

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

[^{F1}CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES]

[^{F1}CHAPTER -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:

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- (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

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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

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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

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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 86I

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

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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

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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);

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- (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

- 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).