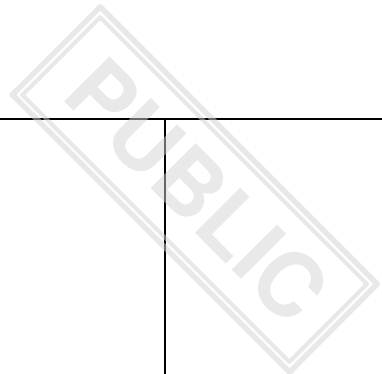
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		2014/59/EU ¹¹ of <i>the European Parliament and of the Council;</i>	
43. Member States may decide not to apply this Chapter to companies which are subject to :	5. Member States may decide not to apply this Chapter to companies which are subject to :	5. Member States may decide not to apply this Chapter to companies which are subject to :	
(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;	(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks¹¹	(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;	
(baa) the subject of liquidation proceedings other than those referred to in point (a)	(b) the subject of liquidation n	(baa) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 4 point a; or	

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<p><i>of paragraph 32, or</i></p>	<p><i>proceedings other than those referred to in <u>point (a)</u> of paragraph 4-point a, or</i></p>		
<p><i>(cb) <u>the subject of</u> crisis prevention measures <i>in the meaning of as defined in point (101) of Article 2 paragraph (1) point (101) of Directive 2014/59/EU of the European Parliament and of the Council.</i></i></p>	<p><i>(c) <u>the subject of</u> crisis prevention measures <u>as defined in the meaning of point (101) of Article 2 paragraph (1) point (101) of Directive 2014/59/EU of the European Parliament and of the Council.</u></i></p>	<p><i>(cb) <u>the subject of</u> crisis prevention measures <u>in the meaning of as defined in point (101) of Article 2 paragraph (1) point (101) of Directive 2014/59/EU of the European Parliament and of the Council.</u></i></p>	

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<p><i>Article 86b Definitions</i></p>	<p><i>Article 119 Definitions</i></p>	<p><i>Article 160b Definitions</i></p>	<p><i>Recital 12</i></p>
<p>For the purposes of this</p>	<p>For the purposes of this Chapter:</p>	<p>For the purposes of this Chapter:</p>	<p>To allow all stakeholders' legitimate interests to be taken into account</p>

<p>Chapter 1</p> <p>(1) 'limited liability company' hereinafter referred to as "company", means a <u>limited liability</u> company of a type listed in Annex II that carries out a cross-border conversion;</p>	<p>(1) 'limited liability company', hereinafter referred to as 'company', means:</p> <p>(a) a company of a type listed in Annex II; or</p> <p>(b) a company with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and that is subject, under the national law governing it, to conditions concerning guarantees such as are provided for by Section 2 of Chapter II of Title I and Section 1 of Chapter III of Title I for the protection of the interests of members and others;</p>	<p>(1) 'limited liability company', hereinafter referred to as 'company', means a <u>limited liability</u> company <i>of a type</i> listed in Annex II;</p>	<p>in the procedure governing a cross-border <i>operation</i>, the company should <i>draw up and disclose</i> the draft terms of the <i>proposed operation</i> containing the most important information about <i>it</i>. <i>The administrative or management body should, where provided for in national law and/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 envisaged 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 the any safeguards offered to members and creditors. A notice should be disclosed in the business register 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 comments with regard to the proposed operation. Member States may/could also decide that the independent</i></p>
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			<i>expert's report required by this Directive is has to be disclosed.</i>
		(2) 'company being divided' means a company which, in a the process of the a cross-border division, in case of involving a full division transfers all its assets and liabilities to <i>two</i> or more companies in the case of a full division , or in the event of a partial division or division by separation 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 for the purposes of a cross-border division;	
(2) 'cross-border conversion' means an operation whereby a company, without being dissolved, or wound up or going into liquidation, converts the legal	(2) 'merger' means an operation whereby:	(4) ' cross border division' means; an operation whereby either :	

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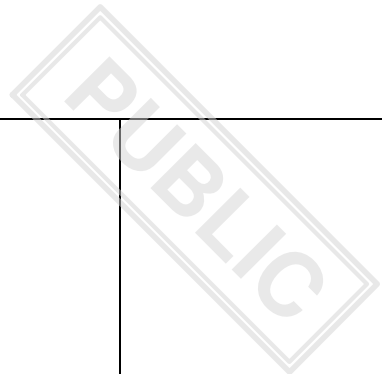
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<p>form under which it is registered in a departure Member State into a legal form <i>listed in Annex II</i> of <i>the</i> destination Member State, and its <i>listed in Annex II</i>, and transfers at least its registered office into the destination Member State, while retaining its legal personality;</p>			
	<p>(a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the</p>	<p>(a) a company being divided, <i>on being dissolved</i> without going into liquidation, transfers all its assets and liabilities to two or more newly formed companies (the recipient companies), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if any applicable, a cash payment not exceeding 10 % of the nominal value, of those securities or shares or, where they have</p>	

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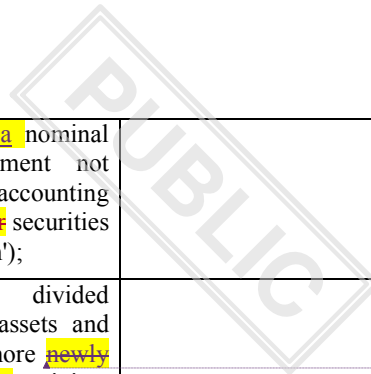
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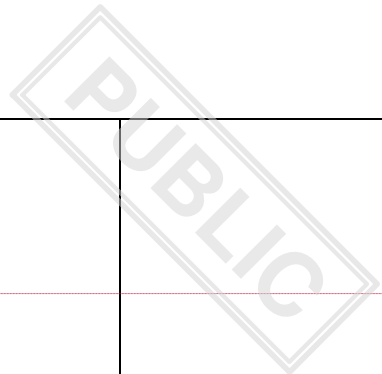
	<p>accounting par value of those securities or shares; or</p>	<p>in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of those their securities or shares ('full division');</p>	
	<p>(b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or</p>	<p>(b) a company being divided transfers part of its assets and liabilities to one or more newly formed companies ('the recipient companies'), in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies, or in the company being divided or in both the recipient companies and in the company being divided, and, if applicable any, a cash payment not exceeding 10 % of the nominal value of those securities or shares, or in in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of their those securities or shares ('partial division'); or.</p>	
	<p>(c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital; or</p>	<p><i>(c) a company being divided transfers part of its assets and liabilities to one or more newly formed companies ('the recipient companies'), in exchange for the issue of securities or shares in the recipient companies to the company being divided of</i></p>	



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		<i>securities or shares in the recipient companies</i> ('division by separation').	
	"(d) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their shares in the same proportion in all merging companies.		
(3) 'departure Member State' means a Member State in which a company is registered <i>in its legal form</i> prior to the cross-border conversion;			

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<p>(4) 'destination Member State' means a Member State in which a converted company shall be registered as a result of the cross-border conversion;</p>			
<p>(5) 'converted company' means the company <i>formed</i> in the destination Member State <i>as a result of the process of the</i> cross-border conversion .</p>			

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<p>Article 86c <i>Procedures and formalities in the departure and destination Member States</i> Further provisions concerning the scope</p>	<p><u>None</u></p>	<p>Article 160c <i>Procedures and formalities in the Member States</i></p>
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<p>4. — <i>In compliance with Union law,</i> The national law of the departure Member State shall govern that 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 national law of the destination Member State shall govern that those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate. in compliance with Union law.</p>		<p><i>In compliance with Union law, 6. — The national law of the Member State of the company being divided shall govern the 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 national laws of the Member States of the recipient companies shall govern the those parts of the procedures and the formalities to be complied with following receipt of the pre-division certificate in compliance with Union law.</i></p>
<p>4. — <i>In compliance with Union law,</i> The national law of the departure Member State shall govern that 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 national law of the destination Member State shall govern that those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate. in compliance with Union law.</p>		

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	<p><i>Article 121</i> Conditions relating to cross-border mergers</p>	<p><i>None</i></p>
	<p>1. Save as otherwise provided in this Chapter, (a) <i>deleted</i> (b) a company taking part in a cross-border merger shall comply with the provisions and formalities of the national law to which it is subject. The laws of a Member State enabling its national authorities to oppose a</p>	

	given internal merger on grounds of public interest shall also be applicable to a cross-border merger where at least one of the merging companies is subject to the law of that Member State. This provision shall not apply to the extent that Article 21 of Regulation (EC) No 139/2004 is applicable.	
	2. <u>The provisions and formalities referred to in the 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.</u>	

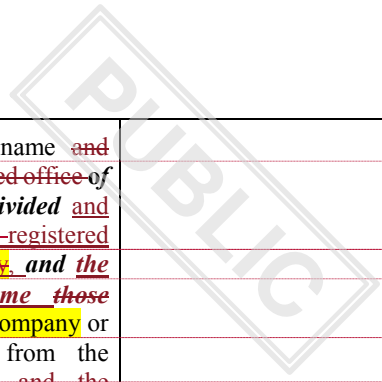
DRAFT TERMS			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86d Draft terms of cross-border conversions	Article 122 Common draft terms of cross-border mergers	Article 160d Draft terms of cross-border divisions	Recital 12
1. —The administrative or management of administrative organ-body of the company shall	The management or administrative organ of each of the merging companies shall draw up the common draft terms of a cross-border merger. The common draft terms of a cross-border merger	The administrative or management or administrative organ-body of the company being divided shall draw up the draft terms of a cross-border division. The draft terms of a	To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border <i>operation</i> , the company should <i>draw up and</i> disclose the draft terms of the

<p>draw up the draft terms of a cross-border conversion.</p> <p>The draft terms of a cross-border conversion shall include at least the following <i>particulars</i>:</p>	<p>shall include at least the following <i>particulars</i>:</p>	<p>cross-border division shall include at least the following <i>particulars</i>:</p>	<p><i>proposed operation</i> containing the most important information about it. <i>The administrative or management body should, where provided for in national law and/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 envisaged 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 the any safeguards offered to members and creditors. A notice should be disclosed in the business register 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 comments with regard to the proposed operation. Member States may could also decide that the independent expert's report required by this Directive is has to be disclosed.</i></p>
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<p>(a) the legal form and name and location of its registered office of the company in the departure Member State and the location of its registered office in that Member State;</p>	<p>"(a) for each of the merging companies, the its legal form and name, and the location of its registered office of the merging companies and the location of their registered offices, and the legal form and name ose proposed for the company resulting from the cross-border merger and the proposed</p>	<p>(a) the legal form and name and location of the registered office of the company being divided and the location of its the registered office of that company, and the legal form and name those proposed for the new company or companies resulting from the cross-border division and the proposed location of their registered offices ;</p>	
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	<u>location of its registered office;</u>		
(b) the legal form <u>and</u> name <u>and location of its registered office</u> proposed for the converted company in the destination Member State <u>and the proposed location of its registered office in that Member State;</u>	(b) the ratio applicable to the exchange of securities or shares representing the company capital <u>of the company</u> and the amount of any cash payment, where appropriate;	(b) the ratio applicable to the exchange of securities or shares representing the <u>companies' capital of the company</u> and the amount of any cash payment, where appropriate ;	
	(c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;	(c) the terms for the allotment of securities or shares representing the capital of the recipient companies <u>or</u> of the company being divided ;	
(c) the instrument of constitution <u>of the company in the destination Member State, where</u>	(i) the instrument <u>or instruments</u> of constitution <u>of the company</u> resulting from	(j) the instruments of constitution <u>of the recipient companies, where applicable, and the statutes if they are contained in a separate instrument, of the recipient companies</u> and any changes to the instrument of constitution of the company being divided in <u>the</u>	

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<p><i>applicable, and the statutes if they are contained in a separate instrument, of a company in the destination Member State;</i></p>	<p><i>the cross-border merger, where applicable, and the statutes if they are contained in a separate instrument, of the company resulting from the cross-border merger;</i></p>	<p>case of a partial division <u>or a division by separation</u>;</p>	
<p>(d) the proposed <i>indicative</i> timetable for the cross-border conversion;</p>	<p>--</p>	<p>(d) the proposed indicative timetable for the cross-border division;</p>	
<p>(e) the rights conferred by the converted company on members enjoying special rights or on holders of securities other than</p>	<p>(g) the rights conferred by the company resulting from the cross-border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;</p>	<p>(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;</p>	

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shares representing the company capital, or the measures proposed concerning them;			
(f) any safeguards, such as guarantees or pledges, where offered to creditors, such as guarantees or pledges;	(n) any safeguards offered to creditors, such as guarantees or pledges, where offered to creditors.	(q) any safeguards, such as guarantees or pledges, where offered to creditors, such as guarantees or pledges.	
(g h) any special advantages granted to members of the administrative, management, supervisory or controlling bodiesorgans of the company;	(h) any special advantages granted to members of the administrative, management, supervisory or controlling organbodies of the merging companies;	(h) any special advantages granted to members of the administrative, management, supervisory or controlling bodiesorgans of the company being divided ;	
(h a) whetherif any	==	--	

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<p><i>incentives or subsidies were received by the company in the departure Member State in the last preceding 5 five years;</i></p>			
<p>(i) details of the offer of cash compensation for the members █ in accordance with Article 86<i>ii</i>;</p>	<p>(m) details of the offer of cash compensation for the members █ in accordance with Article 126a;</p>	<p><i>(p)</i> details of the offer of cash compensation for the members █ in accordance with Article 160<i>ii</i>;</p>	
<p>(j) the likely repercussions of the cross-border conversion on employment;</p>	<p><i>(d)</i> the likely repercussions of the cross-border merger on employment;</p>	<p><i>(e)</i> the likely repercussions of the cross-border division on employment;</p>	
<p>(k) where appropriate, information on the</p>	<p><i>(j)</i> where appropriate, information on the procedures by which arrangements for the</p>	<p><i>(k)</i> where appropriate, information on the procedures by which arrangements for the involvement</p>	

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<p>procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined pursuant to Article 861.</p>	<p>involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined pursuant to Article 133;</p>	<p>of employees in the definition of their rights to participation in the recipient companies are determined pursuant to Article 160ⁱⁿ ;</p>	
<p>--</p>	<p>(e) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;</p>	<p>(f) the date from which the holding of securities or shares representing the companies company capital will entitle the holders to share in profits; and any special conditions affecting that entitlement ;</p>	
<p>--</p>	<p>(f) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross-border merger;</p>	<p>(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;</p>	
<p>--</p>	<p>(k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;</p>	<p>(m) information on the evaluation of the assets and liabilities which are to be allocated to each company</p>	

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		involved in a the cross-border division ;	
--	(l) the dates of the merging companies' accounts used to establish the conditions of the cross-border merger;	(n) the date of the accounts of the company being divided, which is used to establish the conditions of the cross-border division ;	
--	--	(l) the a precise description of the assets and liabilities of the company being divided and a statement of how these assets and liabilities are to be allocated between the recipient companies, or are to be retained by the company being divided in the case of a partial division or a division by separation, including provisions for 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;	

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REPORTS TO MEMBERS AND EMPLOYEES			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86e Report of the management	Article 124 Report of the management	Article 160e Report of the administrative	13

<p>or administrative <u>or</u> <u>management body</u>organ tofor the members <u>and</u> the employees</p>	<p>administrative <u>or</u> <u>management body</u> for to the members <u>and</u> employees</p>	<p>or management body for the members <u>and</u> the employees</p>	
<p>1. The <u>administrative or</u> management or <u>administrative</u> <u>body</u>organ of the company █ shall draw up a report tofor <u>members and</u> <u>employees</u>, explaining and justifying the legal and economic aspects of the cross-border conversion, <u>as well as</u> <u>explaining the</u> <u>implications of the</u> <u>cross-border</u> <u>conversion for</u> <u>employees</u>.</p>	<p>1. <u>The administrative or</u> <u>management or</u> <u>administrative</u> <u>organ</u>body of each of <u>the merging</u> companies shall draw up a report tofor <u>members and</u> <u>employees</u> explaining and justifying the legal and economic aspects of the cross- border merger, <u>as</u> <u>well as explaining the</u> <u>implications of the</u> <u>cross-border merger</u> <u>for employees</u>.</p>	<p>1. The <u>administrative</u> <u>or</u> management or <u>administrative</u> <u>organ</u>body of the company being divided shall draw up a report forto <u>members and</u> <u>employees</u>, explaining and justifying the legal and economic aspects of the cross-border</p>	<p>In order to provide information to its members <u>and employees</u>, the company carrying out the cross-border <u>operation</u> should prepare a report <u>for them</u>. The report should explain and <u>justify the legal</u> <u>and economic</u> aspects of the proposed cross-border <u>operation and</u> the implications of the <u>proposed</u> cross-border <u>operation</u> for <u>employees</u>. <u>In particular,</u> <u>the report should explain the</u> <u>implications of the cross-border</u> <u>operation</u> with regard to the future business of the company <u>including its</u> <u>subsidiaries</u>. <u>Concerning</u><u>As far as</u> <u>members are concerned,</u> <u>the report</u> <u>should, in particular, include potential</u> <u>remedies available to them, especially</u> <u>information about their exit right to exit</u> <u>the company</u>. <u>As to the</u>For employees, <u>the report should also explain, in</u> <u>particular,</u> <u>the implications of the</u> <u>proposed cross-border operation on the</u> <u>employment situation</u>. <u>In particular,</u> <u>the report should explain whether there</u> <u>would be any material change in to the</u> <u>employment conditions laid down by law,</u> <u>to collective agreements and or to</u> <u>transnational company agreements,</u> <u>and</u> <u>in the locations of the company's</u> <u>employees</u>.</p>

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		<p>division, as well as explaining the implications of the cross-border division for employees.</p>	<p>places of business, such as the location of the head office. <i>In addition, the report should include, as well as 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, the wages and salaries, the location place of specific posts and the expected consequences for the employees occupying such 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. This requirement should not however apply. No section for employees should be required where the only employees of the company are in its administrative or management organbody. Furthermore, in order to enhance the protection afforded to the 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 the possibility to provide an of any opinion should be without prejudice to the applicable information and consultation procedures ings provided for instituted at national level including those following the implementation of</i></p>
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			<p>Directive 2002/14/EC of the European Parliament and of the Council⁵ or Directive 2009/38/EC of the European Parliament and of the Council⁶. <i>The report or, where drawn up separately, the reports, in case they are established separately, should be available to the members and to the representatives of the employees of the company carrying out the cross-border conversion operation or, where there are no such representatives, the employees themselves.</i></p>
<p><u>It shall, in particular, explain the implications of the cross-border conversion for the future business of the company.</u></p>	<p><u>It shall, in particular, explain the implications of the cross-border merger for the future business of the company.</u></p>	<p><u>It shall, in particular, explain the implications of the cross-border division for the future business of the companies.</u></p>	
<p>2. The report referred to in paragraph 1, shall, in particular, explain the implications of the</p>	<p>2. The report referred to in paragraph 1, shall, in particular, explain the implications of</p>	<p>2. The report referred to in paragraph 1, shall, in</p>	

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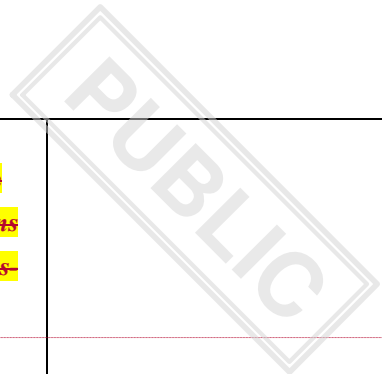
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⁵ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

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

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<p>cross-border conversion on for the future business of the company.</p> <p>It shall also include a section for members and a section for employees.</p>	<p>the cross-border merger on for the future business of the company.</p> <p>It shall also include a section for members and a section for employees.</p>	<p>particular, explain the implications of the cross-border division on for the future business of the companies.</p> <p>It shall also include a section for members and a section for employees.</p>	
<p>8. The company may decide whether either to draw up one report containing those two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for members and</p>	<p>8. The company may decide whether either to draw up one report containing those two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for members and</p>	<p>8. The company may decide whether either to draw up one report containing those two sections referred to in paragraphs 3 and 54 or whether to draw up separate reports for members and employees respectively containing the relevant section.</p>	

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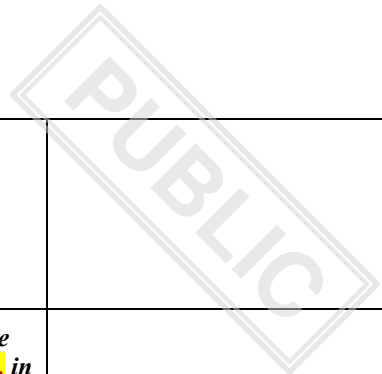
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<p><i>employees respectively containing the relevant section.</i></p>	<p><i>employees respectively containing the relevant section.</i></p>		
<p>3. <i>The section of the report for members shall, in particular, explain the following:</i></p>	<p>3. <i>The section of the report for members shall, in particular, explain the following:</i></p>	<p>3. <i>The section of the report for members shall, in particular, explain the following:</i></p>	
<p><i>(a) an explanation of the cash compensation offered referred to in Article 86i and of the method used to arrive at determine the cash compensation;</i></p>	<p><i>(a) an explanation of the cash compensation referred to in Article 126a and of the method used to arrive at determine the cash compensation;</i></p>	<p><i>(a) an explanation of the cash compensation referred to in Article 160i and of the method used to arrive at determine the cash compensation;</i></p>	
<p>--</p>	<p><i>(b) an explanation of the share</i></p>	<p><i>(b) an explanation of the share exchange ratio and of the method</i></p>	

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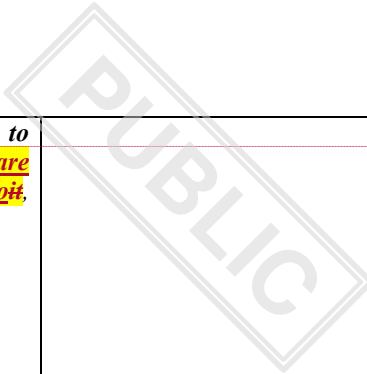
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	exchange ratio and of the method or methods used to arrive at the share exchange ratio , where applicable;	or methods used to arrive at the share exchange ratio , where applicable;	
(b) the implications of the cross-border conversion for members;	(c) the implications of the cross-border merger for members;	(c) the implications of the cross-border division for members;	
(c) the rights and remedies available to members in accordance with Article 86j.	(d) the rights and remedies available to members in accordance with Article 126a.	(d) the rights and remedies available to members in accordance with Article 160j.	
4. By way of derogation from paragraph 2, The section of the	3a4. By way of derogation from paragraph 2, The section of the	4. By way of derogation from paragraph 2, The section of the report for members shall not be	



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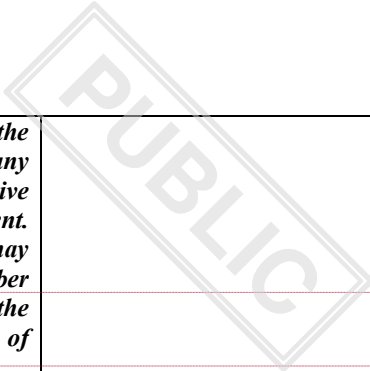
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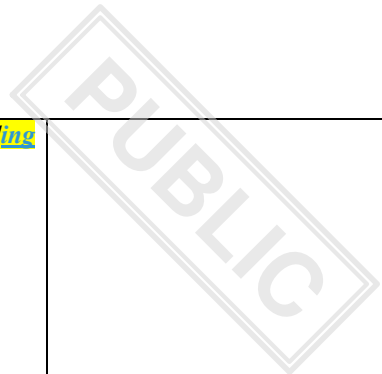
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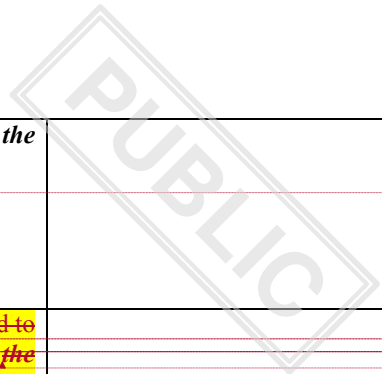
<p><i>report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the <u>application provisions</u> of this Article.</i></p>	<p><i>report for members shall not be required where all the members of the company have agreed to waive this that requirement. Member States may exclude single-member companies from the <u>provisions</u> application of this Article.</i></p>	<p><i>required where all the members of the company have agreed to waive this at requirement. Member States may exclude single-member companies from the <u>application provisions</u> of this Article.</i></p>	<p><i>Formatted: Highlight</i></p> <p><i>Formatted: Highlight</i></p> <p><i>Formatted: Highlight</i></p>
<p>5. <i>The section of the report for employees shall, in particular, explain the following:</i></p>	<p>45. <i>The section of the report for employees shall, in particular, explain the following:</i></p>	<p>5. <i>The section of the report for employees shall, in particular, explain the following:</i></p>	<p><i>Formatted: Highlight</i></p> <p><i>Formatted: Highlight</i></p>
<p><i>(ea) the implications of the cross-border conversion for</i></p>	<p><i>(ea) the implications of the cross-border merger for employment</i></p>	<p><i>(ea) the implications of the cross-border division for employment relationships, as well as, where applicable, any measures in order</i></p>	





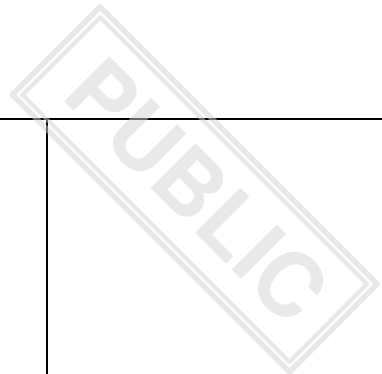
<p><i>employment relationships, as well as, where applicable, any measures in order to for safeguarding those relationshipsem;</i></p>	<p><i>relationships, as well as, where applicable, any measures in order to for safeguarding them those relationships;</i></p>	<p><i>to for safeguarding those relationshipsem ;</i></p>	
<p><i>(eb) any material changes in to the applicable conditions of employment; and in or to the location of the company's places of business;</i></p>	<p><i>(eb) any material changes to in the applicable conditions of employment or to, and in the location of the company's places of business;</i></p>	<p><i>(eb) any material changes in to the applicable conditions of employment, and in or to the location of the company's places of business;</i></p>	
<p><i>(ec) how the factors set out in points</i></p>	<p><i>(ec) how the factors set out in points</i></p>	<p><i>(ec) how the factors set out in points (ea) and (eb) affect also any</i></p>	

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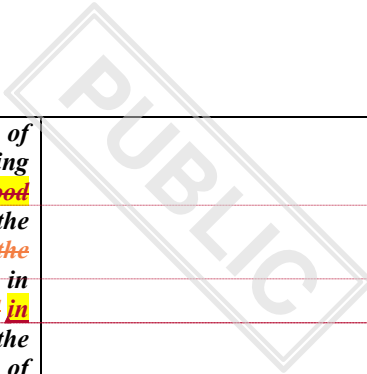
<p><i>(ea) and (eb)</i> affect also any subsidiaries of the company.</p>	<p><i>(ea) and (eb)</i> affect also any subsidiaries of the company.</p>	<p>subsidiaries of the company</p>
<p>96. The report referred to in paragraph 1 or the reports referred to in paragraph 52 shall at least be made available 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 of the company or, where there are no such representatives, to the employees themselves, not less than 6 six</p>	<p>69. The report referred to in paragraph 1 or the reports referred to in paragraph 8-5 shall at least 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</p>	<p>69. The report referred to in paragraph 1 or the reports referred to in paragraph 5 shall at least 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 6 six weeks before the date of the general meeting referred to in Article 1601k.</p>

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<p>weeks before the date of the general meeting referred to in Article 861A.</p>	<p>themselves, not less than 6 six weeks before the date of the general meeting referred to in Article 126.</p> <p>However, where the approval of the merger is not required by <i>the</i> general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available- at least 6 six weeks before the date of the general meeting of the other merging company or companies.</p>		
<p>67. <i>Where the administrative or</i></p>	<p>4aa 67. <i>Where the administrative or</i></p>	<p>76. <i>Where the administrative or management</i></p>	<p><i>the body</i></p>

<p>management or administrative organbody of the company receives, in good time, an opinion on the parts information of the report referred to in paragraphs 1, 2 and 54 in good time from the representatives of the company's their employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that the</p>	<p>management or administrative organbody of the merging company receives, in good time, an opinion on the information parts of the report referred to in paragraphs 1, 2 and 54, in good time from the representatives of their their employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that the</p>	<p>administrative organ of the company being divided receives, in good time, an opinion on the information parts of the report referred to in paragraphs 1, 2 and 54 in good time from the representatives of their the company's employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to that the report.</p>
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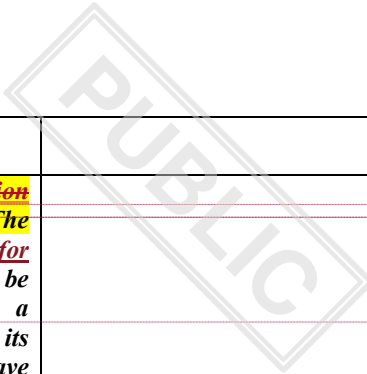
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<i>report.</i>	<i>report.</i>	
<p>87. <i>By way of derogation from paragraph 2, The section of the report for</i> employees shall not be required, where a company and its subsidiaries, if any, have no employees other than those who form part of the <i>administrative or management or administrative organbody.</i></p>	<p>4a78. <i>By way of derogation from paragraph 2, The section of the report for</i> employees shall not be required, where a <i>merging</i> company and its subsidiaries, if any, have no employees other than those who form part of the <i>administrative or management or administrative organbody.</i></p>	<p>87. <i>By way of derogation from paragraph 2, The section of the report for</i> employees shall not be required, where a company and its subsidiaries, if any, have no employees other than those who form part of the <i>administrative or management or administrative organbody.</i></p>
<p>109. <i>Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 43 and the section for</i></p>	<p>9108. <i>Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 43 and the section for</i></p>	<p>910. <i>Where the section for members referred to in paragraph 3 is waived in accordance with paragraph 34 and the section for employees referred to in paragraph 54 is not required in accordance with under paragraph 874a, the</i></p>



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<p><i>employees referred to in paragraph 45 is not required in accordance with under paragraph 874a, the report referred to in paragraph 1 is shall not be required.</i></p>	<p><i>employees referred to in paragraph 54 is not required under, in accordance with paragraph 874a, the report referred to paragraph 1 is shall not be required.</i></p>	<p><i>report referred to paragraph 1 is shall not be required.</i></p>	<p><i>Formatted: Highlight</i> <i>Formatted: Highlight</i></p>
<p>910. Paragraphs 1 to 910 of this Article shall be without prejudice to the applicable information and consultation rights and procedures ings instituted provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.</p>	<p>109. Paragraphs 1 to 910 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided foredings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.</p>	<p>101. Paragraphs 1 to 910 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for proceedings instituted at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.</p>	<p><i>Formatted: Highlight</i> <i>Formatted: Highlight</i> <i>Formatted: Highlight</i> <i>Formatted: Highlight</i> <i>Formatted: Highlight</i> <i>Formatted: Highlight</i> <i>Formatted: Font: Bold, Italic</i> <i>Formatted: Not Highlight</i></p>

INDEPENDENT EXPERT REPORT			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86 ^{fg} <i>Independent expert report</i>	Article 125 <i>Independent expert report</i>	Article 160 ^f <i>Independent expert report</i>	14
<p>1. Member States shall ensure that <i>an independent expert examines the draft terms of the cross-border conversion and draws up a report intended for members. That report shall be which is made available to the members</i> not less than <i>one month</i> before the date of the general meeting referred to in Article 86^{hi} .</p> <p><i>Depending on the law of the Member States, the expert may be a natural person or a legal person.</i></p>	<p>1. An independent expert report intended for members and made available not less than one month before the date of the general meeting referred to in Article 126 shall be drawn up for each merging company. Depending on the law of each Member State, such experts may be natural persons or legal persons.</p> <p><i>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.</i></p>	<p>1. Member States shall ensure that <i>an independent expert examines the draft terms of the cross-border division and draws up a report intended for members. That report which is shall be made available to the members</i> not less than <i>one month</i> before the date of the general meeting referred to in Article 160^{hk} . the draft terms of cross-border division and . Depending on the law of <i>the</i> Member States, the experts may be a natural <i>person</i> or a legal person.</p>	<p><i>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 possible complementary cash payment included in the draft terms, should be examined by an expert who is independent from the company. With regard to the independence of the expert, Member States should take into account the principles</i></p>

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			requirements laid down in Articles 22 and 22b of Directive 2006/43/EC of the European Parliament and of the Council ⁷ .
	2. As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts, appointed for that purpose at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the company resulting from the cross-border merger or approved by such an authority, may examine the common draft terms of cross-border merger and draw up a single written report to all the members.		
2. The report referred to in paragraph 1 shall at least in any case include the expert's opinion as to whether the cash compensation referred to in Article 86i is adequate. When assessing it regard	3. The report referred to in paragraph 1 shall in at least any case include the experts' s opinion as to whether the cash compensation referred to in Article 126a and the share exchange ratio are	2. The report referred to in paragraph 1 shall in any case at least include the expert's opinion as to whether the cash compensation referred to in Article 160i and the share exchange ratio are adequate. When assessing With regard to the cash compensation referred to in Article 160e point(q), the expert shall consider any market price of	

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⁷ 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).

<p>to the cash compensation referred to in <u>point (i) of Article 86d point (i)</u>, the expert shall consider any <u>the</u> market price if any of those shares in the company if any prior to the announcement of the conversion proposal or to the value of the company excluding the effect of the proposed conversion as determined according to <u>in accordance with</u> generally accepted valuation methods. The report shall at least:</p>	<p>adequate. <u>When assessing</u> With regard to the cash compensation referred to in <u>Article 122 point (m)</u>, the expert shall consider any the market price if any of those shares in the merging companies prior to the announcement of the merger proposal or to the value of the companies excluding the effect of the proposed merger as determined according to <u>in accordance with</u> generally accepted valuation methods. The reports shall at least:</p>	<p>those shares in the company being divided if any prior to the announcement of the division proposal or to the value of the company excluding the effect of the proposed division as determined according to <u>in accordance with</u> generally accepted valuation methods. The report shall at least:</p>	
<p>(a) indicate the method or methods used to arrive at <u>determine</u> the <u>amount of the</u></p>	<p>(a) indicate the method or methods used to arrive at <u>determine</u> the <u>cash</u></p>	<p>(a) indicate the method or methods used to arrive at <u>determine</u> the <u>amount of the</u> cash compensation proposed ;</p>	

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<p><i>cash compensation proposed;</i></p>	<p><i>compensation proposed;</i></p>	
	<p>(b) <i>indicate the method or methods used to arrive at the share exchange ratio proposed;</i></p>	<p>(b) <i>indicate the method or methods used to arrive at the share exchange ratio proposed ;</i></p>
<p>(b) <i>state whether such the method or methods used are is adequate for the assessment of the cash compensation, and indicate the value arrived at using that such methods and give an opinion on the relative importance attributed to that those methods in arriving at the value</i></p>	<p>(c) <i>state whether the method or methods used are adequate for the assessment of the cash compensation, and the share exchange ratio, and indicate the value arrived at using each of those such such methods and give an opinion on the relative importance attributed to such</i></p>	<p>(c) <i>state whether such the method or methods are is adequate for the assessment of the cash compensation and the share exchange ratio, and indicate the value arrived at using such methods, and give an opinion on the relative importance attributed to that those methods in arriving at the values, decided on; and</i></p>

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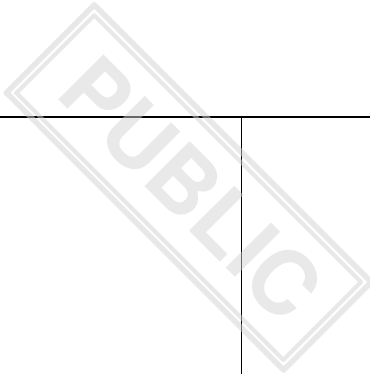
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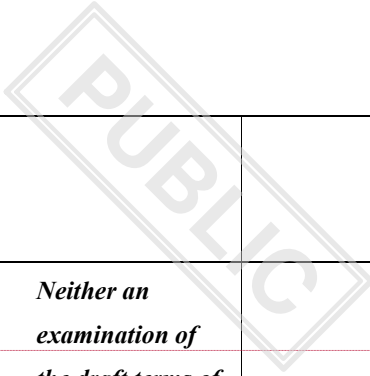
<p>decided on value cash compensation decided on; <u>and</u></p>	<p><u>those</u> methods in arriving at the value decided on; and in ease<u>the</u> event <u>that</u> different methods are used in the merging companies, <u>state</u> also whether the use of different methods was justified; <u>and</u></p>		
<p>(c) describe any special valuation difficulties which have arisen.</p>	<p>(d) describe any <u>specifical</u> valuation difficulties which have arisen.</p>	<p>(d) describe any <u>specifical</u> valuation difficulties which have arisen .</p>	
<p>█ The expert shall be entitled to secure<u>obtain</u> from the company all the necessary information <u>necessary</u> for the discharge of his or her<u>the</u></p>	<p><u>The experts shall be entitled to obtain</u>secure <u>from the merging companies all the necessary</u> information <u>necessary</u> for the</p>	<p>█ The expert shall be entitled to <u>obtain</u>secure from the company being divided all the necessary information <u>necessary</u> for the discharge of his or her<u>the</u> duties <u>of</u> <u>the expert</u>.</p>	

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<p>duties of the expert.</p>	<p>discharge of his or her the duties of the expert.”;</p>		
<p>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 to dispense with same.</p> <p>Member States may exclude single-member companies from the provisionsapplication of this Article.</p>	<p>4. Neither an examination of the common draft terms of cross-border merger by independent experts nor an expert report shall be required if all the members of each of the companies involved in the cross-border merger have so agreed.</p> <p>Member States may exclude single-member companies from the application provisions of this Article.</p>	<p>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 to dispense with same.</p> <p>Member States may exclude single-member companies from the application provisions of this Article .</p>	



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DISCLOSURE			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86 gh Disclosure	Article 123 Disclosure	Article 160g Disclosure	12, 15
<p>1. Member States shall ensure that the following documents are disclosed <u>by the company</u> and made publicaly available in the register of the departure Member State, at least one month before the date of the general meeting referred to in Article 86hi:</p>	<p>1. Member States shall ensure that the following documents are disclosed <u>by the company</u> and made publicaly available in the registers of <u>the Member State of each of the merging companies</u>, at least one month before the date of the general meeting referred to in Article 126:</p>	<p>1. Member States shall ensure that the following documents are disclosed <u>by the company</u> 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 160hk:</p>	<p>(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 and/or in accordance with national practice, <u>or both</u>, include board level employee representatives in the decision on the draft terms of a cross-border operation.</p>

			<p><i>Such information should at least include the envisaged legal form envisaged offer the company or companies, the instrument of constitution, where applicable, the statutes, the proposed indicative timetable for the operation and details of the any safeguards offered to members and creditors. A notice should be disclosed in the business register 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 comments with regard to the proposed operation. Member States may could also decide that the independent expert's report required by this</i></p>
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			Directive <i>ishes to be disclosed.</i>
<p>(a) the draft terms of the cross-border conversion; and</p> <p>(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 <u>five</u> working days before the date of the general meeting, comments concerning the draft terms of the cross-border conversion.</p>	<p>(a) the common draft terms of the cross-border merger; and</p> <p>(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 the 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</p>	<p>(a) the draft terms of the cross-border division; and</p> <p>(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.</p>	

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	merger.		
<i>Member States may require that the independent expert's report, if drafted in accordance with Article 36ffg, is disclosed and made publicly available in the register.</i>	<i>Member States may require that the independent expert's report, if drafted in accordance with Article 125, is disclosed and made publicly available in the register.</i>	<i>Member States may require that the independent expert report, if drafted in accordance with Article 160ff, is disclosed and made publicly available in the register.</i>	
<i>Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert's report.</i>	<i>Member States shall ensure that the company is able to exclude confidential information from the disclosure of the disclosure of the independent expert's report prior to it being disclosed.</i>	<i>Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert's report prior to it being disclosed.</i>	<i>(154) 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 national or Union or national law. Such non-disclosure should not undermine the</i>

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			<i>other requirements provided for in under this Directive.</i>
The documents <i>disclosed in accordance with this paragraph</i> shall also be accessible by means of through the system <i>of interconnection of registers</i> referred to in Article 22.	<i>The documents disclosed in accordance with this paragraph</i> shall also be accessible by means of through the system <i>of interconnection of registers</i> referred to in Article 22.	The documents <i>disclosed in accordance with this paragraph</i> shall be also accessible by means of through the system <i>referred to in Article 22 of interconnection of registers.</i>	
2. Member States may exempt the a company from the disclosure requirement referred to in paragraph 1 where, for a continuous period beginning at least one month before the date fixed for the general meeting <i>referred to in Article 86</i> h and ending not earlier than the conclusion of that meeting, it that company makes the documents referred <i>to</i> in paragraph 1;	2. Member States may exempt merging companies from the disclosure requirement referred to in paragraph 1 where, <u>for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 126</u> and ending not earlier than the conclusion of that meeting, those	2. Member States may exempt the a company being divided from the disclosure requirement referred to in paragraph 1 where, for a continuous period beginning at least one month before the date fixed for the general meeting <i>referred to in Article 160</i> h and ending not earlier than the conclusion of that meeting, it that company makes the documents referred <i>to</i> in paragraph 1;	

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available on its website free of charge to the public.	companies make the <i>documents referred to in paragraph 1, available on</i> their websites free of charge <i>to the public.</i>	free of charge to the public.	
However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of <i>the</i> documents, unless and only to the extent that they which are proportionate in order to achieving those objectives.	However, <u>Member States</u> shall not subject that <u>exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of the documents</u> , unless and <u>only to the extent that they which</u> are proportionate in order to achieving those objectives.	However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of those the documents, unless and only to the extent that they which are proportionate in order to achieving those objectives.	
3. Where the company discloses makes the draft terms of the cross-border conversion <u>available</u> in accordance with	3. Where merging companies disclose make the common draft terms of the cross-border merger <u>available</u> in	3. Where the company being divided discloses makes the draft terms of the cross-border division <u>available</u> in accordance with paragraph 2 of this Article, it shall submit, at	

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<p>paragraph 2 <i>of this Article</i>, it shall submit at least one month before the date of the general meeting referred to in Article 86i to the register of the departure Member State, <u>at least one month before the date of the general meeting referred to in Article 86h</u>, the following information which has to be disclosed:</p>	<p>accordance with paragraph 2 of this Article, <i>they</i> shall submit, at least one month before the date of the general meeting referred to in Article 126 to the respective national registers, at least one month before the date of the general meeting referred to in <u>Article 126</u>, the following information which has to be disclosed:</p>	<p>least one month before the date of the general meeting referred to in Article 160k, to the register, <u>at least one month before the date of the general meeting referred to in Article 160h</u>, the following information which has to be disclosed:</p>
<p>(a) the legal form and name <u>of the company</u> and the location of its registered office of the company in the departure Member State as well as and the legal form and name those proposed for the converted company in the destination Member State <u>and the proposed</u></p>	<p>(a) <u>for each of the merging companies</u> the its legal form and name and registered office of each of the merging companies and the location of their its registered office and the legal form and name and</p>	<p>(a) the legal form and name and registered office of the company being divided <u>and the location of its registered office</u> and the legal form and name and registered office proposed for <u>any the newly created company or companies</u> resulting from the cross-border division <u>and the proposed</u></p>

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<p><u>location of its registered office in that Member State;</u></p>	<p><u>registered office</u> proposed for <u>any</u>the newly created company <u>and the proposed location of its registered office;</u></p>	<p><u>location of their registered offices;</u></p>
<p>(b) the register in which the documents referred to in Article 14 are filed in respect of the company- and <u>the its registration</u> number in that register;</p>	<p>(b) <u>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;</u></p>	<p>(b) the register in which the documents referred to in Article 14 are filed in respect of the company being divided, and <u>theits registration</u> number in that register ;</p>
<p>(c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members; <u>and</u></p>	<p>(c) <u>an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors,</u></p>	<p>(c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members; <u>and</u></p>

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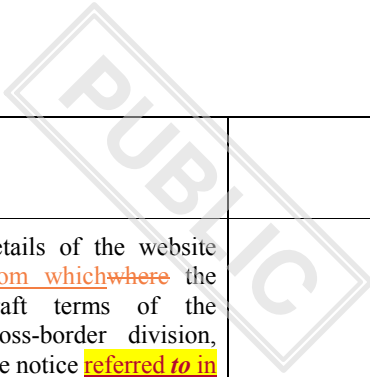
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	employees and members; <u>and</u>		
(d) details of the website <u>from which</u> where <i>the</i> draft terms of the cross-border conversion, the notice referred <i>to</i> in paragraph <u>1</u> and the independent expert's report referred <i>to</i> in <u>paragraph 1</u> and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.	(d) details of the website <u>from which</u> where the common draft terms of the cross-border merger, <i>the notice referred to in paragraph 1, and the independent expert's report referred to in paragraph 1</i> and complete information on the arrangements referred to in point (c) <i>of this paragraph</i> may be obtained <i>online and</i> free of charge.	(d) details of the website <u>from which</u> where the draft terms of the cross-border division, the notice referred <i>to</i> in <u>paragraph 1</u> and the independent expert's report referred <i>to</i> in <u>paragraph 1</u> and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.	
<u>The register of the departure Member State shall make publicly available the information referred to in points (a) to (d) of the first</u>	<u>The register of the Member State of each of the merging companies shall make publicly available the</u>	<u>The register shall make publicly available the information referred to in points (a) to (d) of the first subparagraph .</u>	



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<u>subparagraph.</u>	<u>information referred to in points (a) to (d) of the first subparagraph.</u>		
<p>4. Member States shall ensure that the <u>information requirements</u> referred to in paragraphs 1 and 3 can be completed<u>submitted/fulfilled</u> fully online in their entirety without the necessity for the applicants to appear in person before any competent authority in the departure Member State, <i><u>in accordance/compliance with the relevant provisions of Chapter III of Title I.</u></i></p>	<p>4. Member States shall ensure that the <u>requirements information</u> referred to in paragraphs 1 and 3 can be completed <u>submitted/fulfilled</u> fully online in their entirety without the necessity for the applicants to appear in person before any competent authority in ■ the <i><u>Member States of the merging companies, in compliance/accordance with the relevant provisions of Chapter III of Title I.</u></i></p>	<p>4. Member States shall ensure that the <u>requirements—information</u> referred to in paragraphs 1 and 3 can be completed <u>submitted—fulfilled</u> fully online in their entirety without the necessity for the applicants to appear in person before any competent authority in the Member State concerned, <i><u>in compliance/accordance with the relevant provisions of Chapter III of Title I.</u></i></p>	
	<p>5. Where the approval of the merger is not required by the general meeting of the</p>		

	<p>acquiring company in accordance with Article 126(3), the disclosure referred to in paragraphs 1, 2 and 3 of this Article shall be made available at least one month before the date of the general meeting of the other merging company or companies.</p>		
<p>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, is to be published in their national gazette or through a central electronic platform in accordance with Article 16 paragraph (3). In that instance, Member States shall ensure that the register transmits</p>	<p>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, is to be published in their national gazette or through a central electronic platform in accordance with Article 16</p>	<p>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, is to be published in their national gazette or through a central electronic platform in accordance with Article 16 paragraph (3). In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette or to thea</p>	

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<p>the relevant information to the national gazette <u>or to the central electronic platform.</u></p>	<p>paragraph 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.</p>	<p><u>central electronic platform.</u></p>	
<p>6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible toby the public free of charge through the system of interconnection of registers.</p>	<p>7. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible byto the public free of charge through the system of interconnection of registers.</p>	<p>6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible byto the public free of charge through the system of interconnection of registers.</p>	
<p>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</p>	<p>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,</p>	<p>Member States shall further ensure that any fees charged to the company █ by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 5 shall do not exceed the recovery of the</p>	

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referred to in paragraph 5 shall do not exceed the <i>recovery of the</i> costs of providing <i>such services</i> .	for the publication referred to in paragraph 5 shall do not exceed the <i>recovery of</i> the costs of providing <i>such</i> <i>services</i> .	costs of providing <i>such</i> <i>services</i> .	
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APPROVAL BY THE GENERAL MEETING			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86 hi Approval by the general meeting	<i>Article 126</i> Approval by the general meeting	<i>Article 160h</i> Approval by the general meeting	16
1. After taking note of the reports referred to in Articles 86e ■ and 86fg , where applicable, and the <i>employees' opinions</i> <i>submitted in</i> <i>accordance with</i> <i>Article 86e and</i> <i>comments submitted</i>	1. <u>After taking note of</u> <u>the reports referred to</u> <u>in Articles 124g</u> ■ and 125, <i>where</i> <i>applicable, and the</i> <i>employees' opinions</i> <i>submitted in</i> <i>accordance with</i> <i>Article 124(6) and</i> <i>comments submitted</i>	1. After taking note of the reports referred to in Articles 160 eg ■ and 160 f , where applicable, and the <i>employees' opinions</i> <i>submitted in</i> <i>accordance with</i> <i>Article 160eg and</i> <i>comments</i> <i>submitted in</i> <i>accordance with</i> <i>Article 160gj</i> , the general meeting of the company being	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 <i>necessary amendments to the</i> <i>instruments of constitution, including the</i> <i>statutes</i> . It is important that the required majority requirement for such a the vote should be sufficiently large high in order to ensure that the decision ■ is based ontaken by a <i>solid majority</i> . In addition, members should also have the right to vote on any arrangements concerning employee participation, if they have

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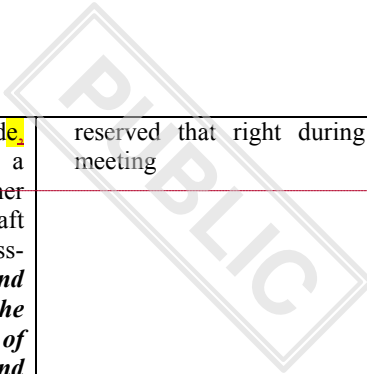
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<p><i>in accordance with Article 86g, the general meeting of the company shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.</i></p>	<p><i>in accordance with Article 123(A), the general meeting of each of the merging companies shall decide, by means of a resolution, on the approval of 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 document instrument.</i></p>	<p>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.</p>	<p>reserved that right during the general meeting</p>
<p>2. The general meeting of the company shall may reserve the right to make</p>	<p>2. The general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to</p>	<p>2. The general meeting of the company being divided may reserve the right to make implementation of</p>	



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<p>implementation of the cross-border conversion conditional on express ratification by it of the arrangements referred to in Article 86l.</p>	<p>the participation of employees in the company resulting from the cross-border merger.</p>	<p>the cross-border division conditional on express ratification by it of the arrangements referred to in Article 160^{la}.</p>	<p>PUBLIC</p>
	<p>3. The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the conditions laid down in Article 94 are fulfilled.</p>		
<p>3. Member States shall ensure that the approval of █ the draft terms of the cross-border conversion, or and of any amendment thereof of those draft terms, requires a majority of not less than two thirds but not more than 90 % of the</p>		<p>3. Member States shall ensure that the approval of █ the draft terms of the cross-border division, or and of any amendment to those draft terms thereof, requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented at the general meeting. In</p>	

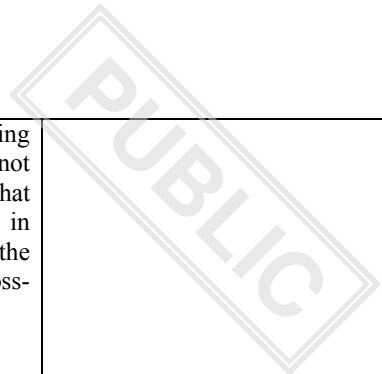
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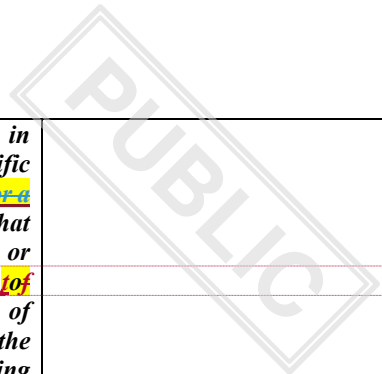
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<p>votes attached either to the shares or to the subscribed capital represented <i>at the general meeting</i>. In any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.</p>		<p>any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.</p>	
<p>4. <i>Where a clause inof the draft terms of the cross border conversion or any amendment of the instrument of constitution of the converting company leads to an increase of the economic obligations of a</i></p>		<p>4. <i>Where a clause inof 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 membershareholder towards the company or third parties, Member States may</i></p>	

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<p>membershareholder towards the company or third parties, Member States may providerequire, in such specific circumstances, for a requirement that thisatsuch clause or the amendment of the instrument of constitution shall be approvedrequires approval by the membershareholder concerned, provided that thisatsuch membershareholder is unable to exercise the rights laid down in Article 86ij.</p>		<p>providerequire, in such specific circumstances, for a requirement that thisatsuch clause or the amendment of the instrument of constitution of the company being divided shall be approved by the member shareholder concerned, provided that thisatsuch membershareholder is unable to exercise the rights laid down in Article 160ij.</p>	
<p>5. Member States shall ensure that the</p>	<p>4. Member States shall ensure that the</p>	<p>5. Member States shall ensure that the approval of the</p>	

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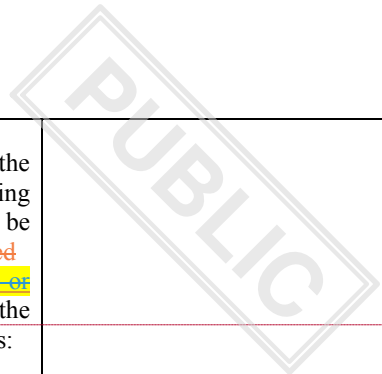
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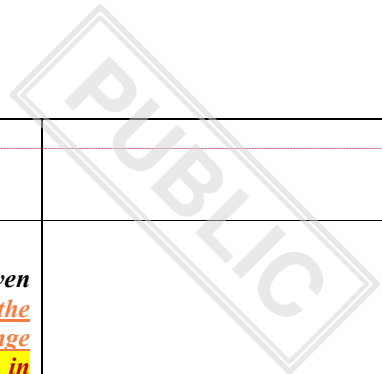
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<p>approval of the cross-border conversion by the general meeting cannot be disputedchallenged solely on one or more of the <i>following grounds</i>:</p>	<p><i>approval of the cross-border merger by the general meeting</i> cannot be disputedchallenged solely on the following grounds:</p>	<p>cross-border division by the general meeting cannot be disputedchallenged solely on one or more of the following grounds:</p>	
	<p>(a) the share exchange ratio referred to in point (b) of Article 122(b) has been inadequately set;</p>	<p>(a) the share exchange ratio referred to in point (b) of Article 160(b) has been inadequately set ;</p>	
<p>(a) the cash compensation referred to in Article 86d(i) has been inadequately set</p>	<p>(b) the cash compensation referred to in Article 122(m) has been set at an inadequately</p>	<p>(b) the cash compensation referred to in Article 160e (q) has been inadequately set or</p>	

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<p>at an inadequate amount; or</p>	<p>set amount; or</p>		
<p>(b) <i>the information given with regard to the cash compensation referred to in point (a) did not comply with the legal requirements.</i></p>	<p>(c) <i>the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in or points (a) and (b) did not comply with the legal requirements.</i></p>	<p>(c) <i>the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in or points (a) and (b) did not comply with the legal requirements.</i></p>	

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PROTECTION OF MEMBERS			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals

Article 86j Protection of members	Article 126a Protection of members	Article 160i <i>Protection of members</i>	18, 19, 20, 21
<p>1. Member States shall ensure that <i>at least</i> the █ members of a company <i>who voted against the approval of the draft terms of the</i> cross-border conversion have the right to dispose of their <i>shares, in</i> consideration exchange <i>for adequate cash compensation</i>, under the conditions laid down in paragraphs 2 to 56.</p>	<p>1. Member States shall ensure that <i>at least</i> the █ members of the merging companies <i>who voted against the approval of the common draft-terms of the cross-border merger</i> have the right to dispose of their shares, in <i>consideration exchange for adequate cash compensation</i>, under the conditions laid down in paragraphs 2 to 6, <i>provided that as a result of the merger they would acquire shares in the company resulting from the merger, which would be governed by subject to the law of a Member State</i></p>	<p>1. Member States shall ensure that <i>at least</i> the █ members of a company being divided <i>who voted against</i> the approval of the draft terms of the cross-border division of a company being divided have the right to dispose of their shares, in <i>consideration exchange for adequate cash compensation</i>, under the conditions laid down in paragraphs 2 to 6, <i>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 that the Member State of the company being divided.</i></p>	<p><i>As a consequence of a cross-border operation, members often face a situation whereby the law applicable to their rights would change, because they would become members in 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. Therefore, Member States should, therefore, at least, offer provide for members holding shares with voting rights and who voted against the approval of the draft terms, at least to have the right to exit the company and receive a cash compensation for their shares that is equivalent to their value of those shares for members holding shares with voting rights and who</i></p>

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other than the Member State of the respective merging company.

~~voted against the approval of the draft terms.~~ However, Member States ~~should be able~~ **free** ~~to may decide to offer extend this that~~ right also to other members, for example, ~~for 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 ~~different~~ proportions ~~different from those than what~~ they held before the operation, or to members for whom there ~~was~~ **would be** no change of applicable law but for whom certain rights have changed 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 ~~nor~~ special legal form requirements. ~~For example,~~ Member States should, ~~for example,~~ **be able to continue to require** a notarial deed or

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			a confirmation of signatures.
Member States may also provide also for other <u>members of the company such to have the right referred to in the first subparagraph</u> also to other members of the company.	Member States may also provide also for other <u>members of the merging companies such to have the right referred to in the first subparagraph</u> also to other members of the merging companies.	Member States may also provide also such a right also to for <u>other members of the company being divided to have the right referred to in the first subparagraph</u> .	
Member States may require that the explicit <u>express</u> opposition to the draft terms of the cross-border conversion, and/or the members' intentions to exercise their right to dispose of their shares, or both, <u>shall</u> be appropriately documented, at the latest at the general meeting referred to in Article 86 ^h . Member States may allow to consider	Member States may require that the explicit <u>express</u> opposition to the common draft terms of the cross-border merger, and/or the members' intentions to exercise their right to dispose of their shares, or both, <u>shall</u> be appropriately documented, at the latest at the general meeting referred to in Article 126.	Member States may require that <u>express</u> the explicit opposition to the draft terms of the cross-border division, and/or the members' intentions to exercise their right to dispose of their shares, or both, <u>shall</u> be appropriately documented at the latest at the general meeting referred to in Article 160 ^h . Member States may allow to consider the recording of that <u>opposition/objection</u> to the draft terms of the cross-border division <u>to be considered as</u> proper	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 <u>have decided to</u> exercise the right to dispose of their shares. <u>This</u> at <u>requirement</u> should be without prejudice to any formal requirements set up <u>laid down in</u> national law. Members <u>might could</u>

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<p>the recording of that objection<u>opposition</u> to the draft terms of the cross-border conversion <u>to be considered as</u> proper documentation of a negative vote.</p>	<p>Member States may allow to consider the recording ing of that opposition<u>objection</u> to the common draft terms of the cross-border merger <u>to be considered as</u> proper documentation of a negative vote.</p>	<p>documentation of a negative vote.</p>	<p>also be required to indicate, together with that declaration or within a specific time limit, whether they intend to <u>dispute</u> challenge the offered cash compensation <u>offered</u> and <u>claim</u> demand additional cash compensation.</p>
<p>2. Member States shall <i>establish the period within which the members referred to in paragraph 1 have to declare to the company their decision</i> to exercise the right to dispose of their shares. <i>That period shall not exceed one month after the general meeting referred to in Article 86^{hi}.</i> Member States shall ensure that the company provides an electronic address for</p>	<p>2. Member States shall <i>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.</i> <i>That period shall not exceed one month after the general meeting referred to in Article 126.</i> Member States shall</p>	<p>2. Member States shall <i>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.</i> <i>That period shall not exceed one month after the general meeting referred to in Article 160^{hk}.</i> Member States shall ensure that thea company being divided provides an electronic address for receiving thisa declaration electronically.</p>	

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<p>receiving thisat declaration electronically.</p>	<p>ensure that the merging companies provide an electronic address for receiving thatthis declaration electronically.</p>		
<p>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. Thisat period mayshall not end laterexceed more than two months after the cross-border conversion takes effect in accordance withaccording to Article 86qf.</p>	<p>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. Thisat period mayshall not endlaterexceed more than two months after the cross-border merger takes effect according toin accordance with Article 129.</p>	<p>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. Thisat period mayshall not end laterexceed more than two months after the cross-border division takes effect according toin accordance with Article 160qf.</p>	
<p>4. Member States shall ensure that any members who haves</p>	<p>4. Member States shall ensure that any members</p>	<p>4. Member States shall ensure that any members who haves declared their the his or her decision to exercise the right</p>	<p>(20) The calculation of the offer of cash compensation should be based on generally accepted</p>

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<p>declared their his or her the decision to exercise the right to dispose of their shares, but who considers that the cash compensation offered by the company has not been adequately set, is are entitled to demand claim additional cash compensation before a the competent authorit ies or body ies mandated under national law. Member States shall establish a time limit for the demand relating to the claim for additional cash compensation.</p>	<p>who has declared their his or her the decision to exercise the right to dispose of the shares, but who considers that the cash compensation offered by the merging company concerned has not been adequately set, is are entitled to claim demand additional cash compensation before the competent authorit ies or body ies mandated under national law. Member States shall establish a time limit for the claim for the demand relating to additional cash compensation.</p>	<p>to dispose of the shares, but who considers that the cash compensation offered by the merging company being divided concerned has not been adequately set, is are entitled to claim demand additional cash compensation before a the competent authority ies or a body ies mandated under national law. Member States shall establish a time limit for the demand claim relating to for additional cash compensation.</p>	<p>valuation methods. Members should have a right to challenge 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 exercised declared their decision to exercise the right to dispose of their shares are entitled to join the such proceedings, and Member States should also be able to establish time limits in national law for doing it joining those proceedings in national law.</p>
<p>Member States may provide that the final decision to</p>	<p>Member States may provide that the final</p>	<p>Member States may provide that the final decision to provide ing a n additional</p>	

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<p><i>providing an additional cash compensation is valid for those all members who have declared their decision to exercise the right to dispose of their shares aeccording toin accordance with paragraph 2.</i></p>	<p><i>decision to providing ane additional cash compensation is valid for those all members of the merging company concerned who have declared their decision to exercise the right to dispose of their shares aeccording toin accordance with paragraph 2.</i></p>	<p><i>cash compensation is valid for those all members of the merging company concerned being divided who have declared their decision to exercise the right to dispose of their shares aeccording in accordance with to paragraph 2o.</i></p>	
<p>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.</p>	<p>5. Member States shall ensure that the ce national law of the Member State to which a merging company is subject, governs the rights referred to in paragraphs 1 to 46 and that the exclusive competence to resolve any disputes relating to those rights lies within the</p>	<p>5. Member States shall ensure that the national law of the Member State of a company being divided governs the rights referred to in paragraphs 1 to 45 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that Member State of the company being divided.</p>	

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	<u>jurisdiction of that Member State concerned.</u>		
6.	Member States shall ensure that members of the merging companies who did not <i>have or did not exercise the right to dispose of their shares</i> , but who consider that the share-exchange ratio set out in the common draft terms of the cross-border merger is inadequate, may <i>dispute</i> that ratio; set out in the common draft terms of the cross-border merger and <i>demand claim cash payment. That</i> <i>Proceedings in that regard</i> shall be initiated before <i>the competent authority or bodies</i>	6. Member States shall ensure that members of the company being divided who did not <i>have or did not exercise the right to dispose of their shares</i> , but <i>who</i> consider that the share-exchange ratio set out in the draft terms of the cross-border division is inadequate, may <i>dispute</i> that ratio set out in the draft terms of the cross-border division and <i>demand claim cash payment. That</i> <i>Proceedings in that regard</i> shall be initiated before the competent <i>authority or bodies</i> mandated under the national law of the <i>Member State to which the company being divided is subject</i> , within the time limit laid down in that national law <i>of that Member State</i> and <i>such proceedings</i> 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.	(21) <i>In case of As far as cross-border mergers or divisions are concerned, members who did not have or did not exercise an exit the right to exit the company should, however 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 possible complementary cash payment included in the draft terms</i>

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	<p><i>mandated under the national law of the Member State to which the respective merging company is subject, within the time limit laid down in that national national law of that Member State, and the 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.</i></p>		
	<p><i>Member States may also provide that the share exchange ratio as established in that decision is valid for those any members of the merging company</i></p>		

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	<i>concerned who did not have or did not exercise their right to dispose of their shares.</i>		
	7. <i>Member States may also provide that the company resulting from the cross-border merger can provide for shares or other compensation instead of a cash payment.</i>	7. <i>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 for shares or other compensation instead of a cash payment.</i>	

PROTECTION OF CREDITORS

Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86 jk Protection of creditors	Article 126b Protection of creditors	Article 160j <i>Protection of creditors</i>	22, 23, 24, 25
1. <i>Member States shall provide for an adequate system of</i>	1. <i>Member States shall provide for an adequate system of</i>	1. <i>Member States shall provide for an adequate system of protection of the interests of creditors;</i>	(22) Following a cross-border <i>operation</i> , the former creditors of the <i>company or</i> companies <i>carrying out that operation</i> may <i>could</i> see their claims affected where the the <i>company</i> which <i>that</i> is liable for the debt is, thereafter <i>following that</i>

<p><i>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.</i></p>	<p><i>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.</i></p>	<p><i>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.</i></p>	<p><i>operation</i>, governed by the law of another Member State. Currently, creditor protection rules vary across Member States, which adds significant complexity to the cross-border <i>operation</i> process and leads to uncertainty both for the companies involved and for their creditors in relation to the recovery or satisfaction of their claim</p>
<p>Member States shall ensure that creditors who are dissatisfied with the <i>safeguards offered</i> in the draft terms of the cross-border conversion, as provided for in <i>point (f) of Article 86d (4)</i> (f), may apply <i>within three months of the disclosure of</i></p>	<p><i>Member States shall ensure that the creditors who are dissatisfied with the safeguards offered in the common draft terms of the cross-border merger, as provided for in point (n) of Article 122 point (m), may apply within three months</i></p>	<p><i>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 160de point (r), may apply within three months of the disclosure of the draft terms of cross-border division referred to in Article 160gj to the appropriate administrative or</i></p>	<p>(23) In order to guarantee <i>ensure that creditors have</i> the appropriate protection of creditors in cases where they are not satisfied with the protection offered by the company in the draft terms <i>and where they may not have found a satisfactory solution with the company</i>, creditors, <i>who have notified the company beforehand, they should be able to</i> may apply for <i>safeguards</i> to the competent <i>appropriate</i> authority. <i>When assessing these such safeguards</i>, the <i>appropriate authority</i> should <i>take into account whether the creditor's claim</i> against the company or a third party <i>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</i> can be brought in the same jurisdiction .</p>

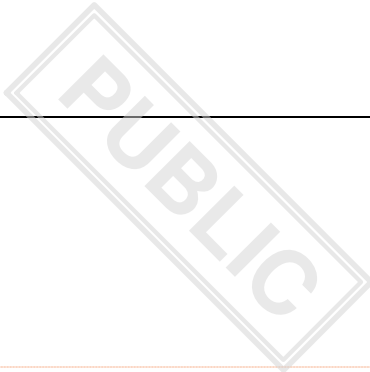
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<p>the draft terms of cross-border conversion referred to in Article 86^{gh}, to the appropriate administrative or judicial authority for adequate safeguards, provided that they such creditors can credibly demonstrate that, due to the cross-border conversion, the satisfaction of their claims is at stake and that they have not obtained no adequate safeguards have been obtained from the company.</p>	<p>of the disclosure of the common draft terms of cross-border merger, referred to in Article 123, to the appropriate administrative or judicial authority for adequate safeguards, provided that they 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 no adequate safeguards have been obtained from the merging companies.</p>	<p>judicial authority for adequate safeguards, provided that they 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 no adequate safeguards have been obtained from the company.</p>	
<p>Member States shall ensure that the</p>	<p>Member States shall ensure that the</p>	<p>Member States shall ensure that the safeguards are</p>	

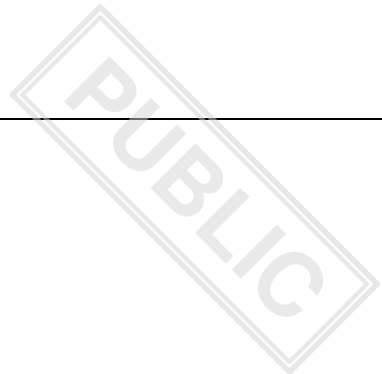
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<p><i>safeguards are dependentconditional on the cross-border conversion taking effect in accordance with Article 86^{gf}.</i></p>	<p><i>safeguards are dependentconditional on the cross-border merger taking effect in accordance with Article 129.</i></p>	<p><i>dependentconditional on the cross-border division taking effect in accordance with Article 160^{gf}.</i></p>	
		<p>2. Where a creditor of the company to be divided does not obtain satisfaction from <i>the company to whom</i>which <i>the liability is allocated</i> to, the other recipient companies, and in the case of a partial division <i>or a division by separation</i>, the company being divided, shall be jointly and severally liable with the <i>company to which</i>whom <i>the liability is allocated</i> to for that obligation. However, the maximum amount of joint and several</p>	

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		<p>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.</p>	
<p>2. Member States may require that the administrative or management body or administrative organ of the company provide a declaration that accurately reflects the its current financial status of the company at the a date of the declaration, which shall not be earlier than one month before its the disclosure of that</p>	<p>2. Member States may require that the administrative or management or administrative organ body of each of the merging companies provides a declaration that accurately reflects ing its their current financial status of these respective companies at the a date of the declaration, which shall not be earlier</p>	<p>3. Member States may require that the administrative or management or administrative organ body of the company being divided provides a declaration that accurately reflects the its current financial status of the company at the a date of the declaration, which shall not be earlier than one month before its the disclosure of that declaration. The declaration shall state declare be to the effect that, on the basis of the information</p>	<p>(25) In addition, in order to protect the creditors against the risk of the insolvency of the company following the cross-border operation, Member States should be allowed to require the company or companies to make a declaration of solvency stating that they are not aware of any reason why the company or companies resulting from the cross-border operation should not be able to meet their liabilities. In those circumstances, Member States should be able to make the members of the management organbody 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 drawdecide on the appropriate consequences for of providing inaccurate or misleading declarations, including which should include effective and proportionate sanctionspenalties and liabilities in compliance with Union law.</p>

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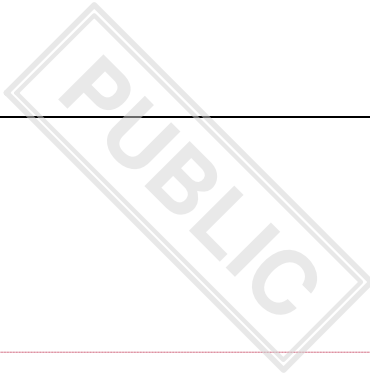
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<p>declaration. The declaration shall statebe to the effect declare that, on the basis of the information available to the administrative or management or administrative organ body of the company at the date of thethat</p>	<p>than one month beforeits the disclosure of that declaration. The declaration shall statebe to the effect declare that, on the basis of the information available to the administrative or administrative or</p>	<p>available to the administrative or management or administrative organ body of the company being dividedat the date of the that declaration, and after having made reasonable enquiries, thatadministrative or management body theyit areis unaware of any reason why any</p>	
<p>recipient company and, in the case of a partial division, the company being divided, shouldwould, after</p>	<p>administrative organ body of the merging companies at the date of that</p>	<p>the division takes effect, be unable to meet the liabilities allocated to themit under the draft terms of the cross-border division, when those liabilities fall due. The declaration shall be disclosed together with the draft terms</p>	
<p>isthey are unaware of any reason why the company shouldwould, after</p>	<p>having made reasonable enquiries, theythat</p>	<p>of the cross-border division, when those liabilities fall due. The declaration shall be disclosed together with the draft terms</p>	
<p>the conversion takes effect, be unable to meet theits liabilities when those liabilities</p>	<p>administrative or management body is are unaware of any reason why the company resulting</p>	<p>of the cross-border division in</p>	

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<p>fall due. The declaration shall be <i>disclosed together with</i> the draft terms of the cross-border conversion ■ in accordance with Article 86g^h.</p>	<p>from the merger would be unable to meet the its liabilities when those liabilities fall due. The declaration shall be <i>disclosed together with</i> the common draft terms of the cross-border merger ■ in accordance with Article 123.</p>	<p>accordance with Article 160g^j.</p>	
<p>3. Paragraphs ■ 12 and 23 are shall be without prejudice to the application of the national laws of the departure Member State concerning the satisfaction of payments or the securing of pecuniary payments</p>	<p>3. Paragraphs ■ 12 and 23 are shall be without prejudice to the application of the national laws of the Member State of the merging companies concerning the satisfaction of payments or securing of payments</p>	<p>4. Paragraphs 1, 2 and 3 are shall be without prejudice to the application of the national laws of the Member State of the dividing company concerning the satisfaction of payments or securing payments of pecuniary or non-pecuniary obligations due to public bodies.</p>	

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<p><i>or non-pecuniary obligations</i> due to public bodies.</p>	<p><i>pecuniary or non-pecuniary obligations</i> due to public bodies.”</p>		
<p>4. <i>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 fromof the date the conversion has taken effect, without prejudice to</i></p>			<p>(24) <i>Member States should ensure that creditors adequate protection for those creditors, who entered into a relationship with the company before the company had made public its intention to carry out a cross-border conversion operation have adequate protection. In addition to the general rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council[*] the Brussels Ia Regulation, Member States should, therefore, provide that such creditors should have the choice right to file of filing a claim in the departure Member States for a period of two years after the disclosure of the draft terms of the cross-border conversion has taken effect. 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 of a company to be protected could also be include comprise active-current and former employees with occupational vested pension rights and persons receiving occupational pension benefits. In addition to</i></p>

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^{*} [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 \(OJ L 351, 20.12.2012, p. 1\).](#)

<p>the rules on jurisdiction rules arising from national or EU Union or national law or from a contractual agreement. The possibility option of instituting such proceedings shall be in addition to other rules on the choice of jurisdiction that are applicable pursuant to Union law.</p>			<p>the general rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council⁹ the Brussels Ia Regulation, Member States should, therefore, provide that such creditors should have the choice-right to file of filing a claim in the departure Member States for a period of two years after the disclosure of the draft terms of the cross-border conversion has taken effect. Also, the two-year protection period measure envisaged provided for by 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, shall be without prejudice to national law determining the statute of limitations periods of claims.</p>
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EMPLOYEE INFORMATION, CONSULTATION AND PARTICIPATION			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86k Employee's information and	Article 126c Employee's information and	Article 160k Employee information and consultation	26

⁹ 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).

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

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<p>consultation to apply information and consultation rights with respect to other the employees of companies other than those referred to in Article 3-paragraph (1) of the Directive 2002/14/EC.</p>	<p>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 to apply information and consultation rights with respect to other the employees of companies other than those referred to in Article 3-paragraph (1) of the Directive 2002/14/EC.</p>		<p>meaning of Council Directive 2001/23/EC¹⁰, in accordance with Directive 2001/23/EC where the cross-border merger or cross-border division is considered to be as transfer of an undertaking within the meaning of that Directive. This Directive does not affect Directive 2009/38/EC, Council Directive 98/59/EC¹¹, Directive 2001/23/EC, and Directive 2002/14/EC and/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</p>
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¹⁰ 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).

¹¹ 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).

			<i>the cross-border operation should take place.</i>
<p>2. Notwithstanding Article 86e(6) and <u>point (b) of Article 86g(1)(b)</u>, Member States shall ensure that <u>rights of employees' rights</u> to information and consultation are respected, at least before the draft terms of the cross-border conversion or the report referred to in Article 86e₂ are decided <u>upon</u>, whichever is earlier₂ in such a way that a reasoned response is given to the employees before the general meeting referred to in Article <u>86h</u>.</p>	<p>2. Notwithstanding <u>point (b) of Article 123(1) and Article 124(64aa) and Article 123(1)(b)</u>, Member States shall ensure that <u>rights of employees' rights to information and consultation rights</u> are respected, at least before the common draft terms of the cross-border merger or the report referred to in Article 124₂ <u>are</u> decided <u>upon</u>, whichever is earlier₂ in such a way that a reasoned response is given to the employees before the general meeting referred to in</p>	<p>2. Notwithstanding Article 160g(6) and <u>point (b) of Article 160g(1)(b)</u>, Member States shall ensure that <u>rights of employees' rights</u> to information and consultation are respected, at least before the draft terms of the cross-border division or the report referred to in Article 160e₂ are decided <u>upon</u>, whichever is earlier₂ in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 160h₂.</p>	

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	<i>Article 126.</i>		
<p>3. Without prejudice to any provisions in force and/or ongoing practices that are in force more favourable to employees, the Member States shall determine the practical arrangements for exercise of exercising exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.</p>	<p>3. Without prejudice to any provisions in force and/or ongoing practices that are in force more favourable to employees, the Member States shall determine the practical arrangements for exercising exercise ofising the right to information and consultation rights in accordance with Article 4 of Directive 2002/14/EC.</p>	<p>3. Without prejudice to any provisions or in force and/or ongoing practices that are in force more favourable to employees, the Member States shall determine the practical arrangements for exercising exercise ofising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.</p>	
Article 861 Employee participation	<i>Article 133</i> Employee participation	<i>Article 160l</i> Employee participation	<i>Recitals 30, 31</i>
<p>1. Without prejudice to paragraph 2, the <i>converted</i> company shall be subject</p>	<p>1. Without prejudice to paragraph 2, the company resulting from the cross-border merger shall be subject to the rules in force concerning employee</p>	<p>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</p>	<p>(30) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border</p>

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<p>to the rules in force concerning employee participation, if any, in the destination Member State.</p>	<p>participation, if any, in the Member State where it has its registered office.</p>	<p>State where it has its registered office .</p>	<p><i>operation</i>, where the company carrying out the cross-border <i>operation has implemented</i> an employee participation system 1, the company <i>or companies resulting from the cross-border operation</i> should be obliged to take a legal form allowing for the exercise of such participation <u>rights</u>, including through the presence of representatives of the employees in the appropriate management or supervisory <u>organbody</u> of the company <i>or companies</i>. Moreover, in such a case, <i>where</i> a bona fide negotiation between the company and its employees <i>takes</i> place, <i>it should be carried out along the lines of</i> in line with the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution <u>that</u> reconciling the right</p>
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			<p>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, the application of standard rules as set out in the Annex to Directive 2001/86/EC should apply, <i>mutatis mutandis</i>. In order to protect either the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out a subsequent domestic or cross border conversion, merger or division, <u>be it cross-border or domestic</u>, within four years.</p> <p>(31) In order to prevent the circumvention of employee participation</p>
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rights **by means of a**
~~cross-border operation,~~
 where a company is
 registered in a Member
 State which provides for
~~such rights, then that~~
 company ~~or those~~
~~companies~~ carrying out
~~the such an cross-border~~
~~operation and~~ registered
 in the Member State
 which provides for the
 employee participation
 rights, should not be able
 to ~~perform carry out~~ a
 cross-border ~~operation~~
~~conversion or division~~
 without first entering into
 negotiations with its
 employees or their
 representatives **when**
where the average
 number of employees
 employed by that

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			company is equivalent to four fifths of the national threshold for triggering such employee participation.
2. However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply, where the company carrying out the conversion has, in the six months prior to the disclosure publication of the draft terms of the cross-border conversion as referred to in Article 86d of this Directive being made publicly available, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in	2. <u>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-</u>	2. However, the rules in force concerning employee participation, if any, in the Member State where the recipient 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/publication of the draft terms of the cross-border division being made publicly available as referred to in Article 160e of this Directive, has 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, which 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:	

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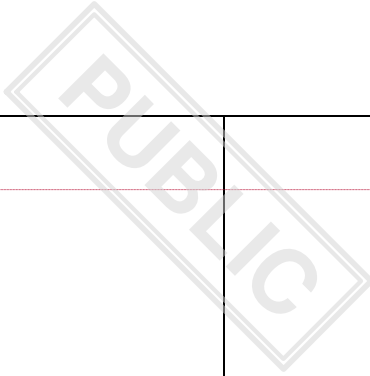
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<p>the law of the departure Member State, which for triggerings the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national-law of the destination Member State does not:</p>	<p><u><i>border merger</i></u> being made publically available as referred to in <u><i>Article 123, an</i></u> <u><i>average number of</i></u> <u><i>employees</i></u> <u><i>equivalent to four</i></u> <u><i>fifths of the</i></u> <u><i>applicable</i></u> <u><i>threshold, as laid</i></u> <u><i>down in the law of</i></u> <u><i>the Member State</i></u> to whosewhose jurisdiction of which of the merging company is subject, which for <u><i>triggersing the</i></u> <u><i>participation of</i></u> <u><i>employees</i></u> <u><i>within</i></u> <u><i>the meaning of</i></u> <u><i>point (k) of Article</i></u> <u><i>2 of Directive</i></u></p>		
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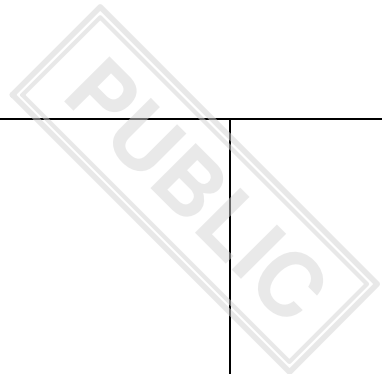


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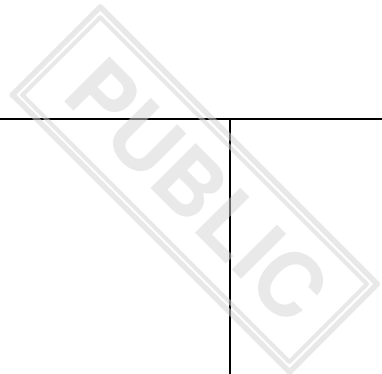
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	<p><u>2001/86/EC, or</u> <u>where the national</u> <u>law applicable to</u> <u>the company</u> <u>resulting from the</u> <u>cross-border merger</u> <u>does not:</u></p>		
<p>(a) provide for at least the same level of employee participation as operated in the company prior to the <u>cross-border</u> conversion, measured by reference to the proportion of employee representatives <u>amongst</u> the members of the administrative or supervisory <u>organbody</u> or their</p>	<p>(a) provide for at least the same level of employee participation as operated in the relevant merging companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or</p>	<p>(a) provide for at least the same level of employee participation as operated in the company <u>being divided</u> prior to <u>its</u> <u>it</u> <u>being</u> <u>the</u> <u>cross-border</u> <u>division</u>, measured by reference to the proportion of employee representatives <u>amongst</u> the members of the administrative or supervisory <u>organbody</u> or their committees or of the management group which covers the profit units of the company, subject to employee representation; or</p>	

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<p>committees or of the management group which covers the profit units of the company, subject to employee representation; or</p>			
<p>(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.</p>	<p>(b) provide for employees of establishments of the company resulting from the cross-border merger 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 company resulting from the cross-border merger has its registered office.</p>	<p>(b) provide for employees of establishments of the recipient companies that are situated in other Member States with 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.</p>	
<p>3. In the cases referred to in paragraph 2 of this Article,</p>	<p>3. In the cases referred to in paragraph 2, the participation of employees in the company resulting from the cross-border merger and their involvement in</p>	<p>3. In the cases referred to in paragraph 2, <u>of this Article</u>, the participation of employees in the <u>recipient</u> companies <u>resulting from</u></p>	

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<p>the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, <i>mutatis mutandis</i> 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:</p>	<p>the definition of such rights shall be regulated by the Member States, <i>mutatis mutandis</i> and subject to paragraphs 4 to 7, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:</p>	<p>the cross-border division and their involvement in the definition of such rights shall be regulated by the Member States, <i>mutatis mutandis</i> and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:</p>	
<p>(a) Article 3(1), <u>points (a)(i) and (b) of Article 3(2)(a)(i), 2(b), and Article 3(3)</u>, the first <i>two sentences</i> of Article</p>	<p>(a) Article 3(1), (2) and (3), the first indent of the first subparagraph of Article 3(4), the second subparagraph of Article 3(4) and Article 3(5) and (7); (b) Article 4(1), Article 4(2)(a), (g) and (h) and Article 4(3); (c) Article 5;</p>	<p>(a) Article 3(1), <u>points (a)(i) and (b) of Article 3(2)(a)(i), 2(b) and Article 3(3)</u>, the first <i>two</i></p>	

<p>3(4), and Article 3(5) and Article 3(7);</p> <p>(b) Article 4(1), points (a), (g) and (h) of Article 4(2)(a), (g) and (h), and Article 4(3) and Article 4(4);</p> <p>(c) Article 5;</p> <p>(d) Article 6;</p> <p>(e) Article 7(<i>paragraph 1</i>), with the exception of the second indent of <i>point (b)</i>;</p> <p>(f) Articles 8, 10, 11 and 12; and</p> <p>(g) point (a) of Part 3 of the Annex.</p>	<p>(d) Article 6;</p> <p>(e) Article 7(1), point (b) of the first subparagraph of Article 7(2), the second subparagraph of Article 7(2) and Article 7(3). However, for the purposes of this Chapter, the percentages required by point (b) of the first subparagraph of Article 7(2) of Directive 2001/86/EC for the application of the standard rules contained in Part 3 of the Annex to that Directive shall be raised from 25 to 33 1/3 %;</p> <p>(f) Articles 8, 10 and 12;</p> <p>(g) Article 13(4);</p> <p>(h) point (b) of Part 3 of the Annex.</p>	<p><i>sentences of</i> Article 3(4), and Article 3(5) and Article 3(7);</p> <p>(b) Article 4(1), points (a), (g) and (h) of Article 4(2)(a), (g) and (h), and Article 4(3) and Article 4(4);</p> <p>(c) Article 5;</p> <p>(d) Article 6;</p> <p>(e) Article 7(<i>paragraph 1</i>), with the exception of the second indent of <i>point (b)</i>;</p> <p>(f) Articles 8, 10, 11 and 12; and</p>	
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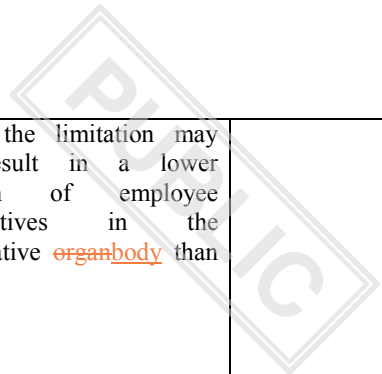
		(g)point (a) of p Part 3 of the Annex.	
4. When regulating the principles and procedures referred to in paragraph 3, Member States:	4. When regulating the principles and procedures referred to in paragraph 3, Member States: <i>(a) shall confer on the relevant bodiesorgans of the merging companies, in the event thatat 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</i>	4. When regulating the principles and procedures referred to in paragraph 3, Member States:	

	<p><i>negotiation to be directly subject to the standard rules for participation referred to in point (b) of <u>Partparagraph 3 of the Annex of that Directive</u> this Article, 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;</i></p>		
(a) shall confer on the special negotiating	(b) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members	(a) shall confer on the special negotiating body the right to decide, by a majority of two	

<p>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;</p>	<p>representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated;</p>	<p>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;</p>	
<p>(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</p>	<p>(c) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ of the company resulting from the cross-border merger. However, if in one of the merging companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower</p>	<p>(b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative organ^{body} of the recipient companies. However, if, in the company being divided, the employee representatives constituted at least one third of the administrative or supervisory</p>	

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<p>representatives in the administrative bodyorgan of the converted company. However, if in the company ■ employee representatives constituted at least one third of the administrative or supervisory bodyboard, the limitation may never result in a lower proportion of employee representatives in the administrative bodyorgan than one third;</p>	<p>proportion of employee representatives in the administrative organ than one third.</p>	<p>bodyboard, the limitation may never result in a lower proportion of employee representatives in the administrative organbody than one third;</p>	
<p>(c) shall ensure that the rules on employee</p>		<p>(c) shall ensure that the rules on <u>employee</u> participation that applied prior to the cross-border</p>	



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<p>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 <u>of Directive 2001/86/EC</u>.</p>		<p>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 <u>of Directive 2001/86/EC</u>.</p>	
<p>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</p>	<p>5. The extension of participation rights to employees of the company resulting from the cross-border merger employed in other Member States, referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce</p>	<p>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</p>	

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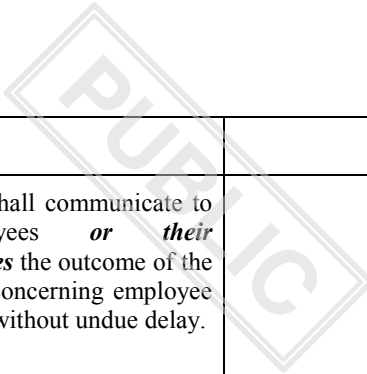
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<p>obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.</p>	<p>thresholds giving rise to participation rights under national law.</p>	<p>participation rights under national law.</p>	
<p>6. Where the <i>converted</i> company ■ is <i>to be governed by</i> an employee participation system, <i>in accordance with the rules referred to in paragraph 2, it</i> shall be obliged to take a legal form allowing for the exercise of participation rights.</p>	<p>6. Where at least one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is to be governed by such a 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.</p>	<p>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, these that companies shall be obliged to take a legal form allowing for the exercise of participation rights.</p>	
<p>7. Where the converted company is operating under an employee participation system, that company it</p>	<p>7. Where the company resulting from the cross-border merger is operating under</p>	<p>7. Where the <i>recipient</i> company ■ is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-</p>	

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<p>shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic conversion, merger, or division, be it cross-border or domestic, or conversion for a period of four years after the cross-border conversion has taken effect, by applying <i>mutatis mutandis</i> the rules laid down in paragraphs 1 to 6.</p>	<p>an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent cross-border or domestic conversion, merger, or division, be it cross-border or domestic, or conversion for a period of four years after the cross-border merger has taken effect, by applying <i>mutatis mutandis</i> the rules laid down in</p>	<p>border or domestic conversion, merger, or division, be it cross-border or domestic, or conversion for a period of four years after the cross-border division has taken effect, by applying, <i>mutatis mutandis</i>, the rules laid down in paragraphs 1 to 6.</p>	
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	<p>paragraphs 1 to 6.</p>		
<p>8. A company shall communicate to its employees <i>or their representatives</i> the outcome of the negotiations concerning employee participation without undue delay.</p>	<p>8. A company shall communicate to its employees or their representatives whether it chooses has chooses to apply standard rules for participation referred to in point (h) of paragraph 3 or whether it enters has entered 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</p>	<p>8. A company shall communicate to its employees <i>or their representatives</i> the outcome of the negotiations concerning employee participation without undue delay.</p>	



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	negotiations without undue delay.		
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PROCEDURE			
Cross-border conversions	Cross-border mergers	Cross-border divisions	Recitals
Article 86m Pre-conversion certificate	<i>Article 127</i> <i>Pre-merger certificate</i>	<i>Article 160m</i> <i>Pre-division certificate</i>	33, 34, 35, 36, 37, 38
1. Member States shall designate the <i>court, notary or other authority or authorities</i> competent (" <i>the competent authority</i> ") to scrutinise the legality of <u>the cross-border conversions</u> (" <i>the competent authority</i> ") as regards <u>that those parts</u> of the procedure which <u>is-are</u> governed	1. <i>Member States shall</i> designate the court, <u>notary or other authority or authorities</u> competent (" <i>the competent authority</i> "), to scrutinise the legality of <u>the cross-border mergers</u> (" <i>the competent authority</i> "), as regards <u>that those parts</u> of the procedure which <u>is-are</u> governed by the law of <i>the Member State of the</i>	1. Member States shall designate the <i>court, notary or other authority or authorities</i> competent (" <i>the competent authority</i> ") to scrutinise the legality of <u>the cross-border divisions</u> (" <i>the competent authority</i> ") as regards <u>the those parts</u> of the procedure which <u>is-are</u> governed by the law of the Member State of the company being divided, and to issue a pre-division certificate attesting <u>to</u> compliance with all relevant conditions, and <u>to</u> the proper completion of all procedures and formalities in that Member State.	

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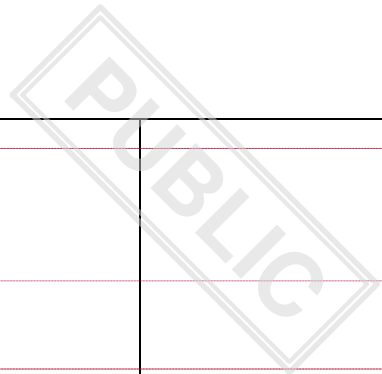
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<p>by the law of the departure Member State and to issue a pre-conversion certificate attesting <u>to</u> compliance with all <u>the</u> relevant conditions and <u>to</u> the proper completion of all procedures and formalities in the departure Member State.</p>	<p><u>merging company</u> <u>and</u> <i>to issue a pre-merger certificate attesting <u>to</u> compliance with all <u>the</u> relevant conditions and <u>to</u> the proper completion of all procedures and formalities in the Member State of the merging company.</i></p>		
<p><i>Such completion of procedures and formalities may comprise the satisfaction <u>of payments</u>, or securing <u>payments or of pecuniary and non-pecuniary obligations due to public bodies or <u>the</u> compliance with <u>specific</u> sectorial requirements, including securing <u>payments or obligations arising from ongoing proceedings.</u></u></i></p>	<p><i>Such completion of procedures and formalities may comprise the satisfaction <u>of payments</u>, or securing <u>of payments-pecuniary and/or non-pecuniary obligations due to public bodies or <u>the</u> compliance with <u>specific</u> sectorial requirements, including securing <u>payments or obligations arising from ongoing proceedings.</u></u></i></p>	<p><i>Such completion of procedures and formalities may comprise the satisfaction <u>of payments</u>, or securing <u>payments of pecuniary and/or non-pecuniary obligations due to public bodies or <u>the</u> compliance with <u>specific</u> sectorial requirements, including securing <u>payments or obligations arising from ongoing proceedings.</u></u></i></p>	



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<p>2. Member States shall ensure that the application to obtain a pre-conversion certificate by the company ■ is accompanied by the following:</p>	<p>2. <i>Member States shall ensure that the application to obtain a pre-merger certificate by the merging company is accompanied by the following:</i></p>	<p>2. Member States shall ensure that the application tofor obtaining the a pre-division certificate by the company being divided is accompanied by the following :</p>	
<p>(a) the draft terms of the cross-border conversion referred to in Article 86d;</p>	<p>(a) <i>the common draft terms of the cross-border merger referred to in Article 122;</i></p>	<p>(a) the draft terms of the cross-border division referred to in Article 160d ;</p>	
<p>(b) the <i>report and the appended opinion, if any</i>, referred to in Article 86e, as well as the report referred to in Article 86f, where those</p>	<p>(b) <i>the report and the appended opinion, if any, referred to in Article 124, as well as the report referred to in Article 125, where those reports they are</i></p>	<p>(b) the <i>report and the appended opinion, if any</i>, referred to in Article 160e, as well as the report referred to in Article 160f, where those reports they are available ;</p>	

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reports they are available;	available;		
(c) any comments submitted in accordance with Article 86g(1); and	(c) any comments submitted in accordance with Article 123(1); and	(c) any comments submitted in accordance with Article 160g(1); and	
(d) information on the approval by the general meeting referred to in Article 86h.	(d) information on the approval by the general meeting referred to in Article 126.	(d) information on the approval by the general meeting referred to in Article 160hk.	
3. Member States may require that the application to obtain a pre-conversion certificate by the company is accompanied by additional information, such as,	3. Member States may require that the application to obtain a pre-merger certificate by the merging company is accompanied by additional information,	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 :	

<i>in particular:</i>	<i>such as, in particular:</i>		
<p>(a) on the number of employees at the time of the drawing up of the draft terms of the cross-border conversion;</p>	<p>(a) on the number of employees at the time of the drawing up of the common draft terms of the cross-border merger;</p>	<p>(a) on the number of employees at the time of the drawing up of the cross-border division ;</p>	
<p>(b) on the existence of subsidiaries and their respective geographical at location;</p>	<p>(b) on the existence of subsidiaries and their respective geographical location;</p>	<p>(b) on the existence of subsidiaries and their respective geographic al location ;</p>	
<p>(c) information regarding the satisfaction fulfilment of obligations due to public bodies</p>	<p>(c) information regarding the fulfilment satisfaction of obligations due to public bodies by the merging</p>	<p>(c) information regarding the fulfilment satisfaction of obligations due to public bodies by the company being divided .</p>	

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<i>by the company.</i>	<i>company;</i>		
<p><i>For the purpose<u>s</u> of this paragraph, competent authorities may request this such information, if not provided <u>by the company</u>, from other relevant authorities.</i></p>	<p><i>For the purpose<u>s</u> of this paragraph, competent authorities may request this such information, if not provided <u>by the merging company</u>, from other relevant authorities.</i></p>	<p><i>For the purpose<u>s</u> of this paragraph, competent authorities may request this such information, if not provided <u>by the company being divided</u>, from other relevant authorities .</i></p>	
<p>4. Member States shall ensure that the application referred to in paragraphs 2 and 3, including <u>the</u> submission of any information and documents, may be completed <u>fully</u> online in its entirety without the necessity <u>for the applicants</u> to appear in person before the</p>	<p>4. <i>Member States shall ensure that the application referred to in paragraphs 2 and 3<u>a</u>, including <u>the</u> submission of any information and documents, may be completed <u>fully</u> online in its entirety without the necessity <u>for the applicants</u> to appear in person before the</i></p>	<p>4. Member States shall ensure that the application referred to in paragraphs 2 and 3<u>a</u>, including <u>the</u> submission of any information and documents, may be completed <u>fully</u> online in its entirety without the necessity <u>for the applicants</u> to appear in person before the competent authority referred to in paragraph 1, <u>in accordance with the relevant provisions of Chapter III of Title I.</u></p>	

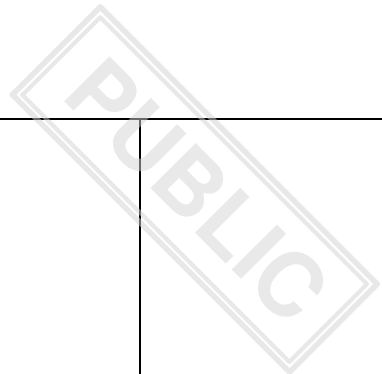
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<p>competent authority referred to in paragraph 1, in complianceaccordance with the relevant provisions of Chapter III of Title I.</p>	<p><i>competent authority</i> <i>referred to in</i> <i>paragraph 1, in</i> <i>complianceaccordance</i> with the relevant provisions of Chapter III of Title I.</p>		
<p>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 <i>the</i> cross-border conversion referred to in paragraph 2 of this Article include information on the procedures by which</p>	<p>5. In respect of compliance with the rules concerning employee participation as laid down in Article 133, the competent authority in the <i>Member State of the</i> <i>merging company shall</i> <i>verify that the common</i> <i>draft terms of the cross-</i> <i>border merger, referred</i> <i>to in paragraph 2 of</i> <i>this Article, include</i> <i>information on the</i> <i>procedures by which</i></p>	<p>5. In respect of compliance with the rules concerning employee participation as laid down in Article 160a, the <i>competent</i> <i>authority of the</i> Member State of the company being divided shall verify that the draft terms of the cross-border division referred to in Article 160e include information on the procedures by which the relevant arrangements for compliance with the rules concerning employee participation as laid down in Article 160l are determined and on the possible options for such arrangements.</p>	

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<p>the relevant arrangements for compliance with the rules concerning employee participation as laid down in Article 86 are determined and on the possible options for such arrangements.</p>	<p><i>the relevant arrangements for compliance with the rules concerning employee participation as laid down in Article 133 are determined and on the possible options for such arrangements.</i></p>		
<p>6. As part of the assessment scrutiny referred to in paragraph 1, the competent authority shall examine the following:</p>	<p>6. <i>As part of the scrutiny assessment referred to in paragraph 1, the competent authority shall examine the following:</i></p>	<p>6. As part of the scrutiny assessment referred to in paragraph 1, the competent authority shall examine the following information :</p>	
<p>(a) all documents and information submitted to the competent</p>	<p>(a) <i>all documents and information submitted to the competent</i></p>	<p>(a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 32a ;</p>	

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<p><i>authority in accordance with paragraphs 2 and 3;</i></p>	<p><i>authority in accordance with paragraphs 2 and 32a;</i></p>		
<p>(b) an indication by the company that the procedure referred to in Article 86l(3) and (4) has started, where relevant.</p>	<p>(b) <i>any indication by the merging companies that the procedure referred to in Article 133(3) and (4) has started, where relevant.</i></p>	<p>(b) an indication by the company <u>being divided</u> that the procedure referred to in Article 160h(3) and (4) has started, where relevant.</p>	
<p>7. Member States shall ensure that the <u>scrutinyassessment</u> referred to in <i>paragraph 1</i> is carried out within <i>three months</i> of the date of receipt of the <i>documents and information</i> concerning</p>	<p>7. <i>Member States shall ensure that the <u>scrutiny assessment</u> 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</i></p>	<p>7. Member States shall ensure that the <u>scrutiny assessment</u> referred to in paragraph 1 is carried out within <i>three months</i> of the <i>date of receipt of the documents and information</i> concerning the approval of the cross-border division by the general meeting of the company <u>being divided</u>. That scrutiny shall have one of the following outcomes:</p>	

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<p>the approval of the cross-border conversion by the general meeting of the company. That <u>scrutiny</u> shall have one of the following outcomes:</p>	<p><i>cross-border merger by the general meeting of the merging company. That scrutiny shall have one of the following outcomes:</i></p>		
<p>(a) where <i>it is determined</i> 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</p>	<p><i>(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;</i></p>	<p>(a) where <i>it is determined</i> that the cross-border division ■ complies with <i>all</i> the relevant conditions and <i>that</i> all necessary procedures and formalities have been completed, the competent authority shall issue the pre-division certificate;</p>	

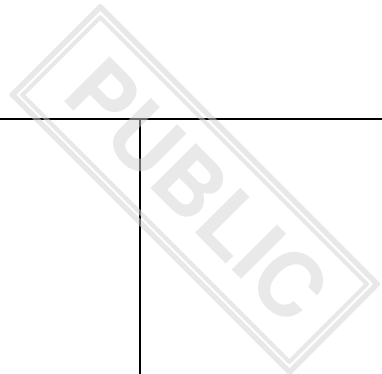
certificate;			
(b) where <i>it is determined that</i> the cross-border conversion does not <i>comply with all the relevant conditions or that not all necessary procedures and/or formalities have been completed</i> , the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision; <i>if in that case, the competent authority may give the company the possibility opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.</i>	(b) where <i>it is determined that the cross-border merger does not comply with all the relevant conditions or that not all necessary procedures and/or formalities have been completed</i> , the competent authority shall not issue the pre-merger certificate and shall inform the company of the reasons for its decision; <i>if in that case, the competent authority may give the company the possibility opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.</i>	(b) where <i>it is determined</i> that the cross-border division does not <i>comply with all</i> the relevant conditions or that not all necessary procedures and/or formalities have been completed, <i>the competent authority shall not issue the pre-division certificate and shall inform the company of the reasons for its decision; if in that case, the competent authority may give the company the possibility opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.</i>	
8. Member States shall ensure that the competent authority shall does not issue the pre-conversion certificate where, if it	8. Member States shall ensure that the competent authority shall does not issue the pre-merger certificate; if where it is determined	8. Member States shall ensure that the competent authority shall does not issue the pre-division certificate where, if it is determined in compliance with national law that a cross-border division is set up set up for abusive or fraudulent purposes leading to or aimed at the lead	

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<p>is determined in compliance with national law that a cross-border conversion is set up set up for abusive or fraudulent purposes leading to or aimed at lead to the evasion or circumvention of national or EU <u>national</u> law, or otherwise for criminal purposes.</p>	<p>in compliance with national law that a cross-border merger is set up set up for abusive or fraudulent purposes leading to or aimed at lead to the evasion or circumvention of national or EU <u>national</u> law, or otherwise for criminal purposes.</p>	<p>to evasion or circumvention of national or EU <u>national</u> law, or otherwise for criminal purposes.</p>	
<p>9. WhereIf the competent authority, throughduring the scrutiny of legality referred to in paragraph 1, has serious doubts indicating that the cross-border</p>	<p>9. IfWhere the competent authority, throughduringfollowing the scrutiny of legality referred to in paragraph 1, has serious doubts indicating that the cross-border merger is</p>	<p>9. WhereIf the competent authority, duringthrough the scrutiny of legality referred to in paragraph 1, has serious doubts indicating that the cross-border division is set up set up for abusive or fraudulent purposes leading to or aimed at lead to the evasion or circumvention of national or EU <u>national</u> law, or otherwise for criminal purposes, it shall take into consideration relevant facts</p>	<p>Formatted: Highlight</p> <p>Formatted: Highlight</p>

<p>conversion is set-up set up up for abusive or fraudulent purposes leading to or aimed to at lead to the evasion or circumvention of national or EU union or national law, or otherwise 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 of legality referred to in paragraph 1, including through</p>	<p>set-up set up for abusive or fraudulent purposes leading to or aimed to lead to at the evasion or circumvention of national or EU union or national law, or otherwise 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 of legality referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the</p>	<p>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 of legality 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.</p>	
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<p><i>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.</i></p>	<p><i>purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.</i></p>		
<p>10. <i>Where it is necessary for the purposes of the determination and assessment under paragraphs 8 and 9 to take into account additional information or necessary to performing additional investigative activities, the period of three months as provided for in paragraph 7 may be extended by for</i></p>	<p>10. <i>Where it is necessary for the purposes of the determination and assessment under paragraphs 8 and 7 to take into account additional information or necessary to performing additional investigative activities, the period of three months as provided for in paragraph 76 may be extended by for a</i></p>	<p>10. <i>Where it is necessary for the purposes of the determination and assessment under paragraphs 8 and 79 to take into account additional information or necessary to performing additional investigative activities, the period of three months as provided for in paragraph 76 may be extended for by a maximum of further 3three months.</i></p>	

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<p>a maximum of three^{further} 3 months.</p>	<p>maximum of three^{further} 3 months.</p>		
<p>11. Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines as^{provided for in paragraphs 7 and 10} this Article, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those^{original} deadlines.</p>	<p>11. Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines as^{provided for in this Article paragraphs 7 and 10}, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those^{original} deadlines.</p>	<p>11. Where, due to the complexity of the cross border procedure, it is not possible to carry out the assessment within the deadlines as^{provided for in paragraphs 7 and 10} this Article, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those^{original} deadlines.</p>	
<p>12. Member States shall ensure that the^{competent authorities} designated in</p>	<p>12. Member States shall ensure that the^{competent authorities} designated in</p>	<p>12. Member States shall ensure that the^{competent authorities} designated in accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned</p>	

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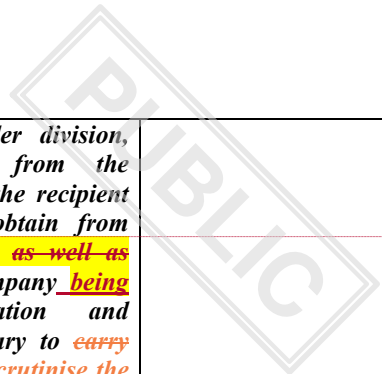
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<p>accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those from the destination Member State, and obtain from these authorities, as well as and from the company, information and documents necessary to carry out the scrutinise control of the legality of the cross-border conversion, within the procedural framework laid down in national law. In For the</p>	<p>accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border merger, including those from the Member State of the company resulting from the merger, and obtain from these such those authorities and, as well as from the merging company, information and documents necessary to carry out the control of scrutinise the legality of the cross-border merger, within the procedural framework laid down in national law. For the</p>	<p>by the cross-border division, including those from the Member State of the recipient companies, and obtain from these authorities, as well as and from the company being divided, information and documents necessary to carry out the control of scrutinise the legality of the cross-border division, within the procedural framework laid down in national law. For the purposes of the assessment this Article. In the assessment the competent authority may have recourse to an independent expert.</p>	
<p>accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those from the destination Member State, and obtain from these authorities, as well as and from the company, information and documents necessary to carry out the scrutinise control of the legality of the cross-border conversion, within the procedural framework laid down in national law. In For the</p>	<p>accordance with paragraph 1 may consult other relevant authorities with competence in the different fields concerned by the cross-border merger, including those from the Member State of the company resulting from the merger, and obtain from these such those authorities and, as well as from the merging company, information and documents necessary to carry out the control of scrutinise the legality of the cross-border merger, within the procedural framework laid down in national law. For the</p>	<p>by the cross-border division, including those from the Member State of the recipient companies, and obtain from these authorities, as well as and from the company being divided, information and documents necessary to carry out the control of scrutinise the legality of the cross-border division, within the procedural framework laid down in national law. For the purposes of the assessment this Article. In the assessment the competent authority may have recourse to an independent expert.</p>	



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<p><i>purposes of the assessment the assessment this Article, the competent authority may have recourse to an independent expert.</i></p>	<p><i>purposes of the assessment this Article. In the assessment the competent authority may have recourse to an independent expert.</i></p>		
<p>Article 86ne Transmission of the pre-conversion certificate</p>	<p>Article 127a Transmission of the pre-merger certificate</p>	<p>Article 160n Transmission of the pre-division certificate</p>	<p>Recital 43</p>
<p>1. Member States shall ensure that the pre-conversion certificate is shared with the competent authorities referred to in Article 86o(1) referred to in Article 86p (1) through the system of interconnection of registers set up in accordance with</p>	<p>1. Member States shall ensure that the pre-merger certificate is shared with the competent authorities referred to in Article 128(1) referred to in Article 128(1) through the system of interconnection of registers set up in accordance with Article</p>	<p>12. Member States shall ensure that the pre-division certificate is shared with the competent authorities referred to in Article 160o(1) through the system of interconnection of registers set up in accordance with Article 22.</p>	<p>In order to provide for the 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 by means of through the system of interconnection of business registers and should be made publicly available. In accordance with the general principle underlying this Directive (EU) 2017/1132, such exchange of information should always be free of charge.</p>

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Article 22.	22.		
<i>Member States shall also ensure that the pre-conversion certificate is available through the system of interconnection of registers set up in accordance with Article 22.</i>	<i>Member States shall also ensure that the pre-merger certificate is available through the system of interconnection of registers set up in accordance with Article 22.</i>	<i>Member States shall also ensure that the pre-division certificate is available through the system of interconnection of registers set up in accordance with Article 22.</i>	
2. The access to the pre-conversion certificate information referred to in paragraph 1 shall be free of charge for the competent authorities referred to in Article 86^{op}(1) and for the registers.	2. The access to the pre-merger certificate information referred to in paragraph 1 shall be free of charge for the competent authorities referred to in Article 128(1) and for the registers.	23. The access to the pre-division certificate information referred to in paragraph 2 shall be free of charge for the competent authorities referred to in Article 160^{o*}(1) and for the registers.	
Article 86 ^{op} Scrutiny of the legality of	Article 128 Scrutiny of the legality of the cross-border merger	Article 160 ^{o*} Scrutiny of the legality of the cross-border division	Recital 10

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<p>the the cross-border conversion by the destination Member State</p>			
<p>1. Member States shall designate the court, notary or other authority competent to scrutinise the legality of the the cross-border conversion as regards that part of the procedure which is governed by the law of the destination Member State and to approve the cross-border conversion where all the relevant conditions and formalities in the destination Member State have been properly completed.</p>	<p>1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger and, where appropriate, the formation of a new company resulting from the cross-border merger where the company created by the cross-border merger is subject to its national law. The said authority shall in particular ensure that the merging companies have approved the common draft terms of cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 133.</p>	<p>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 where all the relevant conditions and formalities in that Member State have been properly completed. That competent authority or authorities shall in particular ensure that the proposed recipient companies comply with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 160a.</p>	<p>Given the complexity of cross-border conversions, mergers and divisions (hereinafter referred to as collectively, 'cross-border operations') and the multitude of the interests concerned, it is appropriate to provide for the the scrutiny of the legality of the cross-border operations before they takes effect, in order to provide create legal certainty. To that effect, the competent authorities of the Member States involved should ensure that a decision on the approval of a cross-border operation is taken in a fair, objective and non-discriminatory manner and on the basis of all relevant elements required by national and Union and national law.</p>

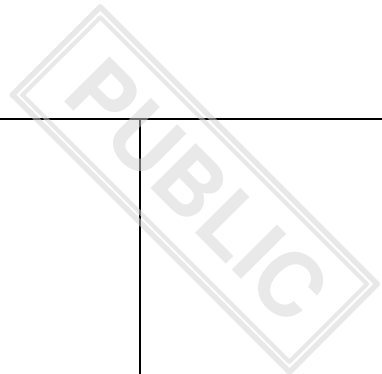
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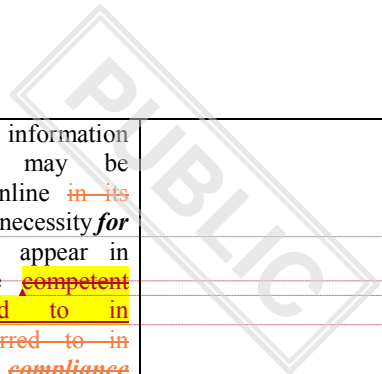
<p>This competent authority of the destination Member State shall in particular ensure that the proposed converted company complies with provisions of national law on the incorporation <i>and registration</i> of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 86l.</p>			
<p>2. For the purposes of paragraph 1 of this Article, the company carrying out the cross-border conversion shall</p>	<p>2. For the purposes of paragraph 1 of this Article, each merging company shall submit to the authority referred to</p>	<p>2. For the purposes of paragraph 1 of this Article, <i>the company being divided</i> shall submit to <i>each</i> authority referred to in paragraph 1 of this Article; the draft terms of the cross-border division approved by the general</p>	

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<p>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.</p>	<p>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 case in the event that the approval by of the general meeting is not required in accordance with Article 132 (paragraph 3), the common draft terms of the cross-border merger approved by each merging company in accordance with national law.</p>	<p>meeting referred to in Article 160 h.</p>	<p>PUBLIC</p>
<p>3. Each Member State shall ensure that the any application for the purposes of referred to in paragraph 1, by the</p>	<p>3. Each Member State shall ensure that the any application referred to in for</p>	<p>3. Each Member State shall ensure that the any application for the purposes of referred to in paragraph 1, by the recipient companies and by the company being divided carrying out the cross-border division, which includes including the</p>	

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<p>company carrying out the cross-border conversion, which includes the submission of any information and documents, may be completed fully online in its entirety without the necessity for the applicants to appear in person before the competent authority referred to in paragraph 1, in</p>	<p>the purposes of paragraph 1, by any of the merging companies, which includes including the submission of any information and documents, may be completed fully online in its entirety without the necessity for the applicants to appear in person</p>	<p>submission of any information and documents, may be completed fully online in its entirety without the necessity for <i>the applicants</i> to appear in person before the competent authority referred to in paragraph 1 referred to in paragraph 1, in compliance accordance with the relevant <i>provisions of Chapter III of</i> <i>Title I.</i></p>	
<p><i>compliance</i> <i>accordance with the</i> <i>relevant provisions of</i> <i>Chapter III of Title I.</i></p>	<p>before the competent authority <i>referred</i> <i>to in paragraph 1</i>, <i>in accordance</i> compliance <i>with</i> <i>the relevant</i> <i>provisions of</i> <i>Chapter III of</i></p>		



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	<i>Title I.</i>		
<p>4. The competent authority referred to in paragraph 1 shall approve the cross-border conversion as soon as it has <u>determined that all relevant conditions have been properly fulfilled and formalities properly completed in the destination Member State</u> completed its assessment of the relevant conditions.</p>	<p>4. <i>The competent authority referred to in paragraph 1 shall approve the cross-border merger as soon as it has <u>determined that completed its assessment of the relevant conditions have been fulfilled.</u></i></p>	<p>4. The competent authority referred to in paragraph 1 of this Article shall approve the cross-border division as soon as it has <u>determined that all relevant conditions have been properly fulfilled and formalities properly completed in the Member States of the recipient companies</u> completed its assessment of the relevant conditions.</p>	
<p>5. The pre-conversion certificate referred to in Article 860n(1) shall be accepted by the competent authority;</p>	<p>5. The pre-merger certificate of certificates referred to in Article 127 n(1)</p>	<p>5. The pre-division certificate, referred to in Article 160n q (12), shall be accepted by the any competent authority <u>referred to in paragraph 1</u> referred to in paragraph 1 of this Article, as conclusively attesting of the proper completion of the</p>	<p>Formatted: Highlight</p> <p>Formatted: Highlight</p>

<p>referred to in paragraph 1; as <i>conclusively attesting</i> to the proper completion of the applicable pre-conversion procedures and formalities under the national law of in the departure Member State, without which the cross-border conversion cannot be approved.</p>	<p>shall be accepted by a competent the authority referred to in paragraph 1 of the Member State of the company resulting from the cross-border merger, as conclusively attesting to the proper completion of the applicable pre-merger procedures and formalities in the respective Member State, without which the cross-border merger cannot be approved or Member States .</p>	<p>applicable pre-division procedures and formalities in the Member State of the company being divided, without which the cross-border division cannot be approved.</p>
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REGISTRATION, DATE OF EFFECT, CONSEQUENCES		
Cross-border conversions	Cross-border mergers	Cross-border divisions
Article 86 ^{pa} Registration	<i>Article 130</i> <i>Registration</i>	<i>Article 160p</i> <i>Registration</i>
1. The laws of the departure Member State and of the destination Member States shall determine, with respect regard to their respective territories of those Member States, the arrangements, in accordance with Article 16, to for disclosing the completion of the cross-border conversion in their registers.	1. <i>The laws of the Member States of the merging companies and of the company resulting from the merger shall determine, with respect regard to their respective territories of that Member State, the arrangements, in accordance with Article 16, to for disclosing the completion of the cross-border merger in their public registers in which each of the companies is required to file documents.</i>	1. The laws of the Member States of the company being divided and of the recipient companies, shall determine, with respect regard to their respective territories of those States, the arrangements, in accordance with Article 16, to for disclosing the completion of the cross-border division in their registers.
2. Member States shall ensure that at least the following information shall be is entered in their registers as follows, which are made publically available and accessible	<i>24a. Member States shall ensure that at least the following information shall be is entered in their registers as follows, which are made publically available and accessible</i>	2. Member States shall ensure that at least the following information shall be is entered in their registers as follows, which are made publically available and accessible by means of the system referred to in Article 22:

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<p>by means of the system referred to in Article 22:</p>	<p>by means of the system referred to in Article 22:</p>	
<p>(a) in the █ register of the destination Member State;2 the fact that the registration of the converted company is a the result of a cross-border conversion;</p>	<p>(a) in the register of the Member State of the company resulting from the merger;2 the fact that the registration of the company resulting from the merger is a the result of a cross-border merger;</p>	<p>(a) in the █ register of the Member States of the recipient companies;2 the fact that the registration of the recipient company is a the result of a cross-border division ;</p>
<p>(b) in the register of the destination Member State;2 – the date of registration of the converted company;</p>	<p>(b) in the register of the Member State of the company resulting from the merger;2 – the date of registration of the company resulting from the merger;2</p>	<p>(b) in the register of the Member State of the recipient companies;2 – the dates of registration of the recipient companies ;</p>
<p>(c) in the register of the departure Member State;2 the fact that the striking off or removal of the company from the register is the result of a cross-border</p>	<p>(d) in the register of the Member State of each merging company;2 the fact that the striking off or removal of the merging company from the register is</p>	<p>(d) in █ the register of the Member State of the company being divided in the event of a full division;2 the fact that the striking off or removal of the company being divided from the register is the a result of a cross-border division;</p>

conversion ;	the result of a cross-border merger;	
(d) in the register of the departure Member State, – the date of striking off or removal of the company from the register;	(d e) 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 d) in the register of the Member State of the company being divided – in case 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 departure Member State and of the destination Member States, respectively, – the registration number, name and legal form of the company in the departure Member State and the registration number, name and legal form of the converted company in the destination Member State.	(e) in the registers of the Member States of each merging company and in the register of the Member State of the company resulting from the merger, respectively, – the registration numbers, names and legal form of each merging company and of the company resulting from the merger.	(e) in the registers of the Member States of the company being divided and the registers of the Member States of the recipient companies, respectively, the registration numbers, name and legal form of the company being divided and of the recipient companies.
<u>The registers shall make the information referred to in the first</u>	<u>The registers shall make the information referred to in the first</u>	<u>The registers shall make the information referred to in the first subparagraph publicly available and accessible by means</u>

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<p><i>subparagraph publicly available and accessible <u>by means of through the system of interconnection of registers.</u></i></p>	<p>subparagraph publicly available and accessible <u>by means of through the system of interconnection of registers.</u></p>	<p>through the system of interconnection of registers .</p>
<p>3. Member States shall ensure that the <u>registry</u> in the destination Member State notifies the <u>registry</u> in the departure Member State, <u>by means of through the system of interconnection of registers</u>, referred to in Article 22, that the <i>cross-border conversion</i> has <i>taken effect</i>. Member States shall also ensure that the registration of the company <i>is struck off or removed from the register</i> immediately <u>upon</u> receipt of that notification .</p>	<p>3. <u>Member States shall ensure that the The register in the Member State for the registration of the company resulting from the cross-border merger shall notify, through the system of interconnection of registers and without delay, the register in the Member State of which each of the merging companies, through the system of interconnection of registers, was required to file documents that the cross-border merger has taken effect. Member States shall also ensure that Deletion the old registration of the merging company is struck off or removed from the register, shall be effected immediately <u>on receipt</u></u></p>	<p>3. Member States shall ensure that the registers in the Member States of the recipient companies notify the <u>registry</u> in the Member State of the company being divided, <u>by means of through the system referred to in Article 22 of interconnection of registers</u>, that the recipient companies have been registered. <u>Member States shall also ensure that, in the case event of a full division, the striking off or removal of the company being divided is struck off or removed from the register shall be effected immediately upon the receipt of all those notifications from the registers of the Member States of the recipient companies.</u></p>

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	of that notification, and not before	
		4. Member States shall ensure that the register in the Member States of the company being divided notifies the registers in the Member States of the recipient companies, by means of through the system referred to in Article 22 of interconnection of registers, that the cross-border division has taken effect.
Article 86 qf Date on which the cross-border conversion takes effect	<i>Article 129</i> Date on which the cross-border merger takes effect	<i>Article 160q</i> Date on which the cross-border division 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 86 m and 86 op has been carried out.	The law of the Member State to whose jurisdiction the company resulting from the cross-border merger is subject shall determine the date on which the cross-border merger takes effect. That date shall be after the scrutiny referred to in Article 128 has been carried out.	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 160 me , 160 of has been carried out and after the registers have received all notifications referred to in Article 160 ps (3).

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Article 86 rs Consequences of the cross-border conversion	<i>Article 131</i> Consequences of a cross-border merger	<i>Article 160r</i> Consequences of a cross-border division	<i>Recitals 47, 48, 49</i>
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<p>A cross-border conversion; carried out in compliance with the national provisions transposing this Directive; shall by reason of the cross-border conversion taking effect and from the date referred to in Article 86; have the following consequences:</p>	<p>1. <u>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:</u></p>	<p>1. A cross-border full cross-border division carried out in compliance with the national provisions transposing this Directive shall, by reason of the cross-border division taking effect and from the date referred to in Article 160; have the following consequences:</p>
<p>(a) all the assets and liabilities of the company, including all contracts, credits, rights and obligations, shall continue with those of the converted company;</p>	<p>(a) <u>all the assets and liabilities of the company being acquired herein, including all contracts, credits, rights and obligations, shall be transferred to and shall become those of the acquiring company;</u></p>	<p>(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;</p>
<p>(b) the members of the company shall continue to be members of the converted company, unless they exercise the exit right</p>	<p>(b) <u>the members of the company being acquired shall become members of the acquiring company, unless they exercise the exit right they have disposed of their shares as</u></p>	<p>(b) the members of the company being divided shall become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of the cross-border division, unless they exercise the exit right have disposed of their</p>

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<p>have disposed of their shares as referred to in Article 86ij(1);</p>	<p><i>referred to in Article 126a(1);</i></p>	<p>shares as referred to in Article 160ij(1);</p>	
<p>(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 continue become those of with the <i>converted</i> company ■ .</p>		<p>(c) the rights and obligations of the company being divided arising from the contracts of employment or from employment <i>relationships</i> and existing at the date on which <i>the</i> cross-border division takes effect shall bare e-transferred to the recipient companies;</p>	
	<p>(c) <i><u>the company being acquired shall cease to exist.</u></i></p>	<p>(d) the company being divided shall ceases to exist .</p>	
	<p>2. A cross-border merger carried out as laid down in subpoint (b) of point 2 Article 119 shall, from the date referred to in Article 129, have the following consequences:</p>	<p>2. A cross-border partial cross-border division carried out in compliance with the national provisions transposing this Directive shall by reason of the cross border division taking effect and from the date referred to in Article 160 ij .</p>	

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		have the following consequences:	
	(a) <u>all the assets and liabilities of the merging companies</u> <i>herein, including all contracts, credits, rights and obligations,</i> are shall be transferred to and shall <i>continue with become are</i> <u>those of the new company;</u>	(a) <i>part of</i> the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, are shall <i>be</i> transferred to the recipient <i>company or</i> companies, and while the remaining part shall continues to be with that <i>of</i> the company being divided in accordance with the allocation specified in the draft terms of the cross-border division;	
	(b) <u>the members of the merging companies shall become members of the new company,</u> <i>unless they exercise the exit right they have disposed of their shares as referred to in Article 126a(1);</i>	(b) <i>at least some of</i> the members of the company being divided shall become members of the recipient <i>company or</i> 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 exercise the exit right have disposed of their shares as referred to in Article 160(1);	
	(c) the merging companies shall cease to exist.	(c) the <i>rights and obligations of</i> the company being divided <i>arising from the</i> contracts of employment or from	

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		<p><i>employment relationships and existing at the date on which the cross-border division takes effect, allocated to the recipient company or companies in accordance with under the draft terms of the cross-border division, shall be are transferred to the respective recipient company or companies.</i></p>
		<p>3. <i>A cross-border division by separation carried out in compliance with the national provisions transposing this Directive, shall, by reason of the cross-border division taking effect and from the date referred to in Article 160⁴, have the following consequences:</i></p>
		<p>(a) <i>the part of the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, is transferred to the recipient company or companies, and while the remaining part shall continues to be that withof the company being divided, in accordance with the allocation specified in the draft terms of the cross-border division;</i></p>

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		<p>(b) the shares of the recipient company or companies are allocated to the company being divided;</p>
		<p>(c) the rights and obligations of the company being divided, arising from the contracts of employment or from the employment relationships and and existing at the date on which the cross-border division takes effect, and allocated to the recipient company or companies in accordance with under the draft terms of the cross-border division, are shall be transferred to the respective recipient company or companies.</p>
	<p>4. The rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect.</p>	<p>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 (m) of Article 160 ed point (m), and where the interpretation of these terms does not make a decision on its allocation possible, the asset, the consideration therefore or the liability is allocated to all the recipient companies or, in the</p>

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		<p><i>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. In any event, Article 160jm(2) shall apply.</i></p>	
	<p>3. Where, in the case of a cross-border merger of companies covered by this Chapter, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall be carried out by the company resulting from the cross-border merger.</p>	<p>5. Where, in the case of a cross-border division covered by this Chapter, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the company being divided becomes effective as against third parties, those formalities shall be carried out by the company being divided or by the recipient companies, as appropriate..</p>	
	<p>5. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:</p>	<p>6. Member States shall ensure that shares in a recipient company may 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</p>	

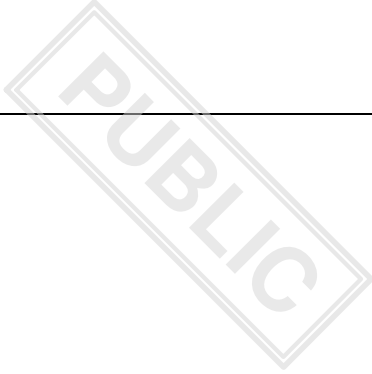
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		name but on behalf of the company.	
	(a) by the acquiring company itself or through a person acting in his or her own name but on its behalf;		
	(b) by the company being acquired itself or through a person acting in his or her own name but on its behalf.		

SIMPLIFIED FORMALITIES, LIABILITY OF INDEPENDENT EXPERT, VALIDITY		
	Cross-border mergers	Cross-border divisions
<i>No corresponding provision</i>	<p><i>Article 132</i> Simplified formalities</p>	<p><i>Article 160s</i> Simplified formalities</p>
	<p>1. <u>Where a cross-border merger by acquisition is carried out by 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 the companies being acquired and the acquiring</u></p>	<p>Where a cross-border division is carried out as a 'division by separation' as referred to in point (e) of Article 160b (3) point (e) then, points (b), (c), (f), (i), (o) and (p) and (q) of Article 160ed points b, c, f, i, p and q and Articles 160eg, 160fi and 160if shall not apply.</p>

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	<p>company does not allot any shares under the merger:</p> <ul style="list-style-type: none"> - <u>points (b), (c), (e) and (m) of Article 122 , Article 125, and point (b) of Article 131(1) shall not apply;</u> - <u>Article 124 and Article 126(1) shall not apply to the company or companies being acquired.</u> <p>2. Where a cross-border merger by acquisition is carried out by a company which holds 90 % or more, but not all, of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company or companies being acquired so requires, in accordance with Chapter I of Title II.</p>	
	<p>3. Where the laws of Member States of all of the merging companies provide for the exemption from the approval by <u>the</u> general meeting in accordance with</p>	

	<p>Article 126(3) and paragraph 1 of this Article, the common draft terms of cross-border merger or the information referred to in paragraphs 1 to 3 of Article 123(1) to (3) respectively and the reports referred to in Articles 124 and 1254a, shall be made available at least one month before the decision on the merger is taken by the company in accordance with the national law.</p>	
<p>Article 86st Liability of the Independent experts</p>	<p>Article 133a Liability of iIndependent experts</p>	<p>Article 160t Independent experts</p>
<p>1. Member States shall lay down rules governing at least the civil liability of the independent <i>expert</i> responsible for drawing up the <i>report</i> referred to in <i>Article 86fg</i> .</p>	<p>1. Member States shall lay down rules governing <u>at least</u> the civil liability of the independent <u>expert</u> responsible for drawing up the report referred to in <i>Article 125</i>.</p>	<p>1. Member States shall lay down rules governing <u>at least</u> the civil liability of the independent <i>expert</i> responsible for drawing up the report referred to in <i>Article 160f</i>.</p>

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<p><u>2.</u> Member States shall have rules in place to ensure that:</p>	<p><u>2.</u> Member States shall have rules in place to ensure that:</p>	<p>2. Member States shall have rules in place to ensure that:</p>
<p>(a) the expert, or and the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest from with the company applying for the pre-conversion certificate; and</p>	<p>(a) the expert, and or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest fromwith the company applying for the pre-merger certificate; and</p>	<p>(a) the expert, and the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest fromwith the company applying for the pre-division certificate; and</p>
<p>(b) and that the expert's opinion is impartial and, objective, and is given with a view to providing assistance to the competent authority in accordancecompliance with the independence and impartiality requirements under the applicable law orand professional standards to</p>	<p>(b) and that the expert's opinion is impartial and, objective, and is given with a view to providing assistance to the competent authority in compliance accordance with the independence and impartiality requirements under the applicable law orand professional standards to which the expert is subject.</p>	<p>(b) the expert's opinion is impartial, and objective, and is given with a view to providing assistance to the competent authority in compliance accordance with the independence and impartiality requirements under the applicable law and professional standards to which the expert is subject.</p>

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<i>which the expert is subject.</i>		
Article 86 ¹¹ Validity	Article 134 Validity	Article 160u Validity
<p>Member States shall ensure that A cross-border conversion which has taken effect in compliance with the procedures transposing this Directive maycanshall not be declared null and void.</p>	<p>A cross-border merger which has taken effect as provided for in Article 129 may not be declared null and void.</p>	<p>Member States shall ensure that a cross-border division which has taken effect in compliance with the procedures transposing this Directive can may may not be declared null and void .</p>
<p><i>The first paragraph is does not affect Member States' powers, inter alia, in relation to in the field of criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, in accordance with under national laws, after the date on which the cross-border</i></p>	<p><i>The first paragraph is does not affect Member States' powers, inter alia, in the field of in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, in accordance with under national laws, after the date on which the cross-border conversion-merger took effect.</i></p>	<p><i>The first paragraph is does shall not affect Member States' powers, inter alia, in the field of relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, in accordance with under national laws, after the date on which the cross-border division took effect."</i></p>

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ANNEX 2

<i>conversion took effect.</i>		
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	Conversions	Mergers	Divisions	Recitals
Scope	86a	118 (unamended) 120(1 to 3)	160a	9
Definitions	86b	119	160b	
Procedures and formalities	86c	<i>None</i>	160c	
<u>Conditions relating to cross-border ...</u>	<i>None</i>	121	<i>None</i>	
Draft terms of cross-border ...	86d (a) (b) (c) d e f g h i j k -----	122 (a) a i -- g -- h -- m d j b c e f k l n	160d (a) a j d i -- h -- p e k b c f g m n q	12
Report of the administrative or management body for members and employees	86e	124	160e	13
Independent expert report	86f	125	160f	14
Disclosure	86g	123	160g	12, 15
Approval by the general meeting	86h	126	160h	16
Protection of members	86i	126a	160i	18-19-20-21
Protection of creditors	86j	126b	160j	22-23-24-25
Employee information and consultation	86k	126c	160k	26
Employee participation	86l	133	160l	30-31

Pre-... certificate	86m	127	160m	33-34-35-36-37-38
Transmission of the pre-... certificate	86n	127a	160n	43
Scrutiny of the legality of the cross-border ... by the destination Member State	86o	128	160o	10
Registration	86p	130	160p	
Date on which the cross-border ... takes effect	86q	129	160q	
Consequences of the cross-border ...	86r	131	160r	47-48-49
Simplified formalities	None	132	160s	
Independent experts	86s	133a	160t	
Validity	86t	134	160u	50