

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

[<sup>F1</sup>CONVERSIONS, MERGERS AND DIVISIONS  
OF LIMITED LIABILITY COMPANIES]

[<sup>F1</sup>CHAPTER 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.

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## 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;

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- (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.

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## 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;

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- 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.

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### 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.

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### 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.

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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:

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- 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** 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 \(Text with EEA relevance\).](#)