

CROSS BORDER MOVEMENT OF COMPANIES: THE NEW EU RULES ON CROSS BORDER COVERION

Dubravka Akšamović, PhD, Associate Professor

Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek
Stjepana Radića 13, Osijek, Croatia
daksamov@pravos.hr

Lidija Šimunović, PhD, Teaching Assistant

Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek
Stjepana Radića 13, Osijek, Croatia
lsimunov@pravos.hr

Iva Kuna, PhD Candidate

Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek
Stjepana Radića 13, Osijek, Croatia
iva.kuna@pravosudje.hr

ABSTRACT

Cross-border companies' mobility is issue which has been gaining public attention in Europe since the end of the 1980's. Although it is clear, from the wording of the articles 49 and 54 of the TFEU, that companies should benefit from a freedom of establishment, in practice, the scope of this freedom is quite unclear. Companies wishing to move abroad are usually facing insurmountable obstacles which are still, more than 30 years after the famous Daily Mail case, very present. The recent EU legislative activity may finally bring this problem to an end. In April 2018 the European Commission proposed new rules on cross-border mobility. By enacting the Proposal of the Directive on cross-border conversions, mergers and divisions European Commission introduced important novelties to the cross-border mobility with an aim to simplify procedures, bring legal certainty and create such a legal environment which will enable companies to operate easily on the Single Market. In this paper authors will analyse only the rules of the Proposal that apply to cross-border conversions of companies. The new Proposal on cross-border conversions seem to be an adequate tool for companies that wish to convert abroad. However, the process of conversion is far from being simple. It is a very specific, multi-layered process which involves different stakeholders and authorities and requires their coordinated action. Authors will provide for a critical overview of the proposed legal solutions with special respect to the recent ECJ decision in Polbud case, in which the ECJ reaffirm the right of companies to cross-border conversion.

Keywords: *Cross-border mobility of companies, Cross-border conversion, Transfer of registered seat, Freedom of establishment, Polbud-case*

1. INTRODUCTION

Companies' conversion typically refers to the situations where company decides to change its legal form and continues to exist but now as a company of another legal form. This legal operation is not particularly intriguing when it happens within national boundaries. Besides the fact that company changes its legal form, everything else stays more or less unchanged, employees keep their rights, creditors automatically become creditors of converted company. There may be some differences with regard to ownership rights, but that issue is usually resolved in the process of conversion.

However, situation is completely different when conversion has cross border dimension or said differently, when a company from one Member State (hereinafter: MS) decides to convert in company of similar or different form of another MS. In such a situation, there are number of issues to be dealt with. Some of the most important concern rights of shareholders, employees' rights, dissolution of company in home MS or not, tax issues etc.

It is noticeable that cross-border companies' conversion opens number of important issues. Therefore, one might ask why, for what reason, a company would wish to carry out cross-border conversion? Generally, there are two main group or reasons for companies' conversion. The first are those which are fully legitimate and have sound economic justification such as, better investment climate, a more favorable market conditions, a more favorable legal framework etc. The second are those which are not necessarily illegitimate, but which may raise some concerns with regard to tax avoidance, reduction of workers' or shareholders' rights, etc.

Although there is a full awareness that some companies' mobility will have fraudulent intention, the question, as to whether a company can move its corporate seat or migrate to another MS has been answered at the EU level years ago. Cross-border mobility of companies is fully recognized by the EU as well as by the ECJ.

However, despite that, in practice, companies from the EU that are wishing to move their seats to another MS through process of conversion or by any other way, face insurmountable obstacles such as complicated and expensive proceedings on cross-border conversions¹, nonexistence of national rules regulating cross border conversion, etc.

For many years, EU has dealt with the issue on cross border *ad hoc* and unsystematically, mostly leaving things for clarification to the ECJ². So for example, the

¹ For more see: Gelder, G., *Polbud-Case and New EU Company Law Proposal: Expanding the Possibilities for Cross-Border Conversions in Europe*, EC Tax Review, Vol. 27, No. 5, p. 260

² The ECJ has been trying to fill up the mentioned legal gaps with its interpretations of freedom of establishment, which, in a broader sense represents cross-border conversion. The ECJ judgments (such

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) had some provisions on cross-border conversion but only those regulating conversion of public limited liability company to *Societas Europaea*.³ Also, the Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law⁴ selectively dealt with some issues regarding cross-border mergers. Evidently, the EU lacked systematic approach in regulating cross-border companies' mobility.

Faced with an increasing demand of companies to move, the EC had finally on 25 April 2018 published a Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and division. (hereinafter: Proposal)⁵. Proposal introduces important novelties regarding three cross-border statutory changes of the company: conversions, mergers and divisions.⁶

However, this paper will only focus on the analysis of the rules from the Proposal relating to the cross-border conversions. It will analyze whether the Proposal's solutions are adequate to meet the Proposal's goals. It will also analyze how the Proposal addresses shareholders rights, employees' rights and other important issues that arise in connection to cross-border conversion.

Secondly, paper will provide for an overview of the most important ECJ decisions dealing with cross-border mobility of companies. It will particularly analyze the ECJ's conclusions in *Polbud* case, in which the ECJ affirmed the right of companies on cross-border conversion.⁷

as *Cartesio, Vale and Polbud*) has revived this matter and the lack of rules on cross-border conversions and the need for their regulation at the EU level. Even though the ECJ has recognized the right of the companies to convert abroad, the ECJ is not a legislative body and therefore not entitled to create rules on cross-border conversion. It is limited by its interpretational role

³ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), OJ L 294, 10.11.2001, p. 1–21

⁴ Gorriz, C., *EU Company Law: Past, Present and ... Future?*, Global Jurist, Vol. 19, No. 1, 2018, Abstract; Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30.6.2017, p. 46–127

⁵ 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, COM/2018/241 final - 2018/0114 (COD), Available: [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A241%3AFIN>] Accessed 13.03.2019. Available also at: European Commission, 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, Brussels, 2018, p. 4, [<https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-241-F1-EN-MAIN-PART-1.PDF>] Accessed 20.03. 2019

⁶ *Ibid.*

⁷ Szydło, M., *The Right of the Companies to Cross-Border Conversion under the TFEU Rules on Freedom of Establishment*, pp. 414. More about the fact that the existing secondary legislation of the EU does not

2. THE STRUCTURE AND MAIN GOALS OF THE PROPOSAL

As it is evident from the Proposal's title, the Proposal deals with three different types of cross-border proceedings: conversions, divisions and mergers⁸. Since the purpose of this paper is to explore only the rules regarding cross-border conversion, the focus will be only on the part of the Proposal that regulates this particular business operation.

Rules on cross-border conversion are part of the Chapter I of the Proposal. The Proposal encompasses substantive rules as well as procedural rules on cross-border conversion⁹. It defines following the most important issues:

- Obligation for the MS to enable cross-border conversion and conditions relating to cross border conversion,¹⁰
- Draft terms and reports that must be drawn up by the company and the duties of an independent expert which precede cross- border conversion,¹¹
- Rules on disclosure of relevant documents to all stakeholders,¹²
- Approval by the general meeting on cross-border conversion,¹³
- Large part of the Proposal gives significance to the protection of members, creditors and employees' rights,¹⁴

regulate the cross-border conversion see: Rammeloo, S. *Cross-border company migration in the EU: Transfer of registered office (conversion) – the last piece of the puzzle? Case C-106/16 Polbud*, EU:C:2017:804. Maastricht Journal of European and Comparative Law, Vol. 25, No. 1, pp. 87-107; Markovinović, H.; Bilić, A., *The Transfer of a Company Seat to a Different Member State in the Light of a Recent „Polbud“ Decision*, InterEULawEast: Journal for the International and European Law, Economics and Market Integrations, Vol. 5, No. 2, 2018, p. 100. See also: Bouček, V., *Prekogranično preoblikovanje trgovačkog društva i sloboda poslovnog nastana u presudi Vale Europskog suda: a sada nešto (ne) sasvim drugo!?*, Hrvatska pravna revija, Vol. 3, No. 5, 2013, pp. 60-67.; Horak, H. et al, *Sloboda poslovnog nastana trgovačkih društava u pravu Europske unije*, Sveučilište u Zagrebu, Ekonomski fakultet, Zagreb, 2013, p.9

⁸ Although those proceedings are very different, the common feature of all three proceedings is that they may result with transfer of corporate seat or economic activity of the company abroad

⁹ More about the content and structure see: Mörsdorf, K., *Der Entwurf einer Richtlinie für grenzüberschreitende Umwandlungen – Meilenstein oder Scheinriese?*, EuZW, 2019, rn. 145. Available: [https://beck-online.beck.de] Accessed 18.03.2019

¹⁰ Art 86c of the Proposal. For more information about other cross-border transformation see: *ibid.*, rn. 142

¹¹ Art 86d, 86e and 86f of the Proposal.

¹² Art 86h 86g of the Proposal

¹³ Art 86i of the Proposal.

¹⁴ Art 86j, 86k, 86l of the Proposal.

- Lastly, the final part of the Proposal regulates issues regarding the effects of cross-border conversion.¹⁵

Purpose of those rules are at least two-fold. On one side they are aimed at creating common European legal framework on cross-border conversions. Lack or nonexistence of common legal framework for cross-border conversion was recognized as a serious obstacle to companies' mobility on the EU level. Thus, the new rules, among others, aim to facilitate and simplify procedure for cross-border conversions.¹⁶

On the other side, those rules also have task to ensure adequate level of protection to different stakeholders affected by the process of cross-border conversion (creditors, employees and shareholders), particularly from fraudulent and abusive behavior and /or artificial arrangements which are on the EU level recognized as a problematic form of competition. It is expected that the new Proposal on cross-border conversion will significantly develop the Single Market, since it will enable companies to spread their activities cross-border¹⁷ and thus to enjoy and maximize all benefits of working at the Single Market.

Although there is no doubt as to regards of the necessity of having common European rules on cross-border conversion, still, there are many reasons for concern.¹⁸

¹⁵ Art 86r and 86s of the Proposal. For more information about the structure see: Mörsdorf, *op. cit.*, note 9, rn. 142; H., *Optionen und Komplikationen bei der Umsetzung des Richtlinienvorschlags zum grenzüberschreitenden Formwechsel (Teil I)*, DSrR 2018, rn. 2644. Available: [<https://beck-online.beck.d>] Accessed 18.03.2019

¹⁶ For more about the previous rules on cross-border conversion see: Jurić, D., *Prekogranični prijenos sjedišta trgovačkog društva u europskom i hrvatskom pravu*, Zbornik PFZ, Vol., 66, no. 6, 2016, p. 743-745. Also, there was an initiative in 1997 by the Commission when it proposed 14th Directive aiming at regulating the cross-border transfer of seat, which was accompanied by lot of discussion and studies but then left in unpleasant silence. See more: Horak, H., Dumančić, K., *Cross-Border Transfer of the Company Seat: One Step Forward, Few Steps Backward*, US-China L. Rev. 711, 2017, p. 712 – 713. See also Horak, H., *Societas Unius Personae - Possibility for Enhancing Cross Border Business of Small and Medium Sized Enterprises, Economic and Social Development*, International Scientific Conference on Economic and Social Development: The Legal Challenges of Modern World 180, 2018, pp. 180-186

¹⁷ *Ibid.* Proposal, p. 4. One of the motives for proposing the Directive is the fact that statutory changes of companies, such as conversion, are common event in a life of a company. For that reason, the targeted group of this Proposal are limited liability companies which represents 80% of companies at the Single Market. 98-99% of these companies are SMEs, which are, due to their market power, the group most affected by the obstacles of cross-border conversion. (*Ibid.* Proposal, p. 1.). Absence of the rules on cross-border conversions and divisions, makes these proceedings highly complicated and in some cases even impossible to conduct. (*Ibid.* Proposal, p. 18; see also case Polbud, Case C-106/16, Polbud v Wykonawstwo sp. z o.o., [2017], ECLI:EU:C:2017:351). In that line see also: Mörsdorf, *op. cit.*, note, 9, rn. 141-142

¹⁸ Szydło, M., *The Right of the Companies to Cross-Border Conversion under the TFEU Rules on Freedom of Establishment*, pp. 414

It is clear that the process of cross-border conversion which involves different MS, different types of authorities etc., is far from being simple. It is a very specific, multi-layered process, which requires coordinated action, interaction and mutual understanding of all included stakeholders and authorities.¹⁹

In lines that follow, authors will give an analysis of the course of proceeding and will address the main problems and doubts that arise in connection to the Proposal on cross-border conversion.

3. SCOPE OF APPLICATION- TO WHOM THE PROPOSAL APPLIES?

One of the things that should be examined before any further analysis, are Proposal's rules regarding the scope of application. Those rules provide for an answer to the question to whom the Proposal applies, or said differently, which type of companies can go through the process of conversion. As we know, under the national company law rules, it is possible to establish companies of different legal forms. Thus, the question is, is the process of conversion available to companies of all forms or only to some particular types of companies?

According to the article 86a of the Proposal, the provisions regarding cross-border conversions refer to a limited liability company (hereinafter: company) which is established under the national law of one MS in which a company has its registered office or principal place of business and which converts into a company governed by the law of another MS.²⁰ This rule does not leave space to any doubts. It clearly indicates that the conversion is possible only for limited liability companies, while other types of companies are deprived from that possibility.

Since the Proposal itself does not have any specific explanation why other types of companies, such as limited or unlimited partnerships are excluded from the scope of the future Directive, it is hard to figure out why the possibility for conversion is not opened to companies other than limited liability companies.²¹ That particularly in light of interpretations of the ECJ according to which the freedom of establishment is not limited only to the corporations but also includes other types

¹⁹ *Ibid.*

²⁰ Proposal, p. 18; Art 86b par 1 Proposal

²¹ The same for cross-border merger at: Boulogne, G., F., *Shortcomings in the EU Merger Directive*, doctoral thesis, Vrije Universiteit, 2016, pp. 34-35. Available at: [<http://dare.uvu.vu.nl/bitstream/handle/1871/55058/complete%20dissertation.pdf?isAllowed=y&sequence=6>] Accessed 20.03.2019

of companies such as partnership.²² Therefore cross-border conversion should be also allowed to companies other than those covered by national laws under the term limited liability.²³

The Proposal is also rather specific with regard to the types of companies to which the Proposal does not apply. Firstly, with regard to cooperative society, the Proposal leaves open for the MS to decide whether they will allow cross-border conversion for cooperative society or not.²⁴ Secondly, the Proposal clearly indicates that it shall not apply to cross-border conversion 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.²⁵ And lastly, the Proposal provides for an exhaustive list of situations in which conversion will not be possible. Cross-border conversion is permitted if a company is a subject to winding up, liquidation or insolvency or preventive restructuring proceedings, or if there is a likelihood of insolvency, or if it is a subject to the suspension of payments.²⁶ Likewise, companies constituting an artificial arrangement with an aim to obtain undue tax advantages or unduly prejudicing the legal or contractual rights of employees, creditors or minority members (shareholders) would also be prevented from performing cross-border conversion.²⁷

It is noticeable that the EC is particularly concerned with those conversions which are carried out with fraudulent or even criminal purpose such as for the evasion, avoidance or circumvention of labor standards, social security payments, tax obligations, creditor's, minority shareholders rights or rules on employees participation, etc.²⁸ Therefore, the Proposal, with a good reason, contains detailed rules regarding the protection of the creditors, shareholders, employees etc.

²² Van Eck, G., Vale: *Increasing Corporate Mobility from Outbound to inbound Cross-Border Conversion*, European Company Law, Vol. 9, no. 6, 2012, p. 323

²³ See also for foundations in: *Ibid.*

²⁴ Art 86a para 3 of the Proposal MS may not apply the provisions of the Proposal on cooperative society even if it is held as a limited liability company in MS

²⁵ Proposal, p. 4; Art 86a para 4 of the Proposal

²⁶ Art 86c para 2 of the Proposal. It is unclear why the companies which are subject to preventive restructuring proceedings should be prevented from the cross-border conversion proceedings, when these preventive measures could serve as an opportunity for the company to solve its financial difficulties and to avoid insolvency

²⁷ Art 86c para 3 of the Proposal. Available also at: Proposal, p.4

²⁸ Report 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, (COM(2018) 0241-C8-0167/2018-2018/0114 (COD)) 9. 1. 2019., p.14

4. PROCEDURE FOR THE CROSS-BORDER CONVERSIONS

Significant part of the Proposal is devoted to procedures for the cross-border conversions. Process of conversion should be carried out in several steps. The first step is preparation of draft terms for the cross-border conversion.²⁹ Draft terms must be supplemented by two targeted reports addressed to shareholders and employees.³⁰

4.1. Draft terms and reports for cross-border conversion

According to the Proposal the procedure for cross-border conversions begins with the drawing up of draft terms and preparing reports on the implications of the cross-border conversion on shareholders and employees.³¹

With regard to the draft terms, draft terms represent framework document for conversion. It should be prepared by the management or other administrative organ of the company.³² It must contain all relevant information on proposed conversion based on which employees, creditors and other stakeholders will be able to determine how conversion will impact their position and rights. Except for the stated purpose, specific value of the draft terms lays in the fact that it serves as a basis for the determination whether the intended cross-border conversion constitutes an artificial arrangement.³³

Content of draft terms is prescribed by the Proposal. It shall contain information regarding departure and destination MS (e.g. the legal form, name, registered office),³⁴ instruments of the constitution of a company in the destination MS and the timetable of the actions planned for the cross-border conversion.³⁵ Furthermore, this draft terms should specify the rights granted to stakeholders enjoying the special rights or to holders of securities, then mechanisms for protection of the creditors, special advantages for administrative, management, supervisory or controlling organs as well as likely repercussions on employment.³⁶ It should also

²⁹ Proposal, p. 4

³⁰ *Ibid.*

³¹ Proposal, p. 4; Mörsdorf, *op. cit.*, note, 9, rn. 143

³² Proposal, p. 4

³³ *Ibid.*

³⁴ Art 86d para 1(a) and (b) of the Proposal

³⁵ Proposal, p. 34, (10). See also art 86d para1 (c) and (d) of the Proposal. Regarding timetable the question arises, what is the purpose of providing the timetable if later timetable deviates from the firstly planned timetable. In that line some authors recommend that this provision should be deleted. See: Wicke, H., *Optionen und Komplikationen bei der Umsetzung des Richtlinienvorschlages zum grenzüberschreitenden Formwechsel (Teil I)*, DStR 2018, rn. 2644. Available: [<https://beck-online.beck.de>] Accessed 18.03.2019

³⁶ Art 86d para 1 (e), (f), (h) and (j) of the Proposal; Wicke, *ibid.*

include information on the date from which the transactions will be treated for accounting purposes as being those of the converted company³⁷, details for cash compensation for the shareholders which oppose the conversion and information on possible involvement of employees in the converted company.³⁸

In order for the draft terms to be more purposeful, the recommendation is to include additional information on the financial situation of the company as well as the amount of the unpaid taxes or public debts. It would be also valuable to add explanation of the method that was used to calculate cash compensation that have to be provided to members.

Besides preparing draft terms for conversion, management or administrative organ of the company also have to prepare two separate reports explaining and justifying the legal and economic reasons for cross-border conversion.³⁹ One report should be written for members of the company (shareholders) and another for the employees.⁴⁰ Since the interests of shareholders and employees are not necessarily complementary, proposed content of those reports is somewhat different. In line with the EC suggestion that the report for members shall in particular include explanations of impact on company's activities (future business and strategic plan for the company), implications on the shareholders' interests and measures to protect shareholders (rights and remedies when they do not agree with conversion)⁴¹, while the report for employees shall contain all potential implications on future business and strategic plan for the company, on protection of employment relationships, any changes in the conditions of employment and location of the company and its subsidiaries.⁴²

An idea of preparing and disclosing the reports to members and employees seems very useful. But it should be also said that preparing such reports is not a legal novelty. On the contrary, it is a legal standard applied in national company laws in similar types of proceedings.

Furthermore, the Proposal anticipates sufficient time for shareholders and employees to analyze proposed draft terms and reports. The report for company

³⁷ Art 86d of the Proposal

³⁸ Art 86d para 1 (g), (i) and (k) of the Proposal

³⁹ Proposal, p. 38. See also art. 86e para 1

⁴⁰ Art. 86e of the Proposal, Rec. 11 and 12, Art 86e para 1 and 86f para 1 of the Proposal; Mörsdorf, *op. cit.*, note, 9, rn. 145

⁴¹ Art 86e para 2, pg. 23 of the Proposal. Art 86e para 3 of the Proposal

⁴² European Company Law Experts (ECLE), *The Commission's 2018 Proposal on Cross-Border Mobility – An Assessment, September 2018*. Available at: [<https://europeancompanylawexperts.wordpress.com/publications/the-commissions-2018-proposal-on-cross-border-mobility-an-assessment-september-2019>] Accessed 20.03.2019; Art 86f para 2 and 4 of the Proposal.

members shall be made available to the members at least two months before the date when general meeting votes on approval of conversion.⁴³ During those two months company members and employees can comment on the draft terms, they can propose amendments to the original draft terms presented to them. If the management of the company finds those comments and proposals justifiable, they will amend draft term in accordance with that.

4.2. Examination by an independent expert

In order to avoid abuses of accuracy of information provided in the draft terms and reports,⁴⁴ the Proposal prescribes that draft terms and reports have to be examined by an independent expert. This obligation is mandatory only for medium size and big companies⁴⁵, while micro and small companies are exempted from this requirement.⁴⁶

Examination by an independent expert serves as an assistance to the competent authority of the departure MS to make a correct decision as to whether or not to issue the pre-conversion certificate on cross-border conversion.⁴⁷

The Proposal further requires that in its written report the expert provides for an assessment of accuracy of the information provided in the draft terms and reports. In particular that means the expert must provide factual elements that are necessary to assess whether the conversion constitutes an artificial arrangement⁴⁸, to collect all the relevant information and documents for cross-border conversion, and also, if necessary, to conduct an investigation.⁴⁹

Although Proposal's rules regarding mandatory external expert report have great practical value and they reduce risks associated with the fraudulent cross-border conversions, and thus they are justified, they also create some doubts.

Obviously, the whole process of conversion largely depends on the opinion given by an independent expert. This means that burden of proof that the cross-border conversion is legitimate, justified and fair (for all included stakeholders) lays on

⁴³ Wicke, *op. cit.*, note 35, rn. 2708

⁴⁴ Proposal, p. 4

⁴⁵ Proposal, p. 4. See also art 86g para 1 of the Proposal; Wicke *op. cit.*, note 35, rn. 2646

⁴⁶ Proposal, p. 23; Art 86g para 6, Rec 14 of the Proposal

⁴⁷ Rec 13 of the Proposal. Independent experts are appointed by the competent authority of the departure MS. Art 86g para 2 of the Proposal The competent authority of the departure MS appoints individual expert within 5 working days from the application for examination

⁴⁸ Proposal, p. 8-9

⁴⁹ Art 86g para 3 and Rec 13 of the Proposal

the independent expert. This also means that once when independent expert has confirmed that draft terms and management reports are accurate and true, the process of conversion can continue. That should also mean that the employees, companies' members and others should rely on findings in his report.

Evidently, an independent expert has a very important role in a process of conversion. Therefore he/she should be a top-class specialist, who is not only able to detect irregularities, but also to foresee whether the proposed conversion has fraudulent purpose. That leads us to the question of "quality" or the question of "necessary expertise" that an independent expert should have. For example, what type of expertise should the independent expert have (*e.g.* auditor, economist, tax expert)? Furthermore, since information on various aspects of companies' activity should be collected *e.g.* financial, tax or employment, it is unclear whether there should be only one independent expert for the whole procedure or there should be few different experts. It is hard to imagine that only one person can provide an in-depth expert opinion for all above mentioned segments for which an expert's opinion is required. And lastly, the question is how realistic is to expect from someone who is not a member of the company or part of management to be able to determine *ex ante* an intention of constituting an artificial arrangement?⁵⁰

Therefore, regardless the good intention that obviously lays behind the idea of involvement of an independent expert, it seems that the expectations regarding to independent expert reports are too high and that his/her role is overestimated. It would be much more realistic to expect that he/she carry one more or less formalistic examination of draft terms and reports. That particularly in light of the fact that the Proposal suggests that MS provide civil liability rules for situation when an independent expert commit an act of misconduct in the performance of his/her duties and in the light of the fact that the competent authority of the departure MS is obliged to carry out an in-depth assessment upon the facts provided by the independent expert to determine if the proposed conversion constitutes an artificial arrangement by the means of article 86c para 3 of the Proposal.⁵¹

4.3. Approval by the general meeting

After taking note of the reports by an independent expert, management of the company can call shareholders meeting, where companies' members should vote on proposed conversion.⁵² The decision of the general meeting must be delivered

⁵⁰ Proposal, p. 23; art 86g

⁵¹ Proposal, p. 25; Art 86n of the Proposal

⁵² Art 86i of the Proposal

to the competent authority of the departure MS.⁵³ The general meeting has the possibility to change conditions for the cross-border conversion. To reach the decision on changing the conditions, the Proposal requires the 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.⁵⁴ Few things with regard to that are unclear.

Proposal says nothing regarding the form of the decision on changing of conditions of cross-border conversion. Moreover, it is unclear what would be the effect of such a decision with regard to continuation of the conversion. Is such a decision completely new legal document or only an annex to the existing one? It is also unclear how this resolution should be prepared.

The general meeting shall also decide whether the cross-border conversion would require making amendments to the constitutional instruments of the company carrying out the conversion.⁵⁵ The decision of the general meeting giving approval to the conversion according to the Proposal cannot be challenged solely on the ground of insufficient cash compensation for the shareholders who were against conversion.⁵⁶

4.4. Role of the responsible authorities in departure and in destination Member States

When and if the general meeting of the company votes for the conversion, proceedings continues before the competent authorities⁵⁷ of the departure and destination MS. In this process, competent authority of the departure and destination MS scrutinize the legality of the operation, each of them within its competences. According to the Proposal, the competent authority of the departure MS will assess whether the conversion is lawful. It will examine whether shareholders meeting approved conversion with the requisite majority of votes, whether creditors and employees are protected as prescribed by the Proposal etc.

⁵³ Art 86i para 1 and Rec 15 of the Proposal

⁵⁴ Art 86i para 2 and 3 of the Proposal

⁵⁵ Art 86i para 4 of the Proposal

⁵⁶ Art 86i para 5 of the Proposal

⁵⁷ The Proposal does not indicate which body should be considered as a competent authority, whether it would be a court or other public body. This could be important from the view of the competences of the bodies and credibility of their decisions, since there is for sure the difference in the persuasiveness of the decisions of different bodies. MS by all means should not be limited in defining the competent authority in accordance with their national systems, however, it would be preferable that it is at least indicated whether e.g. public notaries could also be held as a public authority, or should that responsibility be given only to the courts as the highest authority

If the competent authority of the departure MS has no objection, it will issue a pre-conversion certificate.⁵⁸ If on the other hand the competent authority of the departure MS determines that conversion does not meet national law requirements, it will not issue the pre-conversion certificate and it will inform the company about that decision.⁵⁹

And finally, if the competent authority suspects that conversion is unlawful (meaning that it aims to obtain undue tax advantages or unduly prejudices the rights of employees, creditors or members), it will carry out an in-depth assessment with an aim of determining if the conversion constitutes an artificial arrangement.⁶⁰ The competent authority carries out the assessment on case-by-case basis and it should take into account the factors laid down by the Proposal only indicatively.⁶¹ When conducting an in-depth assessment, the competent authority may hear the company and interested third parties.⁶²

The purpose of the in-depth assessment seems puzzling, since it is not clear what artificial arrangement it entails. Whether it aims only to obtain tax advantages and/or prejudice rights of employees, creditors or minority members or it also enclose other types of fraudulent behavior.⁶³ Moreover, the question is does the competent authority have necessary skills, expertise and time to involve in a such demanding task.

However, if finally, after all assessments and inquiries all doubts regarding legality of conversion are removed, competent authority of the departure MS will issue the pre-conversion certificate.

Once issued, the pre-conversion certificate is immediately delivered to the competent authority of the destination MS. At that point, the departure MS is no longer competent for the rest of the proceeding.⁶⁴ Issuing pre-conversion certificate can be deemed as a proper solution, since it shows that all the formalities for a cross-border conversion required by the departure MS have been duly completed. The competent authority of the destination MS should be bound by this preliminary ruling.⁶⁵

⁵⁸ Art 86m para 1 and 2 of the Proposal

⁵⁹ Art 86m para 7 of the Proposal

⁶⁰ Proposal, p. 20; Art 86n, p. 4 of the Proposal

⁶¹ Rec 22 of the Proposal

⁶² Art 86n para 2 of the Proposal. See also art 86o of the Proposal

⁶³ Proposal, pp. 22; Art 86c para 3 of the Proposal

⁶⁴ Proposal, p. 5

⁶⁵ DAV, 862. For more see: Wicke, H., *Optionen und Komplikationen bei der Umsetzung des Richtlinienvorschlages zum grenzüberschreitenden Formwechsel (Teil II)*, DStR 2018, rn. 2706

When the competent authority of the destination MS receives the pre-conversion certificate it carries out the rest of the procedure.⁶⁶ In that sense the destination MS's competent authority assesses whether the conditions for establishing the company in the destination MS are met.⁶⁷ This separation between responsibilities of the departure and destination MSs' authorities is in line with the principle of the mutual trust between the authorities of the MS.⁶⁸ Such a division of the responsibility is therefore very welcomed.

4.5. Registration and legal consequences

Once the pre-conversion certificate is issued and it is determined that national law requirements of the destination MS are met, the company shall be entered into the register of destination MS, while at the same time struck off from the register of the departure MS.⁶⁹ Destination MS shall notify the departure MS on registration through the system of interconnection of business registers (BRIS).⁷⁰ This system fosters efficiency, cooperation and communication between MS.⁷¹

Once the company enters into the register of destination MS, the cross-border conversion takes effects from that date.⁷² Further consequences of the cross-border conversion are that all assets and liabilities of the company being converted become the assets and liabilities of the recipient company and that all members of the company being converted become the members of the recipient company.⁷³ Also, rights

⁶⁶ Some authors warn that here should be used a clear wording *a full recognition by the destination authority of the preliminary certification*. I. g. Mörsdorf considers that only that strong wording corresponds to the principle of the mutual trust and recognition of all legal, technical and procedural rules of the MS (ger. *Prinzip des Vertrauens in die Gleichwertigkeit*). In that line see: Mörsdorf, *op. cit.*, note, 9, rn. 144

⁶⁷ Art 86p, pg. 5 od the Proposal. For more about the legal consequence see: Mörsdorf, *ibid.*, rn. 147

⁶⁸ In that line see: Mörsdorf, *ibid.*, rn. 144

⁶⁹ Proposal, p. 25; Art 86q para 1 and 2 of the Proposal state that the registration is carried out according to law of destination MS. Proposal prescribes the minimum of information that have to be entered into registers: entry number, date of registration and date of removal of company from the registration

⁷⁰ Art 86o and 86p para 3 of the Proposal

⁷¹ Cooperation is carried out through the digital systems, since the EU recognized the need for digitalization, therefore it promotes usage of digital tools in order to make the communication between registries as efficient as possible. The mentioned BRIS system is a system used on the Single Market aiming at the fastening and promoting, among others, cross-border conversions. BRIS system is regulated by Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers. Proposal, pp.5-10

⁷² Art 86r of the Proposal

⁷³ Proposal, p. 8

and obligations arising from the contracts of employment or employment relationships that exists at the moment when conversion takes effect, are transferred to the recipient company on the date on which the conversion takes effect.⁷⁴

However, the place of the registered office in the departure MS will be held as the company's seat, as long as the company is not struck off from the registry of the departure MS, unless the third party knew, or ought to have known of the conversion.⁷⁵ Contrary to that, all the activities of the company being converted shall be considered as the activities of the converted company, regardless the fact that the company is still registered in the departure MS and not struck off from its register.⁷⁶

Additionally, the liability for any losses that arise from the differences in national legal systems, which were not communicated to the counterparties of the company carrying out the conversion, before the contract was concluded, shall bear the converted company, unless the contracting party has been informed of the change of policy prior to the conclusion of the contract.⁷⁷

Finally, it could be concluded that the result of cross-border conversion is that the converted company ceases to exist and is replaced by the company of another legal form available in the destination MS. The Proposal underlines the continuity of legal personality of the company in the destination MS by contrast to the creation of a new company. However, it should be emphasized that the national rules can make cross-border conversion a subject to special approval requirements which will be applicable to the company once it is converted.⁷⁸

5. PROTECTION OF MEMBERS, EMPLOYEES AND CREDITORS

Since one of the main aims of the Proposal is protection of the interests of members, creditors and employees of the company this chapter pays special attention to it. According to the Proposal two categories of shareholders are protected: shareholders holding shares who did not vote for the approval as well as the ones holding shares with no voting rights.⁷⁹

⁷⁴ Art 86s para 1 of the Proposal

⁷⁵ Art 86s para 1 of the Proposal

⁷⁶ Proposal, p. 25; Art 86s of the Proposal

⁷⁷ Art 86s of the Proposal

⁷⁸ Here should be added that the Proposal prescribes that cross-border conversion may not be declared null and void if it already took effects in accordance with the procedures transposing the Directive. Art 86u of the Proposal

⁷⁹ Proposal, p. 26; Art 86j para 1 of the Proposal

If any of the above mentioned category of shareholders decide to exit company, they have right to substitute their shareholdings for adequate cash compensation.⁸⁰ As mentioned, the company should offer the adequate cash compensation in the draft terms and shareholders wishing to exit company have to decide upon it in the period of one month after the general meeting on approval of draft terms took place.⁸¹ After the agreement on the adequate cash compensation is reached, the company shall pay due amount to shareholders in the period of one month after the conversion takes effect.⁸²

The Proposal gives the opportunity for members to challenge the calculation of the cash compensation amount before the national courts during the one-month period of the acceptance of the offer.⁸³ It is interesting that this opportunity is given to members even though they accepted the offer.

The proposed protection of shareholders is, in principle, appropriate. However, the scope of the cash compensation might be going too far. According to the Proposal for the cash compensation are entitled, not only shareholders who actively opposed conversion, but also those who did not vote at all (either because they did not participate in the meeting or they did not have voting right). While this can be acceptable for those shareholders who do not have voting rights, it is questionable whether it is acceptable for the passive shareholders. This solution is also not in line with the existing rules on cross-border mergers regulated in the Directive 2017/1132⁸⁴, since those rules are granting the right to exit the company only to shareholders who have voted against the cross-border merger or those holding shares without voting rights.

Creditors are protected in various ways, since there is a risk that their interests will be adversely affected by the conversion, in particular, by being henceforth subject to less stringent rules in relation to capital protection and liability.⁸⁵ The converting company shall give a declaration that financial status of the company is equal to the one presented in the draft terms and that conversion will not affect the existing relationship between company and creditors and that the company will be able to meet the liabilities when they fall due (declaration of solvency). The declaration must be made within the period of one month of the disclosure of draft terms.⁸⁶ The question which arises here is how to prescribe the conditions

⁸⁰ Art 86j para 2 of the Proposal

⁸¹ Art 86j para 3 of the Proposal

⁸² Art 86j para 4 of the Proposal

⁸³ Proposal, p. 24; Art 86j para 5 of the Proposal

⁸⁴ See note 5

⁸⁵ Horak, Dumančić, *op. cit.*, note 15, p. 725

⁸⁶ Art 86k para 1, Rec 17 of the Proposal

which would ensure that the declaration is be reliable and verifiable. Moreover, it is questionable until when, or for what period in future, such declaration commits company. Furthermore, a statement that turns out to be incorrect, may lead to the liability of the company, and it is unclear whether such liability would be fault or neglect based.⁸⁷

Creditors, who find that their interests in the conversion are not sufficiently or adequately protected have right on administrative or judicial protection of their rights within one month of the disclosure.⁸⁸ Since there is a possibility that they can misuse their rights and thus to obstruct conversion, this right should be granted to creditors only if they can prove that the company failed to provide adequate collateral.⁸⁹

Proposal deals with this issue in a following way. Firstly, according to the Proposal, when the independent expert concludes that the conversion does not jeopardize the right of the creditors, it will not be considered that their rights are unduly prejudiced.⁹⁰ Secondly, it will not be considered that the creditors are unduly prejudiced if the creditors are offered to be paid against the converted party or if there is the third party guarantee of the value equivalent to the original claim and which can be brought to the original claim's jurisdiction.⁹¹ Finally, the Proposal also prescribes employees participation in the company carrying out a conversion and provides mechanisms for protection of employees, since their rights are put at risk by the conversion procedure. In the first place the rules on employee participation of destination MS must be followed, unless the rules of departure MS provides the same level of protection.⁹²

It is completely justified to protect rights of employees, however, these rules should not be too burdensome in a way that they hinder cross-border conversion, which would consequently jeopardise the Single Market and the freedom of establishment. Holding an employee protection policy for a sensitive issue and a topic of utmost importance in the EU, this topic for sure need a thorough approach, which unfortunately exceeds the scope of this paper.⁹³

⁸⁷ DAV, 860

⁸⁸ Art 86k para 2 of the Proposal

⁸⁹ DAV, 860

⁹⁰ Proposal, p. 24; Art 86k para 3

⁹¹ Proposal, p. 24; Art 86k para 3, Rec 18 of the Proposal

⁹² Art 86l para 1 and 2 of the Proposal

⁹³ Employees protection has always been one of the priorities of the EU. It is evident from the Juncker's Commissions Priorities for the period 2015-2019, as well as from the Europe 2020 Strategy

6. ECJ DECISIONS REGARDING CROSS-BORDER COMPANIES' MIGRATION AND CONVERSION

Over the last few decades the EJC has addressed companies' mobility in a series of judgements. The central issue in all those cases was whether the home MS can raise barriers to both, ingoing and outgoing transfer.⁹⁴

At the very beginning of the ECJ rulings on the cross-border conversion, in so-called 'first generation of the ECJ judgments', the Court dealt only with the issue of the transfer of corporate seat from one MS to another. According to the Court's view, only departure MS may prohibit company established in that MS to move to another MS since the company exists only by the virtue of the national legislation.⁹⁵ Therefore destination MS cannot prevent the change of seat on the ground that the company does not comply with its rules.⁹⁶ However, that does not entitle companies to use the freedom of establishment for fraudulent or abusive actions.⁹⁷ The ECJ thus stated that MS may restrict freedom of establishment when company constitutes an artificial arrangement only to bypass the national rules of MS.⁹⁸

In so-called 'second generation of the ECJ judgments' such as *Cartesio*⁹⁹, *Vale*¹⁰⁰ and *Polbud*¹⁰¹ the ECJ broaden its interpretation of the freedom of establishment not only to the transfer of corporate seat but also to the cross-border conversions.

In *Cartesio* the EJC ruled that the departure MS may impose its national rules on a cross-border changing of the seat when the company wants to remain within the scope of the national rules of the MS where it was established, while when the

⁹⁴ European Company Law Experts (ECLE), *The Commission's 2018 Proposal on Cross-Border Mobility – An Assessment, September 2018*. Available at: [<https://europeancompanylawexperts.wordpress.com/publications/the-commissions-2018-proposal-on-cross-border-mobility-an-assessment-september-2019>] Accessed 20.03.2019

⁹⁵ C-81/87 - *The Queen v Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust PLC*, para. 19 and 24, See also: Horak, *op. cit.*, note 15, p. 182 and Jurić, *op. cit.*, note 15, p. 740

⁹⁶ In Case C-212/97 - *Centros Ltd v Erhvervs- og Selskabsstyrelsen* the ECJ found that the destination MS, cannot reject the transfer of a real seat only because the company wants to exercise its activities in a MS which rules are less restrictive. In Case C-208/00 - *Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC)* the ECJ stated that destination MS cannot prevent the change of the seat only upon the theory of the real seat applicable in that MS, while in Case C-167/01 - *Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd* the rule on minimum share capital of the destination MS could not be set as an obstacle for a foreign company to move a seat

⁹⁷ *Centros*, para. 25

⁹⁸ Case C-196/04. - *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue*, para. 5

⁹⁹ Case C-210/06 - *CARTESIO Oktató és Szolgáltató bt*

¹⁰⁰ Case C-378/10 - *VALE Építési kft.*

¹⁰¹ Case C-106/16, *Polbud v Wykonawstwo sp. z o.o.*, [2017], ECLI:EU:C:2017:351

company wants to detach itself from the departure MS by converting to a company form of the destination MS, then the departure MS cannot impose its rules on the cross-border conversion of that company.¹⁰² In *Vale* the ECJ stated that in cases where there are no rules on cross-border conversions in the national system, the national rules on conversions must be applied by analogy.¹⁰³

In its last decision, the so called *Polbud case*, which was in a way the incentive for the EC to propose here analyzed Proposal of the Directive on the cross-border conversion, mergers and division, the ECJ concluded that the freedom of establishment must be interpreted as giving the right to the company for the cross-border conversion even when the company does not intend to obtain an economic activity in that MS and as preventing the departure MS to impose restrictions during that process which goes beyond what is necessary to protect the minority shareholders, such as that prior to the change of seat the company must undergo the process of liquidation.¹⁰⁴

By this particular interpretation the ECJ extended the freedom of establishment on the cross-border conversion and stated that the company can convert and thus move its registered seat to another MS, without transferring its 'actual seat' *i.e.* conducting an economic activity in the destination MS.¹⁰⁵ According to the ECJ, the freedom of establishment is applicable to the cross-border process even if the transfer of the registered office does not change the location of the real head office of that company.¹⁰⁶ Even though the cross-border conversion did not change the location of the management or the place of the economic activities, according to the ECJ the cross-border conversion changes company's nationality, name, applicable law for ruling company law issues, tax matters etc.¹⁰⁷

The opponents of this opinion pointed out that the ECJ in *Polbud case* broaden to much the scope of the freedom of establishment¹⁰⁸ by protecting so called letter-

¹⁰² Cartesio, para. 110 – 113, see also: Markovinović; Bilić, *op. cit.*, note 7, p. 102

¹⁰³ Vale, para. 60 – 61, see also: Horak, *op. cit.*, note 15, p. 182, p. 716 and Mucha, A., Case C-106/16, *Polbud-Wykonawstwo: The Polish Supreme Court Requests the CJEU for a Preliminary Ruling on the Outbound Limited Company Seat Transfer*. SSRN Electronic Journal. 10.2139/ssrn.2954639., 2017, p. 13-14

¹⁰⁴ Soegaard, G, *Cross-border Transfer and Change of Lex Societatis After Polbud, C-106/16: Old Companies Do Not Die ... They Simply Fade Away to Another Country*, European Company Law, Vol. 15, No. 1, 2018, pp. 21

¹⁰⁵ Polbud, para 44

¹⁰⁶ Soegaard, *op. cit.* note 104, pp. 21

¹⁰⁷ *Ibid.*

¹⁰⁸ Some legal experts recalled that the ECJ in its decisions in *Vale* and *Cadbury Schweppes* stated that an establishment 'involves the actual pursuit of an economic activity through a fixed establishment

box companies and by disregarding the interests and the rights of stakeholders.¹⁰⁹ They stated that cross-border conversion should not be caught by the freedom of establishment where it is an end in itself.¹¹⁰

Some scholars think that the findings from the *Polbud* case are not completely in line with the ECJ's previous cases where the ECJ stated that any restriction must be appropriate to protect interests of creditors, minority shareholders and employees and must not go beyond what is needed to achieve that objective.¹¹¹ Therefore a criticism was raised that the ECJ decision is not justified since the ECJ failed to provide sufficient reasons for the opinion that the liquidation which has an aim to determine the existence of the creditors and their claims does not take into consideration actual risk of detriment of the rights of creditors.¹¹²

All this activities of the ECJ, carried out in a number of mentioned ECJ judgments, have been drawing the attention to the lack of rules on cross-border conversions and the need for their regulation at the EU level.¹¹³ Even though the ECJ has recognized, in particular, that companies are allowed to convert cross-border, decisions of the ECJ have only a limited scope, since the ECJ is not a legislative body, but only entitled to the interpretation of the EU law.¹¹⁴ Moreover, without any doubt, the ECJ's judgements by themselves cannot solve all the practical problems connected to issues of cross-border mobility.¹¹⁵ In that sense, the Proposal of the new Directive on cross-border conversions, mergers and divisions seems like

in the host Member State for an indefinite period' [<https://www.law.ox.ac.uk/business-law-blog/blog/2017/11/last-word-cross-border-reincorporations-eu-freedom-establishment>]

¹⁰⁹ Markovinović; Bilić, *op. cit.*, note 7, p. 104-105

¹¹⁰ It is interesting that in this case and regarding this question the ECJ rebutted the arguments put forward by the Austrian and Polish governments but also rejected the arguments of AG Kokott See: [h Kokott, A., G., \[https://www.law.ox.ac.uk/business-law-blog/blog/2017/11/last-word-cross-border-reincorporations-eu-freedom-establishment\]](https://www.law.ox.ac.uk/business-law-blog/blog/2017/11/last-word-cross-border-reincorporations-eu-freedom-establishment) Accessed 20.03.2019. See also: Mucha, *op. cit.*, note 103, p. 19. Opinion of AG Kokott para 38, Horak; Dumančić, *op. cit.*, note 15, p. 721-722

¹¹¹ Horak; Dumančić, *ibid.*, p. 726

¹¹² Markovinović; Bilić, *op. cit.*, note 7, p. 117

¹¹³ The CJEU confirmed that it is upon MS to decide which national rules would be applicable to the cross-border conversion procedure of an incoming company, if those MS rules exist at all. (See: Case C-106/16, *Polbud v Wykonawstwo sp. z o.o.*, [2017], ECLI:EU:C:2017:351, hereinafter: *Polbud*). The Court also held that the existing absence of the EU secondary legislation on cross-border conversions distorts the functioning of the Single Market and also brings question whether the existing national rules on cross-border conversions are compatible with the freedom of establishment. *Ibid.* Proposal, p.3. More about the fact of the *Polbud* case see: Gelder, *op. cit.* note 2, pp. 260–262

¹¹⁴ *Ibid.* Proposal, p. 3. According to the *Szydło* the ECJ has done much but still not enough for cross-border conversions. Szydło, M., *Cross-border conversion of companies under freedom of establishment: Polbud and beyond*, Common Market Law Review, Vol. 55, No. 5, 2018, pp. 1549

¹¹⁵ European Commission, The Commission's 2018 Proposal on Cross-Border Mobility –An Assessment, European Company Law experts, p.3. Available at [<https://europeancompanylawexperts.wordpress.com>]

an appropriate tool that will foster companies' mobility in Europe, increase legal certainty and facilitate those operations by digitalizing the process of setting up and running businesses.

7. CONCLUSION

The paper provides for a critical overview of the Proposal for a Directive on the cross-border conversions, mergers and divisions. It is long-awaited document which should lead to more harmonized legal framework for cross-border conversions, mergers and divisions on the EU level and which should also bring to an end opposing national practices regarding companies' right to move.

On general level, the Proposal offers number of high-quality legal solutions and it pursues an ambitious agenda. However, conducted research also showed that there is space for improvements and that there is a need for clarity of some of the proposed solutions.

Some of the most problematic aspect of proposed solutions concern the concept and notion of artificial arrangements. Furthermore, more precise division of duties and powers between an independent expert and competent authority would prevent multiplication of work between those two bodies in the procedure. Also, broadening the scope of application of rules on cross-border conversion to companies other than limited liability would make conversion possible for larger number of European undertakings.

However, current text of the Proposal is still under revision. In that sense it should be emphasized that analyzed text of the Proposal is just a working document subject to further revisions and amendments. According to the official announcement of the Commission published in January 2019 a series of amendments have been submitted by the MS to relevant committee¹¹⁶. This means that a search for optimal regulatory model for cross-border conversion on the EU level continues.

com/publications/the-commissions-2018-proposal-on-cross-border-mobility-an-assessment-september-2019] Accessed 18.03.2019

¹¹⁶ European Parliament, *Theme deeper and fairer internal market with a strengthened industrial base services including transport*. Available at [<http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-services-including-transport/file-cross-border-mobility-for-companies>] Accessed 18.03.2019

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