

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]

CHAPTER II

*Cross-border mergers of limited liability companies*

*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.

[<sup>F12</sup> 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);

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- 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:
- [<sup>F1</sup>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.
- [<sup>F17</sup> 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.]

[<sup>F28</sup> 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.]

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