

Cross-border conversions, mergers and divisions

2018/0114(COD) - 10/01/2019 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Evelyn REGNER (S&D, AT) on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

The Committee on Employment and Social Affairs, exercising its prerogatives as an associated committee, also gave its opinion on this report.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

Compliance with the conditions for cross-border conversions

Members specified that the court, notary or any other competent authority designated by the Member States of departure and destination should check that cross-border processing complies with the conditions laid down in the directive. Conversion would not be authorised where the competent authority of the Member State of departure discovers, having assessed the case in question, the existence of an artificial arrangement.

Members specified the minimum range of information to be provided in the cross-border conversion project that will be made available to anyone interested in the operation. The cross-border conversion project should thus provide information concerning, for example:

- the location and date of transfer of the company's registered office to the Member State of destination, as well as information on the management body and, where applicable, on staff, equipment, premises and assets;
- the number of employees on a full-time equivalent basis;
- the likely effects of cross-border conversion on employment and the expected consequences for employees;
- the name of the ultimate company and, where applicable, the list of all its subsidiaries, a brief description of the nature of their activities and their respective geographical distribution;
- the total turnover and the total taxable turnover of the converting company for the last reporting period;
- the amount of income tax paid by the converting company and its subsidiaries and branches.

Assessment by the competent authority

The competent authority should start processing the application within 10 working days of receiving the documents and information on the company and the proposed cross-border conversion. Members have removed the requirement to consult an independent expert when carrying out an in-depth assessment. If, however, the competent authority calls upon an independent expert, this expert should be appointed within one month on the basis of a pre-established list.

The competent authority should draw up a report after consulting, if necessary, third parties with a legitimate interest in the conversion of the company, in particular the tax, labour and social security authorities. The competent authority would be entitled to obtain from the company carrying out the cross-border conversion all relevant information and documents. It would also be able to put questions to the competent authority of the destination Member State as well as be entitled to receive further comments and opinions from the representatives of the company's employees.

A company would not be allowed to carry out a cross-border conversion:

- where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement;
- if the company is subject to a preventive restructuring proceedings initiated because of the likelihood of insolvency or is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, or in Directive 2014/67/EU of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services;
- if the company has been convicted by a court in the last three years or is subject to ongoing legal proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations.

Genuine economic activity

Member States should also be required to ensure that cross-border conversions correspond to the actual pursuit of a genuine economic activity, including in the digital sector, through a fixed establishment in the destination Member State for an indefinite period, in order to avoid the setting up of 'letterbox' or 'front' companies with the purpose of evading, circumventing or infringing national and/or EU law.

Strengthening employee participation

In order to protect employees' interests, especially worker' board level representation, existing under national laws in 17 Member States in different forms, Members propose to further protect workers' rights to participation, information and consultation in order to ensure that the cross-border mobility of companies never leads to a restriction of these rights.

Following the conversion, the company carrying out the cross-border conversion should thus continue to observe the terms and conditions agreed in any collective agreement on the same terms as those applicable under that agreement to the company prior to the conversion.

The Directive would thus complement the requirements already contained in Council Directives 2002/14/EC, 2001/23/EC and 2009/38/EC which ensure that unnecessary administrative burdens do not undermine the current provisions in place for information, consultation and participation of employees.