

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 -I

*Cross-border conversions*

[<sup>F1</sup>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

---

*Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.*

---

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.]

---

#### **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).