



An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

**Public Consultation on the Transposition of
Directive (EU) 2019/2121 of the European
Parliament and Council amending Directive
(EU) 2017/1132 as regards cross-border
conversions, mergers and divisions**
Response Template

As set out in the consultation, the Department of Business, Enterprise and Innovation is specifically seeking views on the Member State options in the Directive. Please note that we are not specifically seeking views on the options in Articles 86m(1), 86m(7)(b), 160m(1) and 160m(7)(b). Submissions are not sought on Articles 160s, 3, 4, 5 or 6.

Respondents have the opportunity to comment generally on the Directive should they wish to express any views on these sections of the Directive. There is also capacity to comment on Articles without Member State options.

Please include your response in the space underneath the relevant option, to set out/ explain your views on each. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of response.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

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Article 86a

Scope

Question:

4. Should Ireland avail of these options relating to companies' subject to liquidation, insolvency or crisis prevention measures? Please provide reasons for your answer in each case.

Response: *Yes, all three options should be taken. Workers and other stakeholders should not be exposed to the risk that companies in liquidation, insolvency or crisis prevention measures will execute a cross-border conversion to avoid obligations to workers and other stakeholders by moving to a regulatory regime which provides less protections for these stakeholders.*

Please indicate any general comments or recommendations you may have on Article 86a:

Article 86b

Definitions

Please indicate any general comments or recommendations you may have on Article 86b:

Article 86c

Procedures and formalities

Please indicate any general comments or recommendations you may have on Article 86c:

Article 86d

Draft terms of cross-border conversions

Please indicate any general comments or recommendations you may have on Article 86d:

Article 86e

Report of the administrative or management body for members and employees

Question:

4. Should Ireland take the option to exclude single-member companies from the provisions of this Article? Please provide reasons for your answer.

Response: *No. Workers have a right to be informed about the implications of a cross-border conversion by their company. This right should not be waived just because a company only has a single member.*

Please indicate any general comments or recommendations you may have on Article 86e:

Article 86f

Independent expert report

Question:

3. Should Ireland take the option to exclude single-member companies from the application of this Article? Please provide reasons for your answer.

Response: *No. It is important that an independent expert report be done to provide some transparency regarding the financial valuation of the cross-border conversion.*

Please indicate any general comments or recommendations you may have on Article 86f:

Article 86g

Disclosure

Question:

1. Should the expert report be disclosed and made publicly available in the register?
Please provide reasons for your answer.

Response: *Yes. It is important to make this report available to the public to promote transparency in cross-border conversions.*

Question:

2. Should Ireland avail of this exemption? Please provide reasons for your answer.

Response: *No. It is important that this information be easily accessible to workers and other stakeholders and that this information be permanently available to workers and the public, so that statements made regarding the probable outcome on workers and other stakeholders can be checked in the future.*

Question:

5. Should the drafter terms referred to in paragraph (3) be required to be published?
Please provide reasons for your answer.

Response: *Yes. It is important that this information be easily accessible to workers and other stakeholders and that this information be permanently available to the public, so that statements made regarding the probable outcome on workers and other stakeholders can be checked in the future.*

Please indicate any general comments or recommendations you may have on Article 86g:

Article 86h

Approval by the general meeting

Question:

4. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 86h:

Article 86i

Protection of members

Question:

1. Should Ireland avail of these options? Please provide reasons for your answer.

Response: *Yes. It is important to have an accurate picture of the financial situation of the company prior to conversion. And it should be mandatory to pass this information on to workers.*

Question:

4. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 86i:

Article 86j

Protection of creditors

Question:

2. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 86j:

Article 86k

Employee information and consultation

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important that rights to information and consultation be protected for all workers affected by a cross-border conversion.*

Please indicate any general comments or recommendations you may have on Article 86k:

Availing of this option would reflect the commitments to information and consultation set down in the recitals to this directive, principally recital (26), which states that 'it is important to ensure that the rights of employees to be informed and consulted in the context of cross-border operations are fully respected.' This clearly is a reference to all employees.

Availing of this option would also give effect to the European Pillar of Social Rights, particularly Principle 8 (Social dialogue and involvement of workers) which states that 'Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies'.

ICTU recalls that the then Taoiseach and now Minister for Enterprise, Trade and Employment, Leo Varadkar TD, previously described the EPSR as a

'...political compass that will help guide our collective actions in the years ahead. At both national and EU levels, the social Pillar will help us chart the best course in dealing with the challenges that come with globalisation in the 21st century. Best of all, it will enable all our citizens to participate effectively in a world of such rapid change.' (Dail debates, 21 June 2018).

Article 86l

Employee participation

Question:

4(b) Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. If employees in the pre-conversion company enjoyed strong participation rights (one-third or more of board seats) these rights should be protected in the cross-border conversion process.*

Please indicate any general comments or recommendations you may have on Article 86l:

Article 86m

Pre-conversion certificate

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important that the obligations due to public bodies, such as for example VAT, PAYE and levies on employee remuneration, and compliance with sectoral requirements such as for example in the area of environmental obligations, are satisfied before the pre-conversion certificate is issued.*

Question:

3. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important to have this information in order to determine which worker information, consultation and participation rights are affected and to provide essential information for determining worker information, consultation and participation arrangements in the converted company.*

Question:

10. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 86m:

Article 86n

Transmission of the pre-conversion certificate

Please indicate any general comments or recommendations you may have on Article 86n:

Article 86o

Scrutiny of the legality of the cross-border conversion by the destination Member State

Please indicate any general comments or recommendations you may have on Article 86o:

Article 86p

Registration

Please indicate any general comments or recommendations you may have on Article 86p:

Article 86q

Date on which the cross-border conversion takes effect

Please indicate any general comments or recommendations you may have on Article 86q:

Article 86r

Consequences of a cross-border conversion

Please indicate any general comments or recommendations you may have on Article 86r:

Article 86s

Independent experts

Please indicate any general comments or recommendations you may have on Article 86s: *It is important that the independent expert should have the capacity to perform the checks expected of them, including access to the information needed to reach their determination of whether the purpose of the cross-border conversion is in line with the aim of the Directive to discourage corporate abuse.*

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Article 86t

Validity

Question:

7(b). Should Ireland avail of these options relating to companies subject to liquidation, insolvency or crisis prevention measures? Please provide reasons for your answer in each case.

Response:

Please indicate any general comments or recommendations you may have on Article 86t: *Yes. Companies in these situations should generally not be allowed to undergo a cross-border conversion.*

Article 123

Disclosure

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important to make this report available to the public to promote transparency in cross-border mergers.*

Question:

2. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *No. It is important that this information be easily accessible to workers and other stakeholders and that this information be permanently available to the public, so that*

statements made regarding the probable outcome on workers can be checked in the future.

Question:

6. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important that this information be easily accessible to workers and other stakeholders and that this information be permanently available to the public, so that statements made regarding the probable outcome on workers can be checked in the future.*

Please indicate any general comments or recommendations you may have on Article 123:

Article 124

Report of the administrative or management body for members and employees

Question:

4. Should Ireland exclude single member companies from the provisions of this Article? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 124: *No. Workers have a right to be informed about the implications of a cross-border merger by their company. This right should not be waived just because a company only has a single member.*

Article 125

Independent expert report

Question:

11(c). Should Ireland exclude single member companies from the provisions of this Article? Please provide reasons for your answer.

Response: *No. It is important that an independent expert report be done to provide some transparency regarding the financial valuation of the cross-border merger.*

Please indicate any general comments or recommendations you may have on Article 125:

Article 126

Approval by general meeting

Please indicate any general comments or recommendations you may have on proposed amendments to Article 126:

Article 126a

Protection of members

Question:

1. Should Ireland avail of the options available under this article? Please provide reasons for your answer.

Response:

Question:

4. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Question:

6. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Question:

7. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 126a:

Article 126c

Protection of creditors

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *(126c actually refers to Employee Information and consultation). Yes. It is important that rights to information and consultation be protected for all workers affected by a cross-border merger."*

With regard to the missing question on 126b (creditor rights) - Yes. It is important to have an accurate picture of the financial situation of the company prior to merger. And it should be mandatory to pass this information on to workers.

Please indicate any general comments or recommendations you may have on Article 126c:

See also comments and recommendations concerning Article 86k above.

Article 127

Pre-merger certificate

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important that obligations due to public bodies and compliance with sectoral requirements are satisfied before the pre-merger certificate is issued.*

Question:

3. Should Ireland require the additional information for pre-merger certificates? Please provide reasons for your answer.

Response: *Yes. It is important to have this information in order to determine which worker information, consultation and participation rights are affected and to provide essential information for determining worker information, consultation and participation arrangements in the merged company.*

Please indicate any general comments or recommendations you may have on Article 127:

Article 127a

Transmission of the pre-merger certificate

Please indicate any general comments or recommendations you may have on Article 127a:

Article 130

Registration

Please indicate any general comments or recommendations you may have on Article 130:

Article 133a

Independent experts

Please indicate any general comments or recommendations you may have on Article 133a: *It is important that the independent expert should have the capacity to perform the checks expected of them, including access to the information needed to reach their determination of whether the purpose of the cross-border merger is in line with the aim of the Directive to discourage corporate abuse.*

Article 160a

Scope

Question:

5. Should Ireland avail of these options relating to companies subject to liquidation, insolvency or crisis prevention measures? Please provide reasons for your answer in each case.

Response: *Yes, all three options should be taken. Workers and other stakeholders should not be exposed to the risk that companies in liquidation, insolvency or crisis prevention measures will execute a cross-border division to avoid obligations to workers and other stakeholders by moving to a regulatory regime which provides less protections for these stakeholders.*

Please indicate any general comments or recommendations you may have on Article 160a:

Article 160b

Definitions

Please indicate any general comments or recommendations you may have on Article 160b:

Article 160c

Procedures and formalities

Please indicate any general comments or recommendations you may have on Article 160c:

Article 160d

Draft terms of cross-border divisions

Please indicate any general comments or recommendations you may have on Article 160d:

Article 160e

Report of the administrative or management body for members and employees

Question:

4. Should Ireland exclude single member companies from the provisions of this Article?
Please provide reasons for your answer.

Response: *No. Workers have a right to be informed about the implications of a cross-border division by their company. This right should not be waived just because a company only has a single member.*

Please indicate any general comments or recommendations you may have on Article 160e:

Article 160f

Independent expert report

Question:

3. Should Ireland exclude single member companies from the provisions of this Article?
Please provide reasons for your answer.

Response: *No. It is important that an independent expert report be done to provide some transparency regarding the financial valuation of the cross-border division.*

Please indicate any general comments or recommendations you may have on Article 160f:

Article 160g

Disclosure

Question:

1. Should the expert report be disclosed and made publicly available in the register?
Please provide reasons for your answer.

Response: *Yes. It is important to make this report available to the public to promote transparency in cross-border divisions.*

Question:

5. Should the draft terms be disclosed and made publicly available in the register? Please provide reasons for your answer.

Response: *Yes. It is important that this information be easily accessible to workers and other stakeholders and that this information be permanently available to the public, so that statements made regarding the probable outcome on workers can be checked in the future.*

Please indicate any general comments or recommendations you may have on Article 160g: *Please note the answer to option 2 is "no", i.e. companies should not be exempted from disclosure through publication on their website, as it may be quite difficult*

to find the publication on the website, and this publication should be permanently available.

Article 160h

Approval by the general meeting

Question:

4. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 160h:

Article 160i

Protection of members

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Question:

4. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Question:

7. Should Ireland avail of this option? Please provide reasons for your answer.

Response:

Please indicate any general comments or recommendations you may have on Article 160i:

Article 160j

Protection of creditors

Question:

3. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important to have an accurate picture of the financial situation of the company prior to division. And it should be mandatory to pass this information on to workers.*

Please indicate any general comments or recommendations you may have on Article 160j:

Article 160k

Employee information and consultation

Question:

1. Should Ireland avail of this option? Please provide reasons for your answer.

Response: *Yes. It is important that rights to information and consultation be protected for all workers affected by a cross-border division.*

Please indicate any general comments or recommendations you may have on Article 160k:

See also comments and recommendations concerning Article 86k above.

Article 160l

Employee participation

Question:

4(b). Should Ireland avail of this option? Please provide reasons for your answer

Response: *Yes. If employees in the pre-division company enjoyed strong participation rights (one-third or more of board seats) these rights should be protected in the cross-border division process.*

Yes, Ireland should decide under Article 160l(1) 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.

Please indicate any general comments or recommendations you may have on Article 160l:

Article 160m

Pre-division certificate

Question:

3. Should Ireland avail of this option? Please provide reasons for your answer

Response: *Yes. It is important to have this information in order to determine which worker information, consultation and participation rights are affected and to provide essential information for determining worker information, consultation and participation arrangements in the divided companies.*

Please indicate any general comments or recommendations you may have on Article 160m:

Article 160n

Transmission of the pre-division certificate

Please indicate any general comments or recommendations you may have on Article 160n:

Article 160o

Scrutiny of the legality of the cross-border division

Please indicate any general comments or recommendations you may have on Article 160o:

Article 160p

Registration

Please indicate any general comments or recommendations you may have on Article 160p:

Article 160q

Date on which the cross-border division takes effect

Please indicate any general comments or recommendations you may have on Article 160q:

Article 160r

Consequences of a cross-border division

Please indicate any general comments or recommendations you may have on Article 160r:

Article 160t

Independent experts

Please indicate any general comments or recommendations you may have on Article 160t: *It is important that the independent expert should have the capacity to perform the checks expected of them, including access to the information needed to reach their determination of whether the purpose of the cross-border division is in line with the aim of the Directive to discourage corporate abuse.*

Article 160u

Validity

Please indicate any general comments or recommendations you may have on Article 160u:

Article 2

Penalties

Please indicate any general comments or recommendations you may have on Article 2: *Penalties for the provision of false information by companies should be*

substantial, to provide an effective deterrent, so that the anti-abuse intent of this Directive can be fulfilled.