



Luxembourg nears the finish line on the implementation of the Mobility Directive

On 23 January 2025, the Luxembourg legislator has passed the first vote of the bill of law (n°8053) transposing the corporate law aspects of Directive (EU) 2019/2121 of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and demergers (the Mobility Directive), (the New Law). The exemption by the Council of State (*Conseil d'Etat*) from a second vote is awaited.

The New Law amends (i) the commercial companies law of 10 August 1915, as amended, and (ii) the trade and company register and the accounting and annual accounts of companies law of 19 December 2002, as amended.

While this marks a significant step forward, it should be noted that the parliamentary bill (n°8225) dealing with the employment law aspects of the Mobility Directive and related amendments is still pending.

General aim and key provisions of the Mobility Directive

The Mobility Directive seeks to enhance the companies' freedom of establishment while providing adequate protection for shareholders, creditors and employees. Its key measures include:

Updates to the existing European harmonised regime of cross-border mergers

- introduction of a side-stream (i.e. sister-sister) merger process without the issuance of new shares applicable when one party directly or indirectly owns all the shares
- in both the acquiring and acquired companies or if the same parties hold the same proportion of shares in each of the merging companies;
- additional requirements in terms of process, among others:
 - > additional information to be inserted into the draft terms of the planned cross-border operation (the **Draft Terms**), such as existence of any incentives or subsidies received in the departure Member State(s) in the preceding five years,
 - > introduction of an anti-abusive control (see below),
 - > further protection rules (see below).

Introduction of European harmonised regimes for cross-border conversions and demerger

- both new regimes are similar (as far as relevant) to the updated cross-border merger regime;
- a harmonised cross-border demerger regime applies only to demergers by incorporation of new companies, including demergers by separation.

Strengthening the protection of shareholders, creditors and employees

- exit rights and related cash compensation for dissenting shareholders with the possibility to claim additional cash compensation;
- possibility for shareholders to dispute the share exchange ratio, if any, and to claim a related cash payment with the company resulting from the cross-border operation able to provide shares or other compensation instead of a cash payment;
- enhanced rights to information including detailed explanatory report(s) from the management body to the benefit of employees and shareholders and notice informing shareholders, creditors and (representatives of) employees of the possibility to submit comments concerning the Draft Terms.

Establishment of an anti-abusive control

- scrutiny by designated authorities (e.g., Notaries in Luxembourg) to ensure the legality of planned cross-border operations.

Luxembourg legislator's approach to the Mobility Directive

Considering the potential impact the new regimes may have on the timing of the completion of European cross border operations, the Luxembourg legislator, in line with its legal tradition, has used all the options left at its discretion by the Mobility Directive to implement a regime as favourable as possible to the mobility of companies. Notably, it has limited the updated/new harmonised European regimes to the strict scope of the Mobility Directive (the **Special Regimes**).

Scope of the Mobility Directive

In a nutshell, the European cross-border operations to which the Special Regimes deriving from the Mobility Directive shall be applicable include:

- merger by acquisition of company/ies or by

incorporation of new company;

- (partial or full) demerger by incorporation of new company/ies and demerger by separation;
- conversion of a company with the transfer of at least of its registered office;

These involve the following types of Luxembourg companies:

- SA (*société anonyme*), or
- SCA (*société en commandite par actions*), or
- SARL (*société à responsabilité limitée*),

with a qualifying type of company from another Member State.

Lighter process outside the scope of the Mobility Directive

Reorganisations and/or types of companies not within the scope of the Mobility Directive shall therefore continue to be governed mainly by the rules applicable prior to implementation of the Special Regimes, with some simplifications and confirmations brought by the New Law such as:

- legal recognition of the current cross-border conversions practices;
- simplification of certain aspects of cross-border mergers operations aligning them where relevant, with the domestic merger's regime and also introducing the side-stream merger.

Transitional period

The relevant new provisions of the New Law shall apply to any cross-border merger, demerger, or conversion for which the draft terms are published, as the case may be, on the **first day of the month following the entry into force of the New Law**.

The date of entry into force of the New Law, as well as the end of the above transitional period (i.e. during which the "current" procedures will still be applicable), cannot yet be determined as they depend on whether the Council of State (*Conseil d'Etat*) will grant an exemption for a second vote and the date of publication of the New Law (unknown at this stage of the law).

Our experts remain at your disposal to anticipate and further detail the impact of the above on your intended restructurings and acquisitions.

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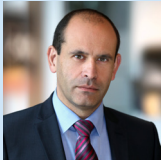


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