

EU makes it easier for companies to restructure within the single market

The EU is removing unjustified barriers to EU companies' freedom of establishment in the single market. Following an agreement with the European Parliament earlier this year, the Council today adopted a directive that facilitates EU companies' cross-border conversions, mergers and divisions.



These new rules enable EU companies to make the best out of the single market so that they remain competitive globally. At the same time, the directive provides for appropriate safeguards that discourage abuses and protect the legitimate interests of workers, minority shareholders and creditors.

Anna-Maja Henriksson, Finnish minister of justice

The new rules introduce comprehensive procedures for cross-border conversions and divisions and provide for additional rules on cross-border mergers of limited liability companies established in an EU member state. They also offer further simplifications that will apply to all three operations. These 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.

The directive sets out procedures to check the legality of cross-border operations against the relevant national legislation and introduces a mandatory anti-abuse control procedure. The procedure will allow national authorities to block a cross-border operation when it is carried out for abusive or fraudulent purposes, i.e. when it is designed to evade or circumvent national or EU law, or is intended for criminal purposes.

The agreed text provides for similar rules on employee participation rights in cross-border conversions, mergers and divisions. It also ensures that employees will be adequately informed and consulted about the expected impact of the operation. Minority and non-voting shareholders' rights will enjoy greater protection. At the same time, creditors of the company concerned are granted clearer and more reliable safeguards.

Finally, the directive encourages the use of digital tools throughout the cross border operation. It will be possible to complete formalities such as the issuance of the pre-operation certificate, online. All relevant information will be exchanged through existing, digitally interconnected, business registers.

Next steps

The directive will enter into force 20 days after its publication in the Official Journal of the EU. Member states will then have 36 months to adopt the measures necessary for its implementation.

Background

This directive is one of two proposals tabled by the Commission in April 2018 for the modernisation of EU company law. The other one, a directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, was adopted in June 2019.

According to figures made available by the Commission, there are around 24 million companies in the EU, of which approximately 80% are limited liability companies. Around 98-99% of these limited liability companies are small and medium-sized enterprises. The latter will be the primary beneficiaries of the considerable savings generated through this directive.

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