

Cross-border conversions, mergers and divisions

2018/0114(COD) - 18/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 511 votes to 54, with 16 abstentions, a legislative resolution 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 proposed Directive shall aim to remove unjustified obstacles to the freedom of establishment of EU companies in the Single Market by facilitating cross-border conversions, mergers and divisions of EU companies. It shall introduce comprehensive procedures for cross-border conversions and divisions and provide additional rules for cross-border mergers of limited liability companies established in an EU Member State.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Cross-border conversion

The Directive shall specify the minimum range of information to be provided in the cross-border conversions that will be made available to any person interested in the operation. The conversions shall thus provide information on, for example:

- the legal form, name and location of its registered office of the company in the departure Member State as well as the legal form, name and location of its registered office proposed for the converted company in the destination Member State;
- the instrument of constitution, where applicable, and the statutes if they are contained in a separate instrument, of a company in the destination Member State;
- the proposed indicative timetable for the cross-border conversion;
- 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;
- safeguards, such as guarantees or pledges, where offered to creditors;
- if any incentive or subsidies were received by the company in the departure Member State in the last 5 years.

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

Independent expert report

Member States shall ensure that an independent expert examines the draft terms of the cross-border conversion and draws up a report intended for members which is made available to them not less than one month before the date of the general meeting.

The expert shall be entitled to secure from the company all the necessary information for the discharge of his/her duties.

Member States shall have rules in place to ensure that the expert or the legal person on whose behalf the expert is operating, is independent and has no conflict of interest from the company applying for the pre-conversion certificate.

After taking note of the reports and the employees' opinions, 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.

Protection of shareholders, creditors and employee participation

The amended text provides for similar rules concerning employees' participation rights in cross-border conversions, mergers and divisions. It shall also ensure that workers are properly informed and consulted about the expected effects of the operation. The rights of minority or non-voting shareholders shall be better protected. At the same time, the creditors of the company concerned should benefit from clearer and more adequate guarantees.

Scrutiny of the legality of operations

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

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

Member States may require that the application to obtain a pre-conversion certificate is accompanied by additional information, such as, in particular on the number of employees at the time of the drawing up of the draft terms of the conversion; on subsidiaries and their respective geographic allocation; regarding the fulfilment of obligations due to public bodies by the company.

The assessment by the competent authority shall be carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border transformation by the company's general meeting. This period may be extended by an additional three months if the competent authority has serious doubts as to whether the cross-border processing is being carried out for abusive or fraudulent purposes.

If the competent authority, through the scrutiny of legality, has serious doubts that the cross-border conversion is set up for abusive or fraudulent purposes leading or aimed to lead to evasion or circumvention of national or EU law, or for criminal purposes, it shall not authorise the transaction in question.

Use of digital tools

Member States shall ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for pre-conversion, pre-merger or pre-division certificate (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 by the destination Member State, may be completed online in their entirety without the necessity for the applicants to appear in person before any competent authority in the Member States.