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PROPOSAL FOR THE FOURTEENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE CROSS-BORDER TRANSFER OF COMPANY SEATS

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EXPLANATORY MEMORANDUM

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Proposal for the FOURTEENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the cross-border transfer of company seats

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The objective of the Directive, which falls within the framework of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies" of 12 December 2012, COM(2012) 740 final, is to facilitate the cross-border transfer in the European Union of a company's registered office, and thus the change of the legal form of such company, while maintaining its legal personality.

To this end, a framework should be defined that provides overall regulation for corporate mobility at a European level with the aim of simplifying the procedures and requirements for the cross-border transfer of the company's seat and preventing abuse and fictitious transfers with social or tax dumping purposes.

Even so, we must remember that, especially in the conception of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies[(1)], as well as Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)[(2)] and their implementation in practice, there are principles, procedures, rules and solutions which, *mutatis mutandis*, may be of special interest in the area that is pertinent for this Directive.

This Directive takes into account the various interests related to the cross-border transfer of the registered office, making sure that it guarantees the indispensable legal certainty and reduces the costs of these types of transactions but, above all, it aims to protect minority members, workers, and creditors.

- **Coherence with the provisions in force in the policy area in question**

This Directive supplements the current EU framework for company law, whose main objective is to eliminate the legal obstacles to the European development of companies and contribute to their economic stimulus while imposing minimum common obligations on all the companies of the Member States aimed at fostering a fair competition system and ensuring appropriate protection for the people who establish commercial relations with them.

- **Historical context: legislative work and case-law of the Court of Justice**

(1) OJ L 310 of 25/11/2005, p. 1.

(2) OJ L 294 of 10/11/2001, p. 1

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The conflicts-of-law rules on company law of the Member States have usually been grouped into those that apply the theory of the *real seat* and grant their nationality to a company that establishes its actual headquarters in their territory, where its registered office is generally located, and those that follow the theory of *incorporation* and acknowledge the company that has been incorporated in accordance with their law and filed at their own registration offices as their nationals, establishing its registered office in their territory, regardless of where its *real seat* is.

As stated in a report on how to improve corporate mobility ordered by the Commission (*Study on the transfer of the Head office of a company from one member state to another.* K.P.M.G. European Business Centre, 1993), as long as there is no harmonised European Union law on cross-border transfers of the registered office, the co-existence of conflicting company law models in the Member States can create situations in which a company that transfers its registered office finds itself subject to two legal systems or, alternatively, to no legal system.

The report's conclusion was that it was desirable that a company be able to transfer its *real seat* from one Member State to another without dissolution and maintaining its legal personality, by virtue of the freedom of establishment, which could always be subject to measures taken by Member States justified for the protection of the general good.

For such purposes, it provided two alternatives: the first one allowed the transfer of the *real seat*, which could be registered in the Member State of arrival as a branch but not of the registered office, so this transfer would not involve a change in the applicable law; and the second one, which did involve a change in the applicable law, allowed the transfer of the registered office and the *real seat* combined.

In that context, prior to the corresponding public consultation, the Proposal for the Fourteenth Directive of the European Parliament and of the Council was drafted on the cross-border transfer of company seats from one Member State to another with changes to the prevailing legislation, and submitted by the Commission in 1997.

Although the Proposal did not succeed, the cross-border transfer of company seats has continued to be under discussion at the institutions since then.

The Communication from the Commission to the Council and the European Parliament "Modernizing Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward", of 21 May 2003, COM(2003) 284 final, expressly included the Commission's intention to present in the short term a new proposal for a Fourteenth Company Law Directive on the transfer of "seat" (a company's centre of activities and/or registered office) from one Member State to another.

In accordance with that Communication, the European Parliament approved the Resolution of 21 April 2004[(3)], supporting the Commission's proposal to draft, in this regard, a directive on corporate mobility.

The European Parliament returned to this matter in its Resolution of 4 July 2006 on recent developments and prospects in relation to company law[(4)] , where it called on

(3) OJ C 104 E of 30/4/2004, p. 714.

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the Commission to present in the near future a proposal concerning the Fourteenth Company Law Directive on the cross-border transfer of the registered office of limited companies, stressing that the transfer of registered offices must not be wrongly used, for example to restrict workers' rights, in particular as regards employee participation in company decisions, or to reduce the protection of creditors and considering, in particular, that safeguarding employees' acquired rights as regards participation in company decisions must be a declared aim of the directive.

The Commission's 2007 Programme included the proposal for the Fourteenth Directive as one of its priority initiatives.

However, the work did not advance since the subsequent impact assessment (*Impact assessment on the Directive on the cross-border transfer of registered office,* SEC(2007) 1707) concluded that the Community case law and the existing measures, as those provided for in the directive on cross-border mergers, were sufficient for the planned purpose and that, in terms of the proportionality test, it was not clear that adopting a directive would represent the least onerous way of achieving the policy objectives.

In its Resolution of 25 October 2007 on the European Private Company and the Fourteenth Company Law Directive on the transfer of the company seat [(5)], the European Parliament regretted that the Commission had informed that it intended to make no legislative proposal for a Fourteenth Company Law Directive on the transfer of the seat.

Again, the European Parliament, in its Resolution of 10 March 2009 with recommendations to the Commission on the cross-border transfer of the registered office of a company (2008/2196(INI)), expressly requested the Commission to submit by 31 March 2009 a legislative proposal for a directive laying down measures for coordinating Member States' national legislation in order to facilitate the cross-border transfer within the Community of the registered office of a company formed in accordance with the legislation of a Member State ("14th Company Law Directive").

The European Parliament's interest on this issue was evidenced once again in its Resolution of 2 February 2012 with recommendations to the Commission on a 14th company law directive on the cross-border transfer of company seats (2011/2046(INI)).

And, in that same year, the European Parliament, in its Resolution of 14 June 2012 on the future of European company law (2012/2669(RSP)), reiterated its request to the Commission that it submit a legislative proposal laying down measures designed to facilitate cross-border mobility for companies within the EU (14th Company Law Directive on the cross-border transfer of company seats).

Based on that, in its Action Plan on "European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies" of 12 December 2012, COM(2012) 740 final, the Commission announced

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(4) OJ C 303 E of 13/12/2006, p. 114

(5) OJ C 263 E of 16/10/2008, p. 671.

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that it would continue to study the need and viability of a directive on the cross-border transfer of company seats.

More recently, a study in June 2016 from the European Parliament Policy Department called "*Cross-border mergers and divisions, transfers of seat: is there a need to legislate?*" highlighted once again both the legitimate interests driving the cross-border transfer of company seats among Member States and the advisability of having an appropriate legal framework for such purpose which ensures the transparency and legal certainty of the transfer.

At the same time, several pronouncements have also been made on this issue by the Court of Justice which, in the absence of the corresponding legislation and through the decisions made in the specific cases, has guided the way for possible solutions under the following terms:

— Unlike natural persons, companies are created by virtue of a law and, as Community law stands at the present time, by virtue of a national law. They exist only by virtue of the varying national legislation which determines their incorporation and functioning (Judgment of the Court of 27 September 1988, case 81/87, *The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust PLC*, 19).

— A Member State unquestionably has the power to define both the connecting factor required of a company if it is to be regarded as incorporated under its national law and as such capable of enjoying the right of establishment, and the connecting factor required if the company is to be able subsequently to maintain that status (Judgment of the Court of 12 July 2012, case 378/10, *VALE Építési kft.*, 29).

— The reasons for which a company chooses to be formed in a particular Member State are, save in the case of fraud, irrelevant with regard to application of the rules on freedom of establishment (Judgment of the Court of 30 September 2003, case C-167/01, *Kamer van Koophandel en Fabrieken voor Amsterdam* v *Inspire Art Ltd.*, 95).

— The fact that the company is established in a Member State for the purpose of benefiting from more favourable legislation does not in itself suffice to constitute abuse of freedom of establishment. In order for a restriction on the freedom of establishment to be justified on the ground of prevention of abusive practices, the specific objective of such a restriction must be to prevent conduct involving the creation of wholly artificial arrangements which do not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory (Judgment of the Court of 12 September 2006, case C-196/04, *Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue*, 37 and 55).

— Articles 52 and 58 of the Treaty cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management and control and their central administration to another Member State while retaining their status as companies incorporated under the legislation

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of the first Member State (Judgment of the Court of 27 September 1988, case 81/87, *The Queen* v *H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust PLC*, 24).

— Articles 49 TFEU and 54 TFEU must be interpreted as precluding national legislation which enables companies established under national law to convert, but does not allow, in a general manner, companies governed by the law of another Member State to convert to companies governed by national law by incorporating such a company (Judgment of the Court of 12 July 2012, case 378/10, *VALE Építési kft.*, 41).

— The differences in treatment depending on whether a domestic or cross-border conversion is at issue cannot be justified by the absence of rules laid down in secondary European Union law. Even though such rules are indeed useful for facilitating cross-border conversions, their existence cannot be made a precondition for the implementation of the freedom of establishment laid down in Articles 49 TFEU and 54 TFEU (Judgment of the Court of 12 July 2012, case 378/10, *VALE Építési kft.*, 38).

— When a company transfers from one Member State to another with a change as regards the national law applicable, where it is converted into a form of company which is governed by the law of the Member State to which it has moved, the power of that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter cannot justify the Member State of incorporation, by requiring the winding-up or liquidation of the company, in preventing that company from converting itself into a company governed by the law of the other Member State, to the extent that it is permitted under that law to do so, since that restriction, unless it serves overriding requirements in the public interest, is prohibited under Article 43 EC (Judgment of the Court of 16 December 2008, case C-210/06, *Cartesio Oktató és Szolgáltató bt.*, 110, 111, 112 and 113).

— The principles of equivalence and effectiveness, respectively, preclude the host Member State from:

(i) refusing, in relation to cross-border conversions, to record the company which has applied to convert as the "predecessor in law", if such a record is made of the predecessor company in the commercial register for domestic conversions, and

(ii) refusing to take due account, when examining a company's application for registration, of documents obtained from the authorities of the Member State of origin (Judgment of the Court of 12 July 2012, case 378/10 *VALE Építési kft.*, 62).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on articles 49, 54 and 114 of the TFEU.

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In accordance with Article 49 of the TFEU, within the framework of its provisions, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited. Such prohibition also applies to restrictions on the setting-up of agencies, branches, or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital requirements.

In accordance with Article 54 of the TFEU, companies or firms formed in accordance with the law of a Member State and having their registered office, central administration, or principal place of business within the Union will, for the purposes of the Chapter, be treated in the same way as natural persons who are nationals of Member States. "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Moreover, Article 114 of the TFEU grants the EU, under certain conditions, the power to adopt EU legislation on the establishment and functioning of the single market.

The procedure for the cross-border transfer of the company seat established in the Directive is aimed at protecting the freedom of establishment, which forms part of the Union's foundations.

The procedure for the cross-border transfer of the company seat will have the effect of avoiding the obstacles to the single market resulting from the still existing heterogeneity in the national legislations on company law, as well as the effect of contributing to the approximation of the provisions laid down by law, regulation or administrative action in Member States in this specific area, which should improve the functioning of the single market and foster job creation and growth in the EU.

- **Subsidiarity (for non-exclusive competence)**

This initiative complies with the principle of subsidiarity.

The general objective of this legislative proposal is to ensure the correct functioning of the EU single market, which is not limited to the territory of a single Member State but covers all the territory of the European Union in terms of the cross-border transfer of the company seat.

It is evident that for this objective to come into fruition, action is necessary to be taken not separately by Member States in an uncoordinated fashion, but at the level of the Union instead.

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- **Proportionality**

The measures introduced in this Directive are in proportion to the planned objective of establishing a procedure for the cross-border transfer of the company seat which, until now, lacks harmonised regulations in the European Union.

Such measures do not go beyond what is necessary to resolve the problems detected and achieve the established objectives.

This proposal ensures that the companies' administrative burdens will be reduced in the event of a cross-border transfer of the company seat.

- **Choice of the instrument**

The difficulties for the cross-border transfer of a company seat may only be tackled through binding legal rules and through a common legislative framework. Soft law would be a risky choice, as Member States could decide not to implement it at all or it could lead to a piece-meal approach. Such an outcome would be highly undesirable. It would risk creating legal uncertainty for companies as well as jeopardizing the objectives for a coordinated and coherent cross-border transfer of a company seat in the internal market. This is far more likely to be achieved through binding law.

In accordance with article 115 of the TFEU, "the Council shall, acting unanimously [...], issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market." Based on article 288 of the TFEU, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. In this vein, the directive should remain general in nature since technicalities and the minute detail should be left to Member States to decide.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

In 1997 and 2002, two public consultations organised by the Commission evidenced the demand by market operators to ensure, in the European Union through legislation, the mobility of the registered office of companies between Member States without the need to wind them down in the home Member State.

Subsequently, further consultations were made: in 2003, the consultation on the Action Plan "Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move"; in 2004, the consultation on the cross-border transfer of the company seat; and in 2005-2006, the consultation on the future priorities of the Action Plan. The answers to all of them showed that there was considerable interest in a European Union regulation on cross-border transfers of company seats.

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The same occurred in the answers to the 2011 consultation and, once again, in a more general public consultation on the priorities of the Action Plan made between February and May 2012.

A further consultation was published in 2013 by the Directorate General for the Internal Market with the aim of acquiring more in-depth information on the costs faced by companies transferring their registered offices abroad and on the range of benefits that could be brought by an EU action in this respect.

- **Impact assessments**

See *supra*: Historical context: legislative work and case-law of the Court of Justice

- **Regulatory fitness and simplification**

The proposed directive will contribute to facilitating the cross-border transfer of companies' seats, reinforcing transparency and legal certainty, by making uniform legislation possible in all the Member States of the European Union and helping to avoid certain discriminatory, unjustified, and disproportionate obstacles in this respect among Member States.

- **Fundamental rights**

This proposal fosters the rights established in the EU Charter of Fundamental Rights, in particular article 16 on the freedom to conduct a business.

4. BUDGETARY IMPLICATIONS

This proposal does not have any budgetary implications for the European Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation, and reporting arrangements**

The Commission will review the application of the Directive five years after its entry into force and report to Council on its operation. Member States should communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

- **Explanatory documents**

See Recital 17.

- **Detailed explanation of the specific provisions of the proposal**

Unlike natural persons, whose personality and legal capacity are inherent to their actual existence, legal persons in general, and companies in particular, are subject to the laws of the Member States, which acknowledge their possibility of participating in

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operations and of holding rights and obligations and, in short, which make their existence possible.

All of this means that there is no complete freedom to form companies; in fact, this is the opposite as a result of their potential interference with operations in the interests of safeguarding the legal certainty and the necessary protection of third-party interests. Each Member State's law provides the possibility of choosing between the various types of companies established by it (*numerus clausus)*.

Based on this, the basic principle that must govern the procedure for the cross-border transfer of a company seat is that, unless the directive states otherwise, because of the cross-border nature of the transaction, it is governed in each Member State by the principles and methods governing the companies subject solely to the legislation of each Member State.

The objective is also to prevent the limited number –*numerus clausus*– of the company types acknowledged in each Member State's law from being affected. As a result of the transfer of a company seat, a Member State must not be required to acknowledge a company type as national if its law does not acknowledge this.

The cross-border transfer of the company seat will lead to a change in the law applicable to the company as of the effective date of that transfer.

To determine the compatibility of a company type with the law of the Member State where the company seat is to be transferred, the company can contact the authorities of the Member State to obtain more information. For such purposes, it can use the existing networks in judicial cooperation in civil and commercial matters and any other means available that provide a better understanding of the foreign law.

The interests of the minority members, debenture holders, holders of securities other than shares, employees' rights other than rights of participation and creditors are also protected in accordance with the national legislation. In this context reference is made to Council Directive 98/59/EC of 20 July 1998 on collective redundancies[(6)], Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses[(7)], Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community[(8)], as well as Council Directive 94/45/EC of 22 September 1994[(9)] and Council Directive 97/74/EC of 15 December 1997[(10)], both related to establishing a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Based on these approaches or principles, the articles of the Directive were set out.

(6) OJ L 225 of 12/8/1998, p. 16.

(7) OJ L 82 of 22/3/2001, p. 16.

(8) OJ L 80 of 23/3/2002, p. 29.

(9) OJ L 254 of 30/9/1994, p. 64.

(10) OJ L 10 of 16/1/1998, p. 22.

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Article 1, which supplements the provisions of **article 3**, delimits the Directive's scope of application.

Article 2 sets out the definitions pertaining to the Directive's scope of application.

The definition of "company" includes all companies referred to in Article 1 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent [(11)].

"Company seat" in this directive is determined by the reference stated in the company's registration, in accordance with articles 2.a) and g) and 3 of Directive 2009/101/EC.

The definition of "cross-border transfer" or "transfer" establishes two special features: firstly, the company that transfers its seat from one Member State, i.e. the home member state, to another, i.e. the host member state, maintains its legal personality, so it does not have to be dissolved and liquidated; and secondly, the transfer of the seat will entail the company's submission to the legislation of the host Member State.

Article 4 defines the conditions for the cross-border transfer of the company seat, delimiting especially the features subject to the legislation of the home Member State with the aim of safeguarding the legitimate rights and interests of the company's members and protecting its creditors, debenture holders, holders of securities or shares and employees.

Article 5, which is aimed at ensuring greater transparency in the cross-border transfer of the company seat, establishes the obligation of the company's management or administrative bodies to draft a report and transfer plan regarding the main grounds for basing this decision so that they are known duly in advance by all the stakeholders, especially the company employees, and not only by the members.

According to **Article 6**, the report on the transfer, which must be drafted by the company's management or administrative bodies, must explain the reasons for and the consequences of the transfer. The report will include, where applicable, the employees' opinions.

Article 7 lists the points that have to be included in the transfer plan. It includes the features justified by the cross-border nature of the transfer of the company seat, including the legal form, name and registered office of the company in the host Member State. The place where the registered office is situated determines which law will be applicable to the company - an important piece of information as far as all interested parties, including creditors, are concerned. The plan must also contain information on the arrangements for employee involvement in decisions taken by the company, especially if that involvement is not mandatory in accordance with the national legislation of the host Member State.

(11) OJ L 258 of 1/10/2009, p. 11.

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Article 8 deals with publication of the transfer plan and the information that must be provided. Company websites or other websites can offer an alternative to publication via the companies' registers, in accordance with Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions [(12)].

Article 9 establishes the obligation for the company's general meeting to approve the transfer proposal in accordance with the regime applicable to it in the home Member State.

Article 10 governs scrutiny of the legality of cross-border transfers of the company seat. They are based on the corresponding principles and techniques provided for in Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

Article 11 deals with the registration of the cross-border transfer of the company seat in the corresponding register of the host Member State, and is inspired by the provisions of article 3 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent[(13)].

Article 12, which is aimed at avoiding situations of conflict and improving coordination between the applicable legislation of the Member States, establishes the registration date in the host Member State as the effective date of the cross-border transfer of the company seat.

Article 13 deals with the participation of employees in the company where the protection of acquired rights of participation is put at risk by the cross-border transfer of the company seat.

One of the overriding concerns regarding cross-border transfers of company seats was that the process might be used by companies which try to circumvent national employee participation rules by means of such a transfer.

Regulation (EC) No 2157/2001 and Directive 2001/86/EC have provided a solution which can be used, *mutatis mutandis*, also with a view to coordinating company law under Article 50.2.g) of the TFEU, as is the purpose of this Directive.

The context in which the Regulation and the Directive on the SE operate is different, however, from that surrounding the application of this Directive. By virtue of its Community nature, the SE is not subject to any existing national rules on compulsory participation in the Member State in which its registered office is situated. By contrast, companies which carry out a cross-border transfer of their seat covered by the present Directive will be companies governed by the law of a Member State. Such companies

(12) OJ L 259 of 2/10/2009, p. 14.

(13) OJ L 258 of 1/10/2009, p. 11.

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will accordingly remain subject to the compulsory participation rules applicable in that Member State. It may well be, however, that, following the transfer, the registered office of the company is situated in a Member State which does not have this type of rule, while the company is operating under a participation system before the transfer. To deal with this eventuality, provision is made for extending to companies covered by the present Directive the same protection of rights acquired with respect to participation as is granted under the system set up by the SE Regulation and Directive. The protection of acquired rights of participation is entirely justified in this case. In cases where the national law of the host Member State has rules on compulsory employee participation, such specific protection is unnecessary as the company in question will be subject to those rules.

Article 14 is based on Article 30 para. (1) of Regulation (EC) No 2157/2001, according to which, after the date on which the transfer takes effect, it is no longer possible to declare the transfer null and void, the aim being to ensure absolute certainty for all third parties affected by the transfer in the various Member States concerned. It would be highly dangerous for third parties subject to the laws of different Member States to be faced with the nullity of an operation after all the checks in each Member State had been carried out conclusively.

Harmonised regulations of cross-border transfers of company seats will help to create within the European Union conditions analogous to those of an internal market and, in order thus to ensure the effective functioning of such an internal market, such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; therefore, **article 15** establishes that tax rules must be neutral for cross-border transfers of company seats.

Articles 16, 17, 18, 19 and 20 contain the usual final provisions concerning data protection, re-examination, transposition, entry into force and the addressees of the Directive.

Proposal for the

FOURTEENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the cross-border transfer of company seats

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and, in particular, Articles 49 and 54 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [(14)],

In accordance with the ordinary legislative procedure,

Whereas:

(1) Articles 49 and 54 of the Treaty on the Functioning of the European Union guarantee freedom of establishment for all companies and firms formed in accordance with the law of a Member State and having their registered office, central administration, or principal place of business within the Union, and the cross-border mobility of companies is one of the crucial elements with regard to the completion of the single market.

(2) Within the single market, the cross-border transfer of company seats still encounters legislative and administrative difficulties due to a lack of harmonisation and, in some Member States, as a result of a complete absence of specific national laws in that respect. Therefore, with a view to the completion and functioning of the single market, it is necessary to lay down Community provisions to facilitate the cross-border transfer of company seats.

(3) The laws of the Member States grant companies legal personality, acknowledge the possibility of participating in operations and of holding rights and obligations and, in short, make their existence possible. All of this means that there is no complete freedom to form companies; in fact, this is the opposite as a result of their potential interference with operations in the interests of safeguarding the legal certainty and the necessary protection of third-party interests. Each Member State's law provides the possibility of choosing between the various types of companies established by it – *numerus clausus*–. Based on this, one of the principles that must govern the procedure for the cross-border transfer of a company seat is that, unless the directive states otherwise because of the cross-border nature of the transaction, it is governed in each Member State by the principles and methods governing the companies subject solely to the legislation of each Member State. The objective is also to prevent the limited

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number –*numerus clausus*– of the company types acknowledged in each Member State's law from being affected. As a result of the cross-border transfer of a company seat, a Member State must not be required to acknowledge a company type as national if its law does not recognise this.

(4) Therefore, an appropriate harmonisation level of the rights of the Member States in the regulations on cross-border transfers of company seats must be compatible with each Member State's power to set out the company types in its own laws. Based on that principle, the definitions, for the purpose of this Directive, of "company", which shall be defined by reference to Directive 2009/101/EC [(15)], and of ''company seat", which shall be defined as the company's registered office, play a crucial role.

(5) Since any registered company must have duly filed its seat, the procedure for the cross-border transfer of a company's seat must primarily regulate the transfer of the company's registered office, without prejudice to the requirements established for such purpose in the laws of the Member State where the company has its seat before the transfer is made (home Member State) and in the laws of the Member State in which the company plans to establish its seat as a result of the transfer (host Member State), especially in order to prevent fictitious transfers and the abusive use of "letterbox companies" for the purposes of tax evasion, money laundering and social dumping and to protect the interests of minority shareholders, employees and creditors, such as, for example, the fact that the transfer of the company seat requires the simultaneous transfer of the company's central administration or principal place of business.

(6) The cross-border transfer of the company seat will lead to a change in the law applicable to the company as of the effective date of that transfer.

(7) To determine the compatibility of a company type with the law of the host Member State, the company can contact the authorities of this Member State to obtain more information. For such purposes, it can use the existing networks in judicial cooperation in civil and commercial matters and any other means available that provide a better understanding of the foreign law.

(8) This Directive facilitates the cross-border transfer of the seat of the companies as defined herein. The laws of the Member States must allow the transfer of a company seat of one Member State to another, maintaining the continuity of the legal personality of the company concerned, in order to ensure its proper functioning.

(9) To facilitate the cross-border transfer of company seats, none of the provisions and formalities of national law, to which reference is made in this Directive, should introduce restrictions on freedom of establishment or on the free movement of capital save where these can be justified in accordance with the case-law of the Court of Justice and in particular by requirements of the general interest and are both necessary for, and proportionate to, the attainment of such overriding requirements.

(15) OJ L 258 of 1/10/2009, p. 11.

(10) The cross-border transfer of company seats should not affect the rights of stakeholders (minority members, employees, and creditors) originating before the transfer, so the procedure should be governed by strict rules as regards transparency and information to stakeholders prior to the transfer being carried out.

(11) To protect the interests of both the members and third parties, the affected company should prepare a plan for the cross-border transfer of the company seat. The minimum content of this plan should therefore be specified, while leaving the company in question free to include other items. The transfer plan and implementation must be sufficiently publicised in the corresponding public registers. The transfer plan must be approved by the company's general meeting.

(12) In order to guarantee the cross-border transfer of a company seat, it should be provided that monitoring of the completion and legality of the decision-making process should be carried out by the national authority of the home Member State, whereas monitoring of the completion and legality of the cross-border transfer of a company seat should be carried out by the national authority of the host Member State. The national authority in question may be a court, a notary or any other competent authority appointed by the Member State concerned. Therefore, it is necessary to establish an effective date for the cross-border transfer of a company seat.

(13) To protect the interests of both the members and third parties, the legal effects of the cross-border transfer of the company seat must be stated. In the interests of legal certainty, it should no longer be possible, after the date on which a cross-border transfer of the company seat takes effect, to declare the transfer null and void.

(14) Employees' rights other than rights of participation should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on collective redundancies[16], Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses[17], Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community[18] and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[19].

(15) If employees have participation rights in a company that transfers its seat under the circumstances set out in this Directive and, if the national law of the host Member State does not provide for the same level of participation as operated in the Member State where the company has had its seat before the transfer, including in committees

(16) OJ L 225 of 12/8/1998, p. 16.

(17) OJ L 82 of 22/3/2001, p. 16.

(18) OJ L 80 of 23/3/2002, p. 29.

(19) OJ L 254 of 30/9/1994, p. 64.

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of the supervisory board that have decision-making powers, or does not provide for the same entitlement to exercise the company's employee rights, the participation of employees in the host Member Stat and their involvement in the definition of such rights are to be regulated. To that end, the principles and procedures provided for in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company[(20)] and in Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees[(21)], are to be taken as a basis, subject, however, to modifications that are deemed necessary. A prompt start to negotiations under Article 13 of this Directive, with a view to not unnecessarily delaying cross-border transfers of company seats, may be ensured by Member States in accordance with Article 3.2.b) of Directive 2001/86/EC.

(16) The provisions of Article 293 of the Treaty establishing the European Community through which the Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing, for the benefit of their nationals, among other objectives, the retention of the companies' legal personality in the event of transfer of their seat from one country to another, are not an obstacle for the European Union to adopt this Directive.

(17) Since the objective of the proposed action, namely laying down rules with common features applicable at transnational level to make it possible for companies to carry out a cross-border transfer of their seats, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(18) In accordance with the Joint Political Declaration of 28 September of 2011 of Member States and the Commission [(22)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

Article 1. Scope

This Directive shall apply to the cross-border transfer of the seat of companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union.

(20) OJ L 294 of 10/11/2001, p. 1.

(21) OJ L 294 of 10/11/2001, p. 22.

(22) OJ C 369 of 17/12/2011, p. 14.

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Article 2. Definitions

For the purposes of this Directive:

1. "company" means: a company as referred to in Article 1 of Directive 2009/101/EC [(23)].

2. "company seat" means: the company's registered office in accordance with articles 2a) and g) and 3 of Directive2009/101/EC.

3. "cross-border transfer" or "transfer" means: the migration of a company from one Member State to another by being converted into a company governed by the law of the host Member State without losing its legal personality.

4. "home Member State" means: the Member State in which the company has its seat before carrying out the cross-border transfer.

5. "host Member State" means: the Member State in which the company establishes its seat as a result of carrying out the cross-border transfer.

Article 3. Further provisions concerning the scope

1. Member States shall ensure that this Directive does not apply to companies under liquidation or involved in insolvency or similar proceedings.

2. Member States shall ensure that this Directive does not apply to the company or companies that are the subject of the use of resolution tools, powers and mechanisms provided in Title IV of Directive 2014/59/EU of the European Parliament and of the Council [(24)].

Article 4. Conditions relating to transfers

1. Save as otherwise provided in this Directive:

a) the cross-border transfer of the company seat can only be carried out by companies that are entitled to transfer their seat and convert into another company which meets the requirements set out in article 2.1 in accordance with the national law of the Member State concerned;

b) the company which plans to carry out a cross-border transfer of its seat shall comply with the provisions and formalities of the national law to which it is subject. The laws of a Member State enabling its national authorities to oppose the transfer of a company seat on grounds of public interest shall also be applicable to a cross-border transfer of a company seat.

c) the cross-border transfer of the company seat requires the simultaneous transfer of the company's administrative seat to the effect that the company's registered office is located in the same Member State as its administrative seat if this is prescribed by the laws of either the home Member State or the host Member State.

(23) OJ L 268 of1/10/2009, p. 11.

(24) OJ L 173 of 13/6/2014, p. 190.

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2. The provisions and formalities referred to in paragraph 1 (b) shall, in particular, include those concerning the decision-making process relating to the transfer of a company seat and, taking into account the cross-border nature of the transfer, the protection of the company's creditors, debenture holders and the holders of securities or shares, as well as of employees as regards rights other than those governed by Article 13.

3. A Member State may adopt provisions designed to ensure appropriate protection for minority members who have opposed the cross-border transfer of the company seat but without preventing it.

Article 5. Information rules prior to the transfer decision

The management or governing bodies of the company which plans to carry out the cross-border transfer of its seat must draft a report and transfer plan.

Before the company's management or governing bodies decide on the report and transfer plan, the representatives of the employees or, if there are no representatives, the employees themselves, should be informed and consulted on the proposed transfer within the meaning of Article 4 of Directive 2002/14/EC[(25)].

The report and transfer plan must be submitted to the members, creditors and representatives of the employees or, if there are no representatives, the employees themselves, who may examine them during a specified period which may not be less than one month or more than three months prior to the date of the general meeting approving the transfer.

Article 6. Transfer report

The transfer report should describe and justify the economic, legal and social aspects of the transfer and explain its consequences for the members, creditors and employees.

When the management or governing bodies of a company receive, in good time, an opinion from the representatives of their employees or, if there are no representatives, the employees themselves, as provided for under national law, that opinion shall be appended to the report.

Article 7. Transfer plan

The transfer plan must include at least:

a) the legal form, name and registered office of the company in the home Member State;

b) the legal form, name and registered office of the company in the host Member State;

c) the memorandum and articles of association envisaged for the company in the host Member State;

(25) OJ L 80 of 23/3/2002, p. 29.

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d) the timetable envisaged for the transfer;

e) the date from which the transactions of the company intending to transfer its seat will be treated for accounting purposes as being located in the host Member State;

g) the rights guaranteed to the company's members, employees and creditors or the relevant measures proposed and the address where all the information thereon can be obtained, free of charge;

h) if the company is managed on the basis of employee participation and if the national legislation of the host Member States does not impose such a scheme, information on the procedures whereby the arrangements for employee participation are determined, in accordance with Article 13,

i) where applicable, detailed information on the transfer of the central administration or principal place of business;

j) the rights conferred by the company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;

k) where applicable, any special advantages granted to members of the company's governing, management, supervisory or controlling bodies.

Article 8. Publication

1. The transfer plan shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 2009/101/EEC[(26)], at least one month before the date of the general meeting which is to decide thereon.

The company shall be exempt from the publication requirement laid down in Article 3 of Directive 2009/101/EEC if, for a continuous period beginning at least one month before the day fixed for the general meeting which is to decide on the transfer plan and ending not earlier than the conclusion of that meeting, it makes the transfer plan available on its website free of charge for the public. Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of the documents and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

By way of derogation from the second paragraph, Member States may require that publication be effected via the central electronic platform referred to in Directive 2009/101/EEC. Member States may alternatively require that such publication be made on any other website designated by them for that purpose. Where Member States avail themselves of one of those possibilities, they shall ensure that companies are not charged a specific fee for such publication.

Where a website other than the central electronic platform is used, a reference giving access to that website shall be published on the central electronic platform at least one month before the day fixed for the general meeting. That reference shall include

(26) OJ L 258 of 1/10/2009, p. 11.

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the date of publication of the transfer plan on the website and shall be accessible to the public free of charge. Companies shall not be charged a specific fee for such publication.

The prohibition precluding the charging to companies of a specific fee for publication, laid down in the third and fourth paragraphs, shall not affect the ability of Member States to pass on to companies the costs in respect of the central electronic platform.

Member States may require companies to maintain the information for a specific period after the general meeting on their website or, where applicable, on the central electronic platform or the other website designated by the Member State concerned. Member States may determine the consequences of temporary disruption of access to the website or to the central electronic platform, caused by technical or other reasons.

2. Subject to the additional requirements imposed by the home Member State, the following particulars shall be published in the national gazette of that Member State:

a) the legal form, name and registered office of the company in the home Member State;

b) the legal form, name and registered office of the company in the host Member State;

c) an indication of the arrangements made for the exercise of the rights of creditors and of any minority members of the company and the address at which complete information on those arrangements may be obtained free of charge.

Article 9. Approval by the general meeting

1. After taking note of the report referred to in Article 6, the company's general meeting shall decide on the approval of the proposed transfer in accordance with the requirements and formalities established in the legislation of the home Member State.

2. If the company is managed on the basis of employee participation, the general meeting may reserve the right to make implementation of the cross-border transfer of the seat conditional on express ratification by it of the arrangements decided on with respect to the participation of employees in the company.

Article 10. Scrutiny of the legality of transfers

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border transfer of the company seat as regards that part of the procedure subject to its national legislation.

2. In each home Member State concerned, the authority referred to in paragraph 1 shall issue, without delay to the company, a certificate conclusively attesting to the proper completion of all the acts and formalities regarding the cross-border transfer of the company seat and, where applicable, that the arrangements for employee participation have been determined in accordance with Article 13.

3. If the law of the home Member State provides for a procedure to compensate minority members, without preventing the cross-border transfer of the company seat, the authority referred to in paragraph 1 may issue the certificate referred to in

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paragraph 2 even if such procedure has commenced. The certificate must, however, indicate that the procedure is pending.

4. The documentation accrediting the approval of the transfer by the general meeting, together with the certificate referred to in paragraph 2, must be submitted within an appropriate period of time in the host Member State to the authority referred to in paragraph 1 so that it can verify that the substantive and formal conditions for the transfer, including the requirements in form and content laid down in the host Member State for the formation of such company, are met.

Those documents should be sufficient to enable the company to be registered in the host Member State.

Article 11. Registration and publication

1. The law of the host Member State shall determine, with respect to the territory of that State, the requirements and formalities for the registration of the cross-border transfer of the company seat in the corresponding register, in accordance with Article 3 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, with a view to making such safeguards equivalent[(27)].

2. The cross-border transfer of the company seat may not be registered in the host Member State until the certificate referred to in Article 10 para. 2 has been submitted.

3. The registry for the registration of the cross-border transfer of the company seat shall notify, without delay, through the system of interconnection of central, commercial and companies registers established in accordance with section 2 of Article 4 *bis* of Directive 2009/101/EC**,** the corresponding registry of the home Member State that the cross-border transfer of the company seat has been carried out. Deletion of the old registration, if applicable, shall be effected on receipt of that notification, but not before.

Article 12. Effective date of the transfer

1. The transfer should take effect on the date of registration in the host Member State. From that date, the company should be governed by the legislation of the host Member State.

2. Without prejudice to paragraph 1, regarding the ongoing judicial or administrative proceedings which commenced before the cross-border transfer of seat, the company should be regarded as having its registered office in the home Member State.

3. The transfer should not affect the rights and obligations of the company arising from contracts of employment or from employment relationships or the company's legal relations with third parties.

(27) OJ L 258 of 1/10/2009, p. 11.

4. The creditors of the company whose credits were arranged before the date of publication of the transfer plan in accordance with Article 8 and are not due shall be entitled to have such credits guaranteed.

5. Where, in the case of a cross-border transfer of the company seat covered by this Directive, the laws of the Member States require the completion of special formalities for the holder of certain assets, rights and obligations becomes effective against third parties, those formalities shall be carried out by the company once the transfer has been effected.

Article 13. Employee participation

1. Without prejudice to paragraph 2, the company shall be subject to the rules in force concerning employee participation in the host Member State.

2. However, the rules in force concerning employee participation in the host Member State shall not apply, where the company has, in the six months before the publication of the transfer plan as referred to in Article 8, an average number of employees that exceeds 500 and is operating under an employee participation system within the meaning of Article 2.k) of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border transfer of the company seat does not

a) provide for at least the same level of employee participation as operated in the company in the home Member State, or

b) provide for employees of establishments of the company situated in other Member States the same entitlement to exercise participation rights as the ones that they enjoyed before the transfer.

3. In the cases referred to in paragraph 2, the participation of employees in the company and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 6 below, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC.

a) Article 3(1), (2) and (3), (4) first subparagraph, first indent, and second subparagraph, (5) and (7);

Article 4(1), (2), points (a), (g) and (h), and (3);

c) Article 5;

d) Article 6;

e) Article 7(1), (2) first subparagraph, point (b), and second subparagraph, and (3). However, for the purposes of this Directive, the percentages required by Article 7(2), first subparagraph, point (b) of Directive 2001/86/EC for the application of the standard rules contained in part 3 of the Annex to that Directive shall be raised from 25 to 33 1/3 %;

f) Articles 8, 10 and 12;

g) Article 13(4);

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h) part 3 of the Annex, point (b).

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

a) shall confer on the relevant bodies of the company the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in paragraph 3(h), as laid down by the legislation of the host Member State, and to abide by those rules from the date of registration;

b) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the host Member State;

c) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding these rules, determine to limit the proportion of employee representatives in the administrative body of the company. However, if, at the company, employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third.

5. The extension of participation rights to employees of the company employed in other Member States, referred to in paragraph 2(b), shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6. When the company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent cross-border transfers of the company seat for a period of three years after the cross-border transfer has taken effect, by applying *mutatis mutandis* the rules laid down in this Article.

Article 14. Validity

A cross-border transfers of the company seat which has taken effect as provided for in Article 11 may not be declared null and void.

Article 15. Taxation

The transfer should be tax-neutral in accordance with the provisions of Directive 2009/133/EC[(28)].

Article 17. Data protection

The processing of personal data carried out in the context of this Directive shall be subject to Regulation (Eu) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of

[(28)] OJ L 310 of 25/11/2009, p. 34.

personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [29].

Article 18. Review

Five years after the date laid down in the first paragraph of Article 19, the Commission shall review this Directive in the light of the experience acquired in applying it, submit the Council a report on its functioning and, if necessary, propose its amendment.

Article 19. Transposition

1. Member States shall adopt and publish, by 30 June 20XX at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 February 20XX.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20. Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 21. Addressees

This Directive is addressed to the Member States.

[29] OJ L 119 of 4/05/2016, p. 1.

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM SIZED ENTERPRISES (SMEs)

Title of the Proposal

Proposal for a Fourteenth Company Law Directive of the European Parliament and of the Council on the cross-border transfer of company seats.

Reference number

COM(20XX) XXX

The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

In accordance with the principles of subsidiarity and proportionality as laid down in Article 5 of the Treaty, the objectives of the proposed action, namely to enable the cross-border transfer of company seats between Member States while maintaining the continuity of the legal personality of the company concerned, cannot be sufficiently achieved by the Member States acting alone. No one Member State is able to organise the operation in full because it has a dimension which goes beyond national frontiers. These objectives can therefore be achieved only at Community level. The Directive is confined to the minimum required in order to achieve those objectives and does not go beyond what is necessary to that end.

The impact on business

2. Who will be affected by the proposal?

The scope of the Directive covers public limited companies, partnerships partly limited by shares, incorporated private companies and other national forms of company which offer safeguards as envisaged in Directive 68/151/EEC. The proposal will therefore benefit above all small and medium-sized enterprises (SMEs) as defined in the Commission Recommendation of 3 April 1996[30]. Owing to their smaller size and lower capitalisation compared with large enterprises, the removal of legal obstacles to cross-border transfers of company seats and the harmonisation of this regulation at Union level will provide a significant contribution to reducing the costs of this type of operation and help to internationalise the SMEs' activities, which account for about nine out of ten enterprises, almost three out of ten jobs, and just over one fifth of value added in the EU. No distinction is made according to sector of activity, size of business or geographical area.

[30] OJ L 107 of 30/10/1996, p. 4.

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3. What will business have to do to comply with the proposal?

Companies which wish to carry out a cross-border transfer of their seat will basically have to draw up a report and the transfer plan and publish these sufficiently. The general meeting of the company will have to approve the proposal. The legality of the procedure will have to be certified by the competent authorities in each Member State concerned. Measures are provided for in order to protect the rights of employees, creditors and holders of securities. The completion of the cross-border transfer of the company seat will also have to be sufficiently publicised. Responsibility for implementing the proposal will rest primarily with the Member States.

4. What economic effects is the proposal likely to have?

The key provisions of the proposal should allow companies wo wish to carry out a cross-border transfer of their seat from one Member State to another to benefit from harmonised legal requirements, which are currently highly complex. This benefit will accrue to all companies in the EU and should therefore have a favourable impact on employment and competitiveness.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The proposal is basically attuned to serving the needs of SMEs, which account for about nine out of ten enterprises, but other companies will also be able to benefit from it on the same terms.

Consultation

6. The present proposal is an appropriate response to the needs which companies have been expressing for many years now. The Commission's communication on cross-border transfers of company seats has likewise been the object of extensive consultations.