



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.

Name(s):	
Organisation:	Revenue
Email address:	
Telephone number:	

*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:**

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

Ireland should avail of options (a), (b) and (c) in paragraph 4 in relation to companies subject to liquidation proceedings.

The protections in paragraph 3 of Article 86a offer sufficient protection to creditors of companies that are already in liquidation in a Member State.

*Article 86b*

**Definitions**

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

The definitions in Article 86b seem adequate.

*Article 86c*

**Procedures and formalities**

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

The procedures set out in Article 86c seem adequate for both the departure and destination Member States.

*Article 86d*

**Draft terms of cross-border conversions**

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

The recommendations in Article 86d are adequate with regard to the particulars that should be included in the draft terms of cross border conversions.

*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:**

**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:**

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

The independent expert report is an adequate and reliable means of gleaning information of the company concerned as the expert "shall be entitled to obtain from the company all

information necessary for the discharge of the duties of the expert”, in accordance with paragraph 2 of 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, the expert report should be disclosed and made publicly available. The report will allow a true and accurate picture of the company to be accessed.

**Question:**

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

**Response:** No, the exemption for companies making documents available to the public on its website should not be availed of. A considerable concern would be the security of the company website to outside parties.

**Question:**

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

**Response:** Yes, publication of the draft terms of the cross-border conversion and other details such as the company’s legal form, name and registered office in the destination and departure states will create a better awareness of the company’s profile.

**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, Ireland should avail of the options in paragraph 1 of Article 86i. The provision provides for an appropriate procedural mechanism for those who wish to dispose of their shares or those who opposed the draft terms of the conversion to be recorded.

**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:** Yes, Ireland should avail of the option in paragraph 2 of Article 86j in relation to the requirement that the administrative or management body of the company provides a declaration that reflects its financial status. This should provide adequate protection to Revenue with regard to company liabilities owed to it by the corporate entity, for example, the ability to institute proceedings in the departure Member State within two years of the date of conversion.

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

The likelihood is that the Company will have tax liabilities that fall due after the disclosure so this disclosure should maximise payment of said liabilities. It must be pointed out however, that the risk on non-payment, if such a disclosure was not in place is probably quite low and there may be a cost implication to the company.

*Article 86k*

**Employee information and consultation**

**Question:**

1. 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 86k:**

*Article 86l*

**Employee participation**

**Question:**

4(b) 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 86l:**

*Article 86m*

**Pre-conversion certificate**

**Question:**

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

**Response:** Yes, Ireland should avail of the option of the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies as part of the procedures and formalities in the departure Member State. This would provide Revenue with the additional protection of ensuring that all outstanding liabilities would be met by the corporate entity.

**Question:**

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

**Response:**

**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:**

From a Stamp Duty perspective much will depend on how the Directive is worded and implemented in relation to “Conversions” – the Directive appears to suggest there would be no need for any “conveyance or transfer of stocks or shares” in order to effect a conversion and so it would fall outside the scope of current Irish Stamp Duty legislation.

Given the intent of the Directive, it is unlikely the Commission would accept the imposition of Irish Stamp Duty on such a transaction as it would be seen as an obstacle to “cross-border mobility”.

*Article 86s*

**Independent experts**

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

*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:** Yes, Ireland should avail of the options in relation to companies subject to liquidation, insolvency or crisis prevention measures to ensure that all insolvency scenarios are captured.

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

### *Article 123*

#### **Disclosure**

**Question:**

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

**Response:**

**Question:**

2. 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:**

**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:**

#### *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:**

**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:**

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

The protection of existing creditors is amply provided for in Article 126b, and the timeframes are adequate. However, the additional protection of a pre-transaction certificate should be sought by Revenue. It is appropriate that a corporate entity leaving the jurisdiction has satisfied its taxation obligations.

### *Article 127*

#### **Pre-merger certificate**

**Question:**

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

**Response:** Yes, Ireland should avail of the option of the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies as part of the procedures and formalities in the Member State of the merging company. This would provide additional assurance that liabilities due to Revenue will be met by the corporate entity.

**Question:**

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

**Response:**

**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:**

*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:**

**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:**

**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:**

**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:**

**Question:**

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

**Response:**

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

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*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, Ireland should avail of the option of a requirement for the administrative or management body of the company being divided to provide a declaration reflecting its financial status. This will provide additional protection for creditors such as Revenue to make an application to the relevant authority for adequate safeguards if dissatisfied with the existing ones that are offered in the draft terms of the cross-border division provided for in Article 160d.

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

The likelihood is that the Company will have tax liabilities that fall due after the disclosure of the draft terms of the cross-border division so this disclosure should maximise payment of said liabilities.

It must be pointed out however, that the risk on non-payment, if such a disclosure was not in place is probably quite low and there may be a cost implication to the company.

*Article 160k*

**Employee information and consultation**

**Question:**

1. 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 160k:**

*Article 160l*

**Employee participation**

**Question:**

4(b). 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 160l:**

*Article 160m*

**Pre-division certificate**

**Question:**

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

**Response:** Yes, Ireland should avail of the option for the additional information outlined in points (a), (b) and (c) of paragraph 3 to be provided along with the pre-division certificate of the company being divided. The provision of this information will provide an additional safeguard that all liabilities owed to Revenue will be paid.

**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:**

*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:**