

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) 2018/0114(COD) Directive	Procedure completed
Cross-border conversions, mergers and divisions Amending Directive (EU) 2017/1132 2015/0283(COD) See also 2018/0113(COD)	
Subject 2.40.01 Right of establishment 2.60.04 Economic concentration, mergers, takeover bids, holding companies 3.45.01 Company law	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs (Associated committee)	S&D REGNER Evelyn Shadow rapporteur PPE DE GRANDES PASCUAL Luis ECR DZHAMBAZKI Angel ECR KARIM Sajjad ALDE ROHDE Jens GUE/NGL MAŠTÁLKA Jiří Verts/ALE DURAND Pascal	15/05/2018
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs	S&D LUDVIGSSON Olle	31/05/2018
Council of the European Union	EMPL Employment and Social Affairs (Associated committee)	ECR MCINTYRE Anthea	11/07/2018
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	European Commission	Commissioner	JOUROVÁ Věra
European Economic and Social Committee	Commission DG Justice and Consumers		

Key events			
25/04/2018	Legislative proposal published	COM(2018)0241	Summary
28/05/2018	Committee referral announced in Parliament, 1st reading/single reading		
04/10/2018	Referral to associated committees announced in Parliament		
	Vote in committee, 1st reading/single		

06/12/2018	reading		
06/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
10/01/2019	Committee report tabled for plenary, 1st reading/single reading	A8-0002/2019	Summary
14/01/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
17/01/2019	Results of vote in Parliament		
17/01/2019	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71 - vote)		
01/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.566 GEDA/A/(2019)004508	
17/04/2019	Debate in Parliament		
18/04/2019	Decision by Parliament, 1st reading/single reading	T8-0429/2019	Summary
17/10/2019	Act adopted by Council after Parliament's 1st reading		
25/11/2019	End of procedure in Parliament		
27/11/2019	Final act signed		
12/12/2019	Final act published in Official Journal		

Technical information

Procedure reference	2018/0114(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive (EU) 2017/1132 2015/0283(COD) See also 2018/0113(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 050-p1; Treaty on the Functioning of the EU TFEU 050-p2
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/12966

Documentation gateway

Legislative proposal	COM(2018)0241	25/04/2018	EC	Summary
Document attached to the procedure	SWD(2018)0141	26/04/2018	EC	

Document attached to the procedure		SWD(2018)0142	26/04/2018	EC	
For information		N8-0092/2018 OJ C 324 13.09.2018, p. 0013	26/07/2018	EDPS	
Committee draft report		PE625.524	21/08/2018	EP	
Amendments tabled in committee		PE628.354	25/09/2018	EP	
Amendments tabled in committee		PE627.948	26/09/2018	EP	
Amendments tabled in committee		PE628.353	26/09/2018	EP	
Economic and Social Committee: opinion, report		CES1917/2018	17/10/2018	ESC	
Committee opinion	ECON	PE625.345	14/11/2018	EP	
Committee opinion	EMPL	PE625.383	21/11/2018	EP	
Amendments tabled in committee		PE631.919	06/12/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0002/2019	10/01/2019	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)004508	27/03/2019	CSL	
Amendments tabled in committee		PE637.550	08/04/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0429/2019	18/04/2019	EP	Summary
Commission response to text adopted in plenary		SP(2019)440	08/08/2019	EC	
Draft final act		00084/2019/LEX	27/11/2019	CSL	

Final act

[Directive 2019/2121](#)
[OJ L 321 12.12.2019, p. 0001](#) Summary

[Corrigendum to final act 32019L2121R\(01\)](#)
[OJ L 020 24.01.2020, p. 0024](#)

2018/0114(COD) - 25/04/2018 Legislative proposal

PURPOSE: to propose new company law rules to facilitate the conversions, mergers and divisions of companies within the Single Market.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: there are around 24 million companies in the EU, out of which approximately 80% are limited liability companies. Around 98-99% of limited liability companies are SMEs. The freedom of establishment plays a crucial role in the development of the Single Market as it allows corporate entities to pursue economic activities in other Member States on a stable basis. However, in practice the exercise of the freedom of establishment by companies remains difficult, in particular because company law is not sufficiently adapted to cross-border mobility in the EU.

The Court of Justice of the European Union (ECJ) has considered that the freedom of establishment enshrined in Article 49 TFEU entails the right, for companies established in a Member State, to transfer their seat to another Member State through a cross-border conversion without losing their legal personality. In particular in its recent judgement Polbud, the ECJ confirmed the right of companies to carry out cross-border conversions on the basis of the freedom of establishment.

Currently, companies wishing to move their registered offices cross-border need to rely on Member States' laws. Such laws, where they exist, are often incompatible or difficult to combine with each other. Moreover, more than half of the Member States do not provide any specific rules allowing for cross-border conversions. SMEs are in particular negatively impacted since often they lack resources to perform cross-border

procedures through costly and complicated alternative methods. This also means that the protection of stakeholders such as employees, creditors or minority shareholders is often ineffective or insufficient due to the lack of, overlapping or contradictory rules.

Therefore, the Commission considers that the EU legislator needs to step in and provide for rules on cross-border conversion with adequate and proportionate safeguards for employees, creditors and shareholders to create a dynamic and fair Single Market.

IMPACT ASSESSMENT: the chosen options consist in introducing:

- harmonised EU procedures to enable companies to carry-out direct cross-border conversions and divisions;
- harmonised rules throughout the single market to protect minority shareholders and creditors with the possibility for Member States to provide additional safeguards;
- targeted amendments to provide workers with the necessary protection, information, consultation and participation;
- rules and procedures whereby Member States would assess on a case-by-case basis whether the cross-border conversion constitutes an artificial arrangement designed to obtain undue tax advantages or to undermine the rights of employees, minority shareholders or creditors.

According to the Commission, the new common rules on cross-border conversions and divisions would result in savings of between EUR 12 000 and EUR 37 000 (for divisions) and between EUR 12 000 and 19 000 (for conversions) depending on the size of the companies and Member States concerned.

CONTENT: this proposal to amend [Directive \(EU\) 2017/1132](#) of the European Parliament and of the Council on cross-border mergers of limited liability companies introduces a new European legal framework for cross-border divisions of companies and firms.

The objective of this proposal is two-fold: provide specific and comprehensive procedures for cross-border conversions, divisions and mergers to foster cross-border mobility in the EU while, at the same time, offering company stakeholders adequate protection in order to safeguard the fairness of the Single Market.

(1) Cross-border conversions: the proposal should allow companies to carry out a cross-border conversion by converting the legal form they have in one Member State into a similar legal form in another Member State. This process should ensure: (i) that companies retain their legal personality throughout the procedure, without being obliged to dissolve or wind up in the departure Member State, and (ii) that they constitute a new entity in the Member State of destination.

A crucial element of the procedure is that it would prevent a cross-border conversion where it is determined that it constitutes an abuse, namely in cases where it constitutes an artificial arrangement aimed at obtaining undue tax advantages or at unduly prejudicing the legal or contractual rights of employees, creditors or minority members.

The first step in the procedure would be the preparation of the draft terms of the cross-border conversion and two targeted reports addressed to shareholders and employees on the implications that the cross-border conversion will have.

Thereafter, the company is to take a decision at the general meeting on whether to pursue the cross-border conversion. That decision, together with the relevant information and documents, would then be submitted to the competent national authority of the Member State of departure which is responsible to decide whether to issue a pre-conversion certificate or not.

The authority would determine if all conditions for the cross-border conversion laid down in the Directive and in national law are fulfilled, including whether the company is solvent, the requisite majority of shareholders has approved the conversion at a general meeting and employees, minority shareholders and creditors are protected within the remit prescribed by the Directive. During this phase, the authority would also determine whether there is an artificial arrangement. If such an arrangement were to be established, the operation would be interrupted by the national authority of the Member State of departure even before the conversion may take place.

The pre-conversion certificate shall be sent without delay to the competent authority of the Member State of destination which should examine the legality of the processing. Once the legality check has been carried out, a company would be registered in the register of a Member State of destination and deregistered in the register of a Member State of departure. The conversion shall then become legally effective.

(2) Cross-border mergers: the proposal seeks to address the shortcomings in the existing texts by providing in particular for harmonised rules for the protection of creditors and shareholders.

The company should provide, in the cross-border transformation project, the protection it intends to provide to creditors and shareholders. Creditors not satisfied with the protection offered could apply to the appropriate administrative or judicial authority for adequate safeguards. Shareholders who have not voted for cross-border mergers or do not have voting rights would have the right to leave the company (sell their shares) and receive adequate compensation.

Furthermore, the proposed rules ensure that workers shall be informed of the implications that the proposed cross-border merger will have for workers.

(3) Cross-border divisions: the proposal also simplifies the procedures allowing any capital company to carry out a cross-border division.

The objectives of the harmonised rules on cross-border divisions remain similar to cross-border conversions: (i) enable companies to divide cross-border in an orderly, efficient and effective manner; (ii) protect the most affected stakeholders such as employees, creditors and shareholders in a suitable and proportionate manner.

The procedure would ensure the scrutiny of legality of the cross-border division by the competent authority of the company being divided and by the authorities of the recipient companies in the light of all relevant facts and information. As in conversions, a crucial element of the procedure would be preventing a cross-border division where it is determined that it constitutes an abuse.

2018/0114(COD) - 10/01/2019 Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Evelyn REGNER (S&D, AT) on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

The Committee on Employment and Social Affairs, exercising its prerogatives as an associated committee, also gave its opinion on this report.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

Compliance with the conditions for cross-border conversions

Members specified that the court, notary or any other competent authority designated by the Member States of departure and destination should check that cross-border processing complies with the conditions laid down in the directive. Conversion would not be authorised where the competent authority of the Member State of departure discovers, having assessed the case in question, the existence of an artificial arrangement.

Members specified the minimum range of information to be provided in the cross-border conversion project that will be made available to anyone interested in the operation. The cross-border conversion project should thus provide information concerning, for example:

- the location and date of transfer of the company's registered office to the Member State of destination, as well as information on the management body and, where applicable, on staff, equipment, premises and assets;
- the number of employees on a full-time equivalent basis;
- the likely effects of cross-border conversion on employment and the expected consequences for employees;
- the name of the ultimate company and, where applicable, the list of all its subsidiaries, a brief description of the nature of their activities and their respective geographical distribution;
- the total turnover and the total taxable turnover of the converting company for the last reporting period;
- the amount of income tax paid by the converting company and its subsidiaries and branches.

Assessment by the competent authority

The competent authority should start processing the application within 10 working days of receiving the documents and information on the company and the proposed cross-border conversion. Members have removed the requirement to consult an independent expert when carrying out an in-depth assessment. If, however, the competent authority calls upon an independent expert, this expert should be appointed within one month on the basis of a pre-established list.

The competent authority should draw up a report after consulting, if necessary, third parties with a legitimate interest in the conversion of the company, in particular the tax, labour and social security authorities. The competent authority would be entitled to obtain from the company carrying out the cross-border conversion all relevant information and documents. It would also be able to put questions to the competent authority of the destination Member State as well as be entitled to receive further comments and opinions from the representatives of the company's employees.

A company would not be allowed to carry out a cross-border conversion:

- where the competent authority has serious concerns that the cross-border conversion constitutes an artificial arrangement;
- if the company is subject to a preventive restructuring proceedings initiated because of the likelihood of insolvency or is subject to checks, inspections or investigations provided for in Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, or in Directive 2014/67/EU of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services;
- if the company has been convicted by a court in the last three years or is subject to ongoing legal proceedings due to infringements of social, taxation, environmental and labour law, or concerning fundamental and human rights violations.

Genuine economic activity

Member States should also be required to ensure that cross-border conversions correspond to the actual pursuit of a genuine economic activity, including in the digital sector, through a fixed establishment in the destination Member State for an indefinite period, in order to avoid the setting up of letterbox or front companies with the purpose of evading, circumventing or infringing national and/or EU law.

Strengthening employee participation

In order to protect employees interests, especially worker board level representation, existing under national laws in 17 Member States in different forms, Members propose to further protect workers' rights to participation, information and consultation in order to ensure that the cross-border mobility of companies never leads to a restriction of these rights.

Following the conversion, the company carrying out the cross-border conversion should thus continue to observe the terms and conditions agreed in any collective agreement on the same terms as those applicable under that agreement to the company prior to the conversion.

The Directive would thus complement the requirements already contained in Council Directives 2002/14/EC, 2001/23/EC and 2009/38/EC which ensure that unnecessary administrative burdens do not undermine the current provisions in place for information, consultation and participation of employees.

2018/0114(COD) - 18/04/2019 Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 511 votes to 54, with 16 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

The proposed Directive shall aim to remove unjustified obstacles to the freedom of establishment of EU companies in the Single Market by facilitating cross-border conversions, mergers and divisions of EU companies. It shall introduce comprehensive procedures for cross-border conversions and divisions and provide additional rules for cross-border mergers of limited liability companies established in an EU Member State.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Cross-border conversion

The Directive shall specify the minimum range of information to be provided in the cross-border conversions that will be made available to any person interested in the operation. The conversions shall thus provide information on, for example:

- the legal form, name and location of its registered office of the company in the departure Member State as well as the legal form, name and location of its registered office proposed for the converted company in the destination Member State;
- the instrument of constitution, where applicable, and the statutes if they are contained in a separate instrument, of a company in the destination Member State;
- the proposed indicative timetable for the cross-border conversion;
- 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;
- safeguards, such as guarantees or pledges, where offered to creditors;
- if any incentive or subsidies were received by the company in the departure Member State in the last 5 years.

The management or administrative organ of the company shall draw up a report to 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.

Independent expert report

Member States shall ensure that an independent expert examines the draft terms of the cross-border conversion and draws up a report intended for members which is made available to them not less than one month before the date of the general meeting.

The expert shall be entitled to secure from the company all the necessary information for the discharge of his/her duties.

Member States shall have rules in place to ensure that the expert or the legal person on whose behalf the expert is operating, is independent and has no conflict of interest from the company applying for the pre-conversion certificate.

After taking note of the reports and the employees opinions, 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.

Protection of shareholders, creditors and employee participation

The amended text provides for similar rules concerning employees' participation rights in cross-border conversions, mergers and divisions. It shall also ensure that workers are properly informed and consulted about the expected effects of the operation. The rights of minority or non-voting shareholders shall be better protected. At the same time, the creditors of the company concerned should benefit from clearer and more adequate guarantees.

Scrutiny of the legality of operations

Member States shall designate the court, notary or other authority or authorities 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 departure Member State and to issue a pre-conversion certificate attesting compliance with all the relevant conditions and the proper completion of all procedures and formalities in the departure Member State.

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

Member States may require that the application to obtain a pre-conversion certificate is accompanied by additional information, such as, in particular on the number of employees at the time of the drawing up of the draft terms of the conversion; on subsidiaries and their respective geographic allocation; regarding the fulfilment of obligations due to public bodies by the company.

The assessment by the competent authority shall be carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border transformation by the company's general meeting. This period may be extended by an additional three months if the competent authority has serious doubts as to whether the cross-border processing is being carried out for abusive or fraudulent purposes.

If the competent authority, through the scrutiny of legality, has serious doubts that the cross-border conversion is set up for abusive or fraudulent purposes leading or aimed to lead to evasion or circumvention of national or EU law, or for criminal purposes, it shall not authorise the transaction in question.

Use of digital tools

Member States shall ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for pre-conversion, pre-merger or pre-division certificate (pre-operation certificate) as well as the submission of any information and documents for the scrutiny of the legality of the cross-border conversion, merger or division by the destination Member State, may be completed online in their entirety without the necessity for the applicants to appear in person before any competent authority in the Member States.

2018/0114(COD) - 12/12/2019 Final act

PURPOSE: to facilitate cross-border transformations, mergers and divisions of EU companies with a view to ensuring greater cross-border mobility of companies.

LEGISLATIVE ACT: Directive (EU) 2019/2121 of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions.

CONTENT: the Directive amends [Directive \(EU\) 2017/1132](#) and aims to eliminate unjustified barriers to the freedom of establishment of EU companies in the single market by facilitating cross-border transformations, mergers and divisions of EU companies.

The European Parliament has called on the Commission to adopt harmonised rules on cross-border transformations and divisions. The Court of Justice of the European Union also stressed the need to adopt harmonised rules on the transfer of the seat of companies within the internal market that provide adequate protection of the legitimate interests of shareholders, creditors and employees.

This Directive introduces comprehensive procedures for cross-border transformations and divisions and provides for additional rules on cross-border mergers of limited liability companies established in an EU Member State.

The main elements of the amending Directive are as follows:

Cross-border operations

To allow all stakeholders legitimate interests to be taken into account in the procedure governing a cross-border operation, the company shall draw up and disclose the draft terms of the proposed operation, containing the most important information about it. Such information shall at least include the legal form envisaged for the company or companies, the instrument of constitution where applicable, the statutes, the proposed indicative timetable for the operation and details of any safeguards offered to members and creditors.

The company carrying out the cross-border operation shall draw up a report in order to provide information to its members and employees. It shall explain and justify the legal and economic aspects of the proposed cross-border operation and the implications of the proposed cross-border operation for employees. In particular, the report shall explain the implications of the cross-border operation with regard to the future business of the company, including its subsidiaries.

The Directive include the possibility of speeding up the procedure by waiving reports for members and employees in the event that shareholders agree, or if the company or any of its subsidiaries do not have any employees.

Protection of shareholders, creditors and employee participation

The Directive provides for similar rules concerning employees' participation rights in cross-border conversions, mergers and divisions. It shall also ensure that workers are properly informed and consulted about the expected effects of the operation. The rights of minority or non-voting shareholders shall be better protected. At the same time, the creditors of the company concerned should benefit from clearer and more adequate guarantees.

Scrutiny of the legality of operations

The Directive establishes procedures for verifying the legality of cross-border transactions and introduces a mandatory monitoring procedure that shall allow national authorities to block a cross-border transaction when it is carried out for abusive or fraudulent purposes, such as circumventing workers' rights, the payment of social security contributions or tax obligations, or for criminal purposes. In particular, the aim is to prevent the creation of shell companies or mailboxes aimed at evading Union or national law.

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

Member States may require that the application to obtain a pre-conversion certificate is accompanied by additional information, such as, in particular on the number of employees at the time of the drawing up of the draft terms of the conversion; on subsidiaries and their respective geographic allocation; regarding the fulfilment of obligations due to public bodies by the company.

Use of digital tools

Member States shall ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for pre-conversion, pre-merger or pre-division certificate (pre-operation certificate) as well as the submission of any information and documents for the scrutiny of the legality of the cross-border conversion, merger or division by the destination Member State, may be completed online in their entirety without the necessity for the applicants to appear in person before any competent authority in the Member States.

ENTRY INTO FORCE: 1.1.2020.

TRANSPOSITION: no later than 31.1.2023.