

Cross-border conversions, mergers and divisions

2018/0114(COD) - 12/12/2019 - Final act

PURPOSE: to facilitate cross-border transformations, mergers and divisions of EU companies with a view to ensuring greater cross-border mobility of companies.

LEGISLATIVE ACT: Directive (EU) 2019/2121 of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

CONTENT: the Directive amends [Directive \(EU\) 2017/1132](#) and aims to eliminate unjustified barriers to the freedom of establishment of EU companies in the single market by facilitating cross-border transformations, mergers and divisions of EU companies.

The European Parliament has called on the Commission to adopt harmonised rules on cross-border transformations and divisions. The Court of Justice of the European Union also stressed the need to adopt harmonised rules on the transfer of the seat of companies within the internal market that provide adequate protection of the legitimate interests of shareholders, creditors and employees.

This Directive introduces comprehensive procedures for cross-border transformations and divisions and provides for additional rules on cross-border mergers of limited liability companies established in an EU Member State.

The main elements of the amending Directive are as follows:

Cross-border operations

To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border operation, the company shall draw up and disclose the draft terms of the proposed operation, containing the most important information about it. Such information shall at least include the legal form envisaged for the company or companies, the instrument of constitution where applicable, the statutes, the proposed indicative timetable for the operation and details of any safeguards offered to members and creditors.

The company carrying out the cross-border operation shall draw up a report in order to provide information to its members and employees. It shall 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 shall explain the implications of the cross-border operation with regard to the future business of the company, including its subsidiaries.

The Directive include the possibility of speeding up the procedure by waiving reports for members and employees in the event that shareholders agree, or if the company or any of its subsidiaries do not have any employees.

Protection of shareholders, creditors and employee participation

The Directive 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

The Directive establishes procedures for verifying the legality of cross-border transactions and introduces a mandatory monitoring procedure that shall allow national authorities to block a cross-border transaction when it is carried out for abusive or fraudulent purposes, such as circumventing workers' rights, the payment of social security contributions or tax obligations, or for criminal purposes. In particular, the aim is to prevent the creation of shell companies or mailboxes aimed at evading Union or national law.

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.

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.

ENTRY INTO FORCE: 1.1.2020.

TRANSPOSITION: no later than 31.1.2023.