



Transposition of the Mobility Directive into Slovak Law

Preventing Tax Avoidance in Cross-Border Conversions

Natália Priateľová* 

* PhD candidate, Department of Financial Law, Tax Law, and Economics, University of Pavol Jozef Šafárik in Košice, Košice, Slovakia. E-mail: natalia.priatelova@student.upjs.sk

Abstract

This article examines the transposition of Directive (EU) 2019/2121 into the Slovak legal framework, with particular emphasis on mechanisms designed to prevent tax law abuse in the context of cross-border company conversions. The objective is to evaluate whether the Slovak legislation has established adequate safeguards and institutional frameworks for detecting and mitigating abusive or fraudulent conduct. The research is based on doctrinal legal analysis, comparative assessment, and critical evaluation of relevant case law. The findings indicate that while the legislative intent is aligned with the Directive's objectives, the procedural framework for reviewing the legality of cross-border conversions and institutional coordination fall short of ensuring effective prevention of tax abuse. The article concludes with specific legislative recommendations for strengthening procedural guarantees and authority cooperation.

Keywords

cross-border conversion, tax law abuse, fraudulent practices, anti-tax avoidance

1 Introduction

The possibility of cross-border mergers of companies has long been perceived within the European Union as an important step towards strengthening the internal market and fulfilling the freedom of establishment. Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 (hereinafter the “Directive”), which extended the harmonization of rules to include cross-border conversions and divisions of companies, represents another significant milestone in this area. At the same time, it responds to the need to combat abusive or fraudulent practices, including tax avoidance. The development of this legal framework for cross-border operations commenced back in 2015 (European Commission, 2015). The Directive thus builds upon the previous legal framework governing cross-border mergers and amalgamations (Directive 2005/56/EC of the European Parliament and of the Council), and expands the existing regulatory framework to cover cross-border conversions and divisions. In Slovak law, the Directive was transposed by Act No. 309/2023 Coll. on Conversions of Companies and Cooperatives (hereinafter the “Act on Conversions”), the part of which dealing with cross-border conversions entered into force on 1 March 2024.

The primary objective of this paper is to evaluate whether the Slovak transposition of the Directive has established adequate legal and procedural mechanisms to effectively identify and prevent abusive and fraudulent practices in the area of taxation.¹ This leads to the core research question, namely whether the scope and quality of the legal instruments entrusted primarily to notaries, but also to other public authorities, are sufficient for effectively preventing the abuse of tax law in case of cross-border conversions of companies?

Despite an increasing number of academic contributions, dealing with cross-border company mobility (e.g., Dipietro, 2025; Grambličková & Macko, 2022a; Garcimartín & Gandía, 2019; Pokryszka, 2021; Papadopoulos, 2023; Gilotta, 2023), a comprehensive doctrinal and institutional analysis of the Slovak implementation of the Directive is still lacking. This paper aims to contribute to filling this gap by analyzing the procedural safeguards incorporated in Slovak law, their alignment with EU anti-abuse standards, and the challenges related to their enforcement. By examining the interaction between notaries and tax authorities, the paper seeks to identify practical and legislative shortcomings that undermine the effective prevention of tax law abuse. Through this contribution, I seek not only to enrich the existing literature but also to stimulate broader academic and professional discussion on the proper calibration of legal mechanisms aimed at counteracting tax-motivated abuses in cross-border company mobility. Methodologically, this paper relies on legal analysis of relevant legislation, case law of the Court of Justice of the EU, and available informational resources, followed by synthesis and a partial comparative assessment of Slovak and Czech legal frameworks.

The first part of the paper clarifies the context of the Directive, emphasizing issues related to the abuse of law. The second part outlines the process for reviewing the legality of cross-border conversions under the Directive. In the third part, I focus on the Slovak transposition of the Directive into national law, analyze the role of notaries in assessing the legality of cross-border conversions, and closely examine selected problematic aspects of this transposition. Finally, the conclusion summarizes key findings, provides an answer to the research question, and proposes legislative solutions aimed at strengthening the prevention of abusive practices in taxation.

2 Abuse of law in the context of the Directive

The original intention of the European legislator in the field of harmonizing cross-border operations was to adopt a directive concerning the cross-border transfer of company seats (the so-called 14th Company Law Directive).² Its adoption aimed to establish a legislative framework for the cross-border transfer of company seats, currently referred to in legal theory and professional practice by the more accurate term “cross-border conversion of companies”. The proposed regulation reflected the implementation of the principle of freedom of establishment (Articles 49 and 54 TFEU). Its implementation into national legal systems would allow companies to freely relocate their seat to another Member State and utilize the legal regime that best aligns with their economic or business needs. However, due to the

¹ According to Babčák et al. (2020, 5), abuse of the tax system, particularly illegal and antisocial conduct by taxpayers, undermines the authority of the European Union and its Member States, thereby weakening their position within the global economic and social sphere.

² For more details regarding the so-called 14th Company Law Directive, see Ballester & Del Monte (2013, 50) and Rammeloo (2008).

lack of consensus among Member States, the 14th Directive was never adopted. Subsequent harmonization efforts by the EU continued in 2018 with the introduction of a Proposal for a Directive regulating cross-border conversions, mergers, and divisions (European Commission, 2018). This proposal included limitations on cross-border conversions and divisions when these could lead to the abuse of law through so-called artificial arrangements. This step by the Commission was preceded by the Court of Justice's decision in the *Polbud* case, concerning the freedom of establishment and its limitations arising from combating abusive practices (the Directive proposal was published 6 months after the CJEU ruling). In this case, drawing on its previous decisions, the Court indicated that a company's decision to relocate its seat to another Member State solely to benefit from a more favorable legal regime (including tax advantages) does not inherently constitute an abuse of law.³ From the perspective of interpreting freedom of establishment, this was a relatively liberal decision of the Court, appearing contradictory to the interests of Member States. Consequently, it was necessary to develop a politically acceptable text for the Directive, inevitably introducing certain restrictions on the freedom of establishment (Davies et al., 2018, 6).

Regarding Member States' concerns about abusive practices, the Directive proposal introduced the concept of an "artificial arrangement",⁴ according to which the Member State of origin would refuse to authorize cross-border conversions or divisions if, after assessing a specific case and considering all relevant facts, the competent authority concluded it represented an artificial arrangement aimed at obtaining undue tax advantages or inappropriately affecting employees', creditors', or minority shareholders' statutory or contractual rights. This concept represented a general proposal to prohibit the abuse of law in cross-border conversions (Grambličková & Macko, 2022b, 610). However, this concept contradicted the Court of Justice's conclusions, expressed in the *Polbud* and other rulings (e.g., *Centros*, *Inspire Art*), particularly regarding the concept of abuse of law. The Court consistently held in these cases that it is not an abuse of the freedom of establishment for a company to relocate to another Member State to benefit from more advantageous legal conditions, including tax benefits. Dipietro (2025) demonstrates that, following the rulings in *Polbud* and *Edil Work*,⁵ the CJEU has progressively expanded the interpretation of the freedom of establishment to allow purely formal relocations of a company's registered office without any real economic link to the host Member State. This development, while consistent with a literal reading of the TFEU, arguably weakens the preventive mechanisms aimed at protecting creditors, minority shareholders, and employees. Dipietro (2025) further points out that although the Directive introduces a detailed procedural framework for the control of cross-border conversions, it fails to provide a material definition of "abuse" and thereby delegates the decisive interpretative standard to national authorities and courts.

The concept of artificial arrangements from the Directive proposal faced criticism for the practical challenges involved in conducting detailed assessments of cross-border operations by the Member State of origin. Such assessments included examining attributes such as the intent of establishment in the target Member State, industry, investments, net turnover, profit or loss, employee count, balance sheet structure, tax residency, asset locations, usual place of

³ For a detailed analysis of the CJEU's jurisprudence, see Judgment of 25 October 2017, *Polbud*, C-106/16, EU:C:2017:804, paragraph 40; Judgment of 9 March 1999, *Centros*, C-212/97, EU:C:1999:126, paragraph 27; Judgment of 30 September 2003, *Inspire Art*, C-167/01, EU:C:2003:512, paragraph 96.

⁴ Proposal of the European Parliament and Council Directive, 2018, Article 86c(3).

⁵ Judgment of 25 April 2024, *Edil Work*, C-276/22, EU:C:2024:348.

employees' work, or business risks.⁶ Many of these indicators (discussed further in the text) relate to business and entrepreneurial aspects not directly connected to applicable company law (*lex societatis*). Thus, it remains unclear how examining net turnover or business risks could justify denying the right to a cross-border conversion (Garcimartín & Gandía, 2019, 38). Determining the public authority capable of conducting such an extensive assessment was also problematic.⁷ Some Slovak authors have similarly indicated that this detailed review could frequently result in refusal of cross-border conversions, often for formal reasons or generalized presumptions of law abuse (Grambličková & Macko, 2022b, 610–611).

The Commission ultimately abandoned the concept of artificial arrangements, replacing it with a provision allowing Member States of origin to refuse issuing a certificate of conversion if national authorities find the cross-border conversion seeks abusive or fraudulent objectives aimed at avoiding or circumventing EU or national law, or pursuing criminal goals. This broader concept effectively extends grounds for refusing certificates beyond the original artificial arrangement concept. In this context, the Court of Justice in the *X GmbH* case further indicated that an objective test (i.e., negation of a measure's object and purpose), rather than a subjective one, should guide the assessment of abuse.⁸ The Directive's final text no longer includes the detailed examination of cross-border operations (Article 86n of the Directive proposal); rather, it is replaced with the requirement to consider all relevant facts and circumstances brought to the attention of competent national authorities during the review of the legality of cross-border conversions. Individual business and entrepreneurial indicators remain, however, in recital 36 of the Directive's preamble, and the designated public authority assessing legality must still consider them. Crucially, the adopted Directive applies the concept of abusive and fraudulent objectives to all cross-border operations, whereas the original proposal covered only conversions and divisions.

The Directive's provisions prohibiting cross-border operations that pursue abusive and fraudulent objectives or attempt to circumvent EU or national law (including tax law) have thus extended European anti-abuse efforts. Combating tax abuse aligns with EU tax policy, focusing since 2001 on removing tax obstacles to cross-border transactions, fighting harmful tax competition, and enhancing cooperation among Member States' tax administrations (European Commission, 2001). The Directive justifies measures against abuse by noting that cross-border operations could, under certain circumstances, be exploited for fraudulent purposes. Demonstrative examples of abusive practices listed include circumventing employee rights, tax obligations,⁹ social benefits, or criminal activities. Member States should particularly monitor "shell companies" or artificial legal structures, intended to evade or circumvent EU or national law.

The substantive definition of the term "tax avoidance", explicitly mentioned, yet not further specified by the Directive, must be sought in the Anti-Tax Avoidance Directive (ATAD), aimed

⁶ Proposal of the European Parliament and Council Directive, 2018, Article 86n.

⁷ Regarding the assessment of the appropriateness of the artificial arrangement concept (see Garcimartín & Gandía, 2019, 37–38; Davies et al., 2018, 8–9).

⁸ Judgment of 26 February 2019, *X GmbH*, C-135/17, EU:C:2019:136, paragraph 84.

⁹ The term mentioned is defined by EU law in the Anti-Tax Avoidance Directive (ATAD). EU legislative and non-legislative acts classify aggressive tax planning practices – including profit shifting and base erosion – under this term. See Council Directive (EU) 2016/1164 of 12 July 2016 Laying Down Rules Against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market (ATAD Directive).

at combating tax avoidance.¹⁰ Tax avoidance is approached in Slovak literature as a concept situated between lawful tax planning and unlawful abuse. Babčák et al. (2020) emphasizes the distinction between optimization and circumvention of tax law, highlighting the limits of legality. Románová (2015) distinguishes tax avoidance as legal conduct aimed at minimizing tax liabilities through arrangements, lacking genuine economic substance, from tax abuse, which involves intentional circumvention of tax law with artificial schemes, designed to secure undue tax advantages. Bonk (2017a; 2017b) analyses the evolution of anti-abuse rules in EU and Slovak law, particularly the introduction of the general anti-abuse rule (GAAR) in the Slovak Tax Procedure Code and its links to EU directives. According to the ATAD Directive, tax avoidance encompasses various tax practices such as base erosion and profit shifting, artificial reduction of tax liabilities, aggressive tax planning, double deductions, or double non-taxation of income. To address these practices, the Directive introduces harmonized rules such as the general anti-abuse rule (GAAR), the interest limitation rule, the exit taxation rule, or the controlled foreign company (CFC) rule.¹¹ The concept of tax avoidance has also been repeatedly addressed by other EU legal instruments, related to the abuse of tax law¹², as well as by the jurisprudence of the Court of Justice of the European Union, which supplements these legal acts with interpretation and application.¹³ Given the extensive case law of the Court of Justice concerning the abuse of law (particularly in tax matters),¹⁴ the final design of the anti-abuse mechanism, introduced by the Directive, aligns with the typical allocation of the burden of proof between public authorities and regulated entities. Primarily, the existence of abuse is established by the public authority, while the regulated entity has the right to provide arguments, demonstrating that the cross-border operation in question does not constitute an abuse of law.

3 Review of the Legality of Cross-Border Conversions under the Directive

The Directive imposes an obligation on Member States to establish in their national legislation a procedure for reviewing the legality of cross-border conversions, conducted through the issuance of a certificate by the competent public authority before such conversion becomes effective (Article 86m of the Directive). Should the public authority have serious doubts that the intended cross-border conversion might pursue fraudulent or abusive purposes, it shall not issue the certificate, thereby preventing the completion of the proposed cross-border operation. Depending on national legislation, competent authorities may include courts, notarial offices, other administrative bodies, tax authorities, or financial services authorities.¹⁵ Their role is to

¹⁰ Council Directive (EU) 2016/1164, 2016.

¹¹ In the context of Slovak law on tax law abuse, see Bonk & Štrkolec (2017, 61–75), Štrkolec (2016, 465–476), Románová (2015, 212–228), Bonk (2017a, 668–680), and Bonk (2017b).

¹² For example, Council Directive 2011/16/EU (DAC Directive); Council Directive (EU) 2017/952 (ATAD 2).

¹³ We reference selected CJEU judgments: Judgment of 21 February 2006, *Halifax*, C-255/02, EU:C:2006:121; Judgment of 12 September 2006, *Cadbury Schweppes*, C-196/04, EU:C:2006:544; the Danish cases: Judgment of 26 February 2019, *T Danmark*, C-116/16, *Y Danmark Aps*, C-117/16, EU:C:2019:135; Judgment of 26 February 2019, *N Luxembourg 1*, C-115/16, *X Denmark A/S*, C-118/16, *C Danmark I*, C-119/16, *Z Denmark Aps*, C-299/16, EU:C:2019:134; Judgment of 8 December 2022, *Orde van Vlaamse Balies*, C-694/20, EU:C:2022:963.

¹⁴ For further details, see Cibul'a & Kačaljak (2019, 44–51).

¹⁵ If multiple competent authorities exist, a company should be able to request the pre-operation certificate from a single competent authority designated by the Member States, which should cooperate with the other competent authorities.

verify compliance with all requirements prescribed by the legal system of the respective Member State and to ensure adherence to procedural steps and formalities related to the cross-border conversion. Provided the competent authority has no serious doubts regarding the fraudulent or abusive objectives of the cross-border operation, it shall issue the certificate preceding the cross-border conversion within three months following the submission of the application. In assessing legality, the authority may consider requesting additional information, performing further actions, or engaging the services of an independent expert. Should the competent authority have doubts regarding the legality of the proposed cross-border conversion, it should further examine indicative factors concerning the characteristics of the establishment in the Member State where the company or companies are to be registered after the cross-border operation. These include the purpose of the operation, industry, investments, net turnover, profit or loss, employee count, balance sheet structure, tax residency, assets and their location, beneficial owners, and others, always being considered in their mutual interrelation. At this point, one can observe the overlap with the original Directive proposal and its catalogue of indicators for an in-depth examination of cross-border conversions. In such cases, the period for issuing the certificate should be extended by an additional three months.

The Directive provides an exception to the legality control, applicable when the place of effective management or economic activity of the company is situated in the Member State where the company or companies are to be registered following the cross-border conversion. The competent authority may consider this situation as presenting no obstacles to issuing the certificate.

Important from the perspective of the Directive's objectives, combating abuse of law, and ensuring legal certainty, is the provision regulating the relationship between these objectives in case of conflict. The Directive ensures legal certainty for the entities concerned by stipulating that an effective cross-border conversion cannot be declared null and void. However, this does not affect the competence of Member States, particularly in taxation matters, especially if the competent authority subsequently discovers significant new information, indicating that the conversion pursues fraudulent or abusive objectives. To protect the interests of Member States, the Directive also explicitly states that the cross-border operation does not affect the liability of the company regarding tax obligations related to activities performed prior to the conversion.

In accordance with the general principle of fairness, the Directive provides legal protection to companies through the right to judicial review of decisions made by the competent authority, as well as the right to request suspension of the effectiveness of the cross-border conversion.

4 The Legal Framework in the Slovak Republic

The legality review of a cross-border conversion is regulated by the Slovak Act on Conversions in the general provisions applicable to cross-border conversions, specifically in Section 87. The Act illustratively defines the formal and substantive requirements for applying for the issuance of a certificate. However, regarding the assessment of tax abuse risks, the participating company is not obliged to submit documents that would allow for a thorough evaluation of whether the transaction in question pursues fraudulent or abusive objectives. Similarly, the auditor's report, accompanying the draft cross-border conversion project (as one of the required elements of the application), does not provide the notary with direct grounds to rule out tax-motivated abusive purposes, as its focus lies primarily on the valuation of the company and the appropriateness of the valuation methods employed (Section 82 of the Act on Conversions). The Act does not

impose a general obligation to obtain an auditor's report in every case; the requirement may be waived based on the agreement of all shareholders or in cases where the company has a sole shareholder.

From the perspective of preventing tax law abuse, enhanced transparency is primarily to be achieved through the obligation imposed on Slovak companies¹⁶ to notify the tax administrator in advance of their intention to carry out a cross-border conversion (Section 84). The explanatory memorandum to a similar provision of the law, which introduced the obligation to notify the tax administrator of certain facts (Section 11 Notification to the Tax Administrator), states that this notification requirement is introduced “as an instrument to combat fraudulent mergers and divisions.” Although it would be reasonable to expect that the Act on Conversions would contain additional concrete measures aimed at curbing the abuse of tax law, neither the Act itself nor its explanatory memorandum includes such provisions.¹⁷

Protection against abusive practices, beyond the obligation to notify the tax authority of the intention to carry out a cross-border conversion, is further embodied in the provisions governing the grounds for refusing to issue a certificate. These grounds include: (1) failure to submit documents required by law; (2) non-fulfilment of conditions established by law or a specific legal regulation; (3) the existence of a well-founded suspicion that the cross-border conversion pursues the circumvention of European Union legal provisions; and (4) refusal to perform the act based on the notary's general duty of professional diligence under Section 36(1) of the Notarial Code (Section 87(3)).¹⁸ It should be noted that point (3), concerning the circumvention of EU law, was incorporated into the Act only following the inter-ministerial review process. The original draft limited the grounds for refusal to the notary's professional discretion and the failure to submit legally required documents.

To dispel doubts concerning the legality of the conversion based on the circumvention of EU law and the general professional diligence of the notary – i.e., where the intended legal act is contrary to the law, circumvents the law, or violates public policy – the notary is, in addition to extending the deadline for issuing the certificate, authorized to: (1) request cooperation from Slovak public authorities and authorities of other Member States with competence in areas affected by the cross-border conversion; such cooperation includes the provision of information and documents necessary for assessing the conversion; and (2) request an expert opinion at the expense of the company concerned. If the public authority fails to provide the requested cooperation within 30 days from the submission of the request, the notary shall instruct the participating company to obtain and submit the documents and information required to rebut the suspicion (Section 87).

The Slovak legal framework indicates a clear legislative intent to fulfil one of the core objectives of the Directive, namely the prevention of abuse of law, primarily through the

¹⁶ Of the dissolving or dividing Slovak company.

¹⁷ Slovak legislators have previously introduced legislative measures addressing fraudulent mergers and amalgamations of companies in inadequate financial situations, where the largest creditor was usually the state. The 2017 amendment to the Commercial Code introduced rules preventing insolvent or liquidated companies from participating in corporate conversions. It required notifying tax authorities and secured creditors of the intended merger and submitting an auditor's report confirming compliance with stipulated conditions.

¹⁸ Act No. 323/1992 Coll. on Notaries and Notarial Activities (Notarial Code), Section 36(1): “A notary is obliged to perform notarial activities with professional diligence. A notary must refuse to perform the requested act if it is clearly contrary to the law, circumvents the law, is contrary to good morals, or if performing the act is entrusted to another public authority by special law. Upon request, the notary shall issue a written confirmation stating the reasons for refusing the act.”

involvement of two public authorities. The first of these is the notary, who is presumed to possess the capacity to identify fraudulent or abusive intentions, particularly in the field of taxation. From a practical standpoint, however, the expectation that such detection falls within the scope of standard notarial professional diligence appears excessive and may exceed the traditional boundaries of the notary's role. Positively, the legal framework confers upon the notary the authority to request the assistance of an expert or to seek cooperation from another public authority. These mechanisms significantly enhance the analytical capacity of the notary and reduce the risk of overlooking potential indicators of abuse. The extent to which these tools will be employed in practice will become apparent only through the actual application of the law; however, their effectiveness may be limited by economic, temporal, or methodological constraints. Given the wide range of considerations that must be considered when assessing the legality of a cross-border conversion, including tax, accounting, and corporate law aspects, it is submitted that the notarial review should not be confined to the framework of general professional diligence alone. It is therefore essential that the legislation and its implementing provisions not only permit, but actively encourage, meaningful cooperation between the notary and other specialized entities. Moreover, the provision of clear methodological guidelines would serve to equip notaries with the expert support necessary to fulfil their role effectively and lawfully.

On the other hand, the tax authority indirectly participates in the process, as it should be notified in advance about the planned cross-border conversion. However, neither the Act on Conversions nor any other tax legislation subjects this notification obligation to further procedures or sanctions, nor do they condition the issuance of the certificate on any form of confirmation from the tax authority. Consequently, several risks emerge: the company lacks an incentive to genuinely inform the tax authority since the legislation does not specify any repercussions for non-compliance, and the notary does not possess any mechanism to verify whether the notification was delivered. Without the active involvement of the tax administration authority, there is a substantial risk that matters relating to the company's tax situation and potential tax avoidance will remain unexamined during cross-border conversions.

Another problematic area involves cooperation with other public authorities, as the legislation addresses it only superficially, implicitly anticipating the possibility that the requested authority might fail to provide cooperation altogether. In such cases, the notary is required to instruct the company to independently procure the necessary documents or supporting materials, which logically would have to be provided by the very authority that initially refused cooperation. Consequently, the effective linkage between notarial oversight and the practical activities of other public institutions is diminished. If we consider a scenario in which the successful completion of a cross-border conversion depends on feedback from a specific public body that refuses cooperation, serious concerns regarding legal certainty emerge. Both the company and the notary remain in a state of uncertainty, as the law does not define any mechanism to compel the relevant authority to act or at least ensure a binding response within the necessary timeframe.

For comparison, the Czech Republic has adopted more precise rules aimed at combating the abuse of law. Due to its shared legal tradition, a similar structure of company law, and parallel implementation of the Directive, the Czech Republic appears to be a legitimate subject of comparison. What is more, both jurisdictions also face comparable challenges in tax compliance and procedural coordination. Although the notary also retains competence over the

legality review of cross-border conversions,¹⁹ Czech legislation more explicitly defines abusive purposes of conversions, characterizing them as “an abusive or fraudulent purpose aimed at evading or circumventing legal regulations of the Czech Republic or European Union law, or committing criminal acts” (Section 59x (8)). In doing so, Czech legislators directly transpose the wording of the Directive, rather than relying solely on the general professional diligence of notaries, as is the case in Slovakia. Furthermore, the cooperation with other public authorities is more precisely regulated; the notary is empowered to establish a reasonable deadline by which the requested authority must provide the necessary cooperation.²⁰

5 Discussion

The preceding analysis reveals substantial discrepancies between the objectives of the Directive and the practical application of its Slovak implementation. Notaries, although legally empowered to prevent abusive practices, are institutionally under-resourced and lack access to the specialized information held by the tax authorities. While the legal framework does enable cooperation between public institutions, it fails to provide mandatory timelines, enforceability mechanisms, or incentives for timely response. Furthermore, the absence of sanctions for non-notification and the limited scope of mandatory documentation weaken the effectiveness of the legislation. Comparative observations suggest that adopting a more defined regulatory approach, as in the Czech Republic, for instance, could increase both efficiency and legal certainty.

6 Conclusion

One of the core objectives of Directive (EU) 2019/2121 is to prevent the abuse of law in the context of cross-border operations. Although the Directive introduces key procedural safeguards and promotes inter-institutional coordination, the Slovak transposition does not fully reflect this ambition. The legal framework in place lacks mechanisms for verifying tax compliance, does not mandate active participation of the tax authority, and over-relies on the professional judgement of notaries without equipping them with sufficient institutional support. This paper has demonstrated that, without more stringent procedural and institutional arrangements, the existing legislation cannot fulfil the Directive’s preventive function. The European legislator explicitly emphasizes the necessity of procedural rules and rigorous coordination among public authorities. However, an analysis of its transposition into Slovak national legislation indicates that these ambitions have not been effectively realized to a degree sufficient to adequately address the practical risks associated with abusive and fraudulent tax practices. Insufficient regulation of both substantive and procedural aspects results in existing provisions potentially causing legal uncertainty and unintended procedural delays in practice. For example, the obligation to notify tax authorities appears largely formal, as the law neither specifies sanctions for non-compliance nor requires evidence of such notification to accompany an application for issuing the certificate. Similarly lacking are the mechanisms to compel effective cooperation from other public authorities, resulting in the notary’s final decision potentially being based on incomplete information, even in cases of clear indications of legal abuse. To overcome these obstacles, I

¹⁹ Act No. 125/2008 Coll. on Transformations of Commercial Companies and Cooperatives.

²⁰ For the implementation of the Directive in the Czech Republic see Kolas (2024).

consider it essential to amend the existing legislation by introducing at least minimal guarantees to enhance the effectiveness of the cross-border conversion review process. I identify three primary areas in which concrete measures should be introduced. First, it is essential to include the obligation to notify the tax authority as a substantive requirement of the application for the issuance of a certificate, thereby ensuring that the company has genuinely informed the tax authority and that such notification is not merely a formal declaration. Second, in the case of transactions exceeding a predetermined threshold, it would be appropriate to introduce a requirement for the submission of the tax authority's consent to the cross-border operation. Such a measure would provide an additional safeguard for the verification of tax-related aspects before the actual execution of the cross-border conversion. Finally, considering the frequent delays encountered in the cooperation of other public authorities, I recommend a more precise formulation of the rules governing their mutual communication, including clear deadlines and consequences for inaction. In my view, these steps would enhance the transparency of the overall process and reduce the risk that abusive tax practices go unnoticed while reviewing cross-border conversions.

The effective prevention of abuse in the field of taxation requires the consistent and systematic application of anti-abuse instruments. Legislative measures can fulfil their intended purpose, namely the safeguarding of the integrity of cross-border company conversion, only insofar as they are supported by robust and operational enforcement mechanisms. This presupposes not only the formal existence of legal norms, but also their practical enforceability through coordinated action by all relevant public authorities, particularly notaries, tax administrations, and supervisory bodies. In this context, a direct response may be offered to the central research question posed in the introduction of this study: "Is the scope and quality of legal instruments entrusted primarily to notaries, but also to other public authorities, sufficient to effectively prevent the abuse of tax law in the context of cross-border conversions of companies?" Based on the current legal framework, the answer must be in the negative, unless and until the legislative structure is further elaborated and refined.

The principal shortcoming lies in the allocation of responsibility to notaries as the primary guardians against tax-motivated abuse, without granting them commensurate powers or imposing a binding obligation of cooperation on other authorities. Under the existing regime, the tax authority is only marginally involved in the pre-certification process, despite being uniquely positioned to provide critical insights into the tax history and risk profile of the entity concerned. This disconnect undermines the preventive function of the legal framework. Should these structural deficiencies remain unaddressed, the very objectives of the Directive are being fundamentally undermined. The lack of institutional coordination and the asymmetrical distribution of responsibilities, where notaries are tasked with ensuring compliance without being afforded the requisite authority or institutional support, threatens to erode both the legal certainty and the normative coherence of the cross-border conversion regime. In such a fragmented framework, the preventive potential of the legislation is significantly diminished, creating fertile ground for the persistence, and even proliferation, of abusive tax practices.

Accordingly, reinforcing the substantive and procedural foundations of the Slovak transposition is not merely a matter of legislative refinement, but a prerequisite for the meaningful realization of the Directive's aims. A well-calibrated legal framework grounded in institutional cooperation, methodological clarity, and enforceable obligations would serve not only to enhance transparency and accountability in cross-border operations but also to reaffirm the commitment of the Slovak Republic to the principles of tax fairness, rule of law, and the integrity of the internal market.

Future research should focus on evaluating the practical implementation of the reviewed mechanisms through empirical legal studies, including case studies of cross-border conversions processed under the new regime. It is also necessary to assess the degree to which tax authorities become actively involved in cooperation with notaries over time, and whether institutional routines gradually develop to mitigate the currently observed shortcomings.

References

- Babčák, V., Štrkolec, M., & Vartašová, A. (Eds.). (2020). *Daňové úniky, ich vznik a eliminácia [Tax Evasions, Their Emergence and Elimination]*. Šafárik Press.
- Ballester, B., & Del Monte, M. (2013). *European Added Value Assessment (EAVA 3/2012): Directive on the Cross-Border Transfer of a Company's Registered Office (14th Company Law Directive)*. European Parliament. <https://doi.org/10.2861/29408>
- Bonk, F. (2017a). Smernica proti vyhýbaniu sa daňovým povinnostiam a nevyhnutnosť jej implementácie (Krok bližšie k harmonizácii priameho zdaňovania v EÚ)? [The Directive Against Tax Evasion and the Necessity of Its Implementation (A Step Closer to the Harmonization of Direct Taxation in the EU)?]. *Justičná revue*, 69(6–7), 668–680.
- Bonk, F. (2017b). *Zásada zákazu zneužitia daňového práva v Európskej únii (Súdny a zákonný rozmer GAARs vo vybraných členských štátoch EÚ) [The Principle of Prohibition of Tax Law Abuse in the European Union (Judicial and Statutory Dimension of GAARs in Selected EU Member States)]* [Doctoral dissertation]. Pavol Jozef Šafárik University in Košice.
- Bonk, F., & Štrkolec, M. (2017). Slovenské zákonné GAAR v daňovom poriadku vo svetle legislatívneho vývoja (následky transpozície smernice proti vyhýbaniu sa daňovým povinnostiam). [The Slovak Statutory GAAR in the Tax Procedure Code in the Light of Legislative Developments (Consequences of Transposing the Directive Against Tax Evasion)]. In V. Babčák, A. Popovič, A. Románová, & I. Štieberová (Eds.), *I. Slovensko-české dni daňového práva: Daňové úniky a vyhýbanie sa daňovým povinnostiam* (pp. 61–75). Pavol Jozef Šafárik University in Košice. Online: <https://tinyurl.hu/N5iF>
- Cibuľa, T., & Kačaljak, M. (2019). Zákaz zneužitia práva v daňovom práve a vplyv rozhodnutí SD EÚ na vnútroštátne súdy [The Prohibition of Abuse of Law in Tax Law and the Impact of the CJEU's Decisions on National Courts]. In *Banskobystrické zámocké dni práva 2019* (pp. 44–51). Banská Bystrica: Matej Bel University.
- Davies, P., Emmenegger, S., Ferran, E., Ferrarini, G., Hopt, K. J., Moloney, N., Opalski, A., Pietrancosta, A., Roth, M., Skog, R., Winner, M., Winter, J., & Wymeersch, E. (2018). The Commission's 2018 Proposal on Cross-Border Mobility – An Assessment. *European Company and Financial Law Review*, 16(1–2), 196–221. <https://doi.org/10.1515/ecfr-2019-0002>
- European Commission. (2018). *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. Online: <https://tinyurl.hu/5uTg>
- European Commission. (2001). *Tax Policy in the European Union: Priorities for the Years Ahead*. COM(2001) 260 final. Online: <https://tinyurl.hu/JSqp>
- European Commission. (2015). *Upgrading the Single Market: More Opportunities for People and Businesses*. COM(2015) 550 final. Online: <https://tinyurl.hu/cjzb>
- Dipietro, G. (2025). Abuse of Rights and Corporate Mobility: (Re)Interpreting the Role of Companies in the European Social Market. *Jean Monnet Working Paper*, 1/25. Online: <https://tinyurl.hu/qgZy>

- Garcimartín, F., & Gandía, E. (2019). Cross-Border Conversions in the EU: The EU Commission Proposal. *European Company and Financial Law Review*, 16(1–2), 15–43. <https://doi.org/10.1515/ecfr-2019-0003>
- Gilotta, S. (2023). Creditor Protection in Cross-Border Conversions, Mergers and Divisions: The Harmonized EU Regime. In P. del Val Talens (Ed.), *Freedom of Establishment and Cross-Border Mobility for Companies in the EU* (pp. 265–290). Wolters Kluwer.
- Grambličková, B., & Macko, R. (2022a). Vzostup cezhraničných premien spoločností (od rozsudku Polbud po smernicu o cezhraničných premenách) (1. časť) [The Rise of Cross-Border Conversions of Companies (From the Polbud Case to the Directive on Cross-Border Conversions) (Part 1)]. *Justičná revue*, 74(4), 459–471.
- Grambličková, B., & Macko, R. (2022b). Vzostup cezhraničných premien spoločností (od rozsudku Polbud po smernicu o cezhraničných premenách) (2. časť) [The Rise of Cross-Border Conversions of Companies (From the Polbud Case to the Directive on Cross-Border Conversions) (Part 2)]. *Justičná revue*, 74(5), 602–617.
- Kolas, H. (2024). Cross-Border Conversions In Accordance With the Directive (EU) 2019/2121 and the Current Rules of Law of the Czech Republic. *Prague Law Working Papers*, 2024/I/1. <http://doi.org/10.2139/ssrn.4796453>
- Papadopoulos, T. (2023). Legislation Commentary: Amendments on the EU Harmonization of Cross-Border Mergers after the Adoption of Directive 2019/2121. *European Business Law Review*, 34(5), 893–938. <https://doi.org/10.54648/eulr2023042>
- Pokryszka, K. (2021). Cross-border conversion of a company in the light of the provisions of Directive 2019/2121 as regards cross-border conversions, mergers and divisions — selected issues. *Przeгляд Ustawodawstwa Gospodarczego*, 74(3), 13–27. <https://doi.org/10.33226/0137-5490.2021.3.3>
- Rammeloo, S. (2008). The 14th EC Company Law Directive on the Cross-Border Transfer of the Registered Office of Limited Liability Companies – Now or Never?. *Maastricht Journal of European and Comparative Law*, 15(3), 359–394. <https://doi.org/10.1177/1023263X0801500304>
- Románová, A. (2015). The New Anti-Abuse Rule in Slovak Tax Law: Strengthening of the Legal Certainty?. In M. Radvan (Ed.), *System of Financial Law. System of Tax Law* (pp. 212–228). Masaryk University. Online: <https://tinyurl.hu/ZdZk>
- Štrkolec, M. (2016). Fighting Tax Evasion and Its Reflection in Procedural Tax Law. In L. Etel, & M. Popławski (Eds.), *Tax Codes Concepts in the Countries of Central and Eastern Europe* (pp. 465–476). Temida 2.