Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance)

TITLE II

[F1CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES]

[F2CHAPTER -I

Cross-border conversions

Article 86a

Scope

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

2 This Chapter shall not apply to cross-border conversions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

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

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

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

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

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

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

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

Article 86b

Definitions

For the purposes of this Chapter:

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

(2) 'cross-border conversion' means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State, as listed in Annex II, and transfers at least its registered office to the destination Member State, while retaining its legal personality;

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

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

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

Article 86c

Procedures and formalities

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

Article 86d

Draft terms of cross-border conversions

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

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

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

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

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

(e) the rights conferred by the converted company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;

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

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

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

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

(j) the likely repercussions of the cross-border conversion on employment;

(k) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined pursuant to Article 86l.

Article 86e

Report of the administrative or management body for members and employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Where the administrative or management body of the company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as

provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.

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

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

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

Article 86f

Independent expert report

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

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

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

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

c describe any special valuation difficulties which have arisen.

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

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

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

Article 86g

Disclosure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any

competent authority in the departure Member State, in accordance with the relevant provisions of Chapter III of Title I.

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

6 Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

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

Article 86h

Approval by the general meeting

1 After taking note of the reports referred to in Articles 86e and 86f, where applicable, employees' opinions submitted in accordance with Article 86e and comments submitted in accordance with Article 86g, the general meeting of the company shall decide, by means of a resolution, whether to approve the draft terms of the cross#border conversion and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.

2 The general meeting of the company may reserve the right to make implementation of the cross-border conversion conditional on express ratification by it of the arrangements referred to in Article 86l.

3 Member States shall ensure that the approval of the draft terms of the cross-border conversion, and of any amendment to those draft terms, requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented at the general meeting. In any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.

4 Where a clause in the draft terms of the cross-border conversion or any amendment to the instrument of constitution of the converting company leads to an increase of the economic obligations of a member towards the company or third parties, Member States may require, in such specific circumstances, that such clause or the amendment to the instrument of constitution be approved by the member concerned, provided that such member is unable to exercise the rights laid down in Article 86i.

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

a the cash compensation referred to in point (i) of Article 86d has been inadequately set; or

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

Article 86i

Protection of members

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

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

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

2 Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 86h. Member States shall ensure that the company provides an electronic address for receiving that declaration electronically.

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

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

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

5 Member States shall ensure that the law of the departure Member State governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that departure Member State.

Article 86j

Protection of creditors

1 Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion and have not fallen due at the time of such disclosure.

Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the draft terms of the cross-border conversion, as provided for in point (f) of Article 86d, may apply, within three months of the disclosure of the draft terms of

the cross-border conversion referred to in Article 86g, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border conversion, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.

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

2 Member States may require that the administrative or management body of the company provide a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the company at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company would, after the conversion takes effect, be unable to meet its liabilities when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border conversion in accordance with Article 86g.

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

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

Article 86k

Employee information and consultation

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

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

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

Article 86l

Employee participation

1 Without prejudice to paragraph 2, the converted company shall be subject to the rules in force concerning employee participation, if any, in the destination Member State.

2 However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply where the company has, in the six months prior to the disclosure of the draft terms of the cross-border conversion, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the departure Member State, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the law of the destination Member State does not:

a provide for at least the same level of employee participation as operated in the company prior to the cross-border conversion, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

b provide for employees of establishments of the converted company that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the destination Member State.

3 In the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

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

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

c Article 5;

d Article 6;

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

f Articles 8, 10, 11 and 12; and

g point (a) of Part 3 of the Annex.

4 When regulating the principles and procedures referred to in paragraph 3, Member States:

a shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the destination Member State;

b may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative body of the converted company. However, if, in the company, employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third;

c shall ensure that the rules on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently

agreed rules or, in the absence of agreed rules, until the application of standard rules in accordance with point (a) of Part 3 of the Annex to Directive 2001/86/EC.

5 The extension of participation rights to employees of the converted company employed in other Member States, as referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6 Where the converted company is to be governed by an employee participation system, in accordance with the rules referred to in paragraph 2, it shall be obliged to take a legal form allowing for the exercise of participation rights.

7 Where the converted company is operating under an employee participation system, it shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross#border or domestic, for a period of four years after the cross-border conversion has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.

8 A company shall communicate to its employees or their representatives the outcome of the negotiations concerning employee participation without undue delay.

Article 86m

Pre-conversion certificate

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

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

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

a the draft terms of the cross-border conversion;

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

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

d information on the approval by the general meeting referred to in Article 86h.

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

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

b the existence of subsidiaries and their respective geographical location;

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

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

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

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

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

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

b an indication by the company that the procedure referred to in Article 86l(3) and (4) has started, where relevant.

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

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

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

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

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

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

11 Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States

shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

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

Article 86n

Transmission of the pre-conversion certificate

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

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

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

Article 86o

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

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

That authority shall in particular ensure that the converted company complies with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 86l.

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

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

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

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

Article 86p

Registration

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

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

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

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

c in the register of the departure Member State, that the striking off or removal of the company from the register is the result of a cross-border conversion;

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

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

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

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

Article 86q

Date on which the cross-border conversion takes effect

The law of the destination Member State shall determine the date on which the cross# border conversion takes effect. That date shall be after the scrutiny referred to in Articles 86m and 86o has been carried out.

Article 86r

Consequences of a cross-border conversion

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

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

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

(c) the rights and obligations of the company arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect shall be those of the converted company.

Article 86s

Independent experts

1 Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 86f.

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

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

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

Article 86t

Validity

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

CHAPTER I

Mergers of public limited liability companies

Section 1

General provisions on mergers

Article 87

General provisions

1 The coordination measures laid down by this Chapter shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of company listed in Annex I.

2 Member States need not apply this Chapter to cooperatives incorporated as one of the types of company listed in Annex I. In so far as the laws of the Member States make use of this option, they shall require such companies to include the word 'cooperative' in all the documents referred to in Article 26.

3 Member States need not apply this Chapter in cases where the company or companies which are being acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings.

4 Member States shall ensure that this Chapter does not apply to the company or companies which are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU.

Article 88

Rules governing mergers by acquisition and mergers by formation of a new company

Member States shall, as regards companies governed by their national laws, make provision for rules governing mergers by the acquisition of one or more companies by another company and merger by the formation of a new company.

Article 89

Definition of a 'merger by acquisition'

1 For the purposes of this Chapter, 'merger by acquisition' shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2 A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

Article 90

Definition of a 'merger by the formation of a new company'

1 For the purposes of this Chapter, 'merger by the formation of a new company' shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2 A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

Section 2

Merger by acquisition

Article 91

Draft terms of merger

1 The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.

2 Draft terms of merger shall specify at least:

a the type, name and registered office of each of the merging companies;

b the share exchange ratio and the amount of any cash payment;

c the terms relating to the allotment of shares in the acquiring company;

d the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

e the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;

f the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

g any special advantage granted to the experts referred to in Article 96(1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

Article 92

Publication of the draft terms of merger

Draft terms of merger shall be published in the manner prescribed by the laws of the Member States in accordance with Article 16, for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

Any of the merging companies shall be exempt from the publication requirement laid down in Article 16 if, for a continuous period beginning at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger and ending not earlier than the conclusion of that meeting, it makes the draft terms of such merger available on its website free of charge for the public. 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, and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

By way of derogation from the second paragraph of this Article, Member States may require that publication be effected via the central electronic platform referred to in Article 16(5). Member States may alternatively require that such publication be made on any other website designated by them for that purpose. Where Member States avail themselves of one of those possibilities, they shall ensure that companies are not charged a specific fee for such publication.

Where a website other than the central electronic platform is used, a reference giving access to that website shall be published on the central electronic platform at least one month before the date fixed for the general meeting. That reference shall include the date of publication of the draft terms of merger on the website and shall be accessible to the public free of charge. Companies shall not be charged a specific fee for such publication.

The prohibition precluding the charging of companies of a specific fee for publication, laid down in the third and fourth paragraphs, shall not affect the ability of Member States to pass on to companies the costs in respect of the central electronic platform.

Member States may require companies to maintain the information for a specific period after the general meeting on their website or, where applicable, on the central electronic platform or the other website designated by the Member State concerned. Member States may determine the consequences of temporary disruption of access to the website or to the central electronic platform, caused by technical or other factors.

Article 93

Approval by the general meeting of each of the merging companies

1 A merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this approval decision shall require a majority of not less than two thirds of the votes attached either to the shares or to the subscribed capital represented.

The laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented. Moreover, where appropriate, the rules governing alterations to the memorandum and articles of association shall apply.

2 Where there is more than one class of shares, the decision concerning a merger shall be subject to a separate vote by at least each class of shareholders whose rights are affected by the transaction.

3 The decision shall cover both the approval of the draft terms of merger and any alterations to the memorandum and articles of association necessitated by the merger.

Article 94

Derogation from the requirement of approval by the general meeting of the acquiring company

The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company where the following conditions are fulfilled:

(a) the publication provided for in Article 92 is effected, for the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;

(b) at least one month before the date specified in point (a), all shareholders of the acquiring company are entitled to inspect the documents specified in Article 97(1) at the registered office of the acquiring company;

(c) one or more shareholders of the acquiring company holding a minimum percentage of the subscribed capital is entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger; this minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of non-voting shares from this calculation.

For the purposes of point (b) of the first paragraph, Article 97(2), (3) and (4) shall apply.

Article 95

Detailed written report and information on a merger

1 The administrative or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

That report shall also describe any special valuation difficulties which have arisen.

2 The administrative or management bodies of each of the companies involved shall inform the general meeting of their company, and the administrative or management bodies of the other companies involved, so that the latter may inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of merger and the date of the general meetings which are to decide on the draft terms of merger.

3 Member States may provide that the report referred to in paragraph 1 and/or the information referred to in paragraph 2 shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

Article 96

Examination of the draft terms of merger by experts

1 One or more experts, acting on behalf of each of the merging companies but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. However, the laws of the Member States may provide for the appointment of one or more independent experts

for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2 In the report referred to in paragraph 1, the experts shall in any case state whether in their opinion the share exchange ratio is fair and reasonable. Their statement shall at least:

a indicate the method or methods used to arrive at the share exchange ratio proposed;

b state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such methods and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also describe any special valuation difficulties which have arisen.

3 Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.

4 Neither an examination of the draft terms of merger nor an expert report shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

Article 97

Availability of documents for inspection by shareholders

1 All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger:

a the draft terms of merger;

b the annual accounts and annual reports of the merging companies for the preceding three financial years;

c where applicable, an accounting statement drawn up on a date which shall not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date;

d where applicable, the reports of the administrative or management bodies of the merging companies provided for in Article 95;

e where applicable, the report referred to in Article 96(1).

For the purposes of point (c) of the first subparagraph, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 5 of Directive 2004/109/EC and makes it available to shareholders in accordance with this paragraph. Furthermore, Member States may provide that an accounting statement shall not be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

2 The accounting statement provided for in point (c) of the first subparagraph of paragraph 1 shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

a it is not necessary to take a fresh physical inventory;

b the valuations shown in the last balance sheet are to be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:

— interim depreciation and provisions,

— material changes in actual value not shown in the books.

3 Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

Where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided by electronic mail.

4 A company shall be exempt from the requirement to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger and ending not earlier than the conclusion of that meeting, it makes them available on its website. 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 and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

Paragraph 3 shall not apply if the website gives shareholders the possibility, throughout the period referred to in the first subparagraph of this paragraph, of downloading and printing the documents referred to in paragraph 1. However, in that case Member States may provide that the company is to make those documents available at its registered office for consultation by the shareholders.

Member States may require companies to maintain the information on their website for a specific period after the general meeting. Member States may determine the consequences of temporary disruption of access to the website caused by technical or other factors.

Article 98

Protection of employees' rights

Protection of the rights of the employees of each of the merging companies shall be regulated in accordance with Directive 2001/23/EC.

Article 99

Protection of the interests of creditors of the merging companies

1 The laws of the Member States shall provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2 For the purposes of paragraph 1, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

Member States shall lay down the conditions for the protection provided for in paragraph 1 and in the first subparagraph of this paragraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or

judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

3 Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

Article 100

Protection of the interests of debenture holders of the merging companies

Without prejudice to the rules governing the collective exercise of their rights, Article 99 shall apply to the debenture holders of the merging companies, except where the merger has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

Article 101

Protection of holders of securities, other than shares, to which special rights are attached

Holders of securities, other than shares, to which special rights are attached shall be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased by the acquiring company.

Article 102

Drawing up and certification of documents in due legal form

1 Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the minutes of the general meetings which decide on the merger and, where appropriate, the merger contract subsequent to such general meetings shall be drawn up and certified in due legal form. In cases where the merger need not be approved by the general meetings of all the merging companies, the draft terms of merger shall be drawn up and certified in due legal form.

2 The notary or the authority competent to draw up and certify the document in due legal form shall check and certify the existence and validity of the legal acts and formalities required of the company for which that notary or authority is acting and of the draft terms of merger.

Article 103

Date on which a merger takes effect

The laws of the Member States shall determine the date on which a merger takes effect.

Article 104

Publication formalities

1 A merger shall be publicised in the manner prescribed by the laws of each Member State, in accordance with Article 16, in respect of each of the merging companies.

2 The acquiring company may itself carry out the publication formalities relating to the company or companies being acquired.

Article 105

Consequences of a merger

1 A merger shall have the following consequences *ipso jure* and simultaneously:

a the transfer, both as between the company being acquired and the acquiring company and, as regards third parties, to the acquiring company of all the assets and liabilities of the company being acquired;

b the shareholders of the company being acquired become shareholders of the acquiring company; and

c the company being acquired ceases to exist.

2 No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

a by the acquiring company itself or through a person acting in his own name but on its behalf; or

b by the company being acquired itself or through a person acting in his own name but on its behalf.

3 The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by the acquired company to be effective as against third parties. The acquiring company may carry out such formalities itself; however, the laws of the Member States may permit the company being acquired to continue to carry out such formalities for a limited period which may not, save in exceptional cases, be fixed at more than six months from the date on which the merger takes effect.

Article 106

Civil liability of members of the administrative or management bodies of the company being acquired

The laws of the Member States shall at least lay down rules governing the civil liability, towards the shareholders of the company being acquired, of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.

Article 107

Civil liability of the experts responsible for drawing up the expert report on behalf of the company being acquired

The laws of the Member States shall at least lay down rules governing the civil liability, towards the shareholders of the company being acquired, of the experts responsible for drawing up on behalf of that company the report referred to in Article 96(1), in respect of misconduct on the part of those experts in the performance of their duties.

Article 108

Conditions for nullity of a merger

1 The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only:

a nullity is to be ordered in a court judgment;

b mergers which have taken effect pursuant to Article 103 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

c nullification proceedings may not be initiated more than six months after the date on which the merger becomes effective as against the person alleging nullity or where the situation has been rectified;

d where it is possible to remedy a defect liable to render a merger void, the competent court is to grant the companies involved a period of time within which to rectify the situation;

e a judgment declaring a merger void is to be published in the manner prescribed by the laws of each Member State in accordance with Article 16;

f where the laws of a Member State permit a third party to challenge such a judgment, that party may only do so within six months of publication of the judgment in the manner prescribed by Section 1 of Chapter III of Title I;

g a judgment declaring a merger void does not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date on which the merger takes effect; and

h companies which have been parties to a merger are jointly and severally liable in respect of the obligations of the acquiring company referred to in point (g).

2 By way of derogation from point (a) of paragraph 1, the laws of a Member State may also provide for the nullity of a merger to be ordered by an administrative authority if an appeal against such a decision lies to a court. Point (b) and points (d) to (h) of paragraph 1shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date on which the merger takes effect.

3 The laws of the Member States on the nullity of a merger pronounced following any supervision other than judicial or administrative preventive supervision of legality shall not be affected.

Section 3

Merger by formation of a new company

Article 109

Merger by formation of a new company

1 Articles 91, 92, 93 and 95 to 108 shall apply, without prejudice to Articles 11 and 12, to merger by formation of a new company. For this purpose, 'merging companies' and 'company being acquired' shall mean the companies which will cease to exist, and 'acquiring company' shall mean the new company.

Article 91(2)(a) shall also apply to the new company.

2 The draft terms of merger and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

Section 4

Acquisition of one company by another which holds 90 % or more of its shares

Article 110

Transfer of all assets and liabilities by one or more companies to another company which is the holder of all their shares

Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Section 2 of this Chapter. However, Member States shall not impose the requirements set out in points (b), (c) and (d) of Article 91(2), Articles 95 and 96, points (d) and (e) of Article 97(1), point (b) of Article 105(1) and Articles 106 and 107.

Article 111

Exemption from the requirement of approval by the general meeting

Member States shall not apply Article 93 to the operations referred to in Article 110 if the following conditions are fulfilled:

(a) the publication provided for in Article 92 is effected, as regards each company involved in the operation, at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of the acquiring company are entitled to inspect the documents referred to in points (a), (b) and (c) of Article 97(1) at the company's registered office;

(c) point (c) of the first paragraph of Article 94 applies.

For the purposes of point (b) of the first paragraph of this Article, Article 97(2), (3) and (4) shall apply.

Article 112

Shares held by or on behalf of the acquiring company

The Member States may apply Articles 110 and 111 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 110 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

Article 113

Merger by acquisition by a company which holds 90 % or more of the shares of a company being acquired

Where a 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, Member States shall not require approval of the merger by the general meeting of the acquiring company if the following conditions are fulfilled:

(a) the publication provided for in Article 92 is effected, as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;

(b) at least one month before the date specified in point (a), all shareholders of the acquiring company are entitled to inspect the documents specified in points (a) and (b) and, where applicable, points (c), (d) and (e) of Article 97(1) at the company's registered office;

(c) point (c) of the first paragraph of Article 94 applies.

For the purposes of point (b) of the first paragraph of this Article, Article 97(2), (3) and (4) shall apply.

Article 114

Exemption from requirements applicable to mergers by acquisition

Member States shall not impose the requirements set out in Articles 95, 96 and 97 in the case of a merger within the meaning of Article 113 if the following conditions are fulfilled:

(a) the minority shareholders of the company being acquired are entitled to have their shares acquired by the acquiring company;

(b) if they exercise that right, they are entitled to receive consideration corresponding to the value of their shares;

(c) in the event of disagreement regarding such consideration, it is possible for the value of the consideration to be determined by a court or by an administrative authority designated by the Member State for that purpose.

A Member State need not apply the first paragraph if the laws of that Member State entitle the acquiring company, without a previous public takeover offer, to require all the holders of the remaining securities of the company or companies to be acquired, to sell those securities to it prior to the merger at a fair price.

Article 115

Transfer of all assets and liabilities by one or more companies to another company which is the holder of 90 % or more of their shares

The Member States may apply Articles 113 and 114 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if 90 % or more, but not all, of the shares and other securities referred to in Article 113 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

Section 5

Other operations treated as mergers

Article 116

Mergers with cash payment exceeding 10 %

Where in the case of one of the operations referred to in Article 88 the laws of a Member State permit a cash payment to exceed 10 %, Sections 2 and 3 of this Chapter and Articles 113, 114 and 115 shall apply.

Article 117

Mergers without all of the transferring companies ceasing to exist

Where the laws of a Member State permit one of the operations referred to in Articles 88, 110 and 116, without all of the transferring companies thereby ceasing to exist, Section 2, except for point (c) of Article 105(1), and Section 3 or 4 of this Chapter shall apply as appropriate.

CHAPTER II

Cross-border mergers of limited liability companies

Article 118

General provisions

This Chapter shall apply to mergers of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union, provided at least two of them are governed by the laws of different Member States (hereinafter referred to as 'cross-border mergers').

Article 119

Definitions

For the purposes of this Chapter:

(1) 'limited liability company', hereinafter referred to as 'company', means:

(a) a company of a type listed in Annex II; or

(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;

(2) 'merger' means an operation whereby:

(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 accounting par value of those securities or shares; or

(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

(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**[**[F3].**][**[F2]; or**]**

(d) **[**[F2]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.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

F3 Deleted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 120

Further provisions concerning scope

1 Notwithstanding Article 119(2), this Chapter shall also apply to cross-border mergers where the law 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.

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).

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 equivalent to such repurchase or redemption.

[F1 4 Member States shall ensure that this Chapter does not apply to companies in either of the following circumstances:

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

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

[F2 5 Member States may decide not to apply this Chapter to companies which are:

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 121

Conditions relating to cross-border mergers

1 Save as otherwise provided in this Chapter,

[[F3]a cross-border mergers shall only be possible between types of companies which may merge under the national law of the relevant Member States;**]**

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 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.

[[F1]2 The provisions and formalities referred to in point (b) of paragraph 1 of this Article shall, in particular, include those concerning the decision-making process relating to the merger and the protection of employees as regards rights other than those governed by Article 133.**]**

Textual Amendments

F3 Deleted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 122

Common draft terms of cross-border mergers

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 shall include at least the following particulars:

(a) **[**[F1]for each of the merging companies, its legal form and name, and the location of its registered office, and the legal form and name proposed for the company resulting from the cross-border merger and the proposed location of its registered office;

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

(c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;

(d) the likely repercussions of the cross-border merger on employment;

(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;

(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;

(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;

(h) **[**[F1]any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the merging companies;

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

(j) where appropriate, information on the procedures by which arrangements for the 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;

(k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;

(l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger**[**[F1];**]**

(m) **[**[F2]details of the offer of cash compensation for members in accordance with Article 126a;

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

[F1 Article 123

Disclosure

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

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

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

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

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

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

2 Member States may exempt merging companies from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 126 and ending not earlier than the conclusion of that meeting, those companies make the documents referred to in paragraph 1 of this Article available on their websites free of charge to the public.

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

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

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

b the register in which the documents referred to in Article 14 are filed in respect of each of the merging companies, and the registration number of the respective company in that register;

c an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors, employees and members; and

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

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

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

5 Where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the disclosure referred to in paragraphs 1, 2 and 3 of this Article shall be made at least one month before the date of the general meeting of the other merging company or companies.

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

7 Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the company by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 6 do not exceed the recovery of the cost of providing such services.

Article 124

Report of the administrative or management body for members and employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

However, where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available

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

7 Where the administrative or management body of the merging company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.

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

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

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

Article 125

Independent expert report

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.

[[F2]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.**]**

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.

[[F1]3 The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the merging companies prior to the announcement of the merger proposal or the value of the companies excluding the effect of the proposed merger, as determined in accordance with generally accepted valuation methods. The report shall at least:

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

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

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

arriving at the value decided on, and in the event that different methods are used in the merging companies, state also whether the use of different methods was justified; and

d describe any special valuation difficulties which have arisen.

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

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.

[[F2]Member States may exclude single-member companies from the application of this Article.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 126

Approval by the general meeting

[[F1]1 After taking note of the reports referred to in Articles 124 and 125, where applicable, employees' opinions submitted in accordance with Article 124 and comments submitted in accordance with Article 123, the general meeting of each of the merging companies shall decide, by means of a resolution, whether to approve the common draft terms of the cross-border merger and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.**]**

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 the participation of employees in the company resulting from the cross-border merger.

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.

[[F2]4 Member States shall ensure that the approval of the cross-border merger by the general meeting cannot be challenged solely on the following grounds:

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

[F2 Article 126a

Protection of members

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

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

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

2 Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the merging company concerned their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 126. Member States shall ensure that the merging companies provide an electronic address for receiving that declaration electronically.

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

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

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

5 Member States shall ensure that the law of the Member State to which a merging company is subject governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that Member State.

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 126b

Protection of creditors

1 Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the common draft terms of the cross#border merger and have not fallen due at the time of such disclosure.

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

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

2 Member States may require that the administrative or management body of each of the merging companies provides a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the merging companies at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company resulting from the merger would be unable to meet its liabilities when those liabilities fall due. The declaration shall be disclosed together with the common draft terms of the cross-border merger in accordance with Article 123.

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 126c

Employee information and consultation

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

[*F1**Article 127*

Pre-merger certificate

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

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

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

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

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

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

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

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

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

b the existence of subsidiaries and their respective geographical location;

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

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

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

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

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

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

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

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

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

b where it is determined that the cross-border merger does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-merger certificate and shall inform the company of the reasons for its decision; in that case, the competent authority may

give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

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

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

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

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

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

[F2 Article 127a

Transmission of the pre-merger certificate

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 128

Scrutiny of the legality of the cross-border merger

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.

[[F1]2 For the purposes of paragraph 1 of this Article, each merging company shall submit to the authority referred to in paragraph 1 of this Article the common draft terms of the cross-border merger approved by the general meeting referred to in Article 126 or, in the event that the approval by the general meeting is not required in accordance with Article 132(3), the common draft terms of the cross-border merger approved by each merging company in accordance with national law.**]**

[[F2]3 Each Member State shall ensure that any application for the purposes of paragraph 1, by any of the merging companies, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority referred to in paragraph 1, in accordance with the relevant provisions of Chapter III of Title I.

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 129

Date on which the cross-border merger takes effect

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.

[F1 Article 130

Registration

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

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

a in the register of the Member State of the company resulting from the merger, that the registration of the company resulting from the merger is the result of a cross-border merger;

b in the register of the Member State of the company resulting from the merger, the date of registration of the company resulting from the merger;

c in the register of the Member State of each merging company, that the striking off or removal of the merging company from the register is the result of a cross-border merger;

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

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

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

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

Article 131

Consequences of a cross-border merger

[F1 1 A cross-border merger carried out as laid down in subpoints (a), (c) and (d) of point (2) of Article 119 shall, from the date referred to in Article 129, have the following consequences:

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

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

c the company being acquired shall cease to exist.**]**

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:

[F1 a all the assets and liabilities of the merging companies, including all contracts, credits, rights and obligations, shall be transferred to the new company;

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

c the merging companies shall cease to exist.

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.

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.

5 No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

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.

Article 132

Simplified formalities

[F1 1 Where a cross-border merger by acquisition is carried out either by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired or by a person who holds directly or indirectly all the shares in the acquiring company and in the company or companies being acquired, and the acquiring company does not allot any shares under the merger:

— points (b), (c), (e) and (m) of Article 122, Article 125, and point (b) of Article 131(1) shall not apply;

— Article 124 and Article 126(1) shall not apply to the company or companies being acquired.**]**

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.

[F2 3 Where the laws of the Member States of all of the merging companies provide for the exemption from the approval by the general meeting in accordance with Article 126(3) and paragraph 1 of this Article, the common draft terms of cross-border merger or the information referred to in Article 123(1) to (3) respectively and the reports referred to in Articles 124 and 125, shall be made available at least one month before the decision on the merger is taken by the company in accordance with national law.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 133

Employee participation

1 Without prejudice to paragraph 2, the company resulting from the cross-border merger shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

[F1 2 However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply where at least one of the merging companies has, in the six months prior to the disclosure of the common draft terms of the cross-border merger, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State to whose jurisdiction the merging company is subject, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not:**]**

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

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.

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 the definition of such rights shall be regulated by the Member States, *mutatis mutandis* 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:

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;

d Article 6;

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 %;

f Articles 8, 10 and 12;

g Article 13(4);

h point (b) of Part 3 of the Annex.

4 When regulating the principles and procedures referred to in paragraph 3, Member States:

[[F1]a shall confer on the relevant bodies of the merging companies, in the event that at least one of the merging companies is operating under an employee participation system within the meaning of point (k) of Article 2 of Directive 2001/86/EC, the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in point (b) of Part 3 of the Annex to that Directive, as laid down by the legislation of the Member State in which the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;**]**

b 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, 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;

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 proportion of employee representatives in the administrative organ than one third.

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 thresholds giving rise to participation rights under national law.

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.

[[F1]7 Where the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of four years after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.**]**

[[F2]8 A company shall communicate to its employees or their representatives whether it chooses to apply standard rules for participation referred to in point (h) of paragraph 3 or whether it enters into negotiations within the special negotiating body. In the latter case, the company shall communicate to its employees or their representatives the outcome of the negotiations without undue delay.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

[F2 Article 133a

Independent experts

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

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

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

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

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

Article 134

Validity

A cross-border merger which has taken effect as provided for in Article 129 may not be declared null and void.

[F2The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border merger took effect.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).

CHAPTER III

Divisions of public limited liability companies

Section 1

General provisions

Article 135

General provisions on division operations

1 Where Member States permit the types of companies listed in Annex I coming under their laws to carry out division operations by acquisition as defined in Article 136, they shall make those operations subject to Section 2 of this Chapter.

2 Where Member States permit the types of companies referred to in paragraph 1 to carry out division operations by the formation of new companies as defined in Article 155, they shall make those operations subject to Section 3 of this Chapter.

3 Where Member States permit the types of companies referred to in paragraph 1 to carry out operations, whereby a division by acquisition as defined in Article 136(1) is combined with a division by the formation of one or more new companies as defined in Article 155(1), they shall make those operations subject to Section 2 of this Chapter and Article 156.

4 Article 87(2), (3) and (4) shall apply.

Section 2

Division by acquisition

Article 136

Definition of a 'division by acquisition'

1 For the purposes of this Chapter, 'division by acquisition' shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as 'recipient companies') and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2 Article 89(2) shall apply.

3 In so far as this Chapter refers to provisions of Chapter I of Title II, the term 'merging companies' shall mean 'the companies involved in a division', the term 'company being acquired' shall mean 'the company being divided', the term 'acquiring company' shall mean 'each of the recipient companies' and the term 'draft terms of merger' shall mean 'draft terms of division'.

Article 137

Draft terms of division

1 The administrative or management bodies of the companies involved in a division shall draw up draft terms of division in writing.

2 Draft terms of division shall specify at least:

a the type, name and registered office of each of the companies involved in the division;

b the share exchange ratio and the amount of any cash payment;

c the terms relating to the allotment of shares in the recipient companies;

d the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

e the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies;

f the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

g any special advantage granted to the experts referred to in Article 142(1) and members of the administrative, management, supervisory or controlling bodies of the companies involved in the division;

h the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;

i the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based.

3 Where an asset is not allocated by the draft terms of division and where the interpretation of those terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.

Where a liability is not allocated by the draft terms of division and where the interpretation of those terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.

Article 138

Publication of the draft terms of division

Draft terms of division shall be published in the manner prescribed by the laws of each Member State in accordance with Article 16 for each of the companies involved in a division, at least one month before the date of the general meeting which is to decide thereon.

Any of the companies involved in the division shall be exempt from the publication requirement laid down in Article 16 if, for a continuous period beginning at least one month before the date fixed for the general meeting which is to decide on the draft terms of division and ending not earlier than the conclusion of that meeting, it makes the draft terms of division available on its website free of charge for the public. 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 and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

By way of derogation from the second paragraph, Member States may require that publication be effected via the central electronic platform referred to in Article 16(5). Member States may alternatively require that such publication be made on any other website designated by them for that purpose. Where Member States avail themselves of one of those possibilities, they shall ensure that companies are not charged a specific fee for such publication.

Where a website other than the central electronic platform is used, a reference giving access to that website shall be published on that central electronic platform at least one month before the date fixed for the general meeting. That reference shall include the date of publication of the draft terms of division on the website and shall be accessible to the public free of charge. Companies shall not be charged a specific fee for such publication.

The prohibition precluding the charging to companies of a specific fee for publication, laid down in the third and fourth paragraphs, shall not affect the ability of Member States to pass on to companies the costs in respect of the central electronic platform.

Member States may require companies to maintain the information for a specific period after the general meeting on their website or, where applicable, on the central electronic platform or the other website designated by the Member State concerned. Member States may determine the consequences of temporary disruption of access to the website or to the central electronic platform, caused by technical or other factors.

Article 139

Approval by the general meeting of each company involved in a division

1 A division shall require at least the approval of a general meeting of each company involved in the division. Article 93 shall apply with regard to the majority required for such decisions, their scope and the need for separate votes.

2 Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased. In such case, they shall be entitled to receive consideration corresponding to the value of their shares. In the event of a dispute concerning such consideration, it shall be possible for the consideration to be determined by a court.

Article 140

Derogation from the requirement of approval by the general meeting of a recipient company

The laws of a Member State need not require approval of a division by a general meeting of a recipient company if the following conditions are fulfilled:

(a) the publication provided for in Article 138 is effected, for each recipient company, at least one month before the date fixed for the general meeting of the company being divided which is to decide on the draft terms of division;

(b) at least one month before the date specified in point (a), all shareholders of each recipient company are entitled to inspect the documents specified in Article 143(1) at the registered office of that company;

(c) one or more shareholders of any recipient company holding a minimum percentage of the subscribed capital is entitled to require that a general meeting of such recipient company be called to decide whether to approve the division. Such minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of non-voting shares from this calculation.

For the purposes of point (b) of the first paragraph, Article 143(2), (3) and (4) shall apply.

Article 141

Detailed written report and information on a division

1 The administration or management bodies of each of the companies involved in the division shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares.

2 The report shall also describe any special valuation difficulties which have arisen.

Where applicable, it shall disclose the preparation of the report on the consideration other than in cash referred to in Article 70(2) for recipient companies and the register where that report must be lodged.

3 The administrative or management bodies of a company being divided shall inform the general meeting of that company and the administrative or management bodies of the recipient companies so that they can inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company being divided which is to decide on the draft terms of division.

Article 142

Examination of the draft terms of division by experts

1 One or more experts acting on behalf of each of the companies involved in the division but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of division and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all of the companies involved in a division if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2 Article 96(2) and (3) shall apply.

Article 143

Availability of documents for inspection by shareholders

1 All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date of the general meeting which is to decide on the draft terms of division:

a the draft terms of division;

b the annual accounts and annual reports of the companies involved in the division for the preceding three financial years;

c where applicable, an accounting statement drawn up as at a date which shall not be earlier than the first day of the third month preceding the date of the draft terms of division, if the latest annual accounts relate to a financial year which ended more than six months before that date;

d where applicable, the reports of the administrative or management bodies of the companies involved in the division provided for in Article 141(1);

e where applicable, the reports provided for in Article 142.

For the purposes of point (c) of the first subparagraph, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 5 of Directive 2004/109/EC and makes it available to shareholders in accordance with this paragraph.

2 The accounting statement provided for in point (c) of paragraph 1 shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

a it shall not be necessary to take a fresh physical inventory;

b the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:

(i) interim depreciation and provisions,

(ii) material changes in actual value not shown in the books.

3 Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

Where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided by electronic mail.

4 A company shall be exempt from the requirement to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning at least one month before the date fixed for the general meeting which is to decide on the draft terms of division and ending not earlier than the conclusion of that meeting, it makes them available on its website. Member States shall not subject that exemption to requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of the documents, and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

Paragraph 3 shall not apply if the website gives shareholders the possibility, throughout the period referred to in the first subparagraph of this paragraph, of downloading and printing the documents referred to in paragraph 1. However, in that case Member States

may provide that the company is to make those documents available at its registered office for consultation by the shareholders.

Member States may require companies to maintain the information on their website for a specific period after the general meeting. Member States may determine the consequences of temporary disruption of access to the website caused by technical or other factors.

Article 144

Simplified formalities

1 Neither an examination of the draft terms of division nor an expert report as provided for in Article 142(1) shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

2 Member States may permit the non-application of Article 141 and points (c) and (d) of Article 143(1) if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

Article 145

Protection of employees' rights

Protection of the rights of the employees of each of the companies involved in a division shall be regulated in accordance with Directive 2001/23/EC.

Article 146

Protection of the interests of creditors of companies involved in a division; joint and several liability of the recipient companies

1 The laws of Member States shall provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate publication of the draft terms of division and have not yet fallen due at the time of such publication.

2 For the purpose of paragraph 1, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided, and that of the company to which the obligation is to be transferred in accordance with the draft terms of division, make such protection necessary, and where those creditors do not already have such safeguards.

Member States shall lay down the conditions for the protection provided for in paragraph 1 and in the first subparagraph of this paragraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the division the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

3 In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability

to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph where the division operation is subject to the supervision of a judicial authority in accordance with Article 157 and a majority in number representing three-quarters in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to point (c) of Article 157(l).

4 Article 99(3) shall apply.

5 Without prejudice to the rules governing the collective exercise of their rights, paragraphs 1 to 4 shall apply to the debenture holders of the companies involved in the division except where the division has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

6 Member States may provide that the recipient companies shall be jointly and severally liable for the obligations of the company being divided. In such case they need not apply paragraphs 1 to 5.

7 Where a Member State combines the system of creditor protection set out in paragraphs 1 to 5 with the joint and several liability of the recipient companies as referred to in paragraph 6, it may limit such joint and several liability to the net assets allocated to each of those companies.

Article 147

Protection of holders of securities, other than shares, to which special rights are attached

Holders of securities, other than shares, to which special rights are attached, shall be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.

Article 148

Drawing up and certification of documents in due legal form

Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of divisions or where such supervision does not extend to all the legal acts required for a division, Article 102 shall apply.

Article 149

Date on which a division takes effect

The laws of Member States shall determine the date on which a division takes effect.

Article 150

Publication formalities

1 A division shall be published in the manner prescribed by the laws of each Member State in accordance with Article 16 in respect of each of the companies involved in a division.

2 Any recipient company may itself carry out the publication formalities relating to the company being divided.

Article 151

Consequences of a division

1 A division shall have the following consequences *ipso jure* and simultaneously:

a the transfer, both as between the company being divided and the recipient companies and as regards third parties, to each of the recipient companies of all the assets and liabilities of the company being divided; such transfer shall take effect with the assets and liabilities being divided in accordance with the allocation laid down in the draft terms of division or in Article 137(3);

b the shareholders of the company being divided become shareholders of one or more of the recipient companies in accordance with the allocation laid down in the draft terms of division;

c the company being divided ceases to exist.

2 No shares in a recipient company shall be exchanged for shares held in the company being divided either:

a by that recipient company itself or by a person acting in his own name but on its behalf; or

b by the company being divided itself or by a person acting in his own name but on its behalf.

3 The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by a company being divided to be effective as against third parties. The recipient company or companies to which such assets, rights or obligations are transferred in accordance with the draft terms of division or with Article 137(3) may carry out those formalities themselves; however, the laws of Member States may permit a company being divided to continue to carry out those formalities for a limited period which may not, save in exceptional circumstances, be fixed at more than six months from the date on which the division takes effect.

Article 152

Civil liability of members of the administrative or management bodies of a company being divided

The laws of Member States shall at least lay down rules governing the civil liability of members of the administrative or management bodies of a company being divided towards the shareholders of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division and the civil

liability of the experts responsible for drawing up for that company the report provided for in Article 142 in respect of misconduct on the part of those experts in the performance of their duties.

Article 153

Conditions for nullity of a division

1 The laws of Member States may lay down nullity rules for divisions in accordance with the following conditions only:

a nullity must be ordered in a court judgment;

b divisions which have taken effect pursuant to Article 149 are declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

c nullification proceedings are not initiated more than six months after the date on which the division becomes effective as against the person alleging nullity or if the situation has been rectified;

d where it is possible to remedy a defect liable to render a division void, the competent court grants the companies involved a period of time within which to rectify the situation;

e a judgment declaring a division void is published in the manner prescribed by the laws of each Member State in accordance with Article 16;

f where the laws of a Member State permit a third party to challenge such a judgment, he does so only within six months of publication of the judgment in the manner prescribed by Chapter III of Title I;

g a judgment declaring a division void does not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was published and after the date referred to in Article 149;

h each of the recipient companies is liable for its obligations arising after the date on which the division took effect and before the date on which the decision pronouncing the nullity of the division was published. The company being divided shall also be liable for such obligations; Member States may provide that this liability be limited to the share of net assets transferred to the recipient company on whose account such obligations arose.

2 By way of derogation from point (a) of paragraph 1 of this Article, the laws of a Member State may also provide for the nullity of a division to be ordered by an administrative authority if an appeal against such a decision lies to a court. Point (b) and points (d) to (h) of paragraph 1 of this Article shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 149.

3 The foregoing shall not affect the laws of the Member States on the nullity of a division pronounced following any supervision of legality.

Article 154

Exemption from the requirement of approval by the general meeting of the company being divided

Without prejudice to Article 140, Member States shall not require approval of the division by the general meeting of the company being divided if the recipient companies together hold all the shares of the company being divided and all other securities conferring the right to vote at general meetings of the company being divided, and the following conditions are fulfilled:

(a) each of the companies involved in the operation carries out the publication provided for in Article 138 at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of companies involved in the operation are entitled to inspect the documents specified in Article 143(1), at their company's registered office;

(c) where a general meeting of the company being divided, required for the approval of the division, is not summoned, the information provided for in Article 141(3) covers any material change in the asset and liabilities after the date of preparation of the draft terms of division.

For the purposes of point (b) of the first paragraph, Article 143(2), (3) and (4) and Article 144 shall apply.

Section 3

Division by the formation of new companies

Article 155

Definition of a 'division by the formation of new companies'

1 For the purposes of this Chapter, 'division by the formation of new companies' means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2 Article 90(2) shall apply.

Article 156

Application of rules on divisions by acquisition

1 Articles 137, 138, 139, and 141, Article 142(1) and (2) and Articles 143 to 153 shall apply, without prejudice to Articles 11 and 12, to division by the formation of new companies. For this purpose, the term 'companies involved in a division' shall refer to the company being divided and the term 'recipient companies' shall refer to each of the new companies.

2 In addition to the information specified in Article 137(2), the draft terms of division shall indicate the form, name and registered office of each of the new companies.

3 The draft terms of division and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of each of the new companies shall be approved at a general meeting of the company being divided.

4 Member States shall not impose the requirements set out in Articles 141 and 142 and in points (c), (d) and (e) of Article 143(1) where the shares in each of the new companies are allocated to the shareholders of the company being divided in proportion to their rights in the capital of that company.

Section 4

Divisions under the supervision of a judicial authority

Article 157

Divisions under the supervision of a judicial authority

1 Member States may apply paragraph 2 where division operations are subject to the supervision of a judicial authority having the power:

a to call a general meeting of the shareholders of the company being divided in order to decide upon the division;

b to ensure that the shareholders of each of the companies involved in a division have received or can obtain at least the documents referred to in Article 143 in time to examine them before the date of the general meeting of their company called to decide upon the division. Where a Member State makes use of the option provided for in Article 140, the period shall be long enough for the shareholders of the recipient companies to be able to exercise the rights conferred on them by that Article;

c to call any meeting of creditors of each of the companies involved in a division in order to decide upon the division;

d to ensure that the creditors of each of the companies involved in a division have received or can obtain at least the draft terms of division in time to examine them before the date referred to in point (b);

e to approve the draft terms of division.

2 Where the judicial authority establishes that the conditions referred to in points (b) and (d) of paragraph 1 have been fulfilled and that no prejudice would be caused to shareholders or creditors, it may relieve the companies involved in the division from applying:

a Article 138, on condition that the adequate system of protection of the interest of the creditors referred to in Article 146(1) covers all claims regardless of their date;

b the conditions referred to in points (a) and (b) of Article 140 where a Member State makes use of the option provided for in Article 140;

c Article 143, as regards the period and the manner prescribed for the inspection of the documents referred to therein.

Section 5

Other operations treated as divisions

Article 158

Divisions with cash payment exceeding 10 %

Where, in the case of one of the operations specified in Article 135, the laws of a Member State permit the cash payment to exceed 10 %, Sections 2, 3 and 4 of this Chapter shall apply.

Article 159

Divisions without the company being divided ceasing to exist

Where the laws of a Member State permit one of the operations specified in Article 135 without the company being divided ceasing to exist, Sections 2, 3 and 4 of this Chapter shall apply, except for point (c) of Article 151(1).

Section 6

Application arrangements

Article 160

Transitional provisions

Member States need not apply Articles 146 and 147 as regards the holders of convertible debentures and other securities convertible into shares if, at the time when the provisions referred to in Article 26(1) or (2) of Directive 82/891/EEC came into force, the position of those holders in the event of a division had previously been determined by the conditions of issue.

[F2CHAPTER IV

Cross-border divisions of limited liability companies

Article 160a

Scope

1 This Chapter shall apply to cross-border divisions of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union, provided that at least two of the limited liability companies involved in the division are governed by the laws of different Member States (hereinafter referred to as ‘cross-border division’).

2 Notwithstanding point 4 of Article 160b, this Chapter shall also apply to cross-border divisions where the law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of point 4 of Article 160b to exceed 10 % of the nominal value, or, in the absence of a nominal value, 10 % of the accounting par value of the securities or shares representing the capital of the recipient companies.

3 This Chapter shall not apply to cross-border divisions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

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

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

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

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

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

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

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

Article 160b

Definitions

For the purposes of this Chapter:

(1) 'company' means a limited liability company of a type listed in Annex II;

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

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

(4) 'division' means an operation whereby:

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

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

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

Article 160c

Procedures and formalities

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

Article 160d

Draft terms of cross-border divisions

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

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

(b) the ratio applicable to the exchange of securities or shares representing the companies' capital and the amount of any cash payment, where appropriate;

(c) the terms for the allotment of securities or shares representing the capital of the recipient companies or of the company being divided;

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

(e) the likely repercussions of the cross-border division on employment;

(f) the date from which the holding of securities or shares representing the companies' capital will entitle the holders to share in profits, and any special conditions affecting that entitlement;

(g) the date or dates from which the transactions of the company being divided will be treated for accounting purposes as being those of the recipient companies;

(h) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the company being divided;

(i) the rights conferred by the recipient companies on members of the company being divided enjoying special rights or on holders of securities other than shares representing the divided company capital, or the measures proposed concerning them;

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

(k) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the recipient companies are determined pursuant to Article 160l;

(l) a precise description of the assets and liabilities of the company being divided and a statement of how those assets and liabilities are to be allocated between the recipient companies, or are to be retained by the company being divided in the case of a partial division or a division by separation, including provisions on the treatment of assets or liabilities not explicitly allocated in the draft terms of cross-border division, such as assets or liabilities which are unknown on the date on which the draft terms of cross-border division are drawn up;

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

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

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

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

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

Article 160e

Report of the administrative or management body for members and employees

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

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

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

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

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

a the cash compensation and the method used to determine the cash compensation;
b the share exchange ratio and the method or methods used to arrive at the share exchange ratio, where applicable;
c the implications of the cross-border division for members;
d the rights and remedies available to members in accordance with Article 160i.

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

5 The section of the report for employees shall, in particular, explain the following:
a the implications of the cross-border division for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;
b any material changes to the applicable conditions of employment or to the location of the company's places of business;
c how the factors set out in points (a) and (b) affect any subsidiaries of the company.

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

7 Where the administrative or management body of the company being divided receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.

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

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

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

Article 160f

Independent expert report

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

2 The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the company being divided prior to the announcement of the division proposal or the value of the company

excluding the effect of the proposed division, as determined in accordance with generally accepted valuation methods. The report shall at least:

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

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

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

d describe any special valuation difficulties which have arisen.

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

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

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

Article 160g

Disclosure

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

a the draft terms of the cross-border division; and

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

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

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

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

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

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

3 Where the company being divided makes the draft terms of the cross-border division available in accordance with paragraph 2 of this Article, it shall submit to the register, at least

one month before the date of the general meeting referred to in Article 160h, the following information:

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

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

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

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

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

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

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

6 Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

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

Article 160h

Approval by the general meeting

1 After taking note of the reports referred to in Articles 160e and 160f, where applicable, employees' opinions submitted in accordance with Article 160e and comments submitted in accordance with Article 160g, the general meeting of the company being divided shall decide, by means of a resolution, whether to approve the draft terms of cross-border division and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.

2 The general meeting of the company being divided may reserve the right to make implementation of the cross-border division conditional on express ratification by it of the arrangements referred to in Article 160l.

3 Member States shall ensure that the approval of the draft terms of the cross-border division, and of any amendment to those draft terms, requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented at the general meeting. In any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.

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

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

a the share exchange ratio referred to in point (b) of Article 160d has been inadequately set;

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

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

Article 160i

Protection of members

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

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

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

2 Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company being divided their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 160h. Member States shall ensure that the company being divided provides an electronic address for receiving that declaration electronically.

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

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

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

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

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

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

Article 160j

Protection of creditors

1 Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the draft terms of the cross#border division and have not fallen due at the time of such disclosure.

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

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

2 Where a creditor of the company being divided does not obtain satisfaction from the company to which the liability is allocated, the other recipient companies, and in the case of a partial division or a division by separation, the company being divided, shall be jointly and severally liable with the company to which the liability is allocated for that obligation. However, the maximum amount of joint and several liability of any company involved in the division shall be limited to the value, at the date on which the division takes effect, of the net assets allocated to that company.

3 Member States may require that the administrative or management body of the company being divided provide a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the company being divided at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why any recipient company and, in the case of a partial division, the company being divided, would, after the division takes effect, be unable to meet the liabilities allocated to them under the draft terms of the cross-border division when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border division in accordance with Article 160g.

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

Article 160k

Employee information and consultation

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

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

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

Article 160l

Employee participation

1 Without prejudice to paragraph 2, each recipient company shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

2 However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply where the company being divided has, in the six months prior to the disclosure of the draft terms of the cross-border division, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State of the company being divided, for triggering the participation of employees within the meaning of point (k) of

Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

a provide for at least the same level of employee participation as operated in the company being divided prior to its cross-border division, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

b provide for employees of establishments of the recipient companies that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the recipient company has its registered office.

3 In the cases referred to in paragraph 2 of this Article, the participation of employees in the companies resulting from the cross-border division and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

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

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

c Article 5;

d Article 6;

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

f Articles 8, 10, 11 and 12; and

g point (a) of Part 3 of the Annex.

4 When regulating the principles and procedures referred to in paragraph 3, Member States:

a shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member States of each of the recipient companies;

b may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative body of the recipient companies. However, if, in the company being divided, employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third;

c shall ensure that the rules on employee participation that applied prior to the cross-border division continue to apply until the date of application of any subsequently agreed rules or, in the absence of agreed rules, until the application of standard rules in accordance with point (a) of Part 3 of the Annex to Directive 2001/86/EC.

5 The extension of participation rights to employees of the recipient companies employed in other Member States, as referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6 Where any of the recipient companies is to be governed by an employee participation system in accordance with the rules referred to in paragraph 2, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

7 Where the recipient company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of four years after the cross#border division has taken effect, by applying, *mutatis mutandis*, the rules laid down in paragraphs 1 to 6.

8 A company shall communicate to its employees or their representatives the outcome of the negotiations concerning employee participation without undue delay.

Article 160m

Pre-division certificate

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

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

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

a the draft terms of the cross-border division;

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

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

d information on the approval by the general meeting referred to in Article 160h.

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

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

b the existence of subsidiaries and their respective geographical location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 160n

Transmission of the pre-division certificate

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

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

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

Article 160o

Scrutiny of the legality of the cross-border division

1 Member States shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border division as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross#border division.

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

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

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

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

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

Article 160p

Registration

1 The laws of the Member States of the company being divided and of the recipient companies shall determine, with regard to their respective territories, the arrangements, in

accordance with Article 16, for disclosing the completion of the cross-border division in their registers.

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

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

b in the register of the Member States of the recipient companies, the dates of registration of the recipient companies;

c in the register of the Member State of the company being divided in the event of a full division, that the striking off or removal of the company being divided from the register is the result of a cross-border division;

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

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

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

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

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

Article 160q

Date on which the cross-border division takes effect

The law of the Member State of the company being divided shall determine the date on which the cross-border division takes effect. That date shall be after the scrutiny referred to in Articles 160m and 160o has been carried out and after the registers have received all notifications referred to in Article 160p(3).

Article 160r

Consequences of a cross-border division

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

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

b the members of the company being divided shall become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of

the cross-border division, unless they have disposed of their shares as referred to in Article 160i(1);

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

d the company being divided shall cease to exist.

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

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

b at least some of the members of the company being divided shall become members of the recipient company or companies and at least some of the members shall remain in the company being divided or shall become members of both in accordance with the allocation of shares specified in the draft terms of the cross-border division, unless those members have disposed of their shares as referred to in Article 160i(1);

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

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

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

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

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

4 Without prejudice to Article 160j(2), Member States shall ensure that where an asset or a liability of the company being divided is not explicitly allocated under the draft terms of the cross-border division, as referred to in point (l) of Article 160d, and where the interpretation of those terms does not make a decision on its allocation possible, the asset, the consideration therefor or the liability is allocated to all the recipient companies or, in the case of a partial division or a division by separation, to all the recipient companies and the company being divided in proportion to the share of the net assets allocated to each of those companies under the draft terms of the cross-border division.

5 Where, in the case of a cross-border division, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the company being divided becomes effective as against third parties, those formalities shall be carried out by the company being divided or by the recipient companies, as appropriate.

6 Member States shall ensure that shares in a recipient company cannot be exchanged for shares in the company being divided which are either held by the company itself or through a person acting in his or her own name but on behalf of the company.

Article 160s

Simplified formalities

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

Article 160t

Independent experts

1 Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 160f.

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

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

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

Article 160u

Validity

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

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

Textual Amendments

F1 Substituted by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Text with EEA relevance).