

EU Mobility Directive Client Compass

April 2023



Country Compass



Introduction

General Information and Principles ([Slide 3](#))

Pick your country

 Austria (Slide 4-17)	 Belgium (Slide 18 – 29)
 Bulgaria (Slide 30 – 40)	 Croatia (Slide 41 – 45)
 Cyprus (Slide 46 – 54)	 Czech Republic (Slide 55 – 64)
 Denmark (Slide 65 – 74)	 Estonia (Slide 75 – 84)
 Finland (Slide 85 – 98)	 France (Slide 99 – 108)
 Germany (Slide 109 – 118)	 Greece (Slide 119 – 120)
 Hungary (Slide 121 – 130)	 Iceland (Slide 131 – 138)
 Ireland (Slide 139 – 140)	 Italy (Slide 141 – 154)
 Latvia (Slide 155 – 165)	 Lithuania (Slide 166 – 177)
 Malta (Slide 178 – 187)	 Netherlands (Slide 188 – 199)
 Norway (Slide 200 – 207)	 Poland (Slide 208 – 218)
 Romania (Slide 219 – 229)	 Slovakia (Slide 230 – 239)
 Slovenia (Slide 240 – 244)	 Spain (Slide 245 – 252)
 Sweden (Slide 253 – 262)	 Switzerland (Slide 263 – 272)
 UK (Slide 273 – 274)	

General Information and Principles

The EU Directive No. 2019/2121 (“**Mobility Directive**”) amending the Directive (EU) 2017/1132 as regards cross border conversions, mergers and divisions was published on 12 December 2019. It was to be transposed into national law by the member states by 31 January 2023.

The aim of the Mobility Directive is to codify standardized rules for the following three corporate measures:

Cross border conversion

- Change of the current legal form of an entity to a legal form of another member state. The legal personality of the entity and all of its existing legal relationships remain unaffected

Cross border division

- Three types of corporate division: full division, partial division and division by separation involving the formation of a new company. The division by absorption by an existing entity was not included in the Mobility Directive

Cross border merger

- Standardization of the existing regime and procedures

The following common principles apply to all three corporate measures:

- Subject of such measures may be the corporations in the EU internal market as listed in Annex II of the Mobility Directive of the European Parliament and of the Council; partnerships are excluded
- Companies in liquidation are excluded from such measures
- All measure to be registered in both competent public registrars of the member states involved
- Mandatory preparation of a plan (*draft terms*), setting out the material information about the measure, to be reviewed by an independent expert and to be disclosed in the competent public registrars
- Preparation of a report by the management to the shareholders and employees on the relevant effects of the measure on the stakeholders
- Mandatory shareholders' resolution on the plan (*draft terms*) with a majority requirement of not less than two thirds of the votes cast and a quorum of 90%
- Safeguarding measures for creditors and minority shareholders (cash compensation), disputes provisions and anti-abuse control by competent national authority
- Issuance of a certain certificate to be issued by the competent national authority giving evidence that all requirements for the envisaged corporate measure under national and European laws were met; after submission of such certificate from the departure member state to the destination member state, only a limited review of prerequisites by the regulatory authority of the destination member state occurs

Austria



Content

1. Implementation status in Austria
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Austria. The content on the following slides is based on draft legislation subject to further changes. The exact date of implementation is currently unclear.



Stefan Arnold, M.Jur

Partner

M +43 131 032564811

stefanarnold@kpmg-law.at



[Back to Country Overview](#)

Implementation status in Austria

Current status of the implementation process in Austria:

The Mobility Directive has not been transposed in Austria until the date hereof.

As of now only a draft legislation is available.

Due to the very early stage of the implementation process, it is difficult to foresee the exact date of the implementation of the Mobility Directive in Austria.

Cross border conversion from Austria to other member state (1/2)



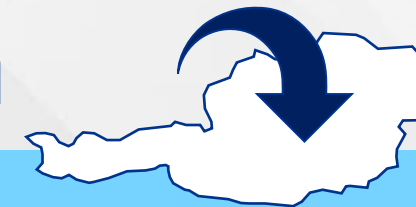
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Required documentation	<ul style="list-style-type: none"> Conversion draft terms (<i>Umwandlungsplan</i>) Conversion report of management (<i>Umwandlungsbericht</i>) <u>Waiver</u>: possible under certain circumstances Audit of conversion by independent auditor (<i>Umwandlungsprüfung</i>) <u>Waiver</u>: if all shareholders of the company have waived or the company has only one shareholder Audit by the supervisory board (<i>Aufsichtsrat</i>) (if applicable) <u>Waiver</u>: if all shareholders of the company have waived or the company has only one shareholder Closing balance sheet (<i>Schlussbilanz</i>) to be drawn up as of a conversion date not more than nine months prior to filing of the intended conversion Interim balance sheet (<i>Zwischenbilanz</i>) (required under certain circumstances)
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for (mandatory) shareholder resolution on conversion (higher majority and further requirements may be included in articles of association) Mandatory compensation payment (<i>Barabfindung</i>) to shareholders voting against the conversion
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of converting legal entity

Cross border conversion from Austria to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceedings): five – seven months • Convening of shareholders' meeting which resolves upon the conversion: no later than six weeks before the date of such shareholders' meeting (waiver possible) • Publication (disclosure) of conversion draft terms and notification to shareholders, creditors and works council (employees) with the commercial court: at least one month before the date of shareholders' meeting resolving upon the conversion • Creditor protection period: creditors may apply for adequately safeguarding their claims within three months of publication (disclosure). Pre-conversion certificate (<i>Vorabbescheinigung</i>) may only be issued after expiry of creditor protection period
Formal considerations	<p>Notarization by (Austrian) notary:</p> <ul style="list-style-type: none"> • Shareholder resolution on conversion (<i>Umwandlungsbeschluss</i>) • Application to Austrian commercial court <p>Language:</p> <ul style="list-style-type: none"> • German language due to registration with the Austrian companies register (<i>Firmenbuch</i>) → Please see other country sections for the language requirements of the respective destination jurisdiction (in practice: bi- or multilingual documentation)
Pre-conversion certificate (<i>Vorabbescheinigung</i>)	<ul style="list-style-type: none"> • Issued by the competent Austrian commercial court after filing of application including the required documentation by the representative body (<i>Vertretungsorgan</i>) and positive review by commercial court • Registration of intended conversion (<i>beabsichtigte Umwandlung</i>) in the Austrian companies register (<i>Firmenbuch</i>) • Three months review period available for issuance of the certificate by the Austrian commercial court with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Legal effectiveness of conversion to be assessed according to the provision of the <u>destination jurisdiction</u> → Please see for further requirements in the respective description for the destination jurisdiction • Registration of deletion (declaratory) in Austrian companies register (<i>Firmenbuch</i>) after notification by competent authority of the destination jurisdiction that conversion has become effective

Cross border conversion from other member state to Austria



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 35,000 Stock corporation (<i>AG</i>): EUR 70,000 Other important provisions: Mandatory foundation audit (<i>Gründungsprüfung</i>): actual value of the net assets of company must at least equal the amount of its nominal capital plus restricted reserves (<i>gebundene Rücklagen</i>) after effectiveness of the conversion
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of target legal entity
Austrian registration process	<ul style="list-style-type: none"> Application filed by representative body (<i>Vertretungsorgan</i>) to the competent Austrian commercial court Application needs to include the following documentation: <ul style="list-style-type: none"> Conversion draft terms (<i>Umwandlungsplan</i>) Incorporation documentation required for target legal form Report of foundation auditor (<i>Gründungsprüfer</i>) Opening balance sheet (<i>Eröffnungsbilanz</i>) of the company Pre-conversion certificate (<i>Vorabbescheinigung</i>) to be transmitted by competent authority of departure jurisdiction Scope of review of Austrian commercial court: receipt of pre-conversion certificate (generally, no review in substance), mandatory foundation provisions of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> German language due to registration with the commercial register (<i>Firmenbuch</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>Vorabbescheinigung</i>) by commercial court: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration of conversion in Austrian companies register (<i>Firmenbuch</i>) after positive review Legal effectiveness <u>upon registration</u> in the Austrian companies register (<i>Firmenbuch</i>)

Cross border division from Austria to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Aufspaltung</i>) with formation of a receiving entity (<i>zur Neugründung</i>): transfer of all assets and liabilities of splitting-up entity to at least two new recipient legal entities (<i>full split-up</i>) <i>New shares</i>: Shareholders of the splitting-up entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist without liquidation Cross border split-off (<i>Abspaltung</i>) with formation of a receiving entity (<i>zur Neugründung</i>): transfer of part of the assets and liabilities of splitting-off entity to a new recipient legal entity <i>New shares</i>: Shareholders of the splitting-off entity receive shares in the new recipient legal entity, the split-off entity continues to exist Cross border spin-off (<i>Ausgliederung</i>) with formation of a receiving (subsidiary) entity (<i>zur Neugründung</i>): transfer of part of the assets and liabilities of spinning-off entity to one or more new recipient legal entities <i>New shares</i>: Spinning-off entity receives shares in the new recipient legal entity and continues to exist
Required documentation	<ul style="list-style-type: none"> Division draft terms (<i>Spaltungsplan</i>) (less extensive in case of spin-offs) Division report of management (<i>Spaltungsbericht</i>) <u>Waiver</u>: possible under certain circumstances Audit of division by independent auditor (<i>Spaltungsprüfung</i>) <u>Waiver</u>: all shareholders of the company have waived or the company has only one shareholder Audit by the supervisory board (<i>Aufsichtsrat</i>) (if applicable) <u>Waiver</u>: all shareholders of the company have waived or the company has only one shareholder Closing balance sheet (<i>Schlussbilanz</i>) to be drawn up as of a division date not more than nine months prior to filing of the intended division Interim balance sheet (<i>Zwischenbilanz</i>) (required under certain circumstances)

Cross border division from Austria to other member state (2/3)



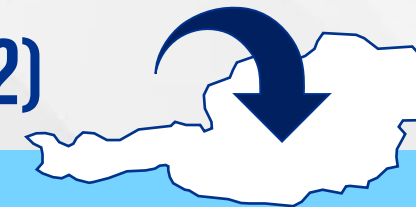
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholder resolution upon division (higher majority and further requirements may be included in articles of association) Higher majority requirements (90%) in case of <u>non-proportional</u> (<i>nicht-verhältnismäßige</i>) divisions (i.e. shareholders of splitting-off entity shall not receive an interest in the receiving companies in the same proportion as exists in the splitting-off entity) Mandatory compensation payment (<i>Barabfindung</i>) to shareholders voting against the division
Extended liability	<ul style="list-style-type: none"> The companies involved in the division are – in addition to the company to which liabilities are allocated in accordance with the draft terms – jointly and severally liable for liabilities of the transferring company incurred up to the registration of the division and up to the amount of net assets allocated to them on the effective date of the division Further capital maintenance provisions: <ul style="list-style-type: none"> In the case of a split-off (<i>Abspaltung</i>) and a spin-off (<i>Ausgliederung</i>) with formation of receiving entity the share capital of the transferring company may only be reduced if the creditor-protecting provisions applicable to the ordinary capital reduction (<i>ordentliche Kapitalherabsetzung</i>) are complied with Mandatory audit of remaining assets (<i>Restvermögensprüfung</i>): actual value of the remaining net assets of the transferring company must equal the amount of its nominal capital plus restricted reserves (<i>gebundene Rücklagen</i>) after effectiveness of the division
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – seven months Convening of shareholders' meeting resolving upon the division: no later than six weeks before the date of such shareholders' meeting (waiver possible) Publication (disclosure) of draft terms and a notification to shareholders, creditors and works council (employees) with the commercial court: at least <u>one month</u> before the date of shareholders' meeting resolving upon the division Creditor protection period: creditors may apply for adequately safeguarding their claims within three months of the publication (disclosure). Pre-division certificate (<i>Vorabbescheinigung</i>) may only be issued after expiry of this creditor protection period

Cross border division from Austria to other member state (3/3)



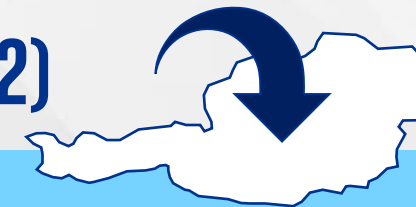
Topic	Prerequisites
Formal considerations	Notarization by (Austrian) notary: <ul style="list-style-type: none"> • Shareholder resolution upon division (<i>Spaltungsbeschluss</i>) • Application to Austrian commercial court Language: <ul style="list-style-type: none"> • German language due to registration with the Austrian companies register (<i>Firmenbuch</i>) → <u>Please see other country sections for the language requirements of the respective destination jurisdiction (in practice: bi- or multilingual documentation)</u>
Pre-division certificate (<i>Vorabbescheinigung</i>)	<ul style="list-style-type: none"> • Issued by the competent Austrian commercial court after filing of application including the required documentation by the representative body (<i>Vertretungsorgan</i>) and positive review by commercial court • Registration of intended division (<i>beabsichtigte Spaltung</i>) in the Austrian companies register (<i>Firmenbuch</i>) • Three months review period available for issuance of the certificate by the Austrian commercial court with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> • Legal effectiveness <u>upon registration</u> of division (deletion) in Austrian companies register (<i>Firmenbuch</i>) (after completing formal procedure in destination jurisdictions)

Cross border division from other member state to Austria (1/2)



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 35,000 Stock corporation (<i>AG</i>): EUR 70,000 <p>Further important provisions:</p> <ul style="list-style-type: none"> Mandatory foundation audit (<i>Gründungsprüfung</i>): actual value of the net assets of the receiving company must at least equal the amount of its nominal capital plus restricted reserves (<i>gebundene Rücklagen</i>) after effectiveness of the division
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of target legal entity
Austrian registration process	<ul style="list-style-type: none"> Application filed by representative body (<i>Vertretungsorgan</i>) to the competent Austrian commercial court Application needs to include the following documentation: <ul style="list-style-type: none"> Draft terms (<i>Spaltungsplan</i>) Minutes of shareholder resolution (<i>Niederschrift des Spaltungsbeschlusses</i>) Regulatory approvals (if applicable) Report of management (<i>Spaltungsbericht</i>) and related comments of works council (employees) Audit report (<i>Bericht des Spaltungsprüfers</i>) Notes of shareholders, creditors, works council (employees) (if any) Closing balance sheet (<i>Schlussbilanz</i>) Evidence of disclosure Incorporation documentation required for target legal form Pre-division certificate (<i>Vorabbescheinigung</i>) to be transmitted by competent authority of departure jurisdiction Scope of review Austrian commercial register: receipt of pre-division certificate (generally, no review in substance), mandatory foundation provisions of target legal form, employee participation rules

Cross border division from other member state to Austria (2/2)



Topic	Prerequisites
Language requirements	<ul style="list-style-type: none"> • German language due to registration with the commercial register (<i>Firmenbuch</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>Vorabbescheinigung</i>) by commercial register: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> • Registration of division in Austrian companies register (<i>Firmenbuch</i>) after positive review • Legal effectiveness of division to be assessed according to the provision of the <u>departure jurisdiction</u> → <u>Please see for further requirements in the respective description for the departure jurisdiction</u>

Cross border merger from Austria to other member state (1/2)



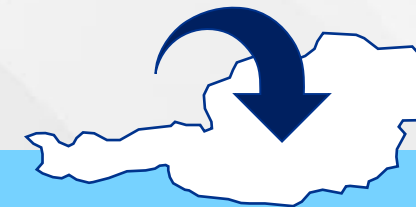
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Merger types	<ul style="list-style-type: none"> Merger with existing legal entity as recipient (<i>Verschmelzung zur Aufnahme</i>) Merger with formation of a receiving entity (<i>Verschmelzung zur Neugründung</i>) Up-stream merger with the sole shareholder (<i>Verschmelzung auf die Alleingesellschafterin</i>) Certain intra-group mergers without granting of shares (<i>Verschmelzung ohne Anteilsgewähr</i>)
Required documentation	<ul style="list-style-type: none"> Joint merger draft terms (<i>Verschmelzungsplan</i>) (less extensive in case of (i) up-stream merger with the sole shareholder and (ii) certain intra-group mergers without granting of shares) Joint merger agreement (<i>Verschmelzungsvertrag</i>) Merger report of management (<i>Verschmelzungsbericht</i>) <u>Waiver</u>: possible under certain circumstances Audit of merger by independent auditor (<i>Verschmelzungsprüfung</i>) <u>Waiver</u>: all shareholders of the company have waived or the company has only one shareholder Audit by the supervisory board (<i>Aufsichtsrat</i>) (if applicable) <u>Waiver</u>: all shareholders of the company have waived or the company has only one shareholder Closing balance sheet (<i>Schlussbilanz</i>) to be drawn up as of a division date not more than nine months prior to filing of the intended merger Interim balance sheet (<i>Zwischenbilanz</i>) (required under certain circumstances) Simplifications (without waiver) regarding (a) merger report of management, (b) audit of merger and (c) audit by supervisory board in case of up-stream merger with the sole shareholder and certain intra-group mergers without granting of shares
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholder resolution upon merger (higher majority and further requirements may be included in articles of association) No shareholders' meeting (resolution) required in case of up-stream merger with the sole shareholder and certain intra-group mergers without granting of shares under certain circumstances Mandatory compensation payment (<i>Barabfindung</i>) to shareholders voting against the merger

Cross border merger from Austria to other member state (2/2)



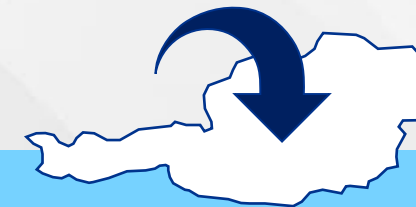
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of target legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – seven months Convening of shareholders' meeting resolving upon the merger: no later than six weeks before the date of such shareholders' meeting (waiver possible; no shareholders' meeting required under certain circumstances) Publication (disclosure) of draft terms and a notification to shareholders, creditors and works council (employees) with the commercial court: at least one month before the date of shareholders' meeting resolving upon the merger Creditor protection period: creditors may apply for adequately safeguarding their claims within three months of the publication (disclosure). Pre-merger certificate (<i>Vorabbescheinigung</i>) may only be issued after expiry of this creditor protection period
Formal considerations	<p>Notarization by (Austrian) notary:</p> <ul style="list-style-type: none"> Merger resolution (<i>Verschmelzungsbeschluss</i>) Application to Austrian commercial court Joint Merger agreement (in form of an Austrian notarial deed; <i>Notariatsakt</i>) <p>Language:</p> <ul style="list-style-type: none"> German language due to registration with the Austrian companies register (<i>Firmenbuch</i>) → <u>Please see other country sections for the language requirements of the respective destination jurisdiction (in practice: bi- or multilingual documentation)</u>
Pre-merger certificate (<i>Vorabbescheinigung</i>)	<ul style="list-style-type: none"> Issued by the competent Austrian commercial court after filing of application including the required documentation by the representative body (<i>Vertretungsorgan</i>) and positive review by commercial court Registration of intended merger (<i>beabsichtigte Verschmelzung</i>) in the Austrian companies register (<i>Firmenbuch</i>) Three months review period available for issuance of the certificate by the Austrian commercial court with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> Legal effectiveness of the merger to be assessed according to the provision of the <u>destination jurisdiction</u> → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> Registration of deletion (declaratory) in Austrian companies register after notification by competent authority of the destination jurisdiction that merger has become effective

Cross border merger to Austria (1/2)



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Gesellschaft mit beschränkter Haftung; GmbH</i>) Stock corporation (<i>Aktiengesellschaft; AG</i>)
Required documentation and Shareholders' protection	<ul style="list-style-type: none"> Required Documentation (→ please see "<i>Cross border merger from Austria to other member state (1/2)</i>") must also be prepared for receiving Austrian companies in case of inbound merger 75% majority requirement for mandatory shareholder resolution upon merger at receiving company's level (higher majority and further requirements may be included in articles of association) Simplifications and waivers may be applicable
Share capital requirements (<i>in case of merger with new foundation or capital increase</i>)	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 35,000 Stock corporation (<i>AG</i>): EUR 70,000 <p>Other important provisions:</p> <ul style="list-style-type: none"> Mandatory foundation audit (<i>Gründungsprüfung</i>): actual value of the net assets of receiving (new) company must at least equal the amount of its nominal capital plus restricted reserves (<i>gebundene Rücklagen</i>) after effectiveness of the merger
Competent regulatory authority	<ul style="list-style-type: none"> Commercial court (<i>Handelsgericht</i>) of seat of target legal entity

Cross border merger to Austria (2/2)



Topic	Prerequisites
Austrian registration process	<ul style="list-style-type: none"> • Application filed by representative body (<i>Vertretungsorgan</i>) of all involved companies to the competent Austrian commercial court • Application needs to include the following documentation: <ul style="list-style-type: none"> – Joint Merger Draft Terms (<i>Verschmelzungsplan</i>) – Minutes of shareholder resolution (<i>Niederschrift des Verschmelzungsbeschlusses</i>) (if applicable) – Joint merger agreement (<i>Verschmelzungsvertrag</i>) – Regulatory approvals (if applicable) – Report of management (<i>Verschmelzungsbericht</i>) and related comments of works council (employees) – Audit report (<i>Bericht des Verschmelzungsprüfers</i>) – Notes of shareholders, creditors, works council (employees) (if any) – Closing balance sheet (<i>Schlussbilanz</i>) – Evidence of disclosure – Incorporation documentation required for target legal form (if applicable) • Pre-merger certificate (<i>Vorabbescheinigung</i>) to be transmitted by competent authority of departure jurisdiction • Scope of review Austrian commercial register: receipt of pre-division certificate (generally, no review in substance), mandatory foundation provisions of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> • German language due to registration with the companies register (<i>Firmenbuch</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Vorabbescheinigung</i>) by commercial court: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> • Registration in Austrian companies register (<i>Firmenbuch</i>) after positive review • Legal effectiveness upon registration of merger in the Austrian companies (<i>Firmenbuch</i>) register

Belgium



Content

1. Implementation status in Belgium
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Belgium. The content on the following slides is based on draft legislation subject to further changes. The exact date of implementation is anticipated after April 2023.



Gert Cauwenbergh

Partner

M +32 475 853640

gcauwenbergh@kpmglaw.com



[Back to Country Overview](#)

Implementation status in Belgium

Current status of the implementation process in Belgium:

A draft law to implement the Mobility Directive into Belgian law has been introduced in Parliament on 15 March 2023. It is said to be up for voting by the end of April this year (at the earliest).

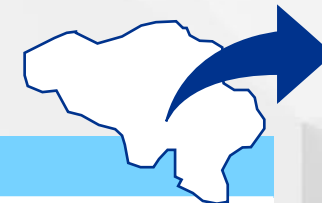
Current Belgian national legislation on cross border transactions:

Notwithstanding the fact that the draft law to implement the Mobility Directive has not yet been approved, some novelties as laid down in the Mobility Directive were already implemented in Belgian law in the framework of the adoption of the new Belgian Companies' and Associations' Code (which entered into force on 1 May 2019). The Belgian legislator has thus anticipated several of the most important aspects of the Mobility Directive (e.g., the implementation of a cross border conversion procedure and the recognition of the cross border division as a possible operation) and went even further in some areas than envisaged by the Mobility Directive. However, important to note is that some aspects of the Mobility Directive should still be implemented.

In this regard, the Client Compass reflects current Belgian legislation on cross border corporate reorganization procedures. Please note that certain aspects of the analysis of current Belgian law will change after the Mobility Directive is effectively implemented in Belgian national legislation.

Please note that any social or employment law obligations arising from any of the cross border transactions are not discussed in the Client Compass.

Cross border conversion from Belgium to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Any company with separate legal personality, with the exception of the SE and the SCE, in particular: <ul style="list-style-type: none"> general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), abbreviated <i>VOF</i> (in Dutch) and <i>SNC</i> (in French) limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), abbreviated <i>CommV</i> (in Dutch) and <i>SComm</i> (in French) private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), abbreviated <i>BV</i> (in Dutch) and <i>SRL</i> (in French) cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), abbreviated <i>CV</i> (in Dutch) and <i>SC</i> (in French) public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), abbreviated <i>NV</i> (in Dutch) and <i>SA</i> (in French)
Required documentation	<p>Conversion proposal (<i>voorstel tot omzetting/projet de transformation</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, seat of the company after the conversion, the name and address of the acting notary public Proposal to be drafted by the management body (<i>bestuursorgaan/organe d'administration</i>) <p>Special report (<i>bijzonder verslag/rapport spécial</i>)</p> <ul style="list-style-type: none"> Report of the management body (<i>bestuursorgaan/organe d'administration</i>) explaining the cross border conversion proposal, its legal and economic reasons and implications, and implications for the holders of shares and other securities, creditors and employees <p>Statement of assets and liabilities (not older than four months prior to the shareholders' meeting resolving on the cross border conversion proposal)</p> <p>Auditor's report (<i>controleverslag/le rapport de contrôle</i>)</p> <ul style="list-style-type: none"> Audit of the statement of assets and liabilities by a (statutory) auditor, resulting in a written auditor's report. In particular, the auditor will need to mention in its reports whether the net assets are overvalued
Shareholders' protection	<ul style="list-style-type: none"> 50% attendance quorum and 80% majority requirement for mandatory shareholders' resolution on conversion <ul style="list-style-type: none"> in limited partnerships and cooperative companies, the voting rights of the partners and shareholders shall be pro rata their share in the assets of the company and the attendance quorum shall be calculated pro rata to such assets Consent of all the partners or shareholders shall be required: <ul style="list-style-type: none"> for the cross border conversion resolution into a company in which one or more partners have unlimited liability for the company's debts for the cross border conversion resolution of a company in which one or more partners have unlimited liability for the company's debts if the company has been incorporated less than two years ago if the articles of association provide that another legal form may not be adopted. Such a provision in the articles of association may only be amended with the consent of all partners or shareholders
	<ul style="list-style-type: none"> Creditors of the company whose claims are certain and not yet due or for which a legal or arbitration procedure is instituted at the time of publication of the conversion proposal in the Annexes to the Belgian Official Gazette may demand a security or any other guarantee within a period of two months after the publication of the conversion proposal

Cross border conversion from Belgium to other member state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Notary public and clerk's office of the competent enterprise court
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four to six months Proposal: publication two months prior to shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> The extraordinary shareholders' meeting resolving on the cross border conversion must be held before a Belgian notary public Language: Dutch, French or German, depending on the location of the registered office of the converting company
Pre-conversion certificate	<ul style="list-style-type: none"> The acting notary public shall issue a pre-conversion certificate after verification whether all formalities have been fulfilled. The acting notary public shall not issue this certificate as long as the creditors demanding security have not received payment, unless their claims have been rejected by an enforceable court decision
Legal effectiveness of conversion	<ul style="list-style-type: none"> Transmission of pre-conversion certificate to the competent authority of the destination jurisdiction Final check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> Deregistration from the Belgian register of legal entities after receipt of approval of registration of the company in the commercial register of the destination jurisdiction Legal effectiveness upon deregistration of the company from the Belgian register of legal entities

Cross border conversion from other member state to Belgium



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Any company with separate legal personality, in particular: <ul style="list-style-type: none"> general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), abbreviated <i>VOF</i> (in Dutch) and <i>SNC</i> (in French) limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), abbreviated <i>CommV</i> (in Dutch) and <i>SComm</i> (in French) private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), abbreviated <i>BV</i> (in Dutch) and <i>SRL</i> (in French) cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), abbreviated <i>CV</i> (in Dutch) and <i>SC</i> (in French) public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), abbreviated <i>NV</i> (in Dutch) and <i>SA</i> (in French)
Share capital requirements	<ul style="list-style-type: none"> Public limited liability company (<i>NV/SA</i>): EUR 61,500 The other legal forms do not require any minimum capital
Competent regulatory authority	<ul style="list-style-type: none"> Notary public and clerk's office of the competent enterprise court
Belgian registration process	<ul style="list-style-type: none"> The foreign company shall submit documents to the Belgian notary public demonstrating that it has complied with the relevant applicable foreign rules After verification of the submitted documents, the Belgian notary public shall establish the cross border conversion in an authentic notarial deed The notarial deed establishing the cross border conversion and the newly adopted articles of association shall be deposited at the clerk's office of the competent enterprise court and published in the Annexes to the Belgian Official Gazette The clerk's office of the competent enterprise court shall register the converted company in the Belgian register of legal entities Within 30 days following the execution of the notarial deed regarding the cross border merger, a statement of assets and liabilities of the company which reflects the situation at the time of the conversion must be deposited with the National Bank of Belgium
Language requirements	<ul style="list-style-type: none"> Dutch, French or German, depending on the location to which the registered office of the company will be transferred
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of the documentation by the Belgian notary public: one month
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effectiveness of the cross border conversion upon registration of the company in the Belgian register of legal entities

Cross border division from Belgium to other member state (1/3)



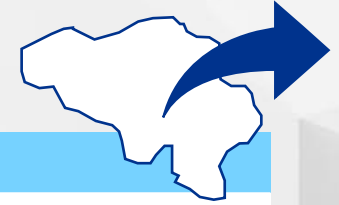
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Any company with separate legal personality, in particular: <ul style="list-style-type: none"> general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), abbreviated <i>VOF</i> (in Dutch) and <i>SNC</i> (in French) limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), abbreviated <i>CommV</i> (in Dutch) and <i>SComm</i> (in French) private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), abbreviated <i>BV</i> (in Dutch) and <i>SRL</i> (in French) cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), abbreviated <i>CV</i> (in Dutch) and <i>SC</i> (in French) public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), abbreviated <i>NV</i> (in Dutch) and <i>SA</i> (in French)
Division types	<ul style="list-style-type: none"> Cross border division (<i>splitsing/scission</i>) by incorporation of new legal entities (<i>door oprichting/par constitution</i>): transfer of all assets and liabilities under universal title to at least two newly incorporated companies Shareholders of the divided company receive shares in the newly incorporated companies, divided company ceases to exist Cross border division (<i>splitsing/scission</i>) by acquisition (<i>door overneming/par absorption</i>): transfer of the assets and liabilities under universal title to at least two existing companies Shareholders of the divided company receive shares in the acquiring companies, divided company ceases to exist Partial division (<i>partiële splitsing/scission partiële</i>): transfer of a part of the assets and liabilities under universal title to either at least one newly incorporated company or at least one existing company, without the divided company ceasing to exist Shareholders of the divided company receive shares in the newly incorporated company/companies or the acquiring company Important notice: The possibility to execute a cross border (partial) division by acquisition (<i>splitsing door overneming/scission par absorption</i>) goes beyond the scope of the Mobility Directive. Hence, it would need to be verified in the case at hand that the other member states involved provide or accept this possibility
Required documentation	<p>Division proposal (<i>splitsingsvoorstel/projet de scission</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, object and registered office of the companies involved, exchange ratio and the amount of any cash payment, the allotment of shares, the date from which the newly issued shares shall participate in the profits, the accounting date, statement on specific rights of shareholders, the remuneration of the (statutory) auditor received for the drafting of the audit report, statement on the special advantages received by the members of the management bodies of the companies involved, the precise description and allocation of the assets and liabilities, the name and address of the acting notary public <p>Proposal to be drafted by the management body (<i>bestuursorgaan/organe d'administration</i>)</p>

Cross border division from Belgium to other member state (2/3)



Topic	Prerequisites
Required documentation (continued)	<p>Special report (<i>bijzonder verslag/rapport spécial</i>)</p> <ul style="list-style-type: none"> A detailed written report of the management body on the assets and liabilities of the companies involved in the division together with comments and a justification from a legal and economic viewpoint on the desirability of the division, the terms on and manner in which it shall take place and its implications, the methods according to which the share exchange ratio has been determined, the relative importance to be attributed to such methods, the valuation arrived at pursuant to each method, any difficulties encountered and the proposed exchange ratio In certain cases, specified by law, this report is not required <u>Waiver</u>: unanimous consent by all shareholders and holders of any other voting securities of all companies involved <p>Auditor's report (<i>controleverslag/rapport de contrôle</i>)</p> <ul style="list-style-type: none"> A written report of the (statutory) auditor regarding the division proposal and in particular the proposed exchange ratio In certain case, specified by law, this report is not required <u>Waiver</u>: unanimous consent by all shareholders and holders of any other voting securities of all companies involved In case the aforementioned reports are waived or not required, the reporting requirements for a contribution in kind will apply <p>Interim balance sheet of the companies involved (not older than three months prior to the date of the division proposal)</p> <ul style="list-style-type: none"> Only necessary when the last annual accounts concern a financial year ended more than six months prior to the date of the division proposal <u>Waiver</u>: by unanimous shareholders' decision in each company involved (not possible in case of a division by incorporation)
Shareholders' protection	<ul style="list-style-type: none"> 50% attendance quorum and 75% majority requirement for mandatory shareholders' resolution on the division in limited partnerships and cooperative companies, the voting rights of the partners and shareholders shall be pro rata their share in the assets of the company and the attendance quorum shall be calculated pro rata to such assets The consent of a shareholder of the Belgian company who is or will become unlimitedly liable for the debts of a company participating in the division is required In certain case unanimity is required
Creditors' protection	<ul style="list-style-type: none"> Creditors of each company whose claims are certain and not yet due or for which a legal or arbitration procedure is instituted at the time of publication of the notarial deed establishing the division in the Annexes to the Belgian Official Gazette may demand a security or any other guarantee within a period of two months after said publication
Extended liability	<ul style="list-style-type: none"> The acquiring companies or the divided company in case of a cross border partial division, shall remain jointly and severally liable to pay (a) the certain and due debts existing at the time of publication in the Annexes to the Belgian Official Gazette of the notarial deed(s) establishing the division that are transferred to the acquiring companies as a result of the division and (b) the debts for which the creditor has instituted a claim before the court or through arbitration prior to the deed establishing the division. The above-mentioned liability shall be limited to the net assets allocated to each of the acquiring companies or the remaining net assets of the divided in case of a partial division
Competent regulatory authority	<ul style="list-style-type: none"> Notary public and clerk's office of the competent enterprise court

Cross border division from Belgium to other member state (3/3)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four to six months • Proposal: filing six weeks prior to shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> • The extraordinary shareholders' meeting of the divided company resolving on the cross border division has to be held before a Belgian notary public • Language: Dutch, French or German, depending on the location of the registered office of the company
Pre-division certificate	<ul style="list-style-type: none"> • The acting notary public shall, at the request of the divided company, issue a certificate conclusively attesting the correct execution of the acts and formalities preceding the division. The acting notary public shall not issue this certificate as long as the creditors demanding security have not received payment, unless their claims have been rejected by an enforceable court decision
Legal effectiveness of division	<ul style="list-style-type: none"> • Transmission of pre-division certificate to the competent authority of the destination jurisdiction • The law governing the newly incorporated or acquiring company determines when the division will take effect → Please see for further requirements in the respective description of the destination jurisdiction • Deregistration of the divided company, as the case may be, from the Belgian register of legal entities after receipt of proof from the competent authority of the destination jurisdiction that the division has become effective • The management body of the divided company publishes the deregistration in the Annexes to the Belgian Official Gazette

Cross border division from other member state to Belgium



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Any company with separate legal personality, in particular: <ul style="list-style-type: none"> – general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), abbreviated <i>VOF</i> (in Dutch) and <i>SNC</i> (in French) – limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), abbreviated <i>CommV</i> (in Dutch) and <i>SCS</i> (in French) – private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), abbreviated <i>BV</i> (in Dutch) and <i>SRL</i> (in French) – cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), abbreviated <i>CV</i> (in Dutch) and <i>SC</i> (in French) – public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), abbreviated <i>NV</i> (in Dutch) and <i>SA</i> (in French)
Share capital requirements	<ul style="list-style-type: none"> Public limited liability company (<i>NV/SA</i>): EUR 61,500 The other legal forms do not require any minimum capital
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: cross border divisions to Belgium are also possible with an existing legal entity as recipient (i.e. division by absorption (<i>splitsing door overnemingscission par absorption</i>)) <p>→ <u>Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also allow this</u></p>
Competent regulatory authority	<ul style="list-style-type: none"> Notary public and clerk's office of the competent enterprise court
Belgian registration process	<ul style="list-style-type: none"> The competent authority of departure state transfers the pre-division certificate to the Belgian notary public conclusively attesting that the acts and formalities preceding the division have been properly carried out in accordance with the law governing these companies Establishment of the completion of the division and, if applicable, the incorporation of the companies by the Belgian notary public after positive review of the provided certificate and documents Filing and publishing of an extract of the notarial deed regarding the establishment of the completion of the division
Language requirements	<ul style="list-style-type: none"> Dutch, French or German, depending on the location of the registered office of the company
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate by the Belgian notary public: one month
Legal effectiveness of division	<ul style="list-style-type: none"> The cross border division in principle takes legal effect on the date on which the acting notary public establishes in a notarial deed the completion of the division or as the case may be the incorporation of the new company/companies

Cross border merger from Belgium to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Any company with separate legal personality, in particular: <ul style="list-style-type: none"> – general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), <i>abbreviated VOF</i> (in Dutch) and <i>SNC</i> (in French) – limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), <i>abbreviated CommV</i> (in Dutch) and <i>SCS</i> (in French) – private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), <i>abbreviated BV</i> (in Dutch) and <i>SRL</i> (in French) – cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), <i>abbreviated CV</i> (in Dutch) and <i>SC</i> (in French) – public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), <i>abbreviated NV</i> (in Dutch) and <i>SA</i> (in French)
Required documentation	<p>Merger proposal (<i>fusievoorstel/projet de fusion</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, object and registered office of the merging companies and those proposed for the company resulting from the cross border merger, the share exchange ratio and the amount of any cash payment (if any), the allotment of shares, the likely repercussions of the cross border merger on employment, the date from which the newly issued shares participate in the profits, the accounting date, statement on specific rights of shareholders, any special advantages granted to the (statutory) auditor received for the drafting of the audit report or to members of the administrative, management, supervisory or controlling bodies of the merging companies, the articles of association of the company resulting from the cross border merger, information on the procedures regarding employee participation, date of the merging companies' accounts used to determine the terms of the cross border merger Merger proposal to be drafted by the management body (<i>bestuursorgaan/organe d'administration</i>) <p>Special report (<i>bijzonder verslag/rapport spécial</i>)</p> <ul style="list-style-type: none"> In each company the management body shall draft a detailed written report on the assets and liabilities of the companies involved in the merger together with comments and a justification from a legal and economic viewpoint on the desirability of the cross border merger, the terms on and manner in which it shall take place and its implications for the shareholders, creditors and employees, the methods according to which the share exchange ratio has been determined, the relative importance to be attributed to such methods, the valuation arrived at pursuant to each method, any difficulties encountered and the proposed exchange ratio <p>Auditor's report (<i>controleverslag/rapport de contrôle</i>)</p> <ul style="list-style-type: none"> A written report of the (statutory) auditor regarding the merger proposal and in particular the proposed exchange ratio The audit report shall not be required in case of a simplified cross border merger <u>Waiver</u>: by unanimous decision of all shareholders and holders of any other voting securities of each company involved <p>Interim balance sheet (not older than three months prior to the date of the merger proposal)</p> <ul style="list-style-type: none"> Only necessary when the last annual accounts concern a financial year closed more than six months prior to the date of the division proposal <u>Waiver</u>: by unanimous shareholders' decision in each company involved
Capital increase	<ul style="list-style-type: none"> The shareholders of the acquired company/companies receive shares in the acquiring or newly incorporated company. In a simplified cross border merger, no additional shares will be issued to the shareholder of the acquired company

Cross border merger from Belgium to other member state (2/2)



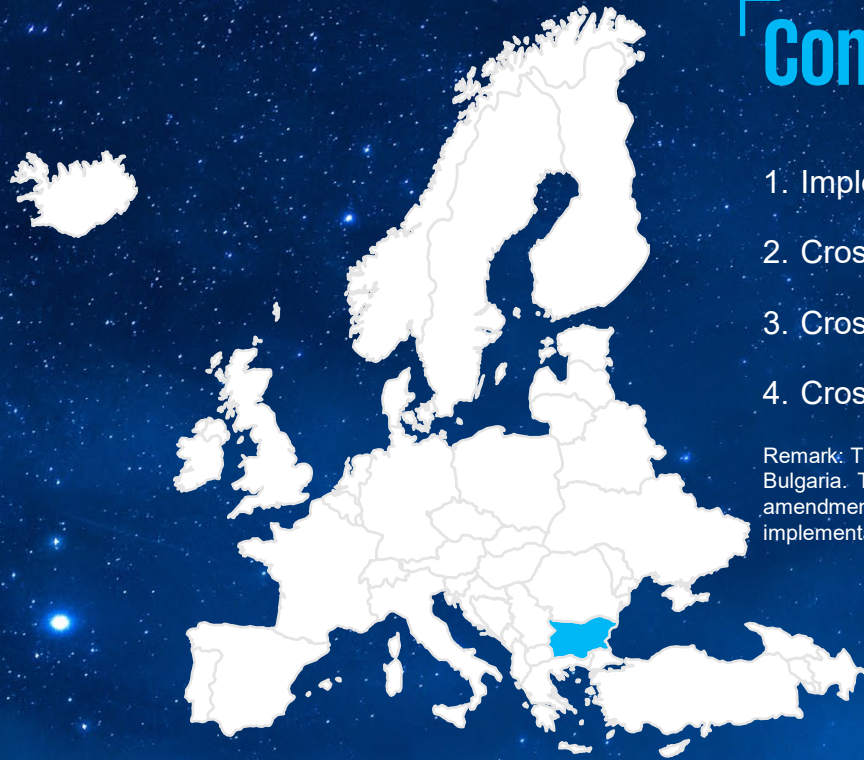
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> • 50% attendance quorum and 75% majority requirement for mandatory shareholders' resolution on the cross border merger in limited partnerships and cooperative companies, the voting rights of the partners and shareholders shall be pro rata to their shares in the assets of the company and the attendance quorum shall be calculated pro rata to such assets • The consent of a shareholder of the Belgian company who is or will become liable without limitation for the debts of a company participating in the cross border merger shall always be required • In certain case unanimity is required
Competent regulatory authority	<ul style="list-style-type: none"> • Notary public and clerk's office of the competent enterprise court
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four to six months • Proposal: filing six weeks prior to shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> • The extraordinary shareholders' meeting(s) of shareholders must be held before a Belgian notary public • Language: Dutch, French or German, depending on the location of the registered office of the company
Pre-merger certificate	<ul style="list-style-type: none"> • Following an examination of the existence and both the internal and external legality of the operations and formalities of which the company for which he acts, the acting notary public shall without delay issue a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities
Legal effectiveness of merger	<ul style="list-style-type: none"> • Transmission of pre-merger certificate to the authority of the destination jurisdiction • The laws applicable on the acquiring company shall determine the date of legal effectiveness of the merger • Final check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description of destination jurisdiction • De-registration in Belgian register of legal entities after notification by authority of the destination jurisdiction that the merger has taken effect • The administrative department of the Crossroads Bank for Enterprises shall publish this deregistration in the Annexes to the Belgian Official Gazette. In the absence of the above notification by the foreign register, the management body of the company shall take care of this publication

Cross border merger to Belgium



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Any company with separate legal personality, in particular: <ul style="list-style-type: none"> general partnerships (<i>vennootschap onder firma/société en nom collectif</i>), abbreviated <i>VOF</i> (in Dutch) and <i>SNC</i> (in French) limited partnerships (<i>commanditaire vennootschap/société en commandite</i>), abbreviated <i>CommV</i> (in Dutch) and <i>SCS</i> (in French) private limited liability companies (<i>besloten vennootschap/société à responsabilité limitée</i>), abbreviated <i>BV</i> (in Dutch) and <i>SRL</i> (in French) cooperative companies (<i>coöperatieve vennootschap/société coopérative</i>), abbreviated <i>CV</i> (in Dutch) and <i>SC</i> (in French) public limited liability companies (<i>naamloze vennootschap/société anonyme</i>), abbreviated <i>NV</i> (in Dutch) and <i>SA</i> (in French)
Share capital requirements	<ul style="list-style-type: none"> Public limited liability company (<i>NV/SA</i>): EUR 61,500 The other legal forms do not require any minimum capital
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger by incorporation (<i>fusie door oprichting/fusion par constitution</i>) Cross border merger by acquisition (<i>fusie door overneming/fusion par absorption</i>) Simplified cross border merger (<i>vereenvoudigde fusie/fusion simplifiée</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Notary public and clerk's office of the competent enterprise court
Belgian registration process	<ul style="list-style-type: none"> Each merging company shall submit to the notary public of the acquiring company the pre-merger certificate within six months of its issuance together with a copy of the common merger proposal; The notary public verifies whether the merging companies have approved the common draft terms of cross border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with the measures taken in execution of Article 133 of Directive 2017/1132/EU of the European Parliament and of the Council of 14 June 2017 Following the examination of the received certificates and documentation, the notary public establishes the completion of the cross border merger in a notarial deed An extract of the notarial deed regarding the completion of the cross border merger, shall be published in the Annexes to the Belgian Official Gazette The competent authority of the departure jurisdiction shall be informed of the legal effect of the cross border merger
Language requirements	<ul style="list-style-type: none"> Dutch, French or German, depending on the location of the registered office of the company
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate by notary public: one month
Legal effectiveness of merger	<ul style="list-style-type: none"> The cross border merger shall in principle take legal effect on the date on which the acting notary public has established the completion of the cross border merger

Bulgaria



Content

1. Implementation status in Bulgaria
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Bulgaria. The content on the following slides is based on law amendments currently in force. The exact date of implementation is currently unclear.



Juliana Mateeva

Partner

M +359 296 97600

jmateeva@kpmg.com



[Back to Country Overview](#)

Implementation status in Bulgaria

Current status of the implementation process in Bulgaria:

The Mobility Directive has not been transposed in Bulgaria until the date hereof.

There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and facilitate its application.

Due to the very early stage of the implementation process it is hard to foresee the exact date of implementation of the Mobility Directive in Bulgarian laws and whether any local specifics shall be introduced (to the extent permitted by the Mobility Directive).

Cross border conversion from Bulgaria to other member state (1/2)



Topic	Prerequisites
Outbound conversion as per effective Bulgarian legislation	<ul style="list-style-type: none"> As per effective Bulgarian legislation, conversion from Bulgaria to other member state as a form of companies' transformation provided in the Mobility Directive, is not possible No legal measures for practical implementation of such conversion are provided in the Bulgarian laws as to date
Competent regulatory authority and practical considerations	<ul style="list-style-type: none"> The Commercial register and register of non-profit legal entities at the Registry Agency (the „Commercial Register“/Търговския регистър) is the regulatory authority in Bulgaria, competent to: (i) issue pre-conversion certificates (<i>удостоверения за законосъобразност</i>) for companies' transformations explicitly set out by Bulgarian laws, and (ii) register and announce circumstances and acts, explicitly specified by Bulgarian laws (e.g. including transformations) Since outbound conversion is not explicitly regulated by effective Bulgarian laws, even if requested, the Commercial Register shall reject to: (i) issue the pre-conversion certificate (<i>удостоверение за законосъобразност</i>), required as per the Mobility Directive for the cross border conversion from Bulgaria to other member state, and (ii) register under the batch of the Bulgarian company such conversion. The rejections are in general subject to appeal before competent Bulgarian courts, however, outcome of such court disputes cannot be predicted Furthermore, from practical perspective, as to date the information system of the Commercial Register is not aligned to the measures necessary for implementation of the Mobility Directive. As per Strategic Plan for development of the Bulgarian Registry Agency during the period 2023 – 2030, within the said period information services provided by the Bulgarian Commercial Register shall be aligned to the Mobility Directive requirements
Conclusion	<ul style="list-style-type: none"> As to date, cross border conversion of a company from Bulgaria to other member state is not a feasible option, neither as per provisions of the Mobility Directive, nor as per special local rules provided in effective Bulgarian legislation
Alternative(s)	<ul style="list-style-type: none"> The alternative to reach similar outcome would be to wind-up the Bulgarian company (or leave it existing) and to transfer, to the extent permitted by applicable laws of involved member states, respective assets, liabilities, contracts, etc. to a newly-incorporated/existing company in the host member state. See our comments below on this alternative option, referred to as the “Transaction” For completeness – cross border transfer of part or entire business (as a going concern) from Bulgaria to other member state is not a feasible alternative (due to similar considerations as the outbound conversion)
Eligible legal form for participation in the Transaction	<ul style="list-style-type: none"> All types of companies which can be incorporated as per Bulgarian laws

Cross border conversion from Bulgaria to other member state (2/2)



Topic	Prerequisites
Required documentation for the Transaction	<ul style="list-style-type: none"> Contractual documentation, required as per applicable laws, depending on the nature of the Transaction and involved assets, liabilities, etc.
Shareholders' protection in connection with the Transaction	<ul style="list-style-type: none"> Not applicable
Joint liability (Солидарна отговорност)	<ul style="list-style-type: none"> May occur in certain occasions (e.g. in case of assumption/transfer of liabilities, without consent of respective creditor)
Competent regulatory authority for the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction and involved assets, liabilities, etc.
Timing for the Transaction	<ul style="list-style-type: none"> Varies, depending on the nature of the Transaction and involved assets, liabilities, etc.
Formal considerations for the Transaction	<ul style="list-style-type: none"> Formal requirements (e.g. notarization or other certifications) as per applicable laws, depending on the nature of the Transaction In case the Transaction requires certain registrations, as per applicable Bulgarian laws, relevant documents/contracts shall have to be prepared in Bulgarian language or as bilingual documents
Pre-operations certificate for the Transaction	<ul style="list-style-type: none"> Not applicable
Legal effectiveness of Transaction	<ul style="list-style-type: none"> Determined as per applicable laws, depending on the nature of the Transaction

Cross border conversion from other member state to Bulgaria



Topic	Prerequisites
Status of implementation of the Mobility Directive in Bulgaria	<ul style="list-style-type: none"> The Mobility Directive has not been transposed into Bulgarian laws within the deadline – 31 January 2023 There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and facilitate its application Due to the very early stage of implementation process, it is hard to foresee the exact date of implementation of the Mobility Directive in Bulgarian laws and whether any local specifics shall be introduced (to the extent permitted by the Mobility Directive)
Inbound conversion as per effective Bulgarian legislation	<ul style="list-style-type: none"> As per effective Bulgarian legislation, conversion from other member state to Bulgaria as a form of companies' transformation provided in the Mobility Directive, is not possible No legal measures for practical implementation of such conversion are provided in the Bulgarian laws as to date
Competent regulatory authority and practical considerations	<ul style="list-style-type: none"> Commercial register and the Commercial Register (<i>Търговския регистър</i>) is the regulatory authority in Bulgaria, competent to render assessment, register and announce circumstances and acts, explicitly specified by Bulgarian laws (e.g. including transformations) Since inbound conversion is not explicitly regulated by effective Bulgarian laws, even if requested, the Commercial Register shall reject to register a Bulgarian company formed as a result of such conversion. The rejections are subject to appeal before competent Bulgarian courts, but the outcome of such court disputes cannot be predicted Furthermore, from practical perspective, as to date the information system of the Commercial Register is not aligned to the measures necessary for implementation of the Mobility Directive. As per Strategic Plan for development of the Bulgarian Registry Agency during the period 2023 – 2030, within the said period information services provided by the Bulgarian Commercial Register shall be aligned to the Mobility Directive requirements
Conclusion	<ul style="list-style-type: none"> As to date, cross border conversion of a company from other member state to Bulgaria is not a feasible option, neither as per provisions of the Mobility Directive, nor as per special local rules provided in effective Bulgarian legislation
Alternative(s)	<ul style="list-style-type: none"> The alternative to reach similar outcome would be to wind-up the company incorporated in the other member state (or leave it existing) and to transfer, to the extent permitted by applicable laws of involved member states, respective assets, liabilities, contracts, etc. to a newly-incorporated/existing company in Bulgaria. See our comments below on this alternative option, referred to as the “Transaction” For completeness – cross border transfer of part or entire business (as a going concern) from other member state to Bulgaria is not a feasible alternative (due to similar considerations as the outbound conversion)
Language requirements for the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction and requirements of the other member state. Recommendable the relevant documents/contracts to be prepared in Bulgarian language or as bilingual documents
Timing for the Transaction	<ul style="list-style-type: none"> Varies depending on any formal requirements as per applicable laws, depending on the nature of the Transaction
Legal effectiveness of the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction, as per applicable laws

Cross border division from Bulgaria to other member state (1/2)



Topic	Prerequisites
Status of implementation of the Mobility Directive in Bulgaria	<ul style="list-style-type: none"> The Mobility Directive has not been transposed into Bulgarian laws within the deadline – 31 January 2023. There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and facilitate its application Due to the very early stage of implementation process, it is hard to foresee the exact date of implementation of the Mobility Directive in Bulgarian laws and whether any local specifics shall be introduced (to the extent permitted by the Mobility Directive)
Outbound division as per effective Bulgarian legislation	<ul style="list-style-type: none"> As per effective Bulgarian legislation, division from Bulgaria to other member state as a form of companies' transformation provided in the Mobility Directive – regardless of whether in the form of spin-off (<i>разделяне</i>) or split-off (<i>отделяне</i>), is not possible No legal measures for practical implementation of such division are provided in the Bulgarian laws as to date
Competent regulatory authority and practical considerations	<ul style="list-style-type: none"> Commercial register and Commercial Register (<i>Търговския регистър</i>) is the regulatory authority in Bulgaria, competent to: (i) issue pre-division certificates (<i>удостоверения за законосъобразност</i>) for companies' transformations explicitly set out by Bulgarian laws, and (ii) register and announce circumstances and acts, explicitly specified by Bulgarian laws (e.g. including transformations) Since outbound division is not explicitly regulated by effective Bulgarian laws, even if requested, the Commercial Register shall reject to: (i) issue the pre-division certificate (<i>удостоверение за законосъобразност</i>), required as per the Mobility Directive for the cross border division from Bulgaria to other member state, and (ii) register under the batch of the Bulgarian company such division. The rejections are in general subject to appeal before competent Bulgarian courts, however, outcome of such court disputes cannot be predicted Furthermore, from practical perspective, as to date the information system of the Commercial Register is not aligned to the measures necessary for implementation of the Mobility Directive. As per Strategic Plan for development of the Bulgarian Registry Agency during the period 2023 – 2030, within the said period information services provided by the Bulgarian Commercial Register shall be aligned to the Mobility Directive requirements
Conclusion	<ul style="list-style-type: none"> As to date, cross border division of a company from Bulgaria to other member state – regardless of whether in the form of spin-off (<i>разделяне</i>) or split-off (<i>отделяне</i>), is not a feasible option, neither as per provisions of the Mobility Directive, nor as per special local rules provided in effective Bulgarian legislation
Alternative(s)	<ul style="list-style-type: none"> The alternative to reach similar outcome would be to wind-up the Bulgarian company (or leave it existing, as per envisaged effects) and to transfer, to the extent permitted by applicable laws of involved member states, respective assets, liabilities, contracts, etc. to other company/companies in the host member state. See our comments below on this alternative option, referred to as the “Transaction” For completeness – cross border transfer of part or entire business (as a going concern) from Bulgaria to other member state is not a feasible alternative (due to similar considerations as the outbound division)
Eligible legal form for participation in the Transaction	<ul style="list-style-type: none"> All types of companies which can be incorporated as per Bulgarian laws

Cross border division from Bulgaria to other member state (2/2)



Topic	Prerequisites
Division types	<ul style="list-style-type: none"> As to date, cross border division of a company from Bulgaria to other member state is not possible regardless of whether in the form of spin-off (<i>разделяне</i>) or split-off (<i>отделяне</i>) and whether with newly incorporated or existing company
Required documentation for the Transaction	<ul style="list-style-type: none"> Contractual documentation, required as per applicable laws depending on the nature of the Transaction and involved assets, liabilities, etc.
Shareholders' protection in connection with the Transaction	<ul style="list-style-type: none"> Not applicable
Joint liability (<i>Солидарна отговорност</i>)	<ul style="list-style-type: none"> May occur in certain occasions (e.g. in case of assumption/transfer of liabilities, without consent of respective creditor)
Competent regulatory authority for the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction and involved assets, liabilities, etc.
Timing for the Transaction	<ul style="list-style-type: none"> Varies, depending on the nature of the Transaction and involved assets, liabilities, etc.
Formal considerations for the Transaction	<ul style="list-style-type: none"> Formal requirements (e.g. notarization or other certifications) as per applicable laws, depending on the nature of the Transaction In case the Transaction requires certain registrations, as per applicable Bulgarian laws, relevant documents/contracts shall have to be prepared in Bulgarian language or as bilingual documents
Pre-operations certificate for the Transaction	<ul style="list-style-type: none"> Not applicable
Legal effectiveness of the Transaction	<ul style="list-style-type: none"> Determined as per applicable Bulgarian laws, depending on the nature of the Transaction

Cross border division from other member state to Bulgaria



Topic	Prerequisites
Status of implementation of the Mobility Directive in Bulgaria	<ul style="list-style-type: none"> The Mobility Directive has not been transposed into the Bulgarian laws within the deadline – 31 January 2023 There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and facilitate its application Due to the very early stage of implementation process, it is hard to foresee the exact date of implementation of the Mobility Directive in Bulgarian laws and whether any local specifics shall be introduced (to the extent permitted by the Mobility Directive)
Inbound division as per effective Bulgarian legislation	<ul style="list-style-type: none"> As per effective Bulgarian legislation, division from other member state to Bulgaria as a form of companies' transformation provided in the Mobility Directive, regardless of whether in the form of spin-off (<i>разделяне</i>) or split-off (<i>отделяне</i>), is not possible No legal measures for practical implementation of such division are provided in the Bulgarian laws as to date
Competent regulatory authority and practical considerations	<ul style="list-style-type: none"> The Commercial register and the Commercial Register (<i>Търговския регистър</i>) is the regulatory authority in Bulgaria, competent to render assessment, register and announce circumstances and acts, explicitly specified by Bulgarian laws (e.g. including transformations) Since inbound division is not explicitly regulated by effective Bulgarian laws, even if requested, the Commercial Register shall reject to register a Bulgarian company formed as a result of such division. The rejections are subject to appeal before competent Bulgarian courts, but the outcome of such court disputes cannot be predicted Furthermore, from practical perspective, as to date the information system of the Commercial Register is not aligned to the measures necessary for implementation of the Mobility Directive. As per Strategic Plan for development of the Bulgarian Registry Agency during the period 2023 – 2030, within the said period information services provided by the Bulgarian Commercial Register shall be aligned to the Mobility Directive requirements
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive, not possible as per applicable Bulgarian laws – regardless of whether in the form of spin-off (<i>разделяне</i>) or split-off (<i>отделяне</i>)
Conclusion	<ul style="list-style-type: none"> Cross border division of a company from other member state to Bulgaria is not a feasible option (regardless of whether in the form of spin-off or split-off and whether with newly incorporated or existing company), neither as per provisions of the Mobility Directive, nor as per special local rules provided in effective Bulgarian legislation
Alternative(s)	<ul style="list-style-type: none"> The alternative to reach similar outcome would be to wind-up the Bulgarian company (or leave it existing, as per envisaged effects) and to transfer, to the extent permitted by applicable laws of involved member states, respective assets, liabilities, contracts, etc. to other company/companies in the host member state. See our comments below on this alternative option, referred to as the “Transaction”. For completeness – cross border transfer of part or entire business (as a going concern) from Bulgaria to other member state is not a feasible alternative (due to similar considerations as the inbound division)
Language requirements for the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction and requirements of the other member state. Recommendable the relevant documents/contracts to be prepared in Bulgarian language or as bilingual documents
Timing for the Transaction	<ul style="list-style-type: none"> Varies depending on any formal requirements as per applicable laws, depending on the nature of the Transaction
Legal effectiveness of the Transaction	<ul style="list-style-type: none"> Depending on the nature of the Transaction, as per applicable laws

Cross border merger from Bulgaria to other member state (1/2)



Topic	Prerequisites
General comments	<ul style="list-style-type: none"> The Mobility Directive has not been incorporated in the Bulgarian laws within the deadline – 31 January 2023 There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and implement standardized procedures Notwithstanding the above, as per effective Bulgarian laws, cross border merger from Bulgaria to other member state is a feasible form of companies' transformation, both in the form of merger by acquisition (<i>вливане</i>) and merger by the formation of a new company (<i>сливане</i>)
Eligible legal form of the merging company as per Bulgarian laws	<ul style="list-style-type: none"> Limited liability company (<i>ООД</i>), Joint stock company (<i>АД</i>), Limited partnership by shares (<i>КДА</i>), Exception: Open-ended investment companies
Restrictions to outbound merger as per Bulgarian laws	<ul style="list-style-type: none"> Merger is possible only with companies from member states or parties to the Agreement on the European Economic Area, provided such merger is permitted by their laws Restrictions for outbound merger in case the Bulgarian company owns a land in Bulgaria (i.e. restriction the foreign acquiring/newly incorporated company to acquire the land) – for the purposes of obtaining of a pre-merger certificate (needed for the outbound merger), the Bulgarian company shall present to the Commercial Register (as defined below) a declaration for lack of land ownership in Bulgaria
Required documentation	<p>Joint plan (<i>Общ план за преобразуване</i>)</p> <ul style="list-style-type: none"> To be prepared in simple written form. Main statutory contents are: corporate data for each of the merging companies/acquiring company/newly incorporated company; share exchange ratio; amount of any cash payments and deadline for their payment; shares to be granted, in case of share capital increase; start date for profit entitlement of the shareholders; effective date of the merger for accounting purposes; specific rights granted to shareholders; effects on employment relationships; assets valuation; new/amended Articles of Association/Incorporation Deed; the annual financial statements and the annual report and/or the balance sheet of the companies participating in the merger. Depending on the type of merger, the Joint Plan is to be prepared by the merging companies and/or the acquiring company (if applicable) <u>Waiver:</u> in case all merging companies are solely owned by the acquiring company, certain contents shall not be included (e.g. share exchange ratio, cash payments, etc.) <p>Report (<i>Доклад</i>)</p> <ul style="list-style-type: none"> Report of the management body (<i>Управителния орган</i>) of each company participating in the outbound merger on the legal and economic grounds of the joint plan, especially on the exchange ratio and the effects for employees, creditors and shareholders <p>List (<i>Списък</i>)</p> <ul style="list-style-type: none"> List with information per each company participating in the merger: corporate data, registration authority, measures for creditors and minority shareholders protection <p>Audit Report (<i>Доклад на проверителя</i>)</p> <ul style="list-style-type: none"> Audit of the Joint plan by independent auditor, resulting in a written audit report <u>Waiver:</u> (i) by written mutual consent of all shareholders of all companies participating in the merger, or (ii) if all merging companies are solely owned by the acquiring company <p>Shareholders' resolutions (<i>решения за преобразуване</i>), to be adopted by each company participating in the outbound merger</p> <p>Other certificates, permits, consents, issued by the Bulgarian authorities (if applicable), etc.</p>

Cross border merger from Bulgaria to other member state (2/2)



Topic	Prerequisites
Capital increase	<ul style="list-style-type: none"> The shareholders of the merging legal entity receive shares in the recipient legal entity – the acquiring company or the newly incorporated company The merger may result in capital increase of the acquiring company → Please see for requirements of the destination jurisdiction
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on merger Cash payments – Equivalent exchange ratio may be reached by means of monetary payments in an amount not exceeding 10% of the nominal value of the acquired shares Liability of the members of the management bodies of the companies participating in the merger for their duties during the merger (for damages caused to shareholders)
Employee's participation	<ul style="list-style-type: none"> Obligation for informing and consultations with employees of the companies participating in the merger. The Report of the Management body should be provided to representatives of the employees or directly to the employees, at least one month before the shareholders' meeting, and at least two months prior to the registration of the merger
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register and register of non-profit legal entities at the Bulgarian Registry Agency (<i>Търговски регистър</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Joint plan (<i>Общ план за преобразуване</i>), Report of the management body (<i>Доклад на управителния орган</i>) of each Bulgarian merging company, the List (<i>Списък</i>): to be announced in the Commercial Register and provided to shareholders at least one month before adoption of Shareholders' resolution on the merger. The Report of the management body – to be provided to the employees or employee's representatives (one month prior to the resolution and two months prior to effectiveness of the merger) Audit report (<i>Доклад на проверителя</i>): to be provided to the shareholders one month prior to the shareholders' meeting Two months – mandatory certificate issued by the Bulgarian National Revenue Agency Technical time for obtaining other necessary permits, certificates, etc.
Formal considerations	<p>No notarization requirements</p> <p>Language:</p> <ul style="list-style-type: none"> Bulgarian language due to registration with the Commercial Register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate (<i>Удостоверение за законосъобразност</i>)	<ul style="list-style-type: none"> To be issued by the Commercial Register after filing of all required documents by the merging legal entity and positive review 14 days review period for the Commercial Register
Legal effectiveness of merger	<ul style="list-style-type: none"> Provision of the pre-merger certificate (<i>Удостоверение за законосъобразност</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements of the respective destination jurisdiction Deregistration of the Bulgarian merging company from the Commercial Register Legal effectiveness upon registration by the authority of the destination jurisdiction → Please refer to respective destination jurisdiction

Cross border merger to Bulgaria



Topic	Prerequisites
General comments	<ul style="list-style-type: none"> The Mobility Directive has not been incorporated in the Bulgarian laws within the deadline – 31 January 2023. There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and implement standardized procedures Notwithstanding the above, as per effective Bulgarian laws, cross border merger from other member state to Bulgaria is a feasible form of companies' transformation, both in the form of merger by acquisition (<i>вливане</i>) and merger by the formation of a new company (<i>сливане</i>)
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>ООД</i>) Joint stock company (<i>АД</i>) Limited partnership by shares (<i>КДА</i>) Exception: Open-ended investment companies
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>ООД</i>): approximately EUR 1 Joint stock company (<i>АД</i>): approximately EUR 25,000 Limited partnership by shares (<i>КДА</i>): approximately EUR 25,000
Merger types	<ul style="list-style-type: none"> Cross border merger by the formation of a new company (<i>Сливане</i>) Cross border merger by acquisition (<i>Вливане</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register and register of non-profit legal entities at the Bulgarian Registry Agency (<i>Търговски регистър</i>)
Bulgarian registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>Управителния орган</i>) of the Bulgarian acquiring or newly incorporated company to the Commercial Register Application includes, among other documents: Joint plan (<i>Общ план за преобразуване</i>), pre-merger certificate (Удостоверение за законосъобразност), resolutions on merger (<i>Решенията за преобразуване</i>), Auditor's report (<i>Доклад на поверителя</i>), Articles of Association/Incorporation Deed (<i>Устав/Дружествен договор/Учредителен акт</i>); mandatory Auditor's report for audit of the share capital – in case of a new company or capital increase of existing company, etc. Scope of review of the Commercial Register: pre-merger certificate (no review in substance), compliance with the registration requirements for the Bulgarian company, approval of the Joint Plan by the companies, compliance with requirements for incorporation of the new legal entity (in the case of merger into a newly incorporated company) or of the acquiring company
Language requirements	<ul style="list-style-type: none"> Bulgarian language due to registration with the Commercial Register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps (i.e. not including the time needed for obtaining of pre-merger certificate(s): two – three months The inbound merger to be registered in the Commercial Register under the batch of the Bulgarian acquiring or a new Bulgarian company to be registered, within 14 days as of submission of the application along with all required documents with the Commercial Register
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Commercial Register after positive review Deregistration of the merging company in the destination jurisdiction → Please refer to respective destination jurisdiction Legal effectiveness upon registration in the Commercial Register

Croatia



Content

1. Implementation status in Croatia
2. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Croatia. The content on the following slides is based on the 2005 Cross Border Merger Directive. The exact date of the Mobility Directive's implementation is currently unclear.



Hrvoje Pajtak

Senior Manager

M +385 914 668062
hpajtak@kpmg.com



[Back to Country Overview](#)

Implementation status in Croatia

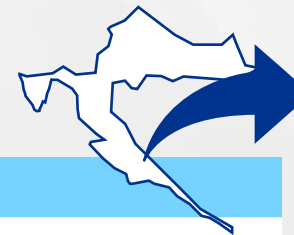
Current status of the implementation process in Croatia:

The Mobility Directive has not been transposed in Croatia until the date hereof.

There is still no draft law for amendments to effective legislation in order to implement the Mobility Directive and facilitate its application.

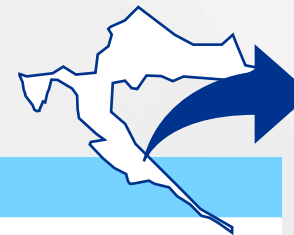
Due to the very early stage of implementation process it is hard to foresee the exact date of implementation of the Mobility Directive in Croatian laws and whether any local specifics shall be introduced (to the extent permitted by the Mobility Directive).

Cross border merger from Croatia to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>društvo s ograničenom odgovornošću; d.o.o.</i>) Stock corporation (<i>dioničko društvo; d.d.</i>)
Required documentation	<p>Joint Merger Plan (<i>Zajednički plan pripajanja</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, company name and seat of all companies involved in the merger, merger ratio and amounts of additional cash payments, expected effects on employees, balance sheet merger date, merger cut-off date and cut-off date for profit entitlement of shares, statement on specific rights of stakeholders, articles of association of the recipient legal entity, notification of estimated value of assets and liabilities being transferred to the recipient legal entity. Plan to be prepared by the representative body (<i>organ upravljanja</i>) <p>Merger Report (<i>Izvešće o pripajanju</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>organ upravljanja</i>) of each company involved in the merger explaining legal and economic purpose for the merger and the effects for employees, creditors and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers) <p>Audit report (<i>Revizorsko izvješće</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers) <p>Balance sheet not older than eight months at the time of filing with the Commercial Court Register</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on merger Compensation by way of adequate cash payment by the recipient legal entity to the shareholders

Cross border merger from Croatia to other member state (2/2)



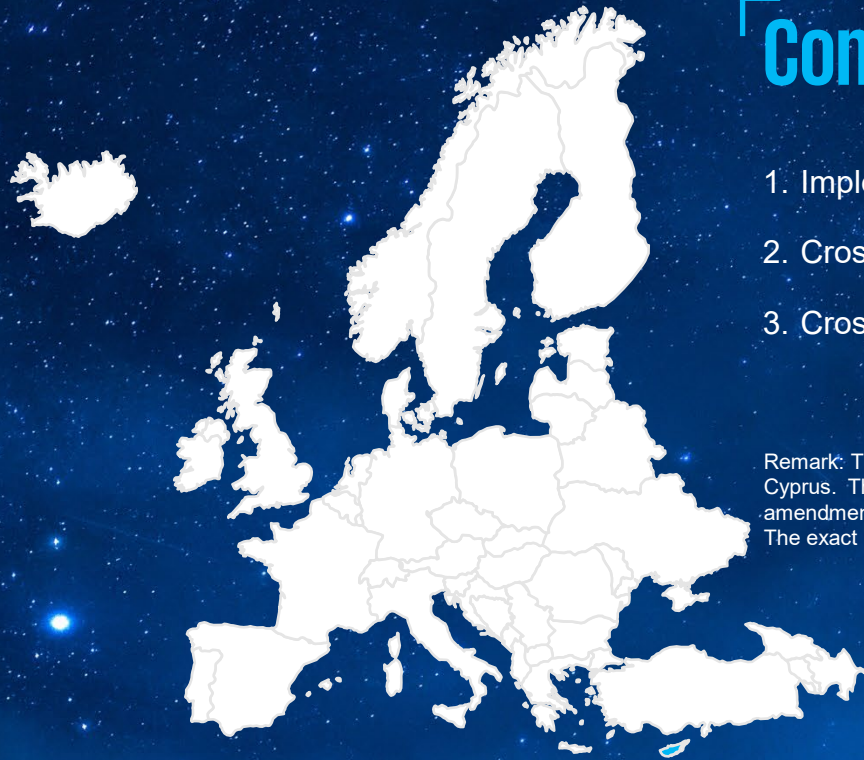
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Commercial Court Register (<i>Sudski registar Trgovačkog suda</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Joint Merger Plan (<i>Zajednički plan pripajanja</i>): must be filed with the Commercial Court Register for its publication at least one month prior to the shareholders' meeting; filing with the Commercial Court Register is not required if the Joint Merger Plan is available on the company's web site from the day of convening the shareholders' meeting until its conclusion and can be downloaded free of charge Merger Report (<i>Izvešće o pripajanju</i>): to be provided to employees one month prior to the shareholders' meeting Audit report (<i>Revizorsko izvješće</i>): to be provided to the shareholders one month prior to the shareholders' meeting Audit of the plan by independent auditor, resulting in a written audit report
Formal considerations	<p>Required form: Public Notary Deed executed before the notary in Croatia:</p> <ul style="list-style-type: none"> Joint Merger Plan (<i>Zajednički plan pripajanja</i>) Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> Croatian language due to registration with the Croatian Commercial Court Register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate (<i>Potvrda da su obavljene sve potrebne radnje</i>)	<ul style="list-style-type: none"> Issued by the Croatian Commercial Court Register after filing of all required documents by the Management (<i>Uprava/Izvršni odbor</i>) of the transferring legal entity and positive review
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>Potvrda da su obavljene sve potrebne radnje</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in the Croatian Commercial Court Register after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border merger to Croatia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>društvo s ograničenom odgovornošću; d.o.o.</i>) Stock corporation (<i>dioničko društvo; d.d.</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>d.o.o.</i>): EUR 2,500 Stock corporation (<i>d.d.</i>): EUR 25,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>spajanje</i>) Cross border merger with an existing legal entity as recipient (<i>pripajanje</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Commercial Court Register (<i>Sudski registar Trgovačkog suda</i>) of seat of legal entity
Croatian registration process	<ul style="list-style-type: none"> Application filed by the Management (<i>Uprava</i>) and President of the Supervisory Board (<i>predsjednik Nadzornog odbora</i>) of the recipient legal entity to the Commercial Court Register in Croatia Application includes in particular the Merger Plan (<i>Plan pripajanja</i>) Pre-merger certificate (<i>Potvrda da su obavljene sve potrebne radnje</i>) transferred by departure member state regulatory body to the Croatian Commercial Court Register → Please see requirements for pre-merger certificate in the respective departure member state section Scope of review of the Croatian Commercial Court Register: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Merger Plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> Croatian language due to registration with the Croatian Commercial Court Register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Potvrda da su obavljene sve potrebne radnje</i>) by the Commercial Court Register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration with the Commercial Court Register after positive review Legal effectiveness upon registration by the Croatian Commercial Court Register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> N/A

Cyprus



Content

1. Implementation status in Cyprus
2. Cross border conversion
3. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Cyprus. The content on the following slides is based on law amendments currently not in force, subject to further changes. The exact date of implementation is currently unclear.



Panayiota Georgiou

Partner

M +357 258 69259

pgeorgiou@kpmg.com



[Back to Country Overview](#)

Implementation status in Cyprus

Current status of the implementation process in Cyprus:

The Mobility Directive has not been transposed in Cyprus until the date hereof.

Conversion in Cyprus law is generally referred to as re-domiciliation (inbound or outbound). Note that where anyone comes across this term, it is the same as conversion with the characteristics we are providing in the presentation.

There is no cross border division in Cyprus because neither that part of the EU Directive 2017/1132 nor the Directive 2005/56 was transposed in national law.

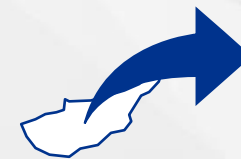
Moreover, a draft bill does not exist yet.

Cross border conversion from Cyprus to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Private Company limited by shares • Private Company limited by guarantee • Public Company limited by shares • Public Company limited by guarantee
Required documentation	<ul style="list-style-type: none"> • Application to the Cyprus Registrar of Companies ("Cyprus RoC") for the continuation of the Cyprus entity to another state • Declaration of the board of directors stating the suggested name to be used in the other state, details of the competent authority of the other state, the suggested date of continuation to the other state. This declaration is attached to the above application • Special resolution of the shareholders, accompanied with interim accounts • Declaration by the directors regarding the solvency of the company for the next three years • License by any other authority, as may be required for each company • Stock exchange approval (if required) • Confirmation of publication at two newspapers in Cyprus regarding the special resolution of the company for the continuation in another state (a period of three months after the publication is allowed for any creditors to object) • Document of continuation from the destination state filed with the Cyprus RoC
Shareholders' protection	<ul style="list-style-type: none"> • Special resolution is required by $\frac{3}{4}$ of the shareholders at the shareholders' meeting • Any other procedure outlined in the company's articles of association e.g. special consents or reserved matters
Competent regulatory authority	<ul style="list-style-type: none"> • Cyprus RoC

Cross border conversion from Cyprus to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceedings): four to eight months • Initial advice and collection of required documentation (board of directors and shareholders' meetings, interim accounts, declaration and application to the RoC Cyprus) • Publication to newspapers in Cyprus • Issue of document of continuance from destination state • Deletion of the Company from the companies' registry of RoC Cyprus
Formal considerations	<ul style="list-style-type: none"> • All documents shall be delivered in Greek or with a certified translation in Greek
Pre-conversion certificate	<ul style="list-style-type: none"> • A document/certificate of continuation from the destination state is delivered to the Cyprus RoC
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Upon delivery of the continuation document to the RoC Cyprus the company ceases to be a registered company in Cyprus as of the date on which its continuation in the destination state becomes effective; the Registrar shall delete the name of the company from the register and it shall issue a certificate of deletion → <u>Please see for further requirements in the respective description for the destination jurisdiction.</u> • Deletion from the registry shall not constitute liquidation and this procedure shall not: <ul style="list-style-type: none"> – oust or prejudice the jurisdiction of any Court in Cyprus in proceedings which were initiated by or against the company before it ceased to be a company registered in Cyprus, – affect the property of the company, – exempt or prejudice any conviction, decision, opinion, order, debt, responsibility or obligation that is owed or that is about to be owed or for any reason that exists against the company or any other person

Cross border conversion from other member state to Cyprus (1/2)



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> • Private Company limited by shares • Private Company limited by guarantee • Public Company limited by shares • Public Company limited by guarantee
Share capital requirements	<ul style="list-style-type: none"> • Private Company: no limitations • Public Company: minimum EUR 25,629
Competent regulatory authority	<ul style="list-style-type: none"> • Cyprus RoC
Cypriot registration process	<ul style="list-style-type: none"> • Application for the continuation to Cyprus is filed with the Cyprus RoC • Resolution (respective special resolution as per Cyprus Law) of the foreign company approving the continuance in Cyprus • Copy of the draft amended Articles of Association of the company to meet the legal requirements under Cyprus law • Certificate of good standing issued by the competent authority of the jurisdiction where the company was incorporated • Declaration by the directors of the company which confirms the name of the company as to be continued, the original jurisdiction, date of initial incorporation, that the company has provided formal notification to the competent authority for the decision to continue in Cyprus and that no administrative or criminal proceedings have been commenced against the overseas company • Declaration by the directors, confirming the solvency of the company for 12 months • Details of the directors, shareholders and the secretary of the overseas company • Such documents as the Cyprus RoC may determine in order to be satisfied that (i) such an application is permissible under the laws of the country of incorporation of the overseas company and (ii) the consent has been received by such number of shareholders, employees, debenture holders and/or creditors of the overseas company as required by the laws of that country • Official consent of the continuation to Cyprus by the competent authority, which granted a license to the overseas for an activity (where required) • Where the overseas company is a public company, it shall also submit, the following documents: <ul style="list-style-type: none"> (a) if the overseas company has offered its shares or debentures to the public, the most recent public offer for registration or the equivalent document; (b) if the overseas company's shares are listed in a recognized stock exchange, it shall submit evidence that the consent of the relevant authorities of the stock exchange has been given in relation to the registration of the company as continuing in Cyprus (c) certified list of the current members of the overseas company
Language requirements	<ul style="list-style-type: none"> • All documents shall be delivered in Greek or with a certified translation in Greek

Cross border conversion from other member state to Cyprus (2/2)



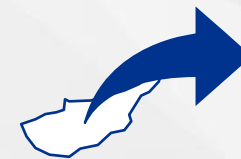
Topic	Prerequisites
Pre-conversion certificate	<ul style="list-style-type: none"> A certificate of temporary continuance in Cyprus is issued by the Cyprus RoC
Timing	<p>Estimated timeframe for inbound steps (advice & formal proceedings): one to three months</p> <ul style="list-style-type: none"> Initial advice and collection of required documentation (board of directors and shareholders' meetings, declaration and application to the RoC Cyprus, consents) Issue of temporary continuance certificate Receipt of evidence of discontinuance from country of incorporation Issue of certificate of continuance to Cyprus
Legal effectiveness of conversion	<p>From the date of issuance of the certificate of temporary continuance, the company:</p> <ul style="list-style-type: none"> (i) shall be considered to be a corporate body incorporated pursuant to Cyprus law (ii) shall be subject to all the duties and shall be capable to exercise all the powers of a company which is registered under Cyprus law <p>Within a period of six months from the date of the issuance by the Cyprus RoC of the certificate of temporary continuation, the company shall submit evidence to the Cyprus RoC from the competent authority of the country of its incorporation (departure state), that it has ceased to be a company registered in the country that it was originally incorporated. If the company fails to do so, the Cyprus RoC:</p> <ul style="list-style-type: none"> (i) removes the name of the overseas company from the register and inform the competent authority of the country concerned that the company is not registered in Cyprus, or (ii) in case there is reasonable cause for not having submitted the above-mentioned documents, allow an extension of three months during which the said documents have to be submitted <p>With the presentation to the Cyprus RoC of the evidence that proves that the company is no longer a company registered in the country that it was originally incorporated (destination state) and with the delivery at the Cyprus RoC of the temporary certificate of continuation, the Cyprus RoC shall issue the certificate of continuation confirming that the company is registered as continuing in Cyprus</p>

Cross border merger from Cyprus to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Cyprus Private Company limited by shares • Cyprus Public Company limited by shares • A company of a member state of the European Union <ul style="list-style-type: none"> • At least one of the companies involved in the merger shall be a Cyprus company or the company resulting from the cross border merger is a Cyprus company
Required documentation	<ul style="list-style-type: none"> • Common draft terms of cross border merger which includes at least the following particulars: <ol style="list-style-type: none"> i. the form, name and registered office of the merging companies and the company resulting from the merger; ii. the ratio applicable to the exchange of securities or shares representing the company capital and where applicable, the amount of any cash payment; iii. the terms for the allotment of securities or shares representing the capital of the company resulting from the merger; iv. the likely repercussions of the cross border merger on employment; v. the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement; vi. the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the merger; vii. the rights conferred by the company resulting from the merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them; viii. any special advantages granted to the experts who examine the draft terms of the merger or to members of the administrative, management, supervisory or controlling organs of the merging companies; ix. the memorandum and articles of the company resulting from the cross border merger; x. Certificate from the Tax Department that the company does not owe taxes and duties in case the Cypriot company is absorbed or strike off xi. where appropriate, information on the procedures by which arrangements for the involvement of employees in the limited liability company resulting from the merger; xii. information on the evaluation of the assets and liabilities which are transferred to the company resulting from the merger; xiii. dates of the merging companies' accounts used to establish the conditions of the merger • Form to the Cyprus RoC which includes details of every merging company, an indication of arrangements by the merging company regarding the rights of creditors and minority shareholders • Report by the directors of Cyprus merging companies explaining the legal and economic aspects and implications of the merger to the members, creditors and employees • An independent expert report intended for members for each Cyprus merging company, explaining the method of the share exchange ratio and related information • Resolution of shareholders' meeting of Cyprus merging company approving the common terms of the merger • Each merging Cyprus company shall apply to Cyprus Courts, requesting a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities (pre-merger certificate) • Letter or certificate of confirmation that the cross border merger has been completed from the competent authority of the absorbing/acquiring/newly incorporated company

Cross border merger from Cyprus to other member state (2/2)



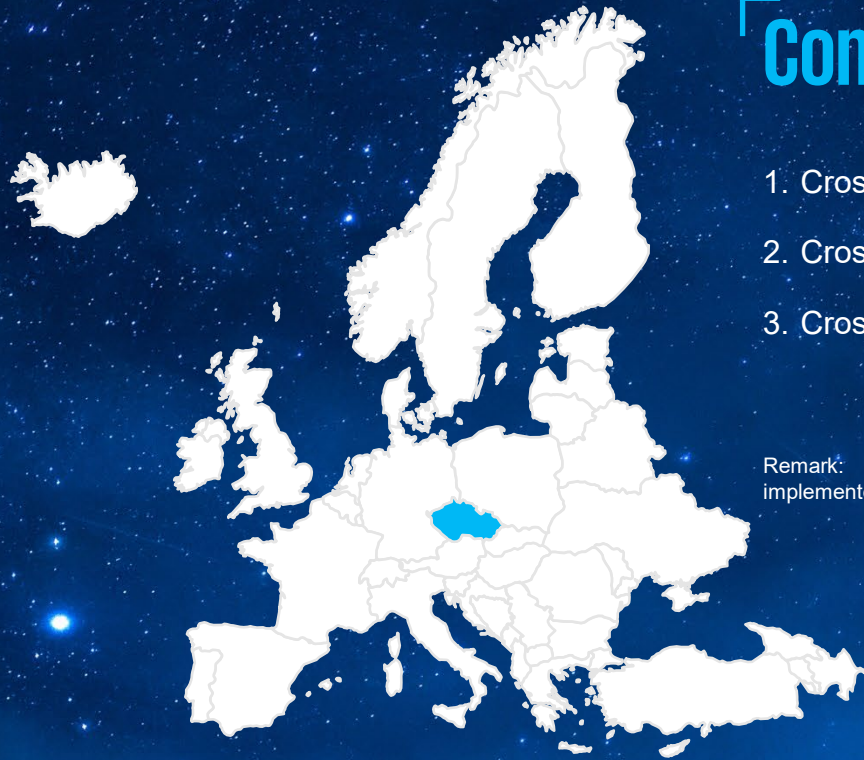
Topic	Prerequisites
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity
Shareholders' protection	<ul style="list-style-type: none"> A special resolution of $\frac{3}{4}$ of the members at a shareholders' meeting is required for the approval of the merger terms For the protection of minority shareholders who have opposed to the cross border merger, the acquiring company may, under certain circumstance, give notice to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the acquiring company shall, unless on an application made by the dissenting shareholder was given the Court, be entitled and bound to acquire those shares on the terms on which, under the scheme the shares of the approving shareholders are to be transferred to the acquiring company
Competent regulatory authority	<ul style="list-style-type: none"> Cyprus RoC, Cyprus District Court having jurisdiction
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of cross border merger (advice, formal proceeding): four – eight months
Formal considerations	<ul style="list-style-type: none"> Certified translation of the documents in case the terms are in a language other than Greek and are filed either with Cyprus Courts of the Cyprus RoC
Pre-merger certificate	<ul style="list-style-type: none"> Pre-merger certificate issued by the District Court of the district where the registered office of each of the merging Cyprus companies is situated as described above and respective certificate by the competent authority for a company been incorporated in another state are issued as described above
Legal effectiveness of merger	<ul style="list-style-type: none"> Where the authority competent to approve the completion of the cross border merger is the authority of another state, the cross border merger shall commence to take effect on the date determined by the national legislation in accordance with the provisions of Directive (EU) 2017/1132

Cross border merger to Cyprus



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> • Private Company limited by shares • Public Company limited by shares • A company of a member state of the European Union • At least one of the companies involved in the merger shall be a Cyprus company or the company resulting from the cross border merger is a Cyprus company
Share capital requirements	<ul style="list-style-type: none"> • Private Company: no limitations • Public Company: minimum EUR 25,629
Merger types/recipient legal entity	<ul style="list-style-type: none"> • One or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing limited-liability company – the acquiring company – in exchange for the issue to their members of securities or shares representing the capital of that acquiring company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or • Two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form – the new company – in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value or those securities or shares; or • A company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the limited-liability company holding all the securities or shares representing its capital
Competent regulatory authority	<ul style="list-style-type: none"> • Cyprus RoC, Cyprus District Court having jurisdiction
Cyprus registration process	<ul style="list-style-type: none"> • One month before the relevant shareholders' meeting of the Cyprus companies, each Cyprus companies files a form at the Cyprus RoC, which includes the common draft terms of cross border merger and the announcement of the merger to the official gazette in Cyprus • Once the pre-merger certificates of the Cyprus company and the other companies are received, the Cyprus absorbing/acquiring/newly incorporated company submits an application to the District Court, requesting the issue of a court order approving the completion of the cross border merger. The court order approving the completion of the cross border merger, must file with the Registrar of Companies by each merging Cyprus company • Filing of the Court decision to the Cyprus RoC
Language requirements	<ul style="list-style-type: none"> • Certified translation of the of the documents in case the terms are in a language other than Greek and are filed either with Cyprus Courts of the Cyprus RoC
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of cross border merger (advice, formal proceeding): four – eight months
Legal effectiveness of merger	<ul style="list-style-type: none"> • The cross border merger shall take effect from the date of its entry into effect, which is determined by the Court decision issued by the Cyprus Courts

Czech Republic



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in the Czech Republic.



Ladislav Karas

Legal Manager

M +42 073 2529392

lkaras@kpmg.cz



[Back to Country Overview](#)

Cross border conversion from Czech Republic to other member state (1/2)



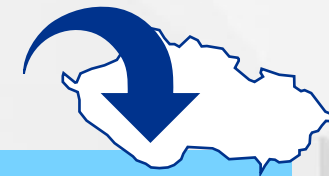
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Required documentation	<p>Plan (<i>Projekt přemístění sídla</i>)</p> <ul style="list-style-type: none"> Main statutory content is in particular the new legal form, envisaged seat, business name and further identification details of the company in the Czech Republic, envisaged changes in the articles of association, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, information on the jurisdiction, which will govern the company's internal relations after the relocation of the registered office, creditors guarantees, the amount of settlement share for the case of withdrawal of a shareholder from the company etc. Plan to be prepared by the representative body (<i>statutární orgán</i>) <p>Report (<i>Zpráva o přeměně</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>statutární orgán</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions) <p>Audit Report (<i>Zpráva nezávislého znalce</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: generally possible
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on conversion Mandatory compensation/acquisition offer to shareholders voting against the conversion. Compensation by way of adequate cash payment to shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Notary public, Register court (<i>rejstříkový soud</i>) of seat of legal entity

Cross border conversion from Czech Republic to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Plan (<i>Projekt přemístění sídla</i>): publication one month prior to shareholders' meeting • Report (<i>Zpráva o přeměně</i>): publication six weeks prior to shareholders' meeting • Audit report (<i>Znalecká zpráva o přeměně</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Formal considerations	<p>Notarization by Czech notary:</p> <ul style="list-style-type: none"> • Plan – in some cases notarized signatures • Shareholders' resolution – in form of a notarial deed <p>Language:</p> <ul style="list-style-type: none"> • Czech language due to filing of the documents with the collection of deeds of the Czech commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-conversion certificate (<i>Osvědčení</i>)	<ul style="list-style-type: none"> • Issued by the Czech notary public after review of all required documents • Three months review period by Czech notary public, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Transmission of pre-conversion certificate to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements in the respective description for the destination jurisdiction • Registration in Czech commercial register after notification by authority of the destination jurisdiction of positive registration of the conversion • Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border conversion from other member state to Czech Republic



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) – CZK 1 Stock corporation (<i>a.s.</i>) – CZK 2,000,000 or EUR 80,000 Limited partnership (<i>k.s.</i>) N/A Unlimited partnership (<i>v.o.s.</i>) N/A Cooperative (<i>družstvo</i>) N/A
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>rejstříkový soud</i>) of seat of legal entity, Czech notary public
Czech registration process	<ul style="list-style-type: none"> The registration with the Czech commercial register can be performed by the Czech notary public by way of direct registration after all necessary documents are submitted to him/her (in particular the Plan (not necessary in this case), Pre-conversion certificate transferred by departure member state regulatory body to the Czech notary public → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review by the Czech notary public: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Czech language due to registration with the commercial register (and filing of the documents in the Collection of Deeds of the Commercial Register)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate by notary public: one – two months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effectiveness upon registration in the Czech commercial register

Cross border division from Czech Republic to other member state (1/2)



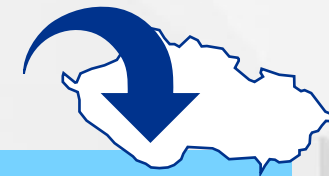
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Division types	<p>Cross border split-up (<i>Rozdělení rozštěpením</i>) with new formation (<i>se vznikem nových společností</i>) or by merger (<i>sloučením</i>): transfer of all assets and liabilities to at least two new recipient legal entities (full split-up) to be newly established or existing ones</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist <p>Cross border split-off (<i>Rozdělení odštěpením</i>) with new formation (<i>se vznikem nové společnosti</i>) or by merger (<i>sloučením</i>): transfer of part of the assets and liabilities to a new recipient legal entity or existing one</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity <p><u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions)</p> <p>Cross border spin-off (<i>Rozdělení vyčleněním</i>) with new formation (<i>se vznikem nové společnosti</i>) or by merger (<i>sloučením</i>): transfer of part of the assets and liabilities to a new recipient legal entity or existing one</p> <ul style="list-style-type: none"> Capital increase: entity spinning-off receives shares in the new or existing recipient legal entity <p><u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions)</p>
Required documentation	<p>Plan (<i>Projekt rozdělení</i>)</p> <ul style="list-style-type: none"> Main statutory content is in particular the legal forms, seats, business names and further identification details of the participating companies, share-exchange ratio, decisive date of the division, information on valuation of the assets and liabilities, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships and, as the case may be layoffs, creditors guarantees, the amount of settlement share for the case of withdrawal of a shareholder from the company etc. Plan to be prepared by the representative body (<i>statutární orgán</i>) <p>Report (<i>Zpráva o přeměně</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>statutární orgán</i>) on the effects for employees and stakeholders <p><u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions)</p> <p>Audit Report (<i>Zpráva nezávislého znalce</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <p><u>Waiver</u>: generally possible</p> <p>(As the case may be audited) financial statements of the participating companies and opening balance sheet In some cases expert valuation of the assets and liabilities</p>

Cross border division from Czech Republic to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on cross border division Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment to shareholders
Extended liability (<i>křížové ručení</i>)	<ul style="list-style-type: none"> Each of the successor companies/cooperatives is liable for the debts that passed as a result of the division from the divided company/cooperative to other successor companies/cooperatives or remained with the divided company or cooperative, jointly and severally with the other successor companies up to the amount of valuation of the property that was supposed to be transferred to the successor company/cooperative The divided company/cooperative is liable for the debts transferred to the successor company(ies)/cooperative(s), up to the amount of its equity shown in the opening balance sheet
Competent regulatory authority	<ul style="list-style-type: none"> Notary public, Register court (<i>rejstříkový soud</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months Plan (<i>Projekt přeshraničního rozdělení</i>): publication one month prior to shareholders' meeting Report (<i>Zpráva o přeměně</i>): publication six weeks prior to shareholders' meeting Audit report (<i>Znalecká zpráva o přeměně</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Formal considerations	<p>Notarization by Czech notary:</p> <ul style="list-style-type: none"> Plan – in some cases notarized signatures Shareholders' resolution – in form of a notarial deed <p>Language:</p> <ul style="list-style-type: none"> Czech language due to filing of the documents with the collection of deeds of the Czech commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-division certificate (<i>Osvědčení</i>)	<ul style="list-style-type: none"> Issued by the Czech notary public after review of all required documents Three months review period by Czech notary public, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in Czech commercial register after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the division in the respective register in the destination jurisdiction Legal effectiveness upon registration by the Czech commercial register

Cross border division from other member state to Czech Republic



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) – CZK 1 Stock corporation (<i>a.s.</i>) – CZK 2,000,000 or EUR 80,000 Limited partnership (<i>k.s.</i>) N/A Unlimited partnership (<i>v.o.s.</i>) N/A Cooperative (<i>družstvo</i>) N/A
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: cross border divisions (split-up, split-off, spin-off) to Czech Republic are also possible with an existing legal entity as recipient (<i>sloučením s existující společností</i>) → Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also provide for a division with an existing entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Notary public, Register court (<i>rejstříkový soud</i>) of seat of legal entity
Czech registration process	<ul style="list-style-type: none"> The registration with the Czech commercial register can be performed by the Czech notary public by way of direct registration after all necessary documents are submitted to him/her (in particular the Plan, financial statements, Pre-conversion certificate transferred by departure member state regulatory body to the Czech notary public → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review by the Czech notary public: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Czech language due to registration with the commercial register (and filing of the documents in the Collection of Deeds of the Commercial Register)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of necessary steps (advice & formal proceeding): one – eight months (depending on the form of division, whether with new formation (<i>se vznikem nových společností</i>) or by merger (<i>sloučením</i>)) Plan (<i>Projekt přeshraničního rozdělení</i>): publication one month prior to shareholders' meeting Report (<i>Zpráva o přeměně</i>): publication six weeks prior to shareholders' meeting Audit report (<i>Znalecká zpráva o přeměně</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Czech commercial register after positive review Legal effectiveness upon registration by the regulatory authority of the departure state

Cross border merger from Czech Republic to other member state (1/2)



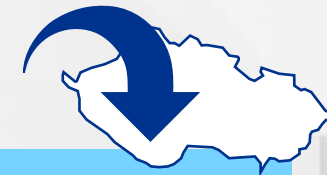
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Required documentation	<p>Plan (<i>Projekt přeshraniční fúze</i>)</p> <ul style="list-style-type: none"> Main statutory content is in particular the legal forms, seats, business names and further identification details of the participating companies, share-exchange ratio, decisive date, information of valuation of the assets and liabilities, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships and, as the case may be, layoffs, creditors guarantees, the amount of settlement share for the case of withdrawal of a shareholder from the company etc. Plan to be prepared by the representative body (<i>statutární orgán</i>) <p>Report (<i>Zpráva o přeměně</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>statutární orgán</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers) <p>Audit Report (<i>Zpráva nezávislého znalce</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: generally possible <p>(As the case may be audited) financial statements of the participating companies and opening balance sheet In some cases expert valuation of the assets and liabilities</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on conversion Mandatory compensation/acquisition offer to shareholders voting against the merger. Compensation by way of adequate cash payment to shareholders

Cross border merger from Czech Republic to other member state (2/2)



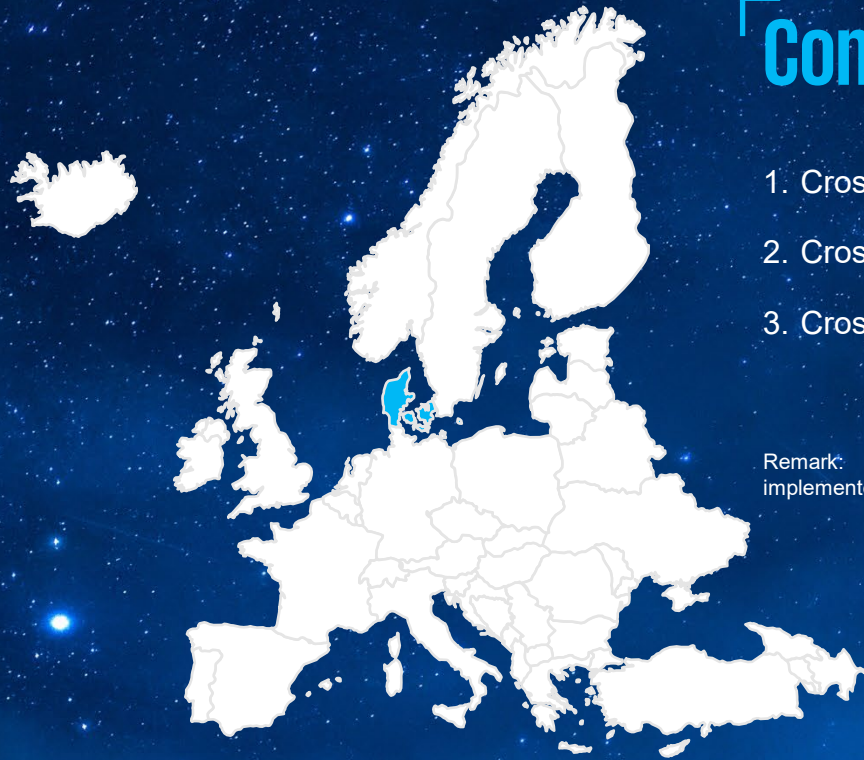
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Notary public, Register court (<i>rejstříkový soud</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months Plan (<i>Projekt přeshraniční fúze</i>): publication one month prior to shareholders' meeting Report (<i>Zpráva o přeměně</i>): publication six weeks prior to shareholders' meeting Audit report (<i>Znalecká zpráva o přeměně</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Formal considerations	<p>Notarization by Czech notary:</p> <ul style="list-style-type: none"> Plan – in some cases notarized signatures Shareholders' resolution – in form of a notarial deed <p>Language:</p> <ul style="list-style-type: none"> Czech language due to filing of the documents with the collection of deeds of the Czech commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Osvědčení</i>)	<ul style="list-style-type: none"> Issued by the Czech notary public after review of all required documents Three months review period by Czech notary public, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>Osvědčení</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> Registration in Czech commercial register after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border merger to Czech Republic



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) Stock corporation (<i>a.s.</i>) Limited partnership (<i>k.s.</i>) Unlimited partnership (<i>v.o.s.</i>) Cooperative (<i>družstvo</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>s.r.o.</i>) – CZK 1 Stock corporation (<i>a.s.</i>) – CZK 2,000,000 or EUR 80,000 Limited partnership (<i>k.s.</i>) N/A Unlimited partnership (<i>v.o.s.</i>) N/A Cooperative (<i>družstvo</i>) N/A
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>Fúze splynutím</i>) Cross border merger with an existing legal entity as recipient (<i>Fúze sloučením</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Notary public, Register court (<i>rejstříkový soud</i>) of seat of legal entity
Czech registration process	<ul style="list-style-type: none"> The registration with the Czech commercial register can be performed by the Czech notary public by way of direct registration after all necessary documents are submitted to him/her (in particular the Plan, financial statements, Pre-merger certificate transferred by departure member state regulatory body to the Czech notary public → Please see requirements for pre-conversion certificate in the respective departure member state section) Scope of review by the Czech notary public: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, if applicable, employee participation rules
Language requirements	<ul style="list-style-type: none"> Czech language due to registration with the commercial register (and filing of the documents in the Collection of Deeds of the Commercial Register)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of necessary steps (advice & formal proceeding): four – eight months Plan (<i>Projekt přeshraniční fúze</i>): publication one month prior to shareholders' meeting Report (<i>Zpráva o přeměně</i>): publication six weeks prior to shareholders' meeting Audit report (<i>Znalecká zpráva o přeměně</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Czech commercial register after positive review Legal effectiveness upon registration by the Czech commercial register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Czech merger regime does not apply to a merger from UK or Northern Ireland

Denmark



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Denmark.



Casper Guldhammer Jensen

Partner

M +45 258 34816

[casper.guldhammer.jensen@](mailto:casper.guldhammer.jensen@kpmg-law.com)

[kpmg-law.com](mailto:casper.guldhammer.jensen@kpmg-law.com)



[Back to Country Overview](#)

Cross border conversion from Denmark to other member state (1/2)



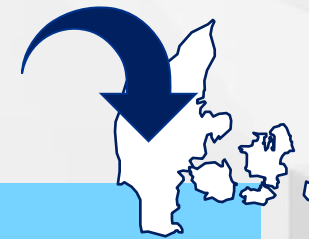
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>)
Required documentation	<p>Plan (<i>omdannelsesplan</i>)</p> <ul style="list-style-type: none"> Main statutory content: Information on the converting company, the new legal form, seat, articles of association, indicative time schedule, statement on specific rights of shareholders, including right of redemption for the shareholders, effective date for accounting purposes, effects on staff and employment relationships, compensation payment. Plan to be prepared by the central management body (<i>det centrale ledelsesorgan</i>) <p>Statement (<i>omdannelsesredøgørelse</i>)</p> <ul style="list-style-type: none"> Statement for the shareholders and employees on the effects of the conversion. Statement to be prepared by the central management body (<i>det centrale ledelsesorgan</i>) <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Statement by valuation expert(s) on the conversion plan (<i>vurderingsmandsudtalelse om omfannelsesplanen</i>)</p> <ul style="list-style-type: none"> Statement should address the shareholders' right of redemption <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declaration by the valuation expert(s) on the creditors' position (<i>vurderingsmandserklæring om kreditorenes stilling</i>)</p> <ul style="list-style-type: none"> Declaration to confirm whether the company's creditors are sufficiently covered after implementation of the conversion <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declarations by management regarding hearing of employees, sufficient security for the value of the shares and settlement of creditors' notified claims</p> <p>Statement by the company that procedures in the interests of the employees have been followed</p> <p>Minutes of the shareholders' meeting to adopt the conversion</p>
Shareholders' protection	<ul style="list-style-type: none"> $\frac{2}{3}$-majority requirement for adopting the conversion Mandatory right of redemption for shareholders voting against the conversion
Competent regulatory authority	<ul style="list-style-type: none"> The Danish Business Authority (<i>Erhvervsstyrelsen</i>)

Cross border conversion from Denmark to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceedings): three – six months • Plan: Publication four weeks prior to adoption of the conversion. <i>The plan needs to be signed before the end of the financial year in which the conversion will have effect for accounting purposes</i> • Declaration by the valuation expert(s) on the creditors' position: Publication four weeks prior to adoption of the conversion • Certificate by the Danish Business Authority to be issued within three months after registration of the conversion with the Danish Business Authority
Formal considerations	<ul style="list-style-type: none"> • Language requirements: Documents must be prepared in Danish, English, Swedish and/or Norwegian
Annual report for a financial year ending prior to the conversion	<ul style="list-style-type: none"> • If a financial year of the converting company has ended before the date of the conversion and the shareholders' meeting has not yet approved the annual report for the accounting period ended, the shareholders' meeting must approve the annual report for such accounting period on or before the date of the resolution to adopt the conversion
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Approval of any outstanding annual report (as mentioned above) • The adoption of the conversion must be registered with the Danish Business Authority within two weeks of the adoption. Relevant documents must be submitted • Certificate by the Danish Business Authority that formalities have been followed is issued to the foreign competent regulatory authority • Legal effectiveness is based on the laws of the country of the continuing legal entity (after the conversion)

Cross border conversion from other member state to Denmark



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>): DKK 40,000 Public limited liability company (<i>Aktieselskab – A/S</i>): DKK 400,000
Competent regulatory authority	<ul style="list-style-type: none"> The Danish Business Authority (<i>Erhvervsstyrelsen</i>)
Danish registration process	<ul style="list-style-type: none"> Certificate from the foreign competent regulatory authority (of the country of the converting entity) must be issued to the Danish Business Authority <ul style="list-style-type: none"> The certificate must be deemed proof that all necessary actions and formalities of the relevant country have been duly complied with Conversion plan adopted by the converting legal entity must be submitted to the Danish Business Authority The Danish Business Authority will review whether all actions and formalities have been complied with After the review, the Danish Business Authority will register the conversion
Language requirements	<ul style="list-style-type: none"> Documents must be prepared in Danish, English, Swedish and/or Norwegian
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of certificate from the foreign competent regulatory authority: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration of the conversion by the Danish Business Authority after review of compliance with actions and formalities Legal effectiveness when completion is registered by the Danish Business Authority – the Danish Business Authority notifies the relevant competent regulatory authority of the converting legal entity on effectiveness of the conversion

Cross border division from Denmark to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>) Certain other special companies with limited liability (e.g., cooperatives) are also eligible
Required documentation	<p>Plan (<i>spaltningsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content: Information on the participating legal entities, (updated) articles of association of the transferee legal entity, exchange ratio and distribution of shares to be granted, statement on specific rights of shareholders, including right of redemption for the shareholders, effective date for accounting purposes, effects on staff and employment relationships, compensation payment, description of transferred/remaining assets and liabilities and valuation of the transferred assets and liabilities. Plan to be prepared by the central management bodies (<i>de centrale ledelsesorganer</i>) of the participating legal entities <p>Statement (<i>spaltningsredegørelse</i>)</p> <ul style="list-style-type: none"> Statement for the shareholders and employees on the effects of the division. Statement to be prepared by the central management body (<i>det centrale ledelsesorgan</i>) <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders Intermediate balance (<i>mellembalance</i>) if the plan is signed no earlier than six months after the end of the last financial year <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders Valuation report on non-cash contributions <u>Waiver</u>: Not required if either a statement by valuation expert(s) on the plan or a declaration by the valuation expert(s) on the creditors' position is prepared <p>Statement by valuation expert(s) on the plan (<i>vurderingsmandsudtalelse om spaltningsplanen</i>) if there is more than one shareholder of transferor company</p> <ul style="list-style-type: none"> Statement should address the shareholders' right of redemption <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declaration by the valuation expert(s) on the creditors' position (<i>vurderingsmandserklæring om kreditorernes stilling</i>)</p> <ul style="list-style-type: none"> Declaration to confirm whether the company's creditors are sufficiently covered after implementation of the division <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declarations by management regarding hearing of employees, sufficient security for the value of the shares and settlement of creditors' notified claims</p> <p>Statement by the company that procedures in the interests of the employees have been followed</p> <p>Minutes of the shareholders' meeting to adopt the division</p>

Cross border division from Denmark to other member state (2/2)



Topic	Prerequisites
Division types	<ul style="list-style-type: none"> • Dissolution of the transferor company through cross border split-up (<i>ophørsspaltning</i>): Dissolution of the transferor company through transfer of all assets and liabilities to at least two transferee legal entities • Transfer of specific assets/liabilities through cross border split-off (<i>gren-spaltning</i>): Transfer of specific assets/liabilities of the transferor company to at least one transferee legal entity
Shareholders' protection	<ul style="list-style-type: none"> • 2/3-majority requirement for adopting the division • Mandatory right of redemption for shareholders voting against the division
Competent regulatory authority	<ul style="list-style-type: none"> • The Danish Business Authority (<i>Erhvervsstyrelsen</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceedings): three – six months • Plan: Publication four weeks prior to adoption of the division. <i>The plan needs to be signed before the end of the financial year in which the division will have effect for accounting purposes</i> • Declaration by the valuation expert(s) on the creditors' position: Publication four weeks prior to adoption of the division • Certificate by the Danish Business Authority to be issued within three months after registration of the division with the Danish Business Authority
Formal considerations	<ul style="list-style-type: none"> • Language requirements: Documents must be prepared in Danish, English, Swedish and/or Norwegian
Annual report for a financial year ending prior to the conversion	<ul style="list-style-type: none"> • If a financial year of the transferor company has ended before the date of the division and the shareholders' meeting has not yet approved the annual report for the accounting period ended, the shareholders' meeting must approve the annual report for such accounting period on or before the date of the resolution to adopt the division
Legal effectiveness of division	<ul style="list-style-type: none"> • Approval of any outstanding annual report (as mentioned above) • The adoption of the division must be registered with the Danish Business Authority within two weeks of the adoption. Relevant documents must be submitted • Certificate by the Danish Business Authority that formalities have been followed is issued to the relevant foreign competent regulatory authorities • When the competent regulatory authorities of the countries of the transferee legal entities notify the Danish Business Authority that the transferee companies have been duly registered, the Danish Business Authority registers the completion of the division • Legal effectiveness when completion is registered by the Danish Business Authority – the Danish Business Authority notifies relevant competent regulatory authorities of foreign countries on the legal effectiveness of the division

Cross border division from other member state to Denmark



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>) Certain other special companies with limited liability (e.g., cooperatives) are also eligible
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>): DKK 40,000 Public limited liability company (<i>Aktieselskab – A/S</i>): DKK 400,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: Cross border divisions (split-up, split-off) to Denmark are also possible with an existing (Danish) legal entity as transferee → <u>Please see requirements of the local rules of the country of the transferor legal entity.</u> For purposes of legal certainty, the country of the transferor legal entity should also provide for a division with an existing entity as transferee
Competent regulatory authority	<ul style="list-style-type: none"> The Danish Business Authority (<i>Erhvervsstyrelsen</i>)
Danish registration process	<p>Certificate from the foreign competent regulatory authority (of the country of the transferor entity) must be issued to the Danish Business Authority</p> <ul style="list-style-type: none"> The certificate must be deemed proof that all necessary actions and formalities of the relevant country have been duly complied with Division plan adopted by the converting company must be submitted to the Danish Business Authority The Danish Business Authority will review whether all actions and formalities have been complied with After the review, the Danish Business Authority will register the division
Language requirements	<ul style="list-style-type: none"> Language requirements: Documents must be prepared in Danish, English, Swedish and/or Norwegian
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of certificate from the foreign competent regulatory authority: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration of the division by the Danish Business Authority after review of compliance with actions and formalities Legal effectiveness is based on the laws of the departure member state of the transferor legal entity

Cross border merger from Denmark to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>) Certain other special companies with limited liability (e.g., cooperatives) are also eligible
Required documentation	<p>Plan (<i>fusionsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content: Information on the participating legal entities, (updated) articles of association of the surviving entity, exchange ratio and distribution of shares to be granted, statement on specific rights of shareholders, including right of redemption for the shareholders, effective date for accounting purposes, effects on staff and employment relationships, compensation payment, valuation of the transferred assets and liabilities. Plan to be prepared by the central management bodies (<i>de centrale ledelsesorganer</i>) of the participating legal entities <p>Statement (<i>fusionsredegørelse</i>)</p> <ul style="list-style-type: none"> Statement for the shareholders and employees on the effects of the merger. Statement to be prepared by the central management body (<i>det centrale ledelsesorgan</i>) <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders Valuation report on non-cash contributions <u>Waiver</u>: Not required if either a statement by valuation expert(s) on the plan or a declaration by the valuation expert(s) on the creditors' position is prepared Statement by valuation expert(s) on the plan (<i>vurderingsmandsudtalelse om fusionsplanen</i>) if there is more than one shareholder of the participating legal entities Statement should address the shareholders' right of redemption <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declaration by the valuation expert(s) on the creditors' position (<i>vurderingsmandserklæring om kreditorernes stilling</i>)</p> <ul style="list-style-type: none"> Declaration to confirm whether the relevant company's creditors are sufficiently covered after implementation of the merger <u>Waiver</u>: Possible to waive preparation of the statement if unanimously decided by the shareholders <p>Declarations by management regarding hearing of employees, sufficient security for the value of the shares and settlement of creditors' notified claims</p> <p>Statement by the company that procedures in the interests of the employees have been followed</p> <p>Minutes of the shareholders' meeting to adopt the merger</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the non-surviving legal entity may receive new shares in the surviving legal entity, subject to the applicable procedures of the country of the surviving legal entity <u>Vertical merger</u>: A surviving legal entity merging with its subsidiary cannot receive remuneration for its shares of the subsidiary

Cross border merger from Denmark to other member state (2/2)



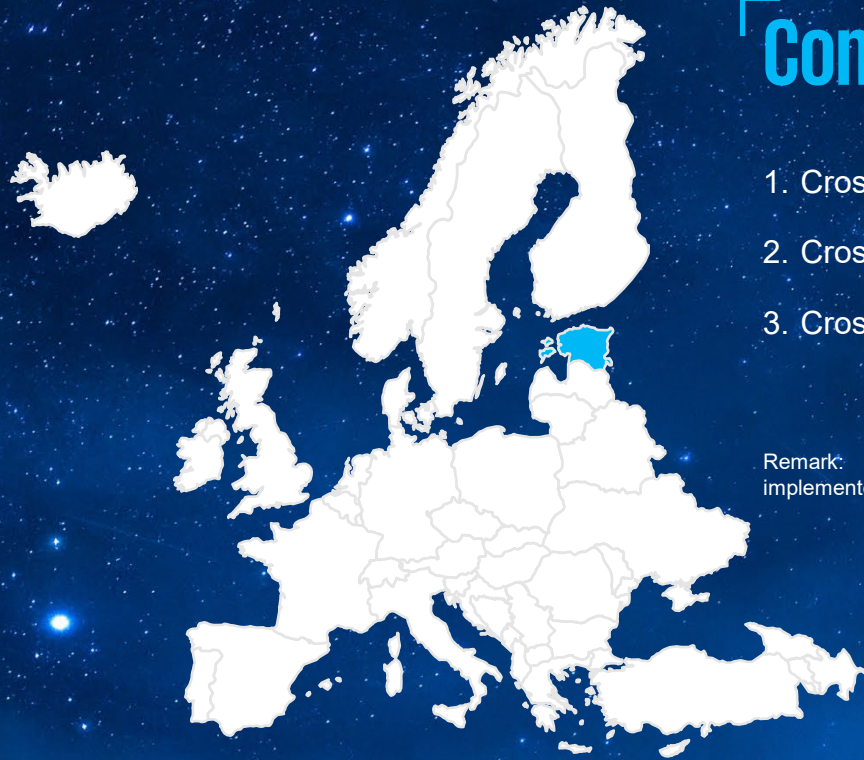
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> • 2/3-majority requirement for adopting the merger • Mandatory right of redemption for shareholders voting against the merger
Competent regulatory authority	<ul style="list-style-type: none"> • The Danish Business Authority (<i>Erhvervsstyrelsen</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceedings): three – six months • Plan: Publication four weeks prior to adoption of the merger. The plan needs to be signed before the end of the financial year in which the merger will have effect for accounting purposes • Declaration by the valuation expert(s) on the creditors' position: Publication four weeks prior to adoption of the merger • Certificate by the Danish Business Authority to be issued within three months after registration of the merger with the Danish Business Authority
Formal considerations	<ul style="list-style-type: none"> • Language requirements: Documents must be prepared in Danish, English, Swedish and/or Norwegian
Annual report for a financial year ending prior to the conversion	<ul style="list-style-type: none"> • If a financial year of the non-surviving company has ended before the date of the merger and the shareholders' meeting has not yet approved the annual report for the accounting period ended, the shareholders' meeting must approve the annual report for such accounting period on or before the date of the resolution to adopt the merger
Legal effectiveness of merger	<ul style="list-style-type: none"> • Approval of any outstanding annual report (as mentioned above) • The adoption of the merger must be registered with the Danish Business Authority within two weeks of the adoption. Relevant documents must be submitted • Certificate by the Danish Business Authority that formalities have been followed is issued to the foreign competent regulatory authority • Legal effectiveness is based on the laws of the country of the surviving legal entity

Cross border merger to Denmark



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>) Public limited liability company (<i>Aktieselskab – A/S</i>) Certain other special companies with limited liability (e.g., cooperatives) are also eligible
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>Anpartsselskab – ApS</i>): DKK 40,000 Public limited liability company (<i>Aktieselskab – A/S</i>): DKK 400,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a newly formed company as the surviving entity, i.e., merger by formation of a new company (<i>egentlig fusion</i>) Cross border merger with an existing company as the surviving entity, i.e., merger by absorption (<i>uegentlig fusion</i>)
Competent regulatory authority	<ul style="list-style-type: none"> The Danish Business Authority (<i>Erhvervsstyrelsen</i>)
Danish registration process	<ul style="list-style-type: none"> Certificate from the foreign competent regulatory authority (of the country of the non-surviving entity) must be issued to the Danish Business Authority <ul style="list-style-type: none"> The certificate must be deemed proof that all necessary actions and formalities of the relevant country have been duly complied with Merger plan adopted by the converting company must be submitted to the Danish Business Authority The Danish Business Authority will review whether all actions and formalities have been complied with After the review, the Danish Business Authority will register the merger
Language requirements	<ul style="list-style-type: none"> Language requirements: Documents must be prepared in Danish, English, Swedish and/or Norwegian
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of certificate from the foreign competent regulatory authority: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration of the merger by the Danish Business Authority after review of compliance with actions and formalities Legal effectiveness when completion is registered by the Danish Business Authority – the Danish Business Authority notifies relevant competent regulatory authorities of foreign countries on the legal effectiveness of the merger

Estonia



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Estonia.



Karin Oras

Partner

M +372 507 9241

karin.oras@kpmglaw.ee



[Back to Country Overview](#)

Cross border conversion from Estonia to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited company (<i>OÜ</i>) Public limited company (<i>AS</i>)
Required documentation	<p>Transformation report (<i>Ümberkujundamisaruanne</i>)</p> <ul style="list-style-type: none"> The transformation report must explain the effect of the transformation on the partners or shareholders of the company and the employees of the private limited company or the public limited company. The part of the report describing the effect of the transformation on the employees may be formalized separately <p>Transformation resolution (<i>Ümberkujundamisotsus</i>)</p> <ul style="list-style-type: none"> A transformation resolution shall set out: the class of company to be formed as a result of the transformation; the business name of the company; the share exchange ratio of the partners or shareholders of the company being transformed; the rights granted to the partners or shareholders of the company, including the holders of preferred shares and convertible bonds; the consequences of the transformation for the employees; if the company is transformed into a private limited company or public limited company, the amount of share capital; the date as of which the transactions of the company being transformed shall be deemed to be undertaken by the transformed company (transformation balance sheet date); the registered office of the transformed company and the company being transformed; the preliminary schedule for the cross border transformation; the compensation offered to the shareholders (the shareholder of a company being transformed who does not agree to the transformation resolution has the right to transfer a share or shares or to demand that the transformed company acquire share(s) of the shareholder for monetary compensation); the principles for the protection of creditors, including the security offered; the advantages granted to the members of the managing bodies of the company; the advantages or support received by the company during five years preceding the preparation of the draft transformation resolution <p>Audit report (<i>Auditori aruanne</i>)</p> <ul style="list-style-type: none"> The draft transformation resolution must be audited by an auditor who prepares a written report on the results of the audit
Shareholders' protection	<ul style="list-style-type: none"> The shareholders' meeting of the company being transformed may reserve the right to make approval of the transformation resolution conditional on express approval by it of the arrangements with respect to the participation of employees of the transformed company in the management of the company Upon transformation, a partner or shareholder of the company being transformed who opposes the transformation resolution may, within two months after entry of the transformation in the register, demand that the new company acquire the exchanged share or shares of the partner or shareholder for monetary compensation. The amount of monetary compensation must be equal to the money which the partner or shareholder would have received from the distribution of remaining assets upon liquidation of the company if the company had been liquidated at the time the transformation resolution was made
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Äriregister</i>)

Cross border conversion from Estonia to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> Transformation report (<i>Ümberkujundamisaruanne</i>): is made electronically accessible to the partners or shareholders of the company and to the representatives of the employees, or where there are no such representatives, to the employees themselves, not later than six weeks before the shareholders' meeting where the transformation resolution is adopted Transformation resolution (<i>Ümberkujundamisotsus</i>): the company discloses the draft transformation resolution and submits it to the commercial register for disclosure in such manner that in both cases it would be disclosed not later than one month before the shareholders' meeting where the transformation resolution is adopted Audit Report (<i>Audiitori aruanne</i>): the auditor's report is made accessible to the partners or shareholders of the company not later than one month before the shareholders' meeting where the transformation resolution is adopted
Formal considerations	Language: <ul style="list-style-type: none"> Estonia language due to registration with the commercial register
Pre-conversion certificate	<ul style="list-style-type: none"> The registrar issues a certificate confirming the conformity of the transformation with the requirements of law to a company being transformed which has been registered in the Estonian commercial register Three months review period by Estonian commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> Transmission of pre-conversion certificate to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border conversion from other member state to Estonia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited company (OÜ) Public limited company (AS)
Share capital requirements	<ul style="list-style-type: none"> Private limited company (OÜ): EUR 0.01 Public limited company (AS) EUR 25,000
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Ärregister</i>)
Estonian registration process	<ul style="list-style-type: none"> Where a company registered in the Estonian commercial register participates in a cross border transformation as the transformed company, the company being transformed which falls under the jurisdiction of a Contracting State submits to the registrar a copy of the transformation resolution and makes a reference to the certificate of the court, notary or other competent authority of the corresponding Contracting State stating that the requirements for transformation have been fulfilled and pre-transformation acts have been concluded with respect to the company being transformed which falls under the jurisdiction of such Contracting State
Language requirements	<ul style="list-style-type: none"> Estonian language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate by commercial register: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in Estonian commercial register after positive review Legal effectiveness upon registration by the Estonian commercial register

Cross border division from Estonia to other member state (1/2)



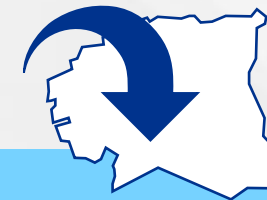
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited company (OÜ) Public limited company (AS)
Division types	<ul style="list-style-type: none"> Distribution: Upon distribution, the company being divided shall transfer its assets to the recipient companies. A recipient company may be an existing or new company. Upon distribution, the company being divided shall be deemed to be dissolved Separation: Upon separation, the company being divided shall transfer part of its assets to one or several recipient companies. A recipient company may be an existing or new company
Required documentation	<p>Division agreement (<i>Jagunemisleping</i>):</p> <ul style="list-style-type: none"> A subdivision agreement shall set out: the preliminary schedule of the cross border division; the compensation offered to the partners or shareholders and the procedure for determination thereof; the principles for the protection of creditors, including the security offered; the advantages granted to the members of the managing bodies of the company being divided <p>Division report (<i>Jagunemisaruanne</i>):</p> <ul style="list-style-type: none"> The division report must also explain the effect of the division on the partners or shareholders of the company and the employees of the private limited company or the public limited company. The management boards of or the partners entitled to represent the companies participating in a division shall prepare a written report (division report) in which the division and division agreement shall be explained and justified legally and economically. Upon distribution or separation whereby shares are exchanged with the partners or shareholders of the company being divided, the share exchange ratio, the distribution of shares of the companies participating in the division among the partners or shareholders of the company being divided, and the amount of additional payments, if additional payments are to be made, shall be justified in the report. Difficulties relating to valuation shall be referred to separately in the report <p>Audit report (<i>Audiitori aruanne</i>):</p> <ul style="list-style-type: none"> Upon cross border division, the division agreement must be audited by an auditor who prepares a written report on the results of the audit <p>Division resolution (<i>Jagunemisotsus</i>):</p> <ul style="list-style-type: none"> Rights and obligations shall arise from a division agreement if the division agreement is approved by all companies participating in the division. A division resolution shall be in writing <p>Final balance sheet (<i>Lõppbilanss</i>):</p> <ul style="list-style-type: none"> Upon distribution, the final balance sheet of the company being dividend shall be drafted. Final balance sheet of the company being divided shall be drafted at a date not earlier than eight months before submission of the petition to the commercial register

Cross border division from Estonia to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The shareholders' meeting of the company being divided may reserve the right to make approval of the division resolution conditional on express approval by it of the procedure for the participation of employees of the recipient company in the management of the company Upon participation of companies of different types in a division, a partner or shareholder of the company being divided who opposes the division resolution may, within two months after entry of the division on the registry card of the company being divided, demand that the recipient company acquire the exchanged share or shares of the partner or shareholder for monetary compensation
Extended liability	<ul style="list-style-type: none"> Companies participating in a division shall be jointly and severally liable for the obligations of the company being divided which arise before entry of the division on the registry card of the company being divided In case of a cross border division, the joint and several liability is limited to the value of the net assets transferred to the company being divided as of the date of entry into force of the division
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Äriregister</i>)
Timing	<ul style="list-style-type: none"> Division report (<i>Jagunemisaruanne</i>): The cross border division report together with a draft cross border division resolution is made electronically accessible to the partners or shareholders of the company and to the representatives of the employees, or where there are no such representatives, to the employees themselves, not later than six weeks before the shareholders' meeting where the division resolution is adopted Auditor report (<i>Auditori aruanne</i>): The auditor's report is made accessible to the partners or shareholders of the company not later than one month before the shareholders' meeting where the division resolution is adopted Division agreement (<i>Jagunemisleping</i>): The company discloses the division agreement and submits it to the commercial register for disclosure in such manner that in both cases it would be disclosed not later than one month before the shareholders' meeting where the division resolution is adopted
Formal considerations	<p>Notarization:</p> <ul style="list-style-type: none"> Division agreement shall be notarized
Pre-division certificate	<ul style="list-style-type: none"> The registrar issues a certificate confirming the conformity of the division with the requirements of law to a company being divided which has been entered in the Estonian commercial register The registrar sends the certificate to the court, notary or other competent authority of the destination state, via the system of interconnection of registers of the European Union within three months after receipt of the petition and documents Three months review period by Estonian commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration Legal effectiveness upon registration by the Estonian commercial register

Cross border division from other member state to Estonia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited company (OÜ) Public limited company (AS)
Share capital requirements	<ul style="list-style-type: none"> Private limited company (OÜ): EUR 0.01 Public limited company (AS) EUR 25,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: In case of distribution or separation a recipient company may be an existing or new company
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Ärregister</i>)
Estonian registration process	<ul style="list-style-type: none"> Where a company entered in the Estonian commercial register participates in a cross border division as the recipient company, the company being divided which falls under the jurisdiction of a Contracting State submits to the registrar a copy of the division resolution and makes a reference to the certificate of the court, notary or other competent authority of the corresponding Contracting State stating that the requirements for division have been fulfilled and pre-division acts have been concluded with respect to the company being divided which falls under the jurisdiction of such Contracting State Where a company registered or to be registered in the Estonian commercial register participates in a cross border division as the recipient company, the registrar immediately gives notice of the division entry to a court, notary or other competent authority of the Contracting State under whose jurisdiction the company being divided falls and, if the shares of the recipient company are entered in the Estonian register of securities or another depository, informs also the registrar of the Estonian register of securities or another depository thereof
Language requirements	<ul style="list-style-type: none"> Estonian language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate by commercial register: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Estonian commercial register after positive review Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Estonia to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited company (OÜ) Public limited company (AS)
Required documentation	<p>Merger Agreement (<i>Ühinemisleping</i>)</p> <ul style="list-style-type: none"> The merger agreement includes the business names and registered offices of the companies, the type of the company being acquired and the acquiring company; in the case of the right to receive a share of the profit, the specifics for performance of such right; information concerning the evaluation of the assets to be transferred to the acquiring company; the dates of the financial statements used for determining the terms and conditions for the merger; in the case provided by law, the data concerning the participation by the employees in the management of the company. The articles of association of the acquiring company shall also be annexed to the merger agreement <p>Merger report (<i>Ühinemisaruanne</i>)</p> <ul style="list-style-type: none"> The merger report must also explain the effect of the merger on the partners or shareholders of the company and the employees of the private limited company or the public limited company. Merger report shall explain and justify legally and economically the merger and merger agreement, including the share Exchange ratio and amount of additional payments if additional payments are to be made. Difficulties relating to valuation shall be referred to separately in the report <p>Audit report (<i>Audiitori aruanne</i>)</p> <ul style="list-style-type: none"> Upon cross border merger, the merger agreement must be audited by an auditor who prepares a written report on the results of the audit <p>Final balance sheet (<i>Lõppbilanss</i>)</p> <ul style="list-style-type: none"> Final balance sheet of the company being acquired is prepared as at a date not earlier than eight months before its submission to the commercial register
Capital increase	<ul style="list-style-type: none"> If the share capital is increased in the course of cross border merger, the management board of the acquiring company shall submit a petition for the entry of the increase of the share capital within one year after the resolution to increase the share capital was adopted
Shareholders' protection	<ul style="list-style-type: none"> The shareholders' meeting of the company being acquired may reserve the right to make approval of the merger resolution conditional on express approval by the acquiring company of the procedure for participation of employees of the acquiring company in the management of the company Where the acquiring company falls under the jurisdiction of another Contracting State, the shareholder of a company being acquired which has been entered in the Estonian commercial register who does not agree to the merger resolution has the right to transfer the shares thereof or to demand that the acquiring company acquire the exchanged share or shares of the shareholder for monetary compensation, by communicating it to the company's e-mail address within one month after the merger resolution is adopted

Cross border merger from Estonia to other member state (2/2)



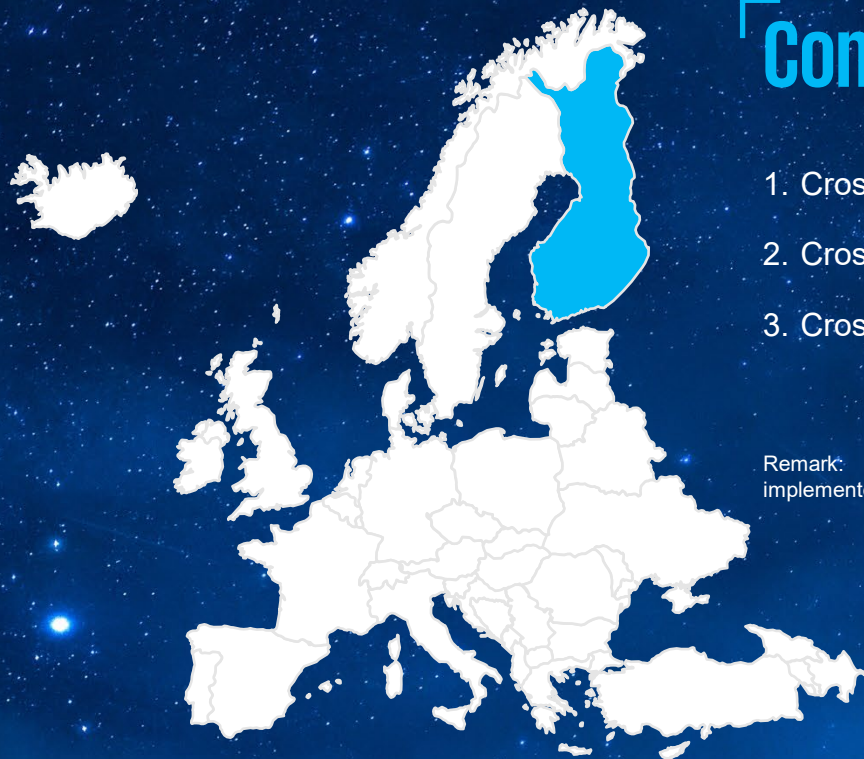
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Äriregister</i>)
Timing	<ul style="list-style-type: none"> Merger Agreement (<i>Ühinemisleping</i>): The company discloses the merger agreement and submits it to the commercial register for disclosure in such manner that in both cases it would be disclosed not later than one month before the shareholders' meeting where the merger resolution is adopted Merger Report (<i>Ühinemisaruanne</i>): merger report together with a draft cross border merger agreement is made electronically accessible to the shareholders of the company and to the representatives of the employees, or where there are no such representatives, to the employees themselves, not later than six weeks before the shareholders' meeting where the merger resolution is adopted Audit Report (<i>Audiitori aruanne</i>): The auditor's report is made accessible to the partners or shareholders of the company not later than one month before the shareholders' meeting where the merger resolution is adopted
Formal considerations	<p>Notarization:</p> <ul style="list-style-type: none"> A Merger Agreement shall be notarised <p>Language:</p> <ul style="list-style-type: none"> Estonian language due to registration with the commercial register
Pre-merger certificate	<ul style="list-style-type: none"> Issued by the Estonian commercial register after filing of all required documents by the representative body of the transferring legal entity and positive review Three months review period by Estonian commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> After receiving a notice concerning the merger having taken place from a court, notary or other competent authority of the Contracting State under whose jurisdiction the acquiring company falls, the registrar shall make an entry in the commercial register concerning the date on which, according to the received notice, the merger took place, and, if the shares of the company being acquired are entered in the Estonian register of securities or another depository, shall also inform the registrar of the Estonian register of securities or another depository thereof The merger is deemed to have taken place in accordance with the law of the member state to which the acquiring company is subject

Cross border merger to Estonia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited company (OÜ) Public limited company (AS)
Share capital requirements	<ul style="list-style-type: none"> Private limited company (OÜ): EUR 0.01 Public limited company (AS) EUR 25,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Company registered or to be registered in the Estonian commercial register participates in a cross border merger as the acquiring company
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Äriregister</i>)
Estonian registration process	<ul style="list-style-type: none"> The company being acquired which falls under the jurisdiction of a Contracting State submits to the registrar a copy of the transformation resolution and makes a reference to the certificate of the court, notary or other competent authority of the corresponding Contracting State stating that the requirements for merger have been fulfilled and pre-merger acts have been concluded with respect to the company being acquired which falls under the jurisdiction of such Contracting State, and that the certificate has been sent to the registrar via the system of interconnection of registers of the European Union The registrar shall immediately give notice of the merger entry to a court, notary or other competent authority of the Contracting State under whose jurisdiction the company being acquired falls and, if the shares of the acquiring company are entered in the Estonian register of securities or another depository, shall also inform the registrar of the Estonian register of securities or another depository thereof
Language requirements	<ul style="list-style-type: none"> Estonian language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate by commercial register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Estonian commercial register after positive review Legal effectiveness upon registration by the Estonian commercial register

Finland



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Finland.



Kai Soini

Partner

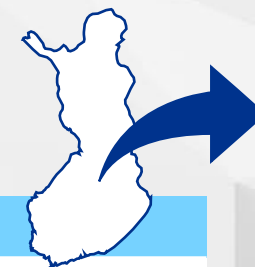
M +358 207 603273

kai.soini@kpmg.fi



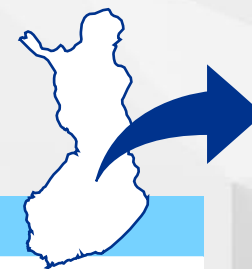
[Back to Country Overview](#)

Cross border conversion from Finland to other member state (1/2)



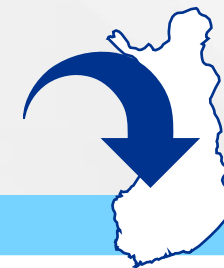
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Private limited liability company (<i>Oy</i>) • Public limited liability company (<i>Oyj</i>) • A cross border conversion can be implemented only if the foreign company corresponds to a Finnish limited liability company: <ul style="list-style-type: none"> – that is a company referred to in appendix II of Directive (2017/1132/EU) or another comparable company which: <ul style="list-style-type: none"> a) has equity or other comparable capital; b) is a legal person; c) has assets that stand alone against the liabilities of the company; and d) is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU – that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office
Required documentation	<ul style="list-style-type: none"> • Transfer plan • Notification to shareholders, creditors and employees regarding their right to deliver to the company written comments on the transfer plan • Statement by the board of directors to shareholders and employees on the reasons of the transfer, legal and financial aspects such as the effects on the future business, as well as the effects on shareholders and employees <ul style="list-style-type: none"> – Statement to shareholders does not need to be prepared if all shareholders have agreed to waive it – Statement to employees does not need to be prepared if the transferring company and its subsidiaries have no employees other than those who belong to the board of directors of the company • Auditor's statement or statement of an independent expert • Trade register notification and application for a public notice to creditors • Written notification to creditors • Conversion decision • Petition for the permission to implement the conversion
Shareholders' protection	<ul style="list-style-type: none"> • The decision of the shareholders' meeting on the conversion shall be made by a qualified majority ($\frac{2}{3}$) of votes and shares represented at the shareholders' meeting. The company's articles of association may require on higher majority requirement. However, the requirement for a majority may not exceed 90% of votes and shares represented at the shareholders' meeting • The shareholder may demand the redemption of his/her shares at the shareholders' meeting and the holder of option rights or other special rights entitling to shares may demand the redemption of his/her rights before or at the shareholders' meeting. If no agreement is reached with the company on the redemption of the shares or other rights entitling shares or on the terms of the redemption, the shareholder or the holder of rights entitling to shares has the right to submit the matter to arbitration no later than within one month from the shareholders' meeting. The pending redemption procedure does not prevent the registration of the conversion
Competent regulatory authority	<ul style="list-style-type: none"> • Finnish Patent and Registration Office

Cross border conversion from Finland to other member state (2/2)



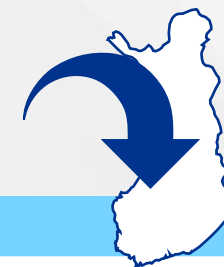
Topic	Prerequisites
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – eight months</p> <ul style="list-style-type: none"> Submitting the transfer plan, declaration on the delivery of the notification to shareholders, creditors and employees, statement by the board of directors and auditor's statement for registration: within one month from the signing of the transfer plan Public notice to creditors: shall be applied within one month of registering the transfer plan. The Finnish Patent and Registration Office shall publish the public notice in the Official Gazette no later than three months before the due date set forth in the public notice. The known creditors of the transferring company whose receivables have arisen before the registration of the transfer plan have the right to object to the conversion Written notification to creditors: no later than one month before the due date set forth in the public notice Shareholders' meeting: within four months of the registration of the transfer plan. In any event, the shareholders' meeting shall be held no later than one month before the due date of the public notice, unless all shareholders and all holders of option rights or other special rights entitling to shares have waived their right to demand redemption Petition for the permission to implement the conversion: within six months from the conversion decision If applicable, payment of the redemption price stated in the transfer plan within two months from the effective date of the conversion unless an earlier date of payment has been stated in the transfer plan or agreed upon between the parties. If the redemption procedure has been submitted to arbitration the redemption price shall be paid within one month from the issue of non-appealable judgment, in any event not before the registration of the conversion
Formal considerations	<ul style="list-style-type: none"> Notarization: not applicable <p>Language:</p> <ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared → <u>Please see other country sections for requirements of the respective destination state</u>
Pre-conversion certificate	<ul style="list-style-type: none"> The Finnish Patent and Registration Office issues a certificate, to the effect that the measures required for the conversion have been carried out and the formalities have been completed, after positive review of the conditions for the conversion in the permit procedure within three months from filing of all required documents by the transferring Finnish company, with an additional up to three months in case of reasonable grounds of fraudulent or abusive action The certificate shall be delivered to the competent authority of the destination state within six months from the issue of the certificate
Legal effectiveness of conversion	<ul style="list-style-type: none"> The Finnish Patent and Registration Office shall without delay and on its own motion deregister the transferred Finnish company from the register upon receipt of notification by the competent authority of the destination state or on the basis of other reliable evidence Legal effectiveness upon registration by the competent authority of the destination state

Cross border conversion from other member state to Finland (1/2)



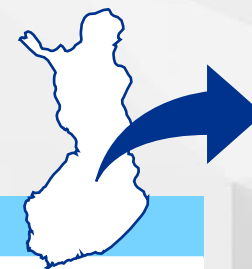
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> • Private limited liability company (<i>Oy</i>) • Public limited liability company (<i>Oyj</i>) • A cross border conversion can be implemented only if the foreign company corresponds to a Finnish limited liability company: <ul style="list-style-type: none"> – that is a company referred to in appendix II of Directive (2017/1132/EU) or another comparable company which: <ul style="list-style-type: none"> a) has equity or other comparable capital; b) is a legal person; c) has assets that stand alone against the liabilities of the company; and d) is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU – that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office
Share capital requirements	<ul style="list-style-type: none"> • Private limited liability company EUR 0 (i.e., there is no share capital requirement in a private limited liability company) • Public limited liability company EUR 80,000
Competent regulatory authority	<ul style="list-style-type: none"> • Finnish Patent and Registration Office
Finnish registration process	<p>Notification by the foreign transferring company of the incorporation of the transferring company: after the transfer plan has been notified for registration to the competent authority of the origin state</p> <ul style="list-style-type: none"> • The Finnish Patent and Registration Office preliminary reviews the transfer plan, proposed trade name and articles of association and issues a Finnish business identification number • The incorporation notification can be submitted also at a later stage in connection with the notification of the implementation of the conversion <p>Notification by the foreign transferring company of the implementation of the conversion: within six months from the conversion decision and of the receipt of a certificate from the competent authority of the state whose legislation applies to the foreign transferring company, to the effect that the measures required for the conversion have been carried out and the formalities have been completed</p> <ul style="list-style-type: none"> • The notification shall include in particular declaration of the board of directors and the managing director confirming that the conversion has been set up according to the provisions in the Finnish Limited Liability Companies Act, transfer plan, conversion decision and pre-conversion certificate

Cross border conversion from other member state to Finland (2/2)



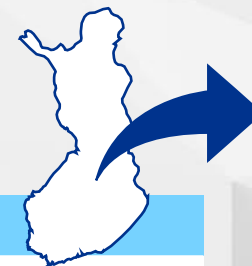
Topic	Prerequisites
Language requirements	<ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared → <u>Please see other country sections for requirements of the respective origin state</u>
Timing	<ul style="list-style-type: none"> Estimated overall timeframe mainly depended on the timing of the required measures and formalities in the respective origin state Estimated overall timeframe for completion of inbound steps after the receipt of pre-conversion certificate by the Finnish Patent and Registration Office: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> After positive review of the conditions for the conversion, the Finnish Patent and Registration Office shall without delay and on its own motion register the transferred company and notify the competent authority of the origin state of the registration of the conversion Legal effectiveness upon registration by the competent authority of the departure state

Cross border division from Finland to other member state (1/3)



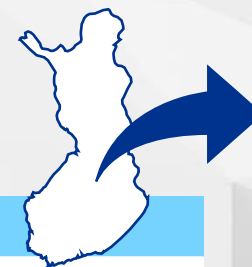
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Private limited liability company (<i>Oy</i>) • Public limited liability company (<i>Oyj</i>) • A cross border division can be implemented only if the foreign company corresponds to a Finnish limited liability company: <ul style="list-style-type: none"> – that is a company referred to in appendix II of Directive 2017/1132/EU or another comparable company which: <ul style="list-style-type: none"> a) has equity or other comparable capital; b) is a legal person; c) has assets that stand alone against the liabilities of the company; and d) is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU – that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office
Division types	<ul style="list-style-type: none"> • Full division: all of the assets and liabilities of the demerging company are transferred to two or more acquiring companies and the demerging company dissolves • Partial division: some of the assets and liabilities of the demerging company are transferred to one or several acquiring companies • Partial division carried out downstream: some of the assets and liabilities of the demerging company are transferred to one or several acquiring companies in exchange for the acquiring companies' shares or securities, which are given to the demerging company • Division into an existing company means a division where the acquiring company has been incorporated before the implementation of the division, and division into a company to be incorporated means a division where the acquiring company is incorporated in the context of the division. A full and partial divisions may proceed into an existing company and into a company to be incorporated at the same time. Partial division carried out downstream may proceed only into a company to be incorporated
Required documentation	<ul style="list-style-type: none"> • Division plan • Notification to shareholders, creditors and employees regarding their right to deliver to the company written comments on the division plan • Statement by the board of directors to shareholders and employees on the reasons of the division, legal and financial aspects such as the effects on the future business, as well as the effects on shareholders and employees <ul style="list-style-type: none"> – Statement to shareholders does not need to be prepared if all shareholders have agreed to waive it – Statement to employees does not need to be prepared if the demerging company and its subsidiaries have no employees other than those who belong to the board of directors of the company – Statement does not need to be prepared if the partial division is carried out downstream • Statement of an independent expert on the division plan and statement by the board • Trade register notification and application for a public notice to creditors • Written notification by the company to the creditors • Division decision • Petition for the permission to implement the division • Final accounts of the demerging company (applicable in full division)

Cross border division from Finland to other member state (2/3)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The decision of the shareholders' meeting on the division shall be made by a qualified ($\frac{2}{3}$) majority of votes and shares represented at the shareholders' meeting In division into existing company, the shareholder may demand the redemption of his/her division consideration at the shareholders' meeting and the holder of option rights or other special rights entitling to shares may demand the redemption of his/her rights before or at the shareholders' meeting (not applicable in the partial division carried out downstream). If no agreement is reached with the company on the redemption of the division consideration or other rights entitling shares or on the terms of the redemption, the shareholder or the holder of rights entitling to shares has the right to submit the matter to arbitration no later than within one month from the shareholders' meeting The shareholder may demand additional cash consideration at the shareholders' meeting if, according to the shareholder's view, the share exchange ratio proposed in the division plan is inappropriately low and the shareholder has not demanded the redemption of her/his division consideration (not applicable in the partial division carried out downstream). If no agreement is reached with the company on the additional cash consideration, the shareholder has the right to submit the matter to arbitration no later than within one month from the shareholders' meeting
Competent regulatory authority	<ul style="list-style-type: none"> Finnish Patent and Registration Office
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – eight months</p> <ul style="list-style-type: none"> Submitting the division plan, declaration on the delivery of the notification to shareholders, creditors and employees, statement by the board of directors and statement of an independent expert for registration: within one month from the signing of the division plan Public notice to creditors: shall be applied within one month from the registration of the division plan. The Finnish Patent and Registration Office shall publish the public notice in the Official Gazette no later than three months before the due date set forth in the public notice. The known creditors of the demerging company whose receivables have arisen before the registration of the division plan have the right to object to the division Written notification by the company to the creditors: no later than one month before the due date set forth in the public notice Merger decision: no later than four months from the registration of the division plan. In any event, the shareholders' meeting shall be held no later than one month before the due date of the public notice, unless all shareholders and all holders of option rights or other special rights entitling to shares have waived their right to demand redemption Petition for permission to implement the division: within six months of the division decision If applicable, payment of the redemption price stated in the division plan within two months from the effective date of the division unless an earlier date of payment has been stated in the division plan or agreed upon between the parties. If redemption of shares or other rights entitling to shares or demand for additional cash consideration procedures have been submitted to arbitration the redemption price or additional cash consideration shall be paid within one month from the issue of non-appealable judgment, in any event not before the registration of the division
Formal considerations	<ul style="list-style-type: none"> Notarization: not applicable <p>Language:</p> <ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared <p>→ Please see other country sections for requirements of the respective destination state</p>

Cross border division from Finland to other member state (3/3)



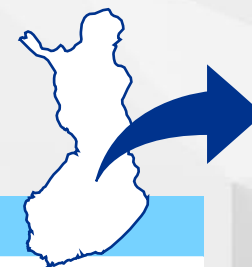
Topic	Prerequisites
Pre-division certificate	<ul style="list-style-type: none"> The Finnish Patent and Registration Office issues a certificate, to the effect that the measures required for the division have been carried out and the formalities have been completed, after positive review of the conditions for the division in the permit procedure within three months from filing of all required documents by the Finnish companies involved in the division, with an additional up to three months in case of reasonable grounds of fraudulent or abusive action The certificate shall be delivered to the competent authority of the destination state within six months from the issue of the certificate
Legal effectiveness of division	<ul style="list-style-type: none"> The Finnish Patent and Registration Office shall without delay and on its own motion register the implementation of the division, and in case of a full division deregister the Finnish dissolved companies from the register, upon receipt of notification by the competent authority of the destination state or on the basis of other reliable evidence Legal effectiveness upon registration by the competent authority of Finland If a full division or a partial division is to take effect by stages owing to the fact that the division takes effect at different times according to the legislation of different acquiring states, the division shall be deemed a partial division for the parts already implemented. The same provision applies if the implementation of the division is precluded in some state even though it has taken effect or will take effect in another state in accordance with the draft terms of division

Cross border division from other member state to Finland



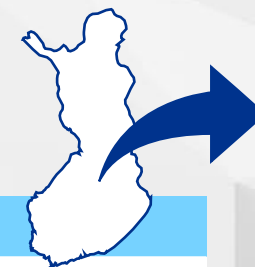
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Oy</i>) Public limited liability company (<i>Oyj</i>) A cross border division can be implemented only if the foreign company corresponds to a Finnish limited liability company: <ul style="list-style-type: none"> that is a company referred to in appendix II of Directive 2017/1132/EU or another comparable company which: <ol style="list-style-type: none"> has equity or other comparable capital; is a legal person; has assets that stand alone against the liabilities of the company; and is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company EUR 0,00 (i.e. there is no share capital requirement in a private limited liability company) Public limited liability company EUR 80,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Division to Finland is possible with an existing legal entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Finnish Patent and Registration Office
Finish registration process	<ul style="list-style-type: none"> Notification of the division plan for registration: within one month from the signing of the merger plan Notification of the implementation of the division for registration: within six months of the division decision made by the Finnish companies involved in the division and of the receipt by the other companies involved in the division of a certificate issued by the competent authority of the state whose legislation applies to a foreign company involved in the division, to the effect that the measures required for the division have been carried out and the formalities completed
Language requirements	<ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared → Please see other country sections for requirements of the respective origin state
Timing	<ul style="list-style-type: none"> Estimated overall timeframe more depended on the timing of the required measures and formalities in the respective origin state Estimated overall timeframe for completion of inbound steps after the receipt of pre-conversion certificate by the Finnish Patent and Registration Office: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> After positive review of the conditions for the division, the Finnish Patent and Registration Office shall without delay and on its own motion register the implementation of the division and register the Finnish company incorporated in the context of the division Legal effectiveness upon registration by the competent authority of the departure member state

Cross border merger from Finland to other member state (1/2)



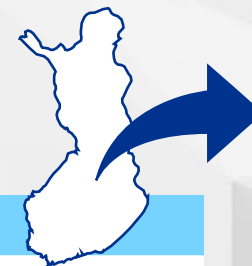
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Private limited liability company (<i>Oy</i>) • Public limited liability company (<i>Oyj</i>) • A cross border merger can be implemented only if the foreign company corresponds to a Finnish limited liability company: <ul style="list-style-type: none"> – that is a company referred to in appendix II of Directive (2017/1132/EU) or another comparable company which: <ul style="list-style-type: none"> a) has equity or other comparable capital; b) is a legal person; c) has assets that stand alone against the liabilities of the company; and d) is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU – that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office • A Finnish limited liability company may also merge into a foreign legal person holding all shares in the company, where the foreign legal person corresponds to a Finnish co-operative, co-operative bank, savings bank or mutual insurance company, is registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area
Required documentation	<ul style="list-style-type: none"> • Merger plan • Notification to shareholders, creditors and employees regarding their right to deliver to the company written comments on the merger plan • Statement by the board of directors to shareholders and employees on the reasons of the merger, legal and financial aspects such as the effects on the future business, as well as the effects on shareholders and employees <ul style="list-style-type: none"> – Statement to shareholders does not need to be prepared if all shareholders have agreed to waive it – Statement to employees does not need to be prepared if the merging company and its subsidiaries have no employees other than those who belong to the board of directors of the company – Statement does not need to be prepared by the merging company if the merger is carried out as subsidiary merger or sister company merger as specified in the law • Statement of an independent expert on the merger plan and statement by the board • Trade register notifications and application for a public notice to creditors • Written notification by the company to the creditors • Merger decision (shareholders' meeting or board of directors) • Petition for the permission to implement the merger • Final accounts of the merging company
Capital increase	<ul style="list-style-type: none"> • The shareholders of the merging company may receive shares in the acquiring company as merger consideration, but the merger consideration may also be cash, other assets or commitments. Merger consideration cannot be given in mergers carried out as subsidiary merger or sister company merger as specified in the law

Cross border merger from Finland to other member state (2/3)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The decision of the shareholders' meeting on the merger shall be made by a qualified ($\frac{2}{3}$) majority of votes and shares represented at the shareholders' meeting The shareholder may demand the redemption of his/her shares at the shareholders' meeting and the holder of option rights or other special rights entitling to shares may demand the redemption of his/her rights before or at the shareholders' meeting. If no agreement is reached with the company on the redemption of the shares or other rights entitling shares or on the terms of the redemption, the shareholder or the holder of rights entitling to shares has the right to submit the matter to arbitration no later than within one month from the shareholders' meeting The shareholder may demand additional cash consideration at the shareholders' meeting or before the meeting of the board of directors in which the decision on merger is made if, according to the shareholder's view, the share exchange ratio proposed in the merger plan is inappropriate and the shareholder has not demanded the redemption of her/his shares. If no agreement is reached with the company on the additional cash consideration, the shareholder has the right to submit the matter to arbitration no later than within one month from the shareholders' meeting or board meeting in which the decision on the merger has been made
Competent regulatory authority	<ul style="list-style-type: none"> Finnish Patent and Registration Office
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – eight months</p> <ul style="list-style-type: none"> Submitting the merger plan, declaration on the delivery of the notification to shareholders, creditors and employees, statement by the board of directors and statement of an independent expert for registration: within one month from the signing of the merger plan Public notice to creditors: shall be applied within one month of the registration of the merger plan. The Finnish Patent and Registration Office shall publish the public notice in the Official Gazette no later than three months before the due date set forth in the public notice. The known creditors of the merging company whose receivables have arisen before the registration of the merger plan have the right to object to the merger Written notification by the company to the creditors: no later than one month before the due date set forth in the public notice Merger decision: no later than four months from the registration of the merger plan. In any event, the shareholders' meeting shall be held no later than one month before the due date of the public notice, unless all shareholders and all holders of option rights or other special rights entitling to shares have waived their right to demand redemption Petition for permission to implement the merger: within six months from the merger decision made by the Finnish companies involved in the merger If applicable, payment of the redemption price stated in the merger plan within two months from the effective date of the merger unless an earlier date of payment has been stated in the merger plan or agreed upon between the parties. If redemption of shares or other rights entitling to shares or demand for additional cash consideration procedures have been submitted to arbitration the redemption price or additional cash consideration shall be paid within one month from the issue of non-appealable judgment, in any event not before the registration of the merger
Formal considerations	<ul style="list-style-type: none"> Notarization: not needed <p>Language:</p> <ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared <p>→ Please see other country sections for requirements of the respective destination state</p>

Cross border merger from Finland to other member state (3/3)



Topic	Prerequisites
Pre-merger certificate	<ul style="list-style-type: none"> • The Finnish Patent and Registration Office issues a certificate, to effect that the measures required for the merger have been carried out and the formalities completed, after positive review of the conditions for the merger in the permit procedure within three months from filing of all required documents by the Finnish companies involved in the merger, with an additional up to three months in case of reasonable grounds of fraudulent or abusive action • The certificate shall be delivered to the competent authority of the destination state within six months from the issue of the certificate
Legal effectiveness of merger	<ul style="list-style-type: none"> • The Finnish Patent and Registration Office shall without delay on its own motion deregister the Finnish merging company from the register upon receipt of notification by the competent authority of the destination state or on the basis of other reliable evidence • Legal effectiveness upon registration by the competent authority of the destination state

Cross border merger to Finland (1/2)



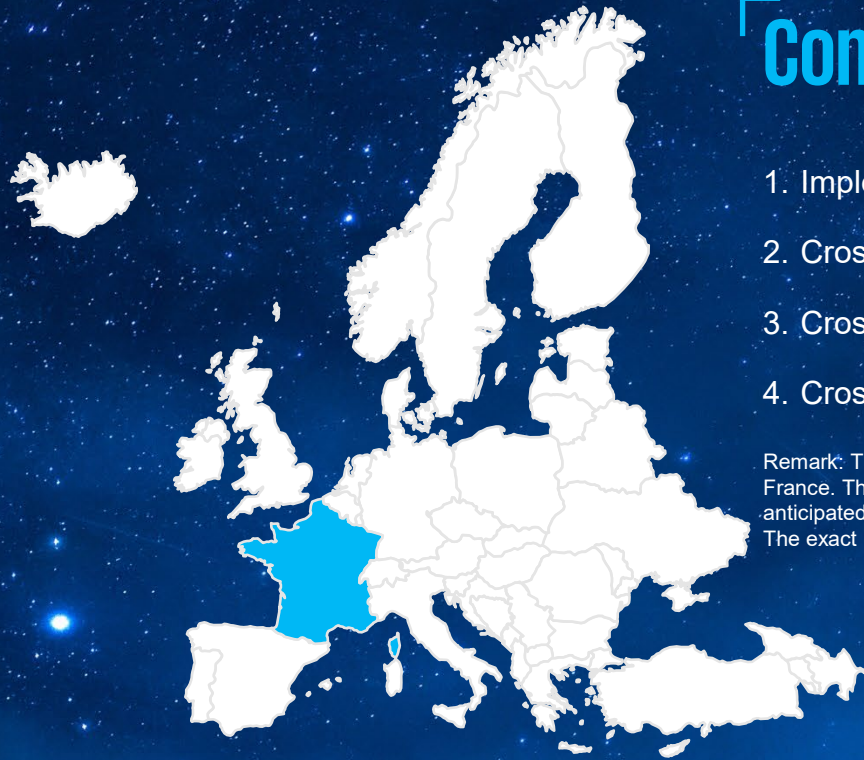
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>Oy</i>) Public limited liability company (<i>Oyj</i>) A cross border merger can be implemented only if the foreign company corresponding to Finnish a limited liability company: <ul style="list-style-type: none"> that is a company referred to in appendix II of Directive 2017/1132/EU or another comparable company which: <ol style="list-style-type: none"> has equity or other comparable capital; is a legal person; has assets that stand alone against the liabilities of the company; and is under domestic legislation subject to conditions that are comparable to the safeguards laid down for the protection of shareholders, members and third parties in Directive 2017/1132/EU that has been registered in another state within the European Economic Area and is subject to the legislation of another state within the European Economic Area based on the location of the statutory domicile, central administration or head office
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company EUR 0,00 (i.e. there is no share capital requirement in a private limited liability company) Public limited liability company EUR 80,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Absorption merger: one or several merging companies merge into the acquiring company Mergers with simplified merger process: Subsidiary merger: absorption merger in which the participating companies own all the shares, option rights and other special rights entitling to the shares in the merging company; <ul style="list-style-type: none"> Sister company merger: absorption merger without merger consideration in which the same natural person or legal person owns directly or indirectly all the shares, option rights and other special rights entitling to the shares in the participating companies Combination merger: at least two merging companies merge by way of incorporating an acquiring company together A triangular merger: absorption merger where a party other than the acquiring company provides the merger consideration
Competent regulatory authority	<ul style="list-style-type: none"> Finnish Patent and Registration Office
Finland registration process	<ul style="list-style-type: none"> Notification of the merger plan for registration: within one month from the signing of the merger plan Notification of the implementation of the merger for registration: within six months of the merger decision made by the Finnish companies involved in the merger and of the receipt by the other companies involved in the merger of a certificate issued by the competent authority of the state whose legislation applies to a foreign company involved in the merger, to the effect that the measures required for the merger have been carried out and the formalities completed
Language requirements	<ul style="list-style-type: none"> Official language Finnish or Swedish due to registration with the Finnish Patent and Registration Office, but it is acceptable to include additional columns in English or other language in the documentation prepared → Please see other country sections for requirements of the respective origin state

Cross border merger to Finland (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> Estimated overall timeframe more depended on the timing of the required measures and formalities in the respective origin state Estimated overall timeframe for completion of inbound steps after the receipt of pre-conversion certificate by the Finnish Patent and Registration Office: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> After positive review of the conditions for the merger, the Finnish Patent and Registration Office shall without delay and on its own motion register the implementation of the merger and register the Finnish company incorporated in the context of the combination merger Legal effectiveness upon registration by the Finnish Patent and Registration Office

France



Content

1. Implementation status in France
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in France. The content on the following slides is based on KPMG's anticipated result of transposition subject to further changes. The exact date of implementation is currently unclear.



Benoît Roucher

Partner

M +33 620 657217

broucher@kpmgavocats.fr



[Back to Country Overview](#)

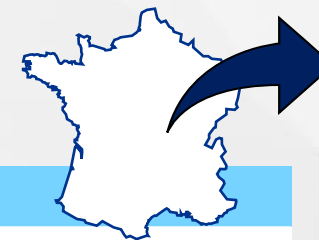
Implementation status in France

Current status of the implementation process in France:

The Mobility Directive has not been transposed in France until the date hereof.

Pursuant to a law called « DDADUE », the Government is empowered to take promptly, by ordinance (*ordonnance*), all measures necessary for the transposition of the Mobility Directive. However, to date, no ordinance has been taken and we are not aware of any draft of said ordinance.

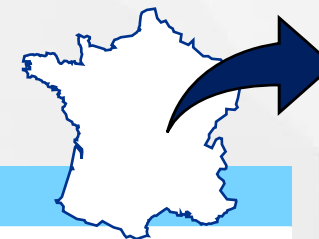
Cross border conversion from France to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Joint stock company (<i>société anonyme – SA</i>) Simplified joint stock company (<i>société par actions simplifiée – SAS</i>) Limited liability company (<i>société à responsabilité limitée – SARL</i>) Limited partnership by shares (<i>société en commandite par actions – SCA</i>)
Required documentation	<p>Conversion plan (<i>Projet de transformation transfrontalière</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, name and seat of the company in France, the new legal form, name, seat, articles of association, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, safeguards offered to creditors, special advantages compensation payment. Plan to be prepared by the representative body (<i>organe d'administration ou de direction de la société</i>) <p>Report (<i>Rapport de l'organe d'administration ou de direction aux associés et aux travailleurs</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>organe d'administration</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular where all members of the company have agreed to waive the requirement) <p>Audit Report (<i>Rapport de l'expert indépendant</i>)</p> <ul style="list-style-type: none"> Examination of the conversion plan by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular where all members of the company have agreed to waive the requirement)
Shareholders' protection	<ul style="list-style-type: none"> Unanimous requirement for mandatory shareholders' resolution on conversion* Mandatory compensation/acquisition offer to shareholders voting against the conversion of legal form. Compensation by way of adequate cash payment by converted legal entity to shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>greffe du tribunal de commerce</i>) of seat of legal entity

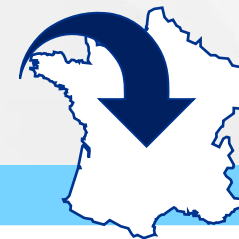
* Please note that this requirement will be changed for 75% majority requirement when the Mobility Directive is transposed in France.

Cross border conversion from France to other member state (2/2)



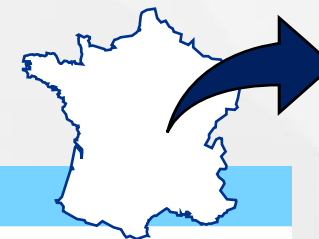
Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Plan (<i>projet de transformation</i>): publication six weeks prior to shareholders' meeting and notification to works council (or employees in absence of works council) • Report (<i>rapport de transformation</i>): publication six weeks prior to shareholders' meeting (if the company has a sole shareholder, the report can be excluded) • Audit report (<i>Rapport à la transformation par expert</i>): to be provided to the shareholders one month prior to the shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> • No notarization requirement applicable in France • Language: French language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate (<i>certificat préalable à la transformation</i>)	<ul style="list-style-type: none"> • Issued by the French register court after filing of all required documents by the representative body (<i>organe d'administration ou de direction</i>) and positive review by the French authority • Three months review period by French authority, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Transmission of pre-conversion certificate (<i>certificat préalable à la transformation</i>) to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> • Deregistration in French commercial register after notification by authority of the destination jurisdiction of positive registration of the conversion of legal form • Legal effectiveness upon registration by the authority of the destination jurisdiction • Deregistration of the company in France once the company is registered in the destination jurisdiction

Cross border conversion from other member state to France



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Joint stock company (<i>société anonyme – SA</i>) Limited liability company (<i>société à responsabilité limitée – SARL</i>) Limited partnership by shares (<i>société en commandite par actions – SCA</i>)
Share capital requirements	<ul style="list-style-type: none"> Joint stock company (<i>société anonyme – SA</i>) : EUR 37,000 Limited liability company (<i>société à responsabilité limitée – SARL</i>) : no minimum share capital Limited partnership by shares (<i>société en commandite par actions – SCA</i>) : EUR 37,000
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>Grefe du tribunal de commerce</i>) of seat of legal entity
French registration process	<ul style="list-style-type: none"> Application (<i>requête</i>) filed by the shareholders to the supervising judge of the trade and companies registry (<i>juge commis à la surveillance de registre du commerce et des sociétés</i>) to be incorporated in the French commercial and companies registry Pre-conversion certificate (<i>document autorisant le transfert de siège de l'étranger vers la France</i>) transferred by departure member state regulatory body to French trade and companies registry → Please see requirements for pre-conversion certificate in the respective departure member state section Filing of the minutes of the shareholders of the company acknowledging the cross border conversion in France Scope of review French commercial register: receipt of pre-conversion certificate, mandatory provisions on establishment of target legal form, certificate of incorporation of the company from the initial jurisdiction, employee participation rules
Language requirements	<ul style="list-style-type: none"> French language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>certificat préalable à la transformation</i>) by commercial register: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in French commercial register after positive review Legal effectiveness upon registration by the French trade and company registry

Cross border division from France to other member state



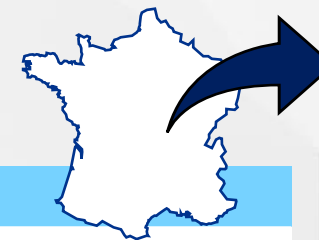
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> Between 75% and 90% Majority requirement for mandatory shareholders' resolution on division Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment by divided legal entity to shareholders
Extended liability	<ul style="list-style-type: none"> Extended liability (<i>garanties ultérieures</i>) of the divided legal entity and the recipient legal entity as joint and several debtors (<i>créanciers</i>) for liabilities incurred prior to the division
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>Greffe du tribunal de commerce</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Plan (<i>projet de scission transfrontalière</i>): publication one month prior to shareholders' meeting and notification to works council (or employees in absence of works council) Report (<i>rapport de l'organe d'administration ou de direction sur la scission transfrontalière</i>): publication six weeks prior to shareholders' meeting Audit report (<i>rapport de l'expert indépendant</i>): to be provided to the shareholders one month prior to the shareholders' meeting Compensation payment to shareholders
Formal considerations	<ul style="list-style-type: none"> No notarization requirement applicable in France <p>Language:</p> <ul style="list-style-type: none"> French language due to registration with the commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-division certificate (<i>certificat préalable à la scission</i>)	<ul style="list-style-type: none"> Issued by the French commercial register Three months review period by French commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate (<i>certificat préalable à la scission</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in French commercial register after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the foundation of the new legal entity Legal effectiveness upon registration by the French commercial register

Cross border division from other member state to France



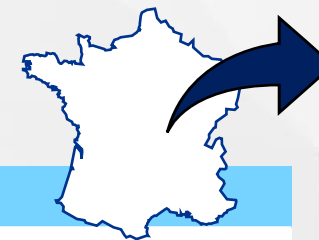
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>société à responsabilité limitée – SARL</i>) Stock corporation (<i>société anonyme – SA</i>) Simplified joint stock company (<i>société par actions simplifiée – SAS</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>société à responsabilité limitée – SARL</i>) : no minimum share capital Stock corporation (<i>société anonyme – SA</i>) : EUR 37,000 Simplified joint stock company (<i>société par actions simplifiée – SAS</i>) : no minimum share capital
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: in France, it is possible to do a cross border division, but the specific law is yet to be voted → Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also provide for a division with an existing entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>greffe du tribunal de commerce</i>) of seat of legal entity
French registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>Rapport de l'organe d'administration ou de direction</i>) to the competent French an commercial register in France Application includes in particular the plan (<i>Projet de cission</i>) Pre-division certificate transferred by departure member state regulatory body to German commercial register → Please see requirements for pre-division certificate in the respective departure member state section
Language requirements	<ul style="list-style-type: none"> French for the French commercial register
Timing	<ul style="list-style-type: none"> <i>Yet to be determined</i>
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in French commercial register after positive review Legal effectiveness upon registration by the regulatory authority of the departure state

Cross border merger from France to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Joint stock company (<i>société anonyme – SA</i>) • Limited partnership by shares (<i>société en commandite par actions – SCA</i>) • European company registered in France (<i>société européenne immatriculée en France</i>) • Simplified joint stock company (<i>société par actions simplifiée – SAS</i>) • Limited liability company (<i>société à responsabilité limitée – SARL</i>)
Required documentation	<p>Common merger terms (<i>Projet commun de fusion</i>)</p> <ul style="list-style-type: none"> • Main statutory content is the legal form, corporate name and seat of the merging companies, merger ratio and share to be granted, distribution scale, additional cash payments, balance sheet date and merger date from a legal, tax and accounting point of view as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of stakeholders, effects on staff and employment relationships, creditor guarantees, compensation payment. Merger terms to be prepared by the representative body (<i>organe de gestion, d'administration ou de direction</i>) <p>Report (<i>Rapport</i>)</p> <ul style="list-style-type: none"> • Report of the representative body (<i>organe de gestion, d'administration ou de direction</i>) of each entity participating to the merger is to draft a report on the effects for employees and stakeholders that is to be made available to the stakeholders and works councils or employees' representatives <p><u>Waiver</u>: pursuant to the Mobility Directive, the section of the report relating to stakeholders can be waived by a decision of all stakeholders and the section of the report relating to employees is not required if all employees are members of the representative body. Said waiver has not yet been codified under French law</p> <p>Audit Report (<i>Rapport de l'expert indépendant</i>)</p> <ul style="list-style-type: none"> • Audit of the plan by independent auditor, resulting in a written audit report <p><u>Waiver</u>: possible under specific circumstances</p> <p>An accounting statement drawn up in accordance with the same methods and presentation as the last annual balance sheet, closed on a date which, if the last annual accounts relate to a financial year ending more than six months before the date of the common merger terms, must be less than three months before the date of the common merger terms or, where applicable, the half-yearly financial report provided for in Article L. 451-1-2 of the Monetary and Financial Code, where published</p>
Capital increase	<ul style="list-style-type: none"> • The shareholders of the transferred legal entity receive shares in the recipient legal entity <p><u>Waiver</u>: possible under specific circumstances</p>
Shareholders' protection	<ul style="list-style-type: none"> • Between 75% and 90% Majority requirement for mandatory shareholders' resolution on merger • Mandatory compensation/acquisition offer to shareholders voting against the merger. Compensation by way of adequate cash payment by the recipient legal entity to the shareholders

Cross border merger from France to other member state (2/2)



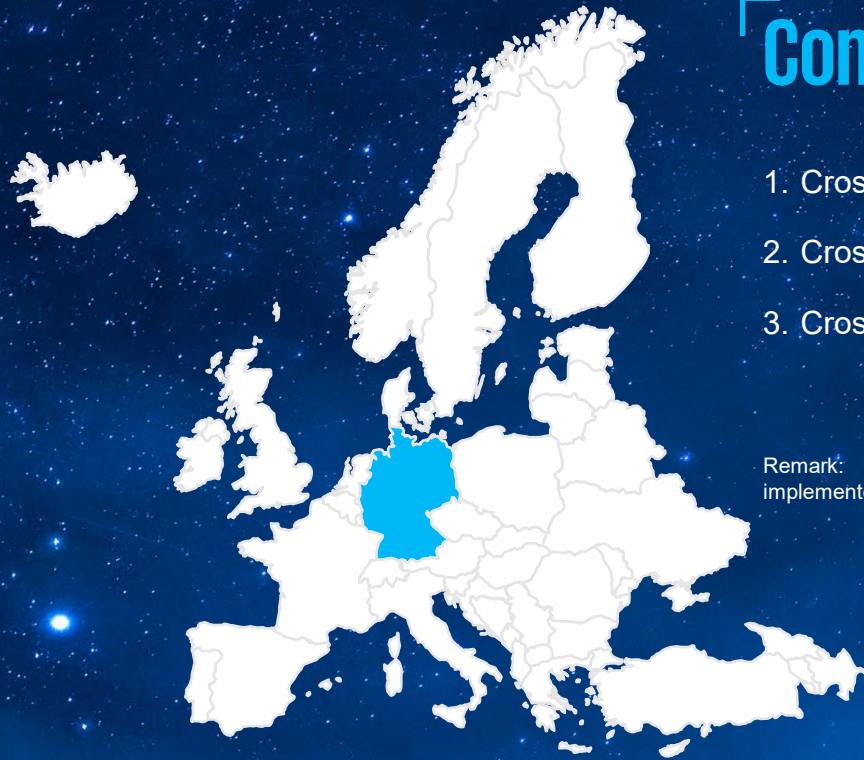
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>greffe du tribunal de commerce</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Common merger plan (<i>Projet commun de fusion</i>): publication one month before the shareholders' resolution or the day of the shareholders' meeting (if no consent is required). If a shareholders' resolution of the transferring entity is dispensable, publication shall be made one month prior to the plan approval; filing with the register court, which shall make the publication without delay Managers' report (<i>Rapport des dirigeants</i>): to be provided to the shareholders and the works council (or the employees if there is no works council) one month prior to the shareholders' meeting Audit report (<i>Rapport des experts</i>): to be provided to the shareholders one month prior to the shareholders' meeting Audit of the plan by independent auditor, resulting in a written audit report Compensation payment to shareholders
Formal considerations	<ul style="list-style-type: none"> No notarization requirement applicable in France <p>Language:</p> <ul style="list-style-type: none"> French language due to registration with the commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate (<i>certificat/attestation préalable à la fusion</i>)	<ul style="list-style-type: none"> Issued by the competent French commercial register after filing of all required documents by the representative body (<i>organe de gestion, d'administration ou de direction</i>) of the transferring legal entity and positive review Three months review period by French commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>certificat/attestation préalable à la fusion</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in the competent French commercial register after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border merger to France



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>société à responsabilité limitée – SARL</i>) Stock corporation (<i>société anonyme – SA</i>) Limited partnership by shares (<i>société en commandite par actions – SCA</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>société à responsabilité limitée – SARL</i>) : no minimum share capital Stock corporation (<i>société anonyme – SA</i>) : EUR 37,000 Limited partnership by shares (<i>société en commandite par actions – SCA</i>) : EUR 37,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity Cross border merger with an existing legal entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Clerk of the commercial court (<i>Greffe du tribunal de commerce</i>) of seat of legal entity
French registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>organe d'administration ou de direction</i>) of the recipient legal entity to the commercial register in France Application includes in particular the plan (<i>projet de fusion</i>) Pre-merger certificate (<i>certificat/attestation de conformité préalable à la fusion</i>) transferred by departure member state regulatory body to French commercial register → Please see requirements for pre-merger certificate in the respective departure member state section Scope of review French commercial register: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> French language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>certificat/attestation de conformité préalable à la fusion</i>) by commercial register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in French commercial register after positive review Legal effectiveness upon registration by the French commercial register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> French regime that apply to cross border mergers with UK or Northern Ireland: Recognition of the concept of “merger” (<i>dissolution sans liquidation</i>) Universal transmission of assets and liabilities (<i>transmission universelle du patrimoine</i>) Declaration of regularity and conformity: pursuant Articles L.236-6 and R.236-4 of the French Commercial Code, the merging companies must file post-merger with the commercial registry a declaration of regularity and conformity (<i>déclaration de régularité et de conformité</i>)

Germany



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Germany.



Dr. Ian M. Maywald

Partner

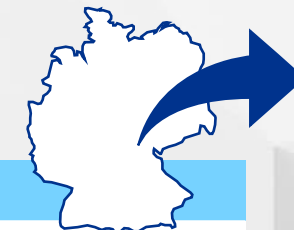
M +49 151 52118034

imaywald@kpmg-law.com



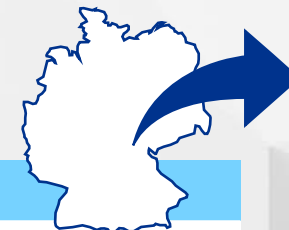
[Back to Country Overview](#)

Cross border conversion from Germany to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Required documentation	<p>Plan (<i>Formwechselplan</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, seat, articles of association, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment. Plan to be prepared by the representative body (<i>Vertretungsorgan</i>) <p>Report (<i>Formwechselbericht</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>Vertretungsorgan</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions) <p>Audit Report (<i>Formwechselprüfungsbericht</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions)
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on conversion Mandatory compensation/acquisition offer to shareholders voting against the conversion of legal form. Compensation by way of adequate cash payment by converted legal entity to shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity

Cross border conversion from Germany to other member state (2/2)



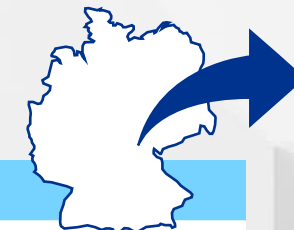
Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Plan (<i>Formwechselplan</i>): publication six weeks prior to shareholders' meeting and notification to works council (or employees in absence of works council) • Report (<i>Formwechselbericht</i>): publication six weeks prior to shareholders' meeting • Audit report (<i>Formwechselprüfungsbericht</i>): to be provided to the shareholders one month prior to the shareholders' meeting • Compensation payment to shareholders: two weeks after legal effectiveness of conversion of legal form
Formal considerations	<p>Notarization by German notary:</p> <ul style="list-style-type: none"> • Plan (<i>Formwechselplan</i>) • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • German language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate (<i>Formwechselbescheinigung</i>)	<ul style="list-style-type: none"> • Issued by the German register court after filing of all required documents by the representative body (<i>Vertretungsorgan</i>) and positive review by register court • Three months review period by German register court, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Transmission of pre-conversion certificate (<i>Formwechselbescheinigung</i>) to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> • Registration in German commercial register after notification by authority of the destination jurisdiction of positive registration of the conversion of legal form • Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border conversion from other member state to Germany



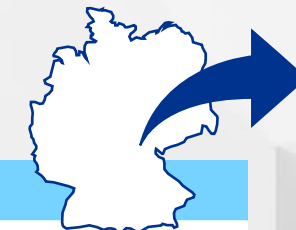
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 25,000 Stock corporation (<i>AG</i>): EUR 50,000 Limited partnership by shares (<i>KGaA</i>): EUR 50,000
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity
German registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>Vertretungsorgan</i>) of the dividing legal entity to the competent German commercial register in Germany Application includes in particular the Plan (<i>Formwechselplan</i>) Pre-conversion certificate (<i>Formwechselbescheinigung</i>) transferred by departure member state regulatory body to German commercial register → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review German commercial register: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> German language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>Formwechselbescheinigung</i>) by commercial register: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in German commercial register after positive review Legal effectiveness upon registration by the German commercial register

Cross border division from Germany to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Aufspaltung</i>) with new formation (<i>zur Neugründung</i>): transfer of all assets and liabilities to at least two new recipient legal entities (full split-up) Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist Cross border split-off (<i>Abspaltung</i>) with new formation (<i>zur Neugründung</i>): transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity <u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions) Cross border spin-off (<i>Ausgliederung</i>) with new formation (<i>zur Neugründung</i>): transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: entity spinning-off receives shares in the new recipient legal entity <u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions) Beyond the scope of the Mobility Directive: Cross border split-up (<i>Aufspaltung</i>), cross border split-off (<i>Abspaltung</i>) and cross border spin-off (<i>Ausgliederung</i>) are also possible with an existing legal entity as recipient (<i>zur Aufnahme</i>), if in case of a German legal entity is being divided the German legal entity had on average for the last six months prior to the publication of the plan (<i>Spaltungsplan</i>) less than 400 employees In order to create legal certainty, the jurisdiction of the other member state involved should also provide for a division with an existing entity as recipient
Required documentation	<p>Plan (<i>Spaltungsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, seat, articles of association, exchange ratio and distribution of shares to be granted, indicative time schedule, statement on specific rights of stakeholders, creditor guarantees, effects on staff and employment relationships, summary of transferred/remaining assets and liabilities, compensation payment. Plan to be prepared by the representative body (<i>Vertretungsorgan</i>) <p>Report (<i>Spaltungsbericht</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>Vertretungsorgan</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group divisions) <p>Audit Report (<i>Spaltungsprüfungsbericht</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group divisions) Balance sheet of dividing legal entity not older than eight months at the time of filing with commercial register

Cross border division from Germany to other member state (2/2)



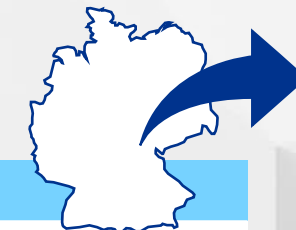
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholders' resolution on division Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment by divided legal entity to shareholders
Extended liability (<i>Nachhaftung</i>)	<ul style="list-style-type: none"> Extended liability (<i>Nachhaftung</i>) of the divided legal entity and the recipient legal entity as joint and several debtors (<i>Gesamtschuldner</i>) for liabilities incurred prior to the division for a period of five years and for pension claims for a period of ten years after the division
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Plan (<i>Spaltungsplan</i>): publication one month prior to shareholders' meeting and notification to works council (or employees in absence of works council) Report (<i>Spaltungsbericht</i>): publication six weeks prior to shareholders' meeting Audit report (<i>Spaltungsprüfungsbericht</i>): to be provided to the shareholders one month prior to the shareholders' meeting Compensation payment to shareholders: Two weeks after legal effectiveness of division
Formal considerations	<p>Notarization by German notary:</p> <ul style="list-style-type: none"> Plan (<i>Spaltungsplan</i>) Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> German language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate (<i>Spaltungsbescheinigung</i>)	<ul style="list-style-type: none"> Issued by the German commercial register after filing of all required documents by the representative body (<i>Vertretungsorgan</i>) and positive review Three months review period by German commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate (<i>Spaltungsbescheinigung</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> Registration in German commercial register after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the foundation of the new legal entity Legal effectiveness upon registration by the German commercial register

Cross border division from other member state to Germany



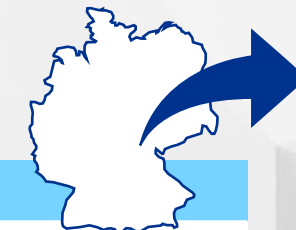
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 25,000 Stock corporation (<i>AG</i>): EUR 50,000 Limited partnership by shares (<i>KGaA</i>): EUR 50,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: cross border divisions (split-up, split-off, spin-off) to Germany are also possible with an existing legal entity as recipient (<i>zur Aufnahme</i>), if in case of a German legal entity as recipient legal entity on average less than 4/5 of the employees of the divided legal entity of the other member state were subject to employee co-determination for the last six months prior to the publication of the plan (<i>Spaltungsplan</i>) → Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also provide for a division with an existing entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity
German registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>Vertretungsorgan</i>) to the competent German commercial register in Germany Application includes in particular the plan (<i>Spaltungsplan</i>) Pre-division certificate (<i>Spaltungsbescheinigung</i>) transferred by departure member state regulatory body to German commercial register → Please see requirements for pre-division certificate in the respective departure member state section Scope of review German commercial register: receipt of pre-division certificate (no review in substance), mandatory provisions on establishment of recipient legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> German language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>Formwechselbescheinigung</i>) by commercial register: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in German commercial register after positive review Legal effectiveness upon registration by the regulatory authority of the departure state

Cross border merger from Germany to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Required documentation	<p>Plan (<i>Verschmelzungsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, seat of the merging company, articles of association, indicative time schedule, merger ratio and share to be granted, distribution scale, additional cash payments, balance sheet date and merger date as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of stakeholders, effects on staff and employment relationships, creditor guarantees, compensation payment. Plan to be prepared by the representative body (<i>Vertretungsorgan</i>) <p>Report (<i>Verschmelzungsbericht</i>)</p> <ul style="list-style-type: none"> Report of the representative body (<i>Vertretungsorgan</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers) <p>Audit Report (<i>Verschmelzungsprüfungsbericht</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers) <ul style="list-style-type: none"> Balance sheet not older than eight months at the time of filing with commercial register
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on merger Mandatory compensation/acquisition offer to shareholders voting against the merger. Compensation by way of adequate cash payment by the recipient legal entity to the shareholders

Cross border merger from Germany to other member state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Plan (<i>Verschmelzungsplan</i>): publication one month before the shareholders' resolution or the day of the shareholders' meeting (if no consent is required). If a shareholders' resolution of the transferring entity is dispensable, publication shall be made one month prior to the plan approval; filing with the register court, which shall make the publication without delay Report (<i>Verschmelzungsbericht</i>): to be provided to the shareholders six weeks prior to the shareholders' meeting Audit report (<i>Verschmelzungsprüfungsbericht</i>): to be provided to the shareholders one month prior to the shareholders' meeting Audit of the plan by independent auditor, resulting in a written audit report Compensation payment to shareholders: two weeks after legal effectiveness of the merger
Formal considerations	<p>Notarization by German notary:</p> <ul style="list-style-type: none"> Plan (<i>Verschmelzungsplan</i>) Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> German language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Verschmelzungs-bescheinigung</i>)	<ul style="list-style-type: none"> Issued by the German commercial register after filing of all required documents by the representative body (<i>Vertretungsorgan</i>) of the transferring legal entity and positive review Three months review period by German commercial register, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>Verschmelzungsbescheinigung</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> Registration in German commercial register after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border merger to Germany



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Limited partnership by shares (<i>KGaA</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): EUR 25,000 Stock corporation (<i>AG</i>): EUR 50,000 Limited partnership by shares (<i>KGaA</i>): EUR 50,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>zur Neugründung</i>) Cross border merger with an existing legal entity as recipient (<i>zur Aufnahme</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Registergericht</i>) of seat of legal entity
German registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>Vertretungsorgan</i>) of the recipient legal entity to the commercial register in Germany Application includes in particular the plan (<i>Verschmelzungsplan</i>) Pre-merger certificate (<i>Verschmelzungsbescheinigung</i>) transferred by departure member state regulatory body to German commercial register → Please see requirements for pre-merger certificate in the respective departure member state section Scope of review German commercial register: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> German language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Verschmelzungsbescheinigung</i>) by commercial register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in German commercial register after positive review Legal effectiveness upon registration by the German commercial register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> German merger regime applies to a merger from UK or Northern Ireland, provided that: <ul style="list-style-type: none"> the recipient legal entity is subject to German law and the transferring legal entity is subject to the law of the UK or Northern Ireland; and the Plan (<i>Verschmelzungsplan</i>) was notarized prior to the withdrawal of the UK or Northern Ireland from the EU or prior to the expiry of the transitional period during which the UK or Northern Ireland continues to be regarded in Germany a member state of the EU; and the merger is applied for entry in the register without delay, but no later than two years after this date of withdrawal or transitional period, together with the necessary documents

Greece



Content

1. Implementation status in Greece

Remark: The Mobility Directive has not yet been implemented in Greece. The content on the following slide is subject to further changes. The exact date of implementation is currently unclear.



Sophia Grigoriadou

Partner

M +30 210 6062325

sgrigoriadou@cpalaw.gr



[Back to Country Overview](#)

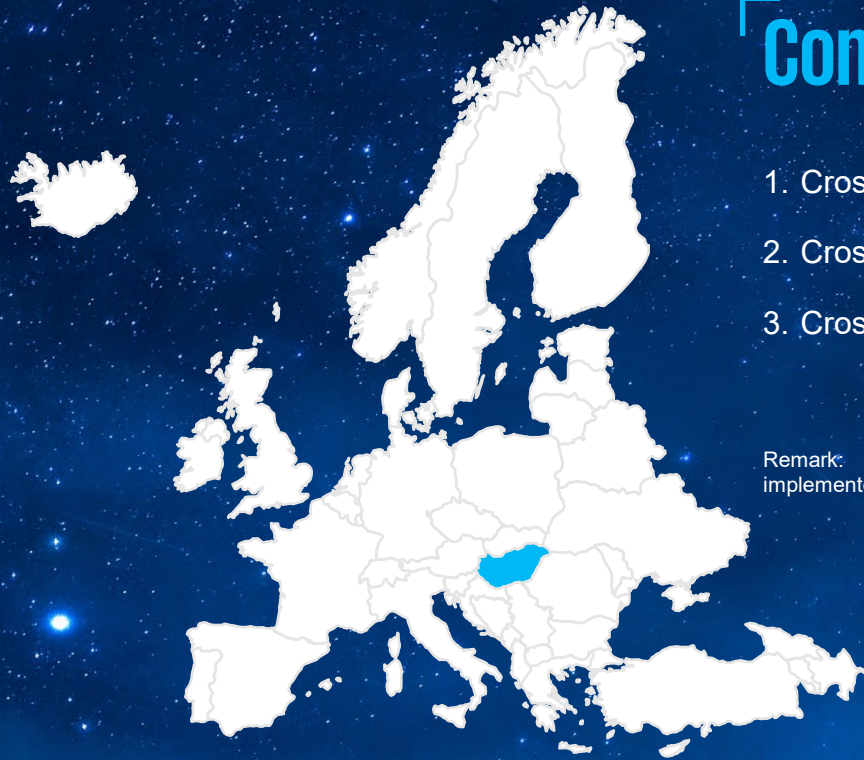
Implementation status in Greece

Current status of the implementation process in Greece:

The Mobility Directive has not been transposed in Greece until the date hereof.

Moreover, neither an ongoing legislative process nor a draft law exists.

Hungary



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Hungary.



**Dr. Bálint Tóásó MSc
LL.M (Vienna)**

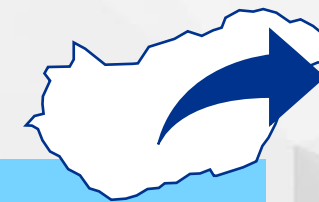
Partner

M +36 306 636245
balint.toaso@kpmg.hu



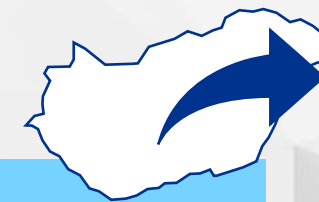
[Back to Country Overview](#)

Cross border conversion from Hungary to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Company limited by shares (<i>részvénytársaság; Rt.</i>) Please note, that Hungarian share companies have two forms: private (<i>Zrt.</i>) and public (<i>Nyrt</i>). If the public form (<i>Nyrt</i>) is involved, each transaction requires specific analysis due to certain legal restrictions in relation to this type of entity. → Please see for further requirements in the respective description for the destination jurisdiction
Required documentation	<ul style="list-style-type: none"> Draft terms of the cross border conversion, including in particular: current and new legal form, seat and name, articles of association, indicative timetable, statement on specific rights of shareholders, compensation payment for non-participating shareholders, details of the offer of cash compensation, collateral offered to creditors, Report of the Managing Director/Board on the effects for employees and shareholders (may be omitted if special circumstances apply) Pre-conversion certificate Draft statements of assets and liabilities and inventories supplementing them Audit Report Statement of the Managing Director/Board on solvency
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for shareholders' resolution on conversion Mandatory compensation to shareholders voting against the conversion of legal form
Competent regulatory authority	<ul style="list-style-type: none"> Company Registration Court (<i>Cégbíróság</i>) based on the registered seat of the company

Cross border conversion from Hungary to other member state (2/2)



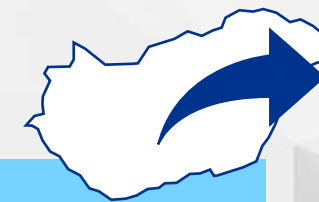
Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe (advice, formal proceeding): four – eight months • Draft terms of the cross border conversion and report: must be available electronically at least 45 days prior to the shareholders' meeting for the shareholders and the works council (or for the employees if there's no works council) • Compensation payment to non-participating shareholders: until the end of the second month after the effectiveness of conversion • The Company Registration Court must be notified at least 30 days prior to the shareholders' meeting • Audit report must be available at least a month prior to the shareholders' meeting • Publication in the Company Gazette twice with a seven days interval
Formal considerations	<ul style="list-style-type: none"> • All documents should be in the form of a private deed with the full probative value <p>Language:</p> <ul style="list-style-type: none"> • Any language, with the caveat that non-Hungarian documents must be translated due to registration with the Company Registration Court, → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate (Tanúsítvány)	<ul style="list-style-type: none"> • Issued by the Hungarian Company Registration Court after filing of all required documents and positive review by the Company Registration Court • The pre-conversion certificate is issued between 30 and 90 days, with an additional up to 180 days in case there's missing information/data
Legal effectiveness of conversion	<ul style="list-style-type: none"> • The Company Registration Court forwards the pre-conversion certificate (<i>Tanúsítvány</i>) to the competent authority of the destination jurisdiction • The registration form in the destination jurisdiction must be submitted within 30 days after issuing the certificate • If the Company set out the effective date of the conversion, it will be effective on that day, otherwise the conversion is effective on the day of registration • The Company Registration Court deletes the converting company from the Company Registry and registers the conversion after receiving the notification on the effective date from the destination jurisdiction

Cross border conversion from other member state to Hungary



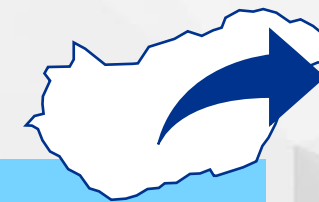
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Private company limited by shares (<i>zártkörűen működő részvénytársaság; Zrt.</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability companies: HUF 3,000,000 Private company limited by shares: HUF 5,000,000
Competent regulatory authority	<ul style="list-style-type: none"> Company Registration Court based on the new registered seat of the company
Hungarian company registry process	<ul style="list-style-type: none"> Application must be filed by the legal representative of the Company (i.e. a law firm) of the departing legal entity to the competent Hungarian Company Registration Court Application includes in particular: documents on the employee participation, articles of association, declarations of acceptance of executive officers Pre-conversion certificate is transferred by the departure member state's respective regulatory body to the Hungarian Company Registration Court → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review of the Hungarian Company Registration Court: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Hungarian, due to registration with the Company Court, the non-Hungarian documents must be translated
Timing	<ul style="list-style-type: none"> The registration application must be filed within 30 days after issuing the pre-conversion certificate, the Company Court has 15 business days to register the conversion
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in the Hungarian Company Registration Court Legal effectiveness upon the designated date by the company, otherwise upon registration

Cross border division from Hungary to other member state (1/2)



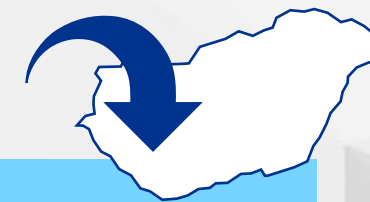
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Private company limited by shares (<i>zártkörűen működő részvénytársaság; Zrt.</i>) <p>→ Please see for further requirements in the respective description for the destination jurisdiction</p>
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Különválás</i>): transfer of all assets to at least two newly-established recipient legal entities for exchange of shares of the recipient entity Cross border split-off (<i>Kiválás</i>): transfer of part of the assets to at least one newly-established legal entity for exchange of shares of the recipient entity Cross border division by separation (<i>Felosztás általi szétválás</i>): transfer of part of the assets to one or more recipient legal entity for exchange of shares of the recipient entity <p>• Beyond the scope of the Mobility Directive: Cross border split-up and cross border split-off with an existing legal entity as recipient (the dividing entity merges with an existing legal entity (split-off combined with merger- <i>beolvadásos kiválás</i> and split-up combined with merger- <i>beolvadásos különválás</i>) are neither ruled out, nor regulated specifically in the Hungarian act implementing the Mobility Directive. It would be possible to disperse all uncertainty regarding the feasibility of these specific divisions involving an existing legal entity only in light of the forthcoming court practice on this matter.</p> <p>→ Please see for further requirements in the respective description for the destination jurisdiction</p>
Required documentation	<ul style="list-style-type: none"> Draft terms of the cross border division, including in particular: articles of association, the exchange ratio of the shares, indicative timetable, the effects of the division to the employees, the date from which the transactions of the company being divided will be treated for accounting purposes as being those of the recipient companies; information on the evaluation of the assets and liabilities; compensation payment for non-participating shareholders, collateral offered to creditors Report of the Managing Director/Board on the effects for employees and shareholders Pre-division certificate Draft statements of assets and liabilities and inventories supplementing them Audit Report Statement of the Managing Director/Board on solvency

Cross border division from Hungary to other member state (2/2)



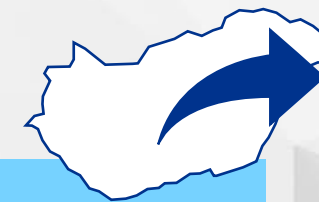
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for mandatory shareholders' resolution on division Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment by divided legal entity to shareholders
Extended liability	<ul style="list-style-type: none"> If a claim of the dividing company's debtor is not satisfied by the entity to which the respective debt has been transferred through the division, the other successors' liability is joint and several up to the net value of the assets received by them respectively
Competent regulatory authority	<ul style="list-style-type: none"> Company Registry Court based on the registered seat of the company
Timing	<ul style="list-style-type: none"> Estimated overall timeframe: (advice, formal proceeding) four – eight months Draft terms of the cross border division and report: must be available electronically at least 45 days prior to the shareholders' meeting for the shareholders and for the works council (or for the employees if there's no works council) Report: available at least 45 days prior to the shareholders' meeting for the shareholders and the employees Audit report must be available at least a month prior to the shareholders' meeting Compensation payment to non-participating shareholders: until the end of the second month after the effectiveness of division The Court must be notified at least 30 days prior to the shareholders' meeting Publication in the Company Gazette twice with a seven days interval
Formal considerations	<ul style="list-style-type: none"> All documents should be in the form of a private deed with the full probative value <p>Language:</p> <ul style="list-style-type: none"> Any language, with the caveat that non-Hungarian documents must be translated due to registration with the Company Court → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate (<i>Tanúsítvány</i>)	<ul style="list-style-type: none"> Issued by the Hungarian Company Registration Court after filing of all required documents and positive review by the Company Registration Court The pre-conversion certificate is issued between 30 and 90 days, with an additional up to 180 days in case the necessary information is not available
Legal effectiveness of division	<ul style="list-style-type: none"> The Company Registration Court forwards the pre-division certificate (<i>Tanúsítvány</i>) to the competent authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> The registration form in the destination jurisdiction must be submitted within 30 days after issuing the certificate If the Company set out the effective date of the division, it will be effective on that day, otherwise the division is effective on the day of registration., the dividing entity is terminated/deleted

Cross border division from other member state to Hungary



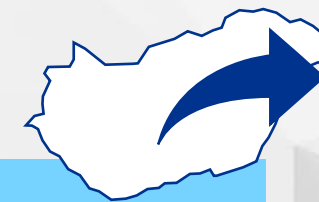
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Private company limited by shares (<i>zártkörűen működő részvénytársaság; Zrt.</i>), In specific cases an existing public company limited by shares (<i>Nyrt</i>) may also be target form. If a public company limited by shares (<i>Nyrt</i>) is involved, each transaction requires specific analysis due to certain legal restrictions in relation to this type of entity
Share capital requirements	<ul style="list-style-type: none"> Limited liability companies: HUF 3,000,000 Private company limited by shares: HUF 5,000,000 Public company limited by shares HUF 20,000,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive, cross border split-up and cross border split-off with an existing legal entity as recipient (the dividing entity merges with an existing legal entity (split-off combined with merger- <i>beolvadásos kiválás</i> and split-up combined with merger- <i>beolvadásos különválás</i>) are neither ruled out, nor regulated specifically in the Hungarian act implementing the Mobility Directive. It would be possible to disperse all uncertainty regarding the feasibility of these specific divisions involving an existing legal entity only in light of the forthcoming court practice on this matter
Competent regulatory authority	<ul style="list-style-type: none"> Company Registration Court based on the registered seat of the company
Hungarian registration process	<ul style="list-style-type: none"> Application must be filed by the legal representative of the Company (i.e. a law firm) of the dividing legal entity to the competent Hungarian Company Registration Court Application includes the documents on the employee participation, articles of association, declarations of acceptance of executive officers Pre-division certificate is transferred by the departure member state's respective regulatory body to the Hungarian Company Registration Court → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review of the Hungarian Company Registration Court: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Any language, with the caveat that non-Hungarian documents must be translated due to registration with the Company Registration Court → Please see other country sections for requirements of the respective jurisdiction
Timing	<ul style="list-style-type: none"> The Company Registration Court has 15 business days to register the division
Legal effectiveness of division	<ul style="list-style-type: none"> If the Company set out the effective date of the division, it will be effective on that day, otherwise the division is effective on the day of registration of the Hungarian Company Registration Court

Cross border merger from Hungary to other member state (1/2)



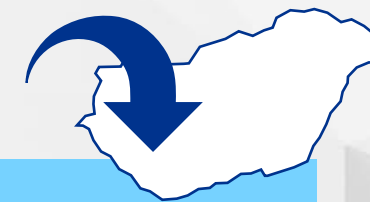
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Company limited by shares (<i>részvénytársaság; Rt.</i>, Please note, that Hungarian share companies have two forms: private (<i>Zrt.</i>) and public (<i>Nyrt</i>). If the public form (<i>Nyrt</i>) is involved, each transaction requires specific analysis due to certain legal restrictions in relation to this type of entity → <u>Please see for further requirements in the respective description for the destination jurisdiction</u>
Required documentation	<ul style="list-style-type: none"> Common draft terms of cross border merger , including in particular: articles of association, the exchange ratio of the shares, indicative timetable, the effects of the division to the employees, the date from which the holding of such shares entitles the holders to participate in profits; information on the evaluation of the assets and liabilities; the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross border merge; compensation payment for non-participating shareholders, collateral offered to creditors Report of the Managing Director/Board on the effects for employees and shareholders (may be omitted if special circumstances apply) Pre-merger certificate Draft statements of assets and liabilities and inventories supplementing them Audit Report Statement of the Managing Director/Board on solvency
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred company receive shares in the recipient company
Shareholders' protection	<ul style="list-style-type: none"> 75% Majority requirement for shareholders' resolution on merger Mandatory compensation to shareholders voting against the merger. Compensation by way of adequate cash payment

Cross border merger from Hungary to other member state (2/2)



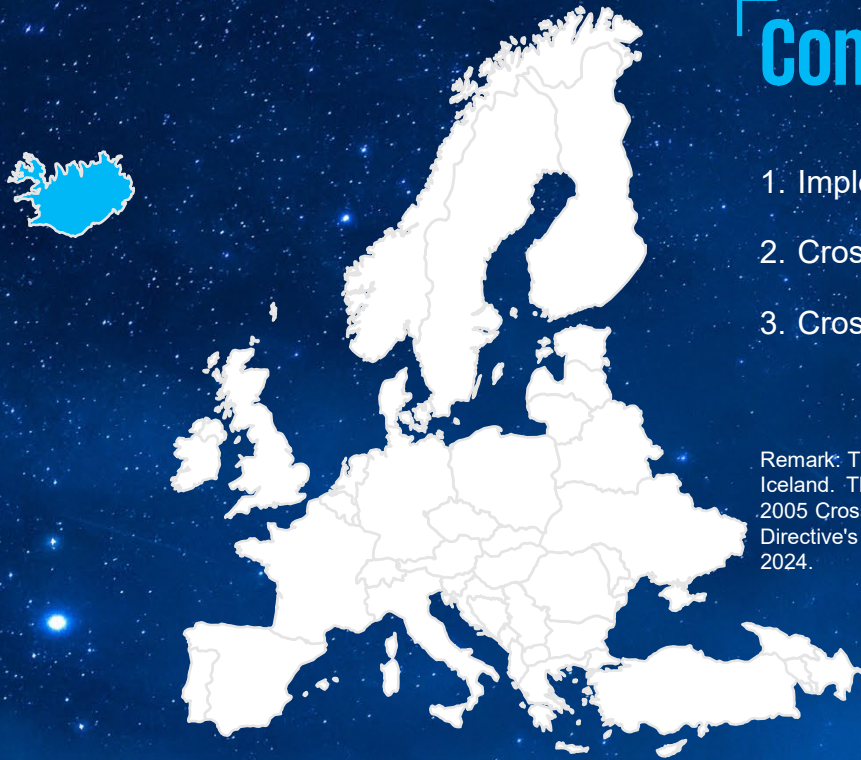
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Company Registration Court based on the registered seat of the company
Timing	<ul style="list-style-type: none"> Estimated overall timeframe (advice, formal proceeding): four – eight months Draft terms of the cross border conversion and report: must be available electronically at least 45 days prior to the shareholders' meeting for the shareholders and for the works council (or for the employees if there's no works council) Compensation payment to non-participating shareholders: until the end of the second month after the effectiveness of merger The Court must be notified at least 30 days prior to the shareholders' meeting Audit report must be available at least a month prior to the shareholders' meeting Publication in the Company Gazette twice with a seven days interval
Formal considerations	<ul style="list-style-type: none"> All documents should be in the form of a private deed with the full probative value <p>Language:</p> <ul style="list-style-type: none"> Any language, with the caveat that non-Hungarian documents must be translated due to registration with the Company Court → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Tanúsítvány</i>)	<ul style="list-style-type: none"> Issued by the competent Company Registration Court after filing all required documents and a positive review The pre-merger certificate is issued between 30 and 90 days, with an additional up to 180 days in case the necessary information is not available
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>Tanúsítvány</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> Registration in the Hungarian Company Registration Court after notification by authority of the destination jurisdiction of positive registration of the merger If the Company set out the effective date of the merger, it will be effective on that day, otherwise the merger is effective on the day of registration of the respective destination Authority

Cross border merger to Hungary



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>korlátolt felelősségű társaság, Kft.</i>) Company limited by shares (<i>részvénytársaság; Rt.</i>), <p>Please note, that Hungarian share companies have two forms: private (<i>Zrt.</i>) and public (<i>Nyrt</i>). If the public form (<i>Nyrt</i>) is involved, each transaction requires specific analysis due to certain legal restrictions in relation to this type of entity. → Please see for further requirements in the respective description for the destination jurisdiction</p>
Share capital requirements	<ul style="list-style-type: none"> Limited liability companies: HUF 3,000,000 Private company limited by shares: HUF 5,000,000 Public company limited by shares: HUF 20,000,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with an existing Hungarian legal entity, Cross border merger with a new recipient Hungarian legal entity
Competent regulatory authority	<ul style="list-style-type: none"> Company Registration Court based on the registered seat of the recipient company
Hungarian registration process	<ul style="list-style-type: none"> Application must be filed by the legal representative of the Company (i.e. a law firm) of the recipient legal entity to the competent Hungarian Company Registration Court Application includes the documents on the employee participation, articles of association, declarations of acceptance of executive officers Pre-merger certificate is transferred by the departure member state's respective regulatory body to the Hungarian Company Registration Court → Please see requirements for pre-merger certificate in the respective departure member state section Scope of review of the Hungarian Company Registration Court: receipt of pre-merger certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Any language, with the caveat that non-Hungarian documents must be translated due to registration with the Company Registration Court → Please see other country sections for requirements of the respective jurisdiction
Timing	<ul style="list-style-type: none"> The Company Registration Court has 15 business days to register the merger
Legal effectiveness of merger	<ul style="list-style-type: none"> The Company may designate the date and timing of the effectiveness, otherwise the merger is effective upon the registration of the Hungarian Company Registration Court
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> N/A in Hungary, only EU member states are allowed to take part in cross border transactions based on the Hungarian Act implementing the Mobility Directive

Iceland



Content

1. Implementation status in Iceland
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Iceland. The content on the following slides is based on the 2005 Cross Border Merger Directive. The exact date of Mobility Directive's implementation is anticipated not before Autumn 2024.



Jónas R. Tómasson

Partner

M +354 893 8814

jtomasson@kpmg.is



[Back to Country Overview](#)

Implementation status in Iceland

Current status of the implementation process in Iceland:

The Mobility Directive has not been transposed in Iceland until the date hereof.

According to information from the Icelandic Ministry of Education and Commerce, it is expected that a bill concerning the implementation of the Mobility Directive will not be submitted to parliament until the autumn of 2024.

Therefore, the currently applicable legal provisions concerning the subject are provisions of the companies' legislation which implemented Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross border mergers of limited liability companies (the “**Cross Border Merger Directive**”).

The following slides present the current legal regime, which as noted above, is based on the Cross Border Merger Directive.

Cross border division from Iceland to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>ehf.</i>) Public limited liability company (<i>hf.</i>)
Division types	<p>Division to at least two recipient legal entities with transfer of all assets and liabilities</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities <p>Division to one or more recipient legal entity with transfer of part of the assets and liabilities</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity
Required documentation	<p>Division schedule (<i>Skiptingaráætlun</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, articles of association, exchange ratio and distribution of shares to be granted, statement on specific rights of stakeholders, creditor guarantees, effects on staff and employment relationships, summary of transferred/remaining assets and liabilities, compensation payment. The division schedule is prepared by the legal entities' Board of Directors <p>Memorandum by the Board of Directors (<i>Greinargerðir stjórnna</i>)</p> <ul style="list-style-type: none"> The memorandum shall address the economic and legal grounds for the division schedule as well as the determination of the consideration for the shares, including any particular difficulties linked to the decision. As payment for shares is rendered by other means than cash, the Board of Directors must also prepare a report stating that the consideration is adequate and this report shall be sent to the commercial register <p>Audit Report (<i>Skýrsla endurskoðanda</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent auditor, resulting in a written audit report <p><u>Waiver</u>: possible under specific circumstances</p> <p>Division Balance sheet of the companies as of the division date</p>

Cross border division from Iceland to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> • 2/3 majority requirement for mandatory shareholders' resolution on division • Mandatory compensation/acquisition offer to shareholders if they have expressed reservations to do so at the shareholders' meeting, provided that the consideration for the shares is neither fairly nor objectively justified
Extended liability	<ul style="list-style-type: none"> • Extended liability of the divided legal entity and the recipient legal entity as joint and several debtors for liabilities incurred prior to the division
Competent regulatory authority	<ul style="list-style-type: none"> • Commercial register
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): three – eight months • The Division Schedule, Reports by the Board of Directors and by the Auditor shall be sent to the commercial register within one month from the signature of the Division Schedule • The commercial register is then responsible for publishing an announcement in the Legal Gazette • After one month from the advertisement the division can be confirmed and registered • Compensation payment to shareholders: Two weeks after the division has been decided in all participating legal entities proceedings shall be brought before the District Court
Formal considerations	<ul style="list-style-type: none"> • The commercial register announces the division in the Legal Gazette • The commercial register sends a notification that all legal formalities have been completed <p>Language:</p> <ul style="list-style-type: none"> • Icelandic language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate	<ul style="list-style-type: none"> • Issued by the Icelandic commercial register after filing of all required documents and positive review
Legal effectiveness of division	<ul style="list-style-type: none"> • Transmission of pre-division certificate to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> • Registration in the Icelandic commercial register after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the foundation of the new legal entity • Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border division from other member state to Iceland



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>ehf.</i>) Public limited liability company (<i>hf.</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>ehf.</i>): ISK 500,000 (EUR 3,324) Public limited liability company (<i>hf.</i>): ISK 4,000,000 (EUR 26,592)
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Cross border divisions to Iceland are also possible with an existing legal entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register
Icelandic registration process	<ul style="list-style-type: none"> Notification of proposed division is sent to the Icelandic commercial register Application includes in particular the Division schedule An announcement is published in the Legal Gazette Pre-division certificate transferred by departure member state regulatory body to Icelandic commercial register Scope of review of the Icelandic commercial register: receipt of pre-division certificate (no review in substance), mandatory provisions on establishment of recipient legal form
Language requirements	<ul style="list-style-type: none"> Icelandic language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate by commercial register: three – eight months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in the Icelandic commercial register after positive review Legal effectiveness upon registration by the commercial register

Cross border merger from Iceland to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Private limited liability company (<i>ehf.</i>) • Public limited liability company (<i>hf.</i>)
Required documentation	<p>Merger schedule (<i>Samrunaáætlun</i>)</p> <ul style="list-style-type: none"> • Main statutory content is the new legal form, articles of association, merger ratio and share to be granted, distribution scale, additional cash payments, balance sheet date and merger date as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of stakeholders, effects on staff and employment relationships, creditor guarantees, compensation payment. Plan to be prepared by the legal entities Board of Directors <p>Memorandum by the Board of Directors</p> <ul style="list-style-type: none"> • The memorandum shall address the economic and legal grounds for the merger schedule as well as the determination of the consideration for the shares, including any particular difficulties linked to the decision <p>Audit Report</p> <ul style="list-style-type: none"> • Audit of the plan by independent auditor, resulting in a written audit report • Balance sheet of the companies as of the merger date
Capital increase	<ul style="list-style-type: none"> • The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> • $\frac{2}{3}$ majority requirement for mandatory shareholders' resolution on merger • Mandatory compensation/acquisition offer to shareholders if they have expressed reservations to do so at the shareholders' meeting, provided that the consideration for the shares is neither fairly nor objectively justified

Cross border merger from Iceland to other member state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months The Merger Schedule, Reports by the Board of Directors and by the Auditor shall be sent to the commercial register within one month from the signature of the Merger Schedule The commercial register is then responsible for publishing an announcement in the Legal Gazette After one month from the advertisement the division can be confirmed and registered Compensation payment to shareholders: Two weeks after the merger has been decided in all participating legal entities proceedings shall be brought before the District Court
Formal considerations	<ul style="list-style-type: none"> The commercial register announces the merger in the Legal Gazette The commercial register sends a notification that all legal formalities have been completed <p>Language:</p> <ul style="list-style-type: none"> Icelandic language due to registration with the commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate	<ul style="list-style-type: none"> Issued by the Icelandic commercial register after filing of all required documents and positive review
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in the Icelandic commercial register after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border merger to Iceland



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>ehf.</i>) Public limited liability company (<i>hf.</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>ehf.</i>): ISK 500,000 (EUR 3,324) Public limited liability company (<i>hf.</i>): ISK 4,000,000 (EUR 26,592)
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity Cross border merger with an existing legal entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register
Icelandic registration process	<ul style="list-style-type: none"> Notification of proposed merger is sent to the Icelandic commercial register Application includes in particular the Merger Schedule An announcement is published in the Legal Gazette Pre-merger certificate by departure member state regulatory body to Icelandic commercial register Scope of review Icelandic commercial register: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Merger Schedule by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> Icelandic language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate by commercial register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Icelandic commercial register after positive review Legal effectiveness upon registration by the Icelandic commercial register

Ireland



Content

1. Implementation status in Ireland

Remark: The Mobility Directive has not yet been implemented in Ireland. The exact date of Mobility Directive's implementation is currently unclear.



Aisling Garry

Director

M +353 170 04173

aisling.garry@kpmglaw.ie



[Back to Country Overview](#)

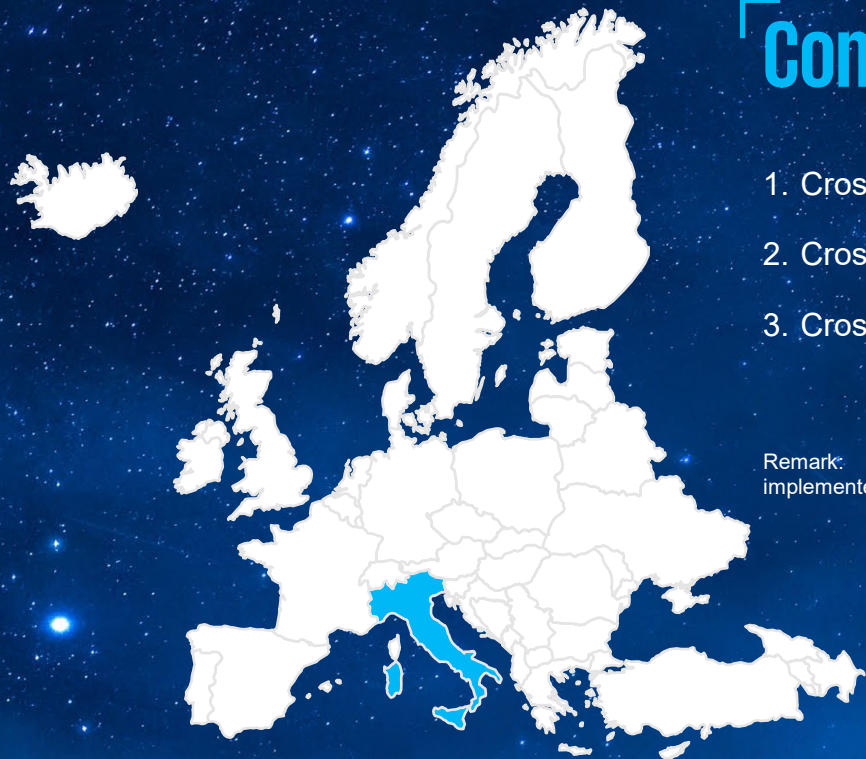
Implementation status in Ireland

Current status of the implementation process in Ireland:

The Mobility Directive has not been transposed in Ireland until the date hereof.

The exact date of implementation is hard to foresee.

Italy



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Italy.



Alberto Cirillo

Partner

T +39 011 883166

albertocirillo@kpmg.it



[Back to Country Overview](#)

Cross border conversion from Italy to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Required documentation	<ul style="list-style-type: none"> Conversion Plan (<i>Progetto di trasformazione</i>) <ul style="list-style-type: none"> Main statutory content is the new legal form, seat, articles of association, indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment Plan to be prepared by the governing body of the Italian company Governing Body's Report (<i>relazione dell'organo amministrativo</i>) <ul style="list-style-type: none"> Report of the governing body (<i>organo amministrativo</i>) on the effects of the conversion for employees and shareholders, in particular stating whether the company has received localized public benefits (<i>benefici pubblici localizzati</i>) during the five years before the filing of the conversion plan with the Companies' Register specifying any entity or authority which granted said benefits <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights unanimously resolve upon it)
Shareholders' protection	<ul style="list-style-type: none"> On the first call the shareholders' meeting is validly held with at least 50% of corporate capital and the mandatory resolution on conversion is taken with a 2/3 majority, and, in case of limited liability companies, the required majority is at least half of the corporate capital of the company. On second call the requirements are lower Shareholders voting against the conversion or not participating to the conversion resolution have the right to withdraw from the company and receive compensation
Employees' protection	<ul style="list-style-type: none"> The cross border converted entity retains all the rights and obligations of the former entity and continues in all of the relations, (also in court and with the employees) of the converting entity
Competent regulatory authority	<ul style="list-style-type: none"> Italian notary public

Cross border conversion from Italy to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six months • Conversion Plan (<i>Progetto di trasformazione</i>): publication with the Companies Register or in the companies' websites at least 30 days before the shareholders' resolution unless the shareholders unanimously waive such term, alongside a notice to the shareholders, creditors and employees' representatives (or the employees themselves if there are no representatives). At least five days before the shareholders' meeting, the recipients of the notice may provide their comments regarding the Conversion Plan • Governing Body's Report (<i>relazione dell'organo amministrativo</i>): to be provided to the shareholders and the representatives of the employees (or the employees themselves if there are no representatives) of the company at least 45 days prior to the shareholders' meeting. Without prejudice to the applicable National Bargaining Collective Agreement, employees' representatives (or the employees themselves if there are no representatives) may have more favorable applicable provisions in relation to employees' information and consultation rights. The Governing Body Report shall also contain the effects of the conversion on staff and employment relationships. In case of other applicable laws to the company resulting from the conversion, such information shall be given to the shareholders and the employees • Creditors' opposition period: the creditors have a 90-day period to challenge the conversion starting from the filing of the conversion plan with the Companies' Register. Following this grace period, the conversion deed may be executed before an Italian notary
Formal considerations	<p>Notarization by Italian notary:</p> <ul style="list-style-type: none"> • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • Italian language due to registration with the Companies' Register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate	<ul style="list-style-type: none"> • The pre-conversion certificate is issued by the Italian public notary upon request by the converting company. The request must contain all required documents and the notary shall verify its compliance with law. To obtain such certificate, the Italian company has to document as well to not have any pending debts vis-à-vis public entities or administrations (e.g., including social security contributions) or to have duly guaranteed or satisfied said debts • Pre-conversion certificate is issued no later than 30 days after the filing of all required documentation • The issued pre-conversion certificate is filed with the Companies' Register by the company • Transmission of pre-conversion certificate (<i>certificate preliminare</i>) to the authority of the destination jurisdiction
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description of the destination jurisdiction</u> • Registration in Italian Companies' Register within 30 days after the review by the competent authority of the destination jurisdiction of positive registration of the conversion • Deletion of the Italian company from the Companies' Register following the conversion notice of the competent Companies' Register of the registered office of the resulting converted company • Legal effectiveness depending on the destination jurisdiction law requirements

Cross border conversion from other member state to Italy



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>): EUR 10,000 Stock corporation (<i>SpA</i>): EUR 50,000 Limited partnership by shares (<i>Sapa</i>): EUR 50,000
Competent regulatory authority	<ul style="list-style-type: none"> Italian notary public
Italian process	<ul style="list-style-type: none"> Pre-conversion certificate (<i>certificato preliminare</i>): to be provided by the competent foreign authority to the notary public and filed with the Italian Companies' Register Scope of review (of both the Companies' Register and the notary public): receipt of pre-conversion certificate, mandatory provisions on establishment of target legal form, employee participation rules Notarial review (compliance with law, including any labour law requirements) of the pre-conversion certificate and of the foreign conversion deed Notarial deed executing the conversion in Italy Filing of the conversion deed with the Companies' Register no later than 30 days after its execution
Employees participation and protection	<ul style="list-style-type: none"> Employees' participation: when the company applies employees participation schemes or within six months from the publication of the conversion plan has a certain workforce average, employees' participation rules apply accordingly to relevant agreements entered into with trade unions and in line with the applicable provisions related to the participation rights Employees protection: the cross border converted entity retains all the rights and obligations of the former entity and continues in all of the relations, (also in court and with the employees) of the converting entity
Language requirements	<ul style="list-style-type: none"> Italian language due to registration with the Companies' Register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>certificato preliminare</i>) by Companies' Register: two – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effects begin upon the date of the filing of the converted company's articles of association (<i>atto costitutivo</i>) in the Companies' Register of the place where the converted company has its registered office (unless the conversion plan provides for a later effective date).

Cross border division from Italy to other member state (1/3)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Division types	<p>Cross border division with new recipient legal entities (<i>scissione totale</i>):</p> <ul style="list-style-type: none"> transfer of all assets and liabilities to at least two new recipient legal entities (either proportional or not proportional, meaning that the resulting entities may or may not have the same amount of shares/shareholders/structure) <p>Cross border division with existing recipient legal entities (<i>scissione parziale</i>):</p> <ul style="list-style-type: none"> transfer of part of an entity's assets and liabilities to one or more already existing (or newly created) recipient legal entities (either proportional or not proportional, meaning that the resulting entities may or may not have the same amount of shares/shareholders/structure) <p>Cross border spin-off with new formation (<i>scissione mediante scorporo</i>):</p> <ul style="list-style-type: none"> transfer of part of the assets and liabilities to a new recipient legal entity whose shares are owned by the spun-off company
Required documentation (<i>continues</i>)	<p>Division Plan (<i>Progetto di scissione</i>)</p> <ul style="list-style-type: none"> Main statutory content of the Division Plan is, inter alia.: the new legal form, seat, articles of association, exchange ratio and distribution of shares to be granted, indicative time schedule, statement on specific rights of stakeholders, creditor guarantees, effects on staff and employment relationships, summary of transferred/remaining assets and liabilities, compensation payment Plan to be prepared by the governing body of the involved companies <p>Governing Body's Report (<i>Relazione dell'organo amministrativo</i>)</p> <ul style="list-style-type: none"> Report of the governing body (<i>organo amministrativo</i>) on the effects of the division for employees and shareholders, in particular stating whether the Italian company involved in the division has received localized public benefits (<i>benefici pubblici localizzati</i>) during the five years before the filing of the Division Plan with the Companies' Register specifying any entity or authority which granted said benefits Such report is not required in the event of a cross border division with existing legal entities (<i>scissione mediante scorporo</i>) <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the involved companies unanimously resolve upon it) <p>Experts' Report (<i>Relazione degli esperti</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent expert(s) (chosen by the competent court), resulting in a written experts report Such report is not required in the event of a cross border division with existing legal entities (<i>scissione mediante scorporo</i>) <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the involved companies unanimously resolve upon it)

Cross border division from Italy to other member state (2/3)



Topic	Prerequisites
Required documentation (continued)	Balance sheet or financial statement (<i>situazione patrimoniale o bilancio</i>) <ul style="list-style-type: none"> Balance sheet not older than 120 days before the time of filing of the Division Plan with the Companies' Register, prepared by the governing bodies of the involved companies Financial statement of the companies of the last fiscal year, if closed no later than six months before the day of the filing of the Division Plan with the Companies' Register <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the involved companies unanimously resolve upon it)
Shareholders' protection	<ul style="list-style-type: none"> On the first call the shareholders' meeting is validly held with at least 50% of corporate capital and the mandatory resolution on division is taken with a 2/3 majority, and, in case of limited liability companies, the required majority is at least half of the corporate capital of the company. On second call the requirements are lower Shareholders voting against the division or not participating to the division resolution have the right to withdraw from the company and receive compensation
Extended liability	<ul style="list-style-type: none"> Italian company/companies involved in the division are jointly liable for the divided company's liabilities within the limit of the assets assigned (to the recipient company) or of the residual assets (for the divided company)
Competent regulatory authority	<ul style="list-style-type: none"> Italian notary public
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): six – eight months Division Plan (<i>Progetto di scissione</i>): publication with the Companies Register or in the companies' websites at least 30 days before the shareholders' resolution unless the shareholders unanimously waive such term, alongside a notice to the shareholders, creditors and employees representatives (or the employees themselves if there are no representatives) At least five days before the shareholders' meeting, the recipients of the notice may provide their comments regarding the Division Plan Governing Body's Report (<i>relazione dell'organo amministrativo</i>): to be provided to the shareholders and the representatives of the employees (or the employees themselves if there are no representatives) of the merging companies at least 45 days prior to the shareholders' meeting. Without prejudice to the applicable National Bargaining Collective Agreement, employees representatives (or the employees themselves if there are no representatives) may have more favourable applicable provisions in relation to employees' information and consultation rights. The Governing Body Report shall also contain the effects of the division on staff and employment relationships. In case of other applicable laws to the company resulting from the division, such information shall be given to the shareholders and the employees Experts' Report (<i>relazione degli esperti</i>) and Balance sheet or financial statement (<i>situazione patrimoniale o bilancio</i>): to be provided to the shareholders at least 30 days prior to the shareholders' meeting Creditors' opposition period: the creditors have a 90-day period to challenge the division starting from the filing of the division plan with the Companies' Register. Following this grace period, the division deed may be executed before an Italian notary Division Deed: to be executed by the Italian notary public Deletion of the prior company from the related Companies' Register after notice from the Companies' Register of the resulting divided companies (only in the event of <i>scissione totale</i>)

Cross border division from Italy to other member state (3/3)



Topic	Prerequisites
Employees	<ul style="list-style-type: none"> Notification to the trade unions (<i>comunicazione alle rappresentanze sindacali</i>): the notification to the trade unions shall be submitted at least 25 days before the envisaged operation (also depending on the applicable National Bargaining Collective Agreement that may provide for more favourable provisions) and joint examination shall be carried out with trade unions, if required (article 47, Italian law no. 428/1990) No changes in the employment conditions may occur. The employment relationships shall continue with the resulting company and each employee maintains all the rights granted/accrued during the last employment relationship Employees' participation in the company: when the company applies employees participation schemes or within six months from the publication of the division plan has a certain workforce average, employees' participation rules apply accordingly to relevant agreements entered into with trade unions and in line with the applicable provisions related to the participation rights
Formal considerations	<p>Notarization by Italian notary:</p> <ul style="list-style-type: none"> Shareholders' resolution on the Division Plan Division deed <p>Language:</p> <ul style="list-style-type: none"> Italian language due to registration with the Companies' Register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-division certificate (<i>certificato preliminare</i>)	<ul style="list-style-type: none"> The pre-division certificate is issued by the Italian public notary upon request by the dividing company. The request must contain all required documents and the notary shall verify its compliance with law. To obtain such certificate, the Italian company has to document as well to not have any pending debts vis-à-vis public entities or administrations (e.g., including social security contributions) or to have duly guaranteed or satisfied said debts Pre-division certificate is issued no later than 30 days after the filing of all required documentation The issued pre-division certificate is filed with the Companies' Register by the company
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate (<i>certificate preliminare</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Legal effectiveness upon registration of the division in the Companies Register of the departure state, following the notice of the filing of the relevant division deed by the authority/authorities of the destination jurisdiction(s) of the beneficiaries legal entities of the division.

Cross border division from other member state to Italy (1/2)



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>): EUR 10,000 Stock corporation (<i>SpA</i>): EUR 50,000 Limited partnership by shares (<i>Sapa</i>): EUR 50,000
Division type/recipient legal entity	<ul style="list-style-type: none"> Cross border division with new recipient legal entities (<i>scissione totale</i>): <ul style="list-style-type: none"> transfer of all assets and liabilities to at least two new recipient legal entities (either proportional or not proportional, meaning that the resulting entities may or may not have the same amount of shares/shareholders/structure) Cross border division with existing recipient legal entities (<i>scissione parziale</i>): <ul style="list-style-type: none"> transfer of part of an entity's assets and liabilities to one or more already existing (or newly created) recipient legal entities (either proportional or not proportional, meaning that the resulting entities may or may not have the same amount of shares/shareholders/structure) Cross border spin-off with new formation (<i>scissione mediante scorporo</i>): <ul style="list-style-type: none"> transfer of part of the assets and liabilities to a new recipient legal entity whose shares are owned by the spun-off company
Competent regulatory authority	<ul style="list-style-type: none"> Italian notary public
Italian process	<ul style="list-style-type: none"> Publication of the Division Plan with the Companies Register at least 30 days before the shareholders' resolution (unless the shareholders unanimously waive such term) Pre-division certificate (<i>certificato preliminare</i>) to be obtained for all companies involved (for the Italian company to be issued by the notary public, and <u>for the other company please refer to the respective departure member state section</u>) and to be transferred by departure member state governing body to the Italian Companies' Register and to the Italian notary public (where applicable) Scope of review (of both the Companies' Register and the notary public): receipt of pre-division certificate, mandatory provisions on establishment of recipient legal form, employee participation rules Notarial review (compliance with law) of the pre-division certificate and of the foreign division deed Notarial deed executing the division in Italy Filing of the division deed with the Companies' Register at least 30 days after its execution Deletion of the prior company from the related Companies' Register after notice from the Companies' Register of the resulting divided companies (only in the event of <i>scissione totale</i>)
Language requirements	<ul style="list-style-type: none"> Italian language due to registration with the Companies' Register

Cross border division from other member state to Italy (2/2)



Topic	Prerequisites
Employees	<ul style="list-style-type: none"> Notification to the trade unions (<i>comunicazione alle rappresentanze sindacali</i>): the notification to the trade unions shall be submitted at least 25 days before the envisaged operation (also depending on the applicable National Bargaining Collective Agreement that may provide for more favourable provisions) and joint examination shall be carried out with trade unions, if required (article 47, Italian law no. 428/1990) No changes in the employment conditions may occur. The employment relationships shall continue with the resulting company and each employee maintains all the rights granted/accrued during the last employment relationship Employees' participation in the company: when the company applies employees participation schemes or within six months from the publication of the division plan has a certain workforce average, employees' participation rules apply accordingly to relevant agreements entered into with trade unions and in line with the applicable provisions related to the participation rights
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>certificato preliminare</i>) by Companies' Register: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> The division legal effectiveness depends on the requirements set by the departure jurisdiction law. → <u>Please see for further requirements the respective description of the departure jurisdiction</u>

Cross border merger from Italy to other member state (1/3)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Required documentation (continues)	<p>Merger Plan (<i>Progetto di fusione</i>)</p> <ul style="list-style-type: none"> Main statutory content of the Merger Plan is, inter alia, the new legal form, seat of the merging company, articles of association, indicative time schedule, merger ratio and shares to be granted, distribution scale, additional cash payments, balance sheet date and merger date as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of stakeholders, effects on staff and employment relationships, creditor guarantees, compensation payment Plan to be prepared by the governing body of the merging companies <p>Governing Body's Report (<i>Relazione dell'organo amministrativo</i>)</p> <ul style="list-style-type: none"> Report of the governing body (<i>organo amministrativo</i>) on the effects of the merger for employees and shareholders, in particular stating whether the Italian company involved in the merger has received localized public benefits (<i>benefici pubblici localizzati</i>) during the five years before the filing of the Merger Plan with the Companies' Register specifying any entity or authority which granted said benefits <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the merging companies unanimously resolve upon it) <p>Experts' Report (<i>Relazione degli esperti</i>)</p> <ul style="list-style-type: none"> Audit of the plan by independent expert(s) (chosen by the competent court of the registered office of the Italian company involved in the merger), resulting in a written experts report <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the merging companies unanimously resolve upon it) <p>Balance sheet or financial statement (<i>situazione patrimoniale o bilancio</i>)</p> <ul style="list-style-type: none"> Balance sheet not older than 120 days before the time of filing of the Merger Plan with the Companies' Register, prepared by the governing bodies of the merging companies financial statement of the companies of the last fiscal year, if closed no later than six months before the day of the filing of the Merger Plan with the Companies' Register <u>Waiver</u>: possible under specific circumstances (if all shareholders and owners of financial instruments having voting rights of the merging companies unanimously resolve upon it)

Cross border merger from Italy to other member state (2/3)



Topic	Prerequisites
Required documentation (continued)	<p>In case of a simplified merger (merger by incorporation carried out by a company holding all the shares, quotas or other securities conferring voting rights in the shareholders' meeting of the merged company), less documentation is required and, inter alia:</p> <ul style="list-style-type: none"> • It is not mandatory to include in the merger plan any exchange ratio or cash balance, nor any modality to assign the relevant shares/quotas/securities, nor the date from which said titles allow to participate to company's profits; • The merger plan does not have to be approved by the shareholders' meeting of the Italian merged company; • The governing body's report is not required; • The governing body's report addressed to the employees is only required for the merging company
Capital increase	<ul style="list-style-type: none"> • The shareholders of the transferred legal entity have the right to receive shares in the recipient legal entity on the basis of the shares exchange ratio • <u>Waiver</u>: possible under specific circumstances (in particular if the shareholders that dissented or did not participate in the Merger Plan approval resolution exert their <u>withdrawal right</u>)
Shareholders' protection	<ul style="list-style-type: none"> • On the first call the shareholders' meeting is validly held with at least 50% of corporate capital and the mandatory resolution on merger is taken with a 2/3 majority, and, in case of limited liability companies, the required majority is at least half of the corporate capital of the company. On second call the requirements are lower • Shareholders voting against the merger or not participating to the merger resolution have the right to withdraw from the company and receive compensation
Competent regulatory authority	<ul style="list-style-type: none"> • Italian public notary
Timing (continues)	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): six – eight months • Merger Plan (<i>Progetto di fusione</i>): publication with the Companies Register or in the companies' websites at least 30 days before the shareholders' resolution unless the shareholders unanimously waive such term, alongside a notice to the shareholders, creditors and employees representatives (or the employees themselves if there are no representatives). At least five days before the shareholders' meeting, the recipients of the notice may provide their comments regarding the Merger Plan • Governing Body's Report (<i>relazione dell'organo amministrativo</i>): to be provided to the shareholders and the representatives of the employees (or the employees themselves if there are no representatives) of the merging companies at least 45 days prior to the shareholders' meeting. Without prejudice to the applicable National Bargaining Collective Agreement, employees representatives (or the employees themselves if there are no representatives) may have more favourable applicable provisions in relation to employees' information and consultation rights. The Governing Body Report shall also contain the effects of the merger on staff and employment relationships. In case of other applicable laws to the company resulting from the merger, such information shall be given to the shareholders and the employees • Experts' Report (<i>relazione degli esperti</i>) and Balance sheet or financial statement (<i>situazione patrimoniale o bilancio</i>): to be provided to the shareholders at least 30 days prior to the shareholders' meeting

Cross border merger from Italy to other member state (3/3)



Topic	Prerequisites
Timing (continued)	<ul style="list-style-type: none"> • Merger Deed: to be executed on the basis of the destination jurisdiction requirements (alongside the lawfulness review of the deed and the pre-merger certificate) and to be provided to the Italian notary • Creditors' opposition period: the creditors have a 90-day period to challenge the merger starting from the filing of the merger plan with the Companies' Register. Following this grace period, the merger deed may be executed before an Italian notary • Notification to the trade unions (<i>comunicazione alle rappresentanze sindacali</i>): the notification to the trade unions shall be submitted at least 25 days before the envisaged operation (also depending on the applicable National Bargaining Collective Agreement that may provide for more favourable provisions) and joint examination shall be carried out with trade unions, if required (article 47, Italian law no. 428/1990) • Employees' participation in the company: when the company applies employee's participation schemes or within six months from the publication of the merger plan has a certain workforce average, employees' participation rules apply accordingly to relevant agreements entered into with trade unions and in line with the applicable provisions related to the participation rights • Compensation payment to shareholders: 90 days after legal effectiveness of the merger
Formal considerations	<p>Notarization by Italian notary:</p> <ul style="list-style-type: none"> • Shareholders' resolution on the Merger Plan <p>Language:</p> <ul style="list-style-type: none"> • Italian language due to registration with the Companies' Register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>certificato preliminare</i>)	<ul style="list-style-type: none"> • The pre-merger certificate is issued by the Italian public notary upon request by the merging company. The request must contain all required documents and the notary shall verify its compliance with law. To obtain such certificate, the Italian company has to document as well to not have any pending debts vis-à-vis public entities or administrations (e.g. including social security contributions) or to have duly guaranteed or satisfied said debts • Pre-merger certificate is issued no later than 30 days after the filing of all required documentation • The issued pre-merger certificate is filed with the Companies' Register by the company
Legal effectiveness of merger	<ul style="list-style-type: none"> • Transmission of pre-merger certificate (<i>certificato preliminare</i>) to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> • Registration in Italian Companies' Register within 45 days after the review by the competent authority of the destination jurisdiction of positive registration of the merger • Deletion of the Italian company from the relevant Companies' Register following notice of the Companies' Register of the registered office of the resulting merged company • Legal effectiveness upon registration by the authority of the destination jurisdiction • No changes in the employment conditions may occur. The employment relationships shall continue with the resulting (merged) Company and each employee maintains all the rights granted/accrued during the last employment relationship

Cross border merger to Italy (1/2)



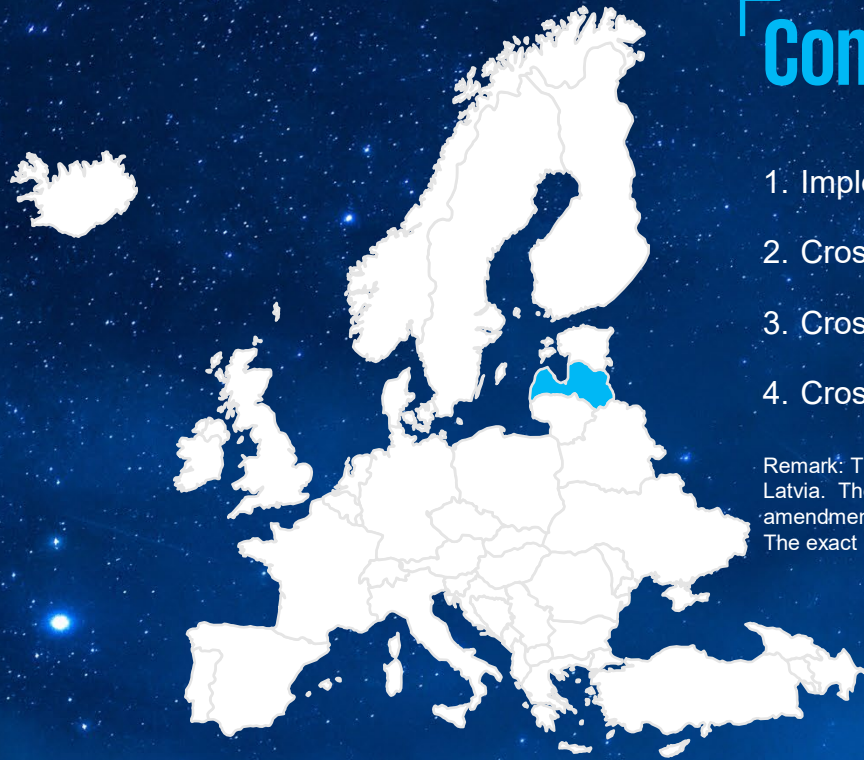
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>) Stock corporation (<i>SpA</i>) Limited partnership by shares (<i>Sapa</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>Srl</i>): EUR 10,000 Stock corporation (<i>SpA</i>): EUR 50,000 Limited partnership by shares (<i>Sapa</i>): EUR 50,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>fusione propria</i>) Cross border merger with an existing legal entity as recipient (<i>per incorporazione</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Italian notary public
Italian process	<ul style="list-style-type: none"> Publication of the Merger Plan with the Companies Register at least 30 days before the shareholders' resolution (unless the shareholders unanimously waive such term) Pre-merger certificate (<i>certificato preliminare</i>) to be obtained for both companies involved (for the Italian company to be issued by the notary public, and for the other company please refer to the respective departure member state section) and to be transferred by departure member state governing body to the Italian Companies' Register and to the Italian notary public (where applicable) Scope of review (of both the Companies' Register and the notary public): receipt of pre-merger certificate, compliance with the registration requirements relating to the recipient legal entity, confirmation of the Merger Plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity) Notarial review (compliance with law) of the pre-merger certificate and of the foreign merger deed Notarial deed executing the merger in Italy Filing of the merger deed with the Companies' Register at least 30 days after its execution Deletion of the prior merging companies from the related Companies' Registers after notice from the Italian Companies' Register of the resulting merging company
Language requirements	<ul style="list-style-type: none"> Italian language due to registration with the Companies' Register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>certificato preliminare</i>) by Companies' Register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Legal effects begin upon the filing of the merger deed with the relevant Italian Companies' Register of the place where the merged company has its registered office.

Cross border merger to Italy (2/2)



Topic	Prerequisites
Employees	<ul style="list-style-type: none">• Notification to the trade unions (<i>comunicazione alle rappresentanze sindacali</i>): the notification to the trade unions shall be submitted at least 25 days before the prospected operation (also depending on the applicable National Bargaining Collective Agreement that may provide for more favourable provisions) and joint examination shall be carried out with trade unions, if required (article 47, Italian law no. 428/1990)• No changes in the employment conditions may occur. The employment relationships shall continue with the resulting (merged) Company and each employee maintains all the rights granted/accrued during the last employment relationship• Employees' participation in the company: when the company applies employee's participation schemes or within six months from the publication of the merger plan has a certain workforce average, employees' participation rules apply accordingly to relevant agreements entered into with trade unions and in line with the applicable provisions related to the participation rights

Latvia



Content

1. Implementation status in Latvia
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Latvia. The content on the following slides is based on law amendments currently not in force, subject to further changes. The exact date of implementation is currently unclear.



Ieva Tiltene-Tiltene

Partner

M +371 291 93938
itiltene@kpmglaw.lv



[Back to Country Overview](#)

Implementation status in Latvia

Current status of the implementation process in Latvia:

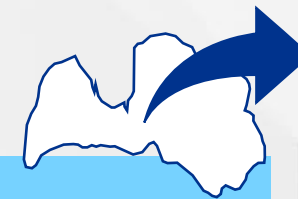
The Mobility Directive has not been transposed completely in Latvia until the date hereof.

Cross border conversion from Latvia to other member state (1/2)



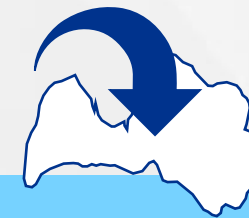
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Required documentation	<p>Cross border reorganization agreement</p> <ul style="list-style-type: none"> In addition to the statutory requirements for all reorganization agreements, it must specify the legal form of the converting company and of the company to be formed, details of employment matters (if applicable), collateral available to creditors and whether the company being converted has received state aid or subsidies in the five years preceding the reorganization decision. Prepared by the Management Board <p>Cross border reorganization prospectus</p> <ul style="list-style-type: none"> The prospectus must specify an explanation of the terms of the reorganization agreement, the legal and economic aspects of the reorganization, reorganization's impact on the future business and on employees. The prospectus shall include a section for its shareholders where the right to compensation and its determination methods are explained, and a section for employees with an explanation of the impact of the reorganization on employees, including any changes in terms and conditions of employment. Prepared by the Management Board <u>Waiver</u>: The section for shareholders does not need to be prepared, if all shareholders agree. The section for employees does not need to be prepared if there are no employees for the company and for its subsidiaries. The prospectus does not need to be prepared if the section for shareholders and for employees is not to be prepared <p>Audit report</p> <ul style="list-style-type: none"> An independent auditor carries out an audit of the project and produces a written audit report <u>Waiver</u>: The audit report may be not prepared if all shareholders agree <p>Shareholders' meeting minutes or shareholder's decision</p> <ul style="list-style-type: none"> The Shareholders of the company must decide on reorganization and on approval of the reorganization agreement <p>Announcement to creditors</p> <ul style="list-style-type: none"> The Management Board must prepare an announcement to all creditors in which they are invited to submit their claims. The announcement must include the time-limit for lodging of creditor's claims, which shall be not less than two months from its publication <p>Application to the Enterprise Register of the Republic of Latvia</p> <ul style="list-style-type: none"> Upon initiation of the reorganization process and upon final registration of reorganization, the company must submit applications to the Enterprise Register of the Republic of Latvia
Shareholders' protection	<ul style="list-style-type: none"> The cross border reorganization agreement is accompanied by a notice to the shareholders where they are invited to state their opinion on the reorganization agreement, which is later shared with the other shareholders The cross border reorganization prospect must include a section for shareholders that explains the impact of the reorganization on shareholders and includes other significant information relevant to the shareholders' interests and rights A shareholder who voted against the reorganization is entitled within a month after shareholders' meeting to require the acquiring company to repurchase his shares for fair and reasonable remuneration which is determined in the reorganization agreement
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia

Cross border conversion from Latvia to other member state (2/2)



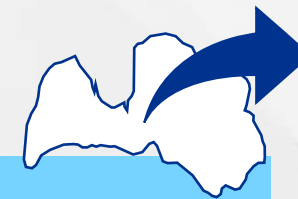
Topic	Prerequisites
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – six months</p> <ul style="list-style-type: none"> • Cross border reorganization agreement: must be published to shareholders at least one month prior to the shareholders' meeting • Cross border reorganization prospectus: if necessary, must be published to shareholders at least six weeks prior to the shareholders' meeting • Audit report: if necessary, must be published to shareholders at least one month prior to the shareholders' meeting • Shareholders' meeting minutes or shareholder's decision: the shareholders' meeting cannot be held or shareholder's decision for stock companies (AS) can be adopted not earlier than one month (for limited liability companies (<i>SIA</i>) and partnerships (<i>personālsabiedrības</i>) – two weeks) after draft reorganization agreement has been announced • <u>Waiver</u>: If all shareholders participate in the shareholders' meeting, the decision can be adopted before the mentioned time period • Application to the Enterprise Register: not earlier than two months after the shareholders' meeting • Compensation payment to shareholders, if any: within two months after legal effectiveness of conversion of legal form (if the reorganization agreement does not provide for a shorter period)
Formal considerations	<ul style="list-style-type: none"> • Language: Latvian language due to registration with the Enterprise Register of the Republic of Latvia → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate <i>(Pirmsapvienošanas apliecība)</i>	<ul style="list-style-type: none"> • The converting company registered in Latvia shall apply and submit all reorganization documentation to the Enterprise Register of the Republic of Latvia, which after examination of documents adopts decision to issue pre-conversion certificate (<i>pirmsapvienošanas apliecība</i>) which confirms that Latvian company has taken all the necessary steps to complete the cross border reorganization
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Transmission of pre-conversion certificate (<i>pirmsapvienošanas apliecība</i>) to the authority of the destination jurisdiction • Relevant authority of the destination jurisdiction registers conversion → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> • The Enterprise Register of the Republic of Latvia receives information from the commercial register of destination jurisdiction regarding registration of the conversion of legal form and excludes the company from the commercial registry • Legal effectiveness is governed by the laws and regulations of the destination member state concerned

Cross border conversion from other member state to Latvia



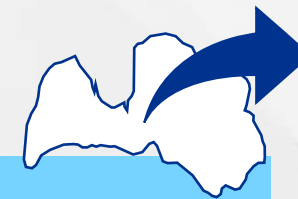
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) – 2,800 EUR Stock company (<i>AS</i>) – 35,000 EUR
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia
Latvian registration process	<ul style="list-style-type: none"> The converting company adopts decision on the conversion, prepares reorganization prospectus and elects the relevant corporate governance bodies for the acquiring company Not earlier than one month after the decision on the conversion was adopted, the converting company submits application, decision on the conversion, reorganization prospectus and audit report (if necessary), acquiring company's Articles of Association and other main documents of acquiring company according to law to the Enterprise Register of the Republic of Latvia After the Enterprise Register of the Republic of Latvia has received pre-reorganization certificate (<i>pirmsapvienošanās apliecība</i>) from the departure member state regulatory body (→ please see requirements for pre-conversion certificate in the respective departure member state section), the Enterprise Register of the Republic of Latvia registers the conversion, and the legal effectiveness comes into force
Language requirements	<ul style="list-style-type: none"> Latvian language due to registration with the Enterprise Register of the Republic of Latvia. If submitting documents issued abroad or in a language other than Latvian to the Latvian Enterprise Register, notarized certified translations into Latvian must be provided
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>pirmsapvienošanās apliecība</i>) by commercial register: one – three working days
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effectiveness upon registration of the acquiring company in the Enterprise Register of the Republic of Latvia is entered

Cross border division from Latvia to other member state (1/2)



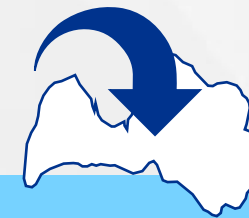
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Division types	<ul style="list-style-type: none"> Split-up (<i>sašķelšana</i>) – the company transfers all its assets to two or more acquiring companies and ceases to exist without liquidation Spin-off (<i>nodalīšana</i>) – the company transfers part of its assets to one or more acquiring companies and continues to exist
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia
Required documentation	<p>Cross border reorganization agreement</p> <ul style="list-style-type: none"> In addition to the statutory requirements for all reorganization agreements, it must specify the legal form of the dividing company and of the company to be formed, details of employment matters (if applicable), collateral available to creditors and whether the company being converted has received state aid or subsidies in the five years preceding the reorganization decision. Prepared by the Management Board <p>Cross border reorganization prospectus</p> <ul style="list-style-type: none"> The prospectus must specify an explanation of the terms of the reorganization agreement, the legal and economic aspects of the reorganization, reorganization's impact on the future business and on employees. The prospectus shall include a section for its shareholders where the right to compensation and its determination methods are explained, and a section for employees with an explanation of the impact of the reorganization on employees, including any changes in terms and conditions of employment. Prepared by the Management Board <p><u>Waiver:</u> The section for shareholders does not need to be prepared, if all shareholders agree. The section for employees does not need to be prepared if there are no employees for the company and for its subsidiaries. The prospectus does not need to be prepared if the section for shareholders and for employees is not to be prepared</p> <p>Audit report</p> <ul style="list-style-type: none"> An independent auditor carries out an audit of the project and produces a written audit report <p><u>Waiver:</u> The audit report may be not prepared if all shareholders agree</p> <p>Shareholders' meeting minutes or shareholder's decision</p> <ul style="list-style-type: none"> The Shareholders of the company must decide on reorganization and on approval of reorganization agreement <p>Announcement to creditors</p> <ul style="list-style-type: none"> The Management Board must prepare an announcement to all creditors in which they are invited to submit their claims. The announcement must include the time-limit for lodging of creditor's claims, which shall be not less than two months from its publication <p>Application to the Enterprise Register of the Republic of Latvia</p> <ul style="list-style-type: none"> Upon initiation of the reorganization process and upon final registration of reorganization, the company must submit applications to the Enterprise Register of the Republic of Latvia

Cross border division from Latvia to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The cross border reorganization agreement is accompanied by a notice to the shareholders where they are invited to state their opinion on the reorganization agreement, which is later shared with the other shareholders The cross border reorganization prospect must include a section for shareholders that explains the impact of the reorganization on shareholders and includes other significant information relevant to the shareholders' interests and rights A shareholder who voted against the reorganization is entitled within a month after shareholders' meeting to require the acquiring company to repurchase his shares for fair and reasonable remuneration which is determined in the reorganization agreement
Extended liability	<ul style="list-style-type: none"> Extended liability of the divided legal entity and the recipient legal entities as joint and several liability for liabilities incurred prior to the division and which are due to be performed within five years from the date on which the reorganization takes effect
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – six months</p> <ul style="list-style-type: none"> Cross border reorganization agreement: must be published to shareholders at least one month prior to the shareholders' meeting Cross border reorganization prospectus: if necessary, must be published to shareholders at least six weeks prior to the shareholders' meeting Audit report: if necessary, must be published to shareholders at least one month prior to the shareholders' meeting Shareholders' meeting minutes or shareholder's decision: the shareholders' meeting cannot be held or the shareholder's decision cannot be adopted not earlier than one month after draft reorganization agreement has been announced (for limited liability companies (SIA) and partnerships (<i>personālsabiedrības</i>) – two weeks after reorganization agreement has been announced) <p><u>Waiver:</u> If all shareholders participate in the shareholders' meeting, the decision can be adopted before the mentioned time period</p> <ul style="list-style-type: none"> Application of creditor claims: the time limit for creditors to lodge their claims must be not less than two months from the date of publication of the notice (published together with the announcement of the reorganization agreement) Application to the Enterprise Register of the Republic of Latvia: after the creditors' claims period has expired and all received creditors' claims are satisfied Compensation payment to shareholders: within two months after legal effectiveness of conversion of legal form (if the reorganization agreement does not provide for a shorter period)
Formal considerations	<ul style="list-style-type: none"> Language: Latvian language due to registration with the Enterprise Register of the Republic of Latvia. If submitting documents issued abroad or in a language other than Latvian to the Enterprise Register of the Republic of Latvia, notarized certified translations into Latvian must be provided → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate (<i>Pirmsapvienošanas apliecība</i>)	<ul style="list-style-type: none"> The dividing company registered in Latvia shall apply to the Enterprise Register of the Republic of Latvia for a pre-division certificate (<i>pirmsapvienošanas apliecība</i>) that the de-merging company has taken all the necessary steps to complete the cross border division
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate (<i>pirmsreorganizācijas apliecība</i>) to the authority of the destination jurisdiction Relevant authority of the destination jurisdiction registers conversion → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> The Enterprise Register of the Republic of Latvia receives information from the commercial registry of destination jurisdiction regarding the registration of the division and excludes the company from the commercial registry Legal effectiveness is governed by the laws and regulations of the Latvia as departure member state

Cross border division from other member state to Latvia



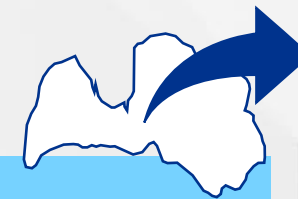
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) – 2,800 EUR Stock company (<i>AS</i>) – 35,000 EUR
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Cross border divisions (split-up, spin-off) to Latvia are also possible with an existing legal entity or entities as recipient
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia
Latvian registration process	<ul style="list-style-type: none"> The draft reorganization agreement, notification to creditors and an application are submitted to the Enterprise Register of the Republic of Latvia for the initialization of the reorganization. The application lists the business names and registration numbers of all the companies involved in the reorganization and, for a company of another member state, the legal form of the company and the commercial register in which it is registered Shareholders' meeting adopts a decision regarding approval of the reorganization agreement After the creditors' claims period has expired, the involved companies must satisfy all received creditors' claims The reorganization agreement, shareholders' meeting decision, application, reorganization prospectus and audit report (if necessary) are submitted to the Enterprise Register for the finalization of the reorganization Within one-three days after submission of all documents and after receiving pre-division certificate (<i>pirmsapvienošanas apliecība</i>), the Enterprise Register registers the reorganization (particular type of the division takes effect)
Language requirements	<ul style="list-style-type: none"> When submitting documents issued abroad or in language other than Latvian to the Latvian Enterprise Register, notarized certified translations into Latvian must be provided
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for division: four – six months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration with the Latvian competent authority after positive review Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Latvia to other member state (1/2)



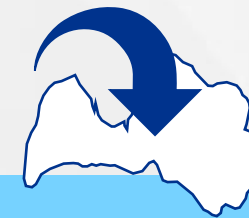
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Required documentation	<p>Cross border reorganization agreement</p> <ul style="list-style-type: none"> In addition to the statutory requirements for all reorganization agreements, it must specify the legal form of the merger company and of the company to be formed, details of employment matters (if applicable), collateral available to creditors and whether the company being converted has received state aid or subsidies in the five years preceding the reorganization decision. Prepared by the Management Board <p>Cross border reorganization prospectus</p> <ul style="list-style-type: none"> The prospectus must specify an explanation of the terms of the reorganization agreement, the legal and economic aspects of the reorganization, reorganization's impact on the future business and on employees. The prospectus shall include a section for its shareholders where the right to compensation and its determination methods are explained, and a section for employees with an explanation of the impact of the reorganization on employees, including any changes in terms and conditions of employment. Prepared by the Management Board <p><u>Waiver</u>: The section for shareholders does not need to be prepared, if all shareholders agree. The section for employees does not need to be prepared if there are no employees for the company and for its subsidiaries. The prospectus does not need to be prepared if the section for shareholders and for employees is not to be prepared</p> <p>Audit report</p> <ul style="list-style-type: none"> An independent auditor carries out an audit of the project and produces a written audit report <u>Waiver</u>: The audit report may be not prepared if all shareholders agree <p>Shareholders' meeting minutes or shareholder's decision</p> <ul style="list-style-type: none"> The Shareholders of the company must decide on reorganization and on approval of the reorganization agreement <p>Announcement to creditors</p> <ul style="list-style-type: none"> The Management Board must prepare an announcement to all creditors in which they are invited to submit their claims. The announcement must include the time-limit for lodging of creditor's claims, which shall be not less than two months from its publication <p>Application to the Enterprise Register of the Republic of Latvia</p> <ul style="list-style-type: none"> Upon initiation of the reorganization process and upon final registration of reorganization, the company must submit applications to the Enterprise Register of the Republic of Latvia
Capital increase	<ul style="list-style-type: none"> By increasing the share capital of the acquiring company as a result of the division, its members (shareholders) have no pre-emptive rights to the shares to be exchanged

Cross border merger from Latvia to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The cross border reorganization agreement is accompanied by a notice to the shareholders where they are invited to state their opinion on the reorganization agreement, which is later shared with the other shareholders The cross border reorganization prospect must include a section for shareholders that explains the impact of the reorganization on shareholders and includes other significant information relevant to the shareholders' interests and rights A shareholder who voted against the reorganization is entitled within a month after shareholders' meeting to require the acquiring company to repurchase his shares for fair and reasonable remuneration which is determined in the reorganization agreement
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – six months</p> <ul style="list-style-type: none"> Cross border reorganization agreement: must be published to shareholders at least one month prior to the shareholders' meeting Cross border reorganization prospectus: if necessary, must be published to shareholders at least six weeks prior to the shareholders' meeting Audit report: if necessary, must be published to shareholders at least one month prior to the shareholders' meeting Shareholders' meeting minutes or shareholder's decision: the shareholders' meeting cannot be held or shareholder's decision cannot be adopted not earlier than one month after draft reorganization agreement has been announced (for limited liability companies (SIA) and partnerships (<i>personālsabiedrības</i>) – two weeks after reorganization agreement has been announced) <p><u>Waiver:</u> If all shareholders participate in the shareholders' meeting, the decision can be adopted before the mentioned time period</p> <ul style="list-style-type: none"> Application of creditor claims: the time limit for creditors to lodge their claims must be not less than two months from the date of publication of the notice (published together with the announcement of the reorganization agreement) Application to the Enterprise Register of the Republic of Latvia: after the creditors' claims period has expired and all received creditors' claims are satisfied Compensation payment to shareholders: within two months after the legal effectiveness of conversion of legal form (if the reorganization agreement does not provide for a shorter period)
Formal considerations	<ul style="list-style-type: none"> Language: Latvian language due to registration with the commercial register. If submitting documents issued abroad or in language other than Latvian to the Latvian Enterprise Register, notarized certified translations into Latvian must be provided → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Pirmsapvienošanas apliecība</i>)	<ul style="list-style-type: none"> The merging company registered in Latvia shall apply to the Latvian Enterprise Register for a pre-merger certificate (<i>pirmsapvienošanas apliecība</i>) certifying that the merging company has taken all the necessary steps in Latvia to complete the cross border merger
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>pirmsapvienošanas apliecība</i>) to the authority of the destination jurisdiction Relevant authority of the destination jurisdiction registers conversion → <u>Please see for further requirements in the respective description for the destination jurisdiction</u> The Enterprise Register of the Republic of Latvia receives information from the commercial register of destination jurisdiction regarding registration of the conversion of legal form and removes the company from the commercial registry Legal effectiveness is governed by the laws and regulations of the destination member state concerned

Cross border merger to Latvia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) Stock company (<i>AS</i>) Partnership (<i>personālsabiedrība</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>SIA</i>) – 2,800 EUR Stock company (<i>AS</i>) – 35,000 EUR
Merger types/recipient legal entity	<ul style="list-style-type: none"> Merging of companies may take the form of acquisition (recipient is existing legal entity) or consolidation (recipient is new legal entity)
Competent regulatory authority	<ul style="list-style-type: none"> The Enterprise Register of the Republic of Latvia
Latvian registration process	<ul style="list-style-type: none"> The draft reorganization agreement, notification to creditors and an application are submitted to the Enterprise Register for the initialization of the reorganization. The application lists the business names and registration numbers of all the companies involved in the reorganization and, for a company of another member state, the legal form of company and the commercial register in which it is registered Shareholders' meeting adopts a decision regarding approval of the reorganization agreement After the creditors' claims period has expired, the involved companies must satisfy all received creditors' claims The reorganization agreement, shareholders' meeting decision, application, reorganization prospectus and audit report (if necessary) are submitted to the Enterprise Register of the Republic of Latvia for the finalization of the reorganization Within one – three days after submission of all documents and receiving pre-merger certificate (<i>pirmsapvienošanas apliecība</i>), the Enterprise Register of the Republic of Latvia registers the reorganization (merger takes effect)
Language requirements	<ul style="list-style-type: none"> When submitting documents issued abroad or in language other than Latvian to the Latvian Enterprise Register, notarized certified translations into Latvian must be provided
Timing	<ul style="list-style-type: none"> For stock companies (<i>AS</i>), a period of one month between the announcement of the agreement and the shareholders' meeting where the reorganization agreement is finalized. The reorganization decision can be challenged within one month For limited liability companies (<i>SIA</i>), a period of two weeks between the announcement of the agreement and the shareholders' meeting where the reorganization agreement is finalized. The reorganization decision can be challenged within one month
Legal effectiveness of merger	<ul style="list-style-type: none"> Legal effectiveness upon registration of the acquiring company in the Enterprise Register of the Republic of Latvia is entered
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Not regulated

Lithuania



Content

1. Implementation status in Lithuania
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Lithuania. The content on the following slides is based on draft legislation subject to further changes. The exact date of implementation is currently unclear.



Inga Šutaitė

Partner

M +370 685 27313

inga.sutaite@kpmglaw.lt



[Back to Country Overview](#)

Implementation status in Lithuania

Current status of the implementation process in Lithuania:

The Mobility Directive has not been transposed completely in Lithuania until the date hereof.

In order to implement the Mobility Directive, a draft law on cross border conversion, merger or division of limited liability companies has been prepared and registered in the Parliament of the Republic of Lithuania. The draft law is currently in the development stage and has not yet been adopted. According to the latest version of the draft law, it should enter into force on 31 August 2023.

Cross border conversion from Lithuania to other member state (1/2)



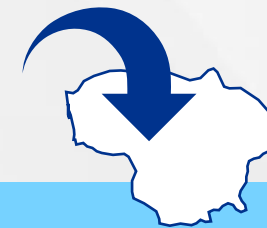
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Required documentation	<p>Conversion terms (<i>pertvarkymo sąlygos</i>)</p> <ul style="list-style-type: none"> The conversion terms must, inter alia, indicate the preliminary conversion timetable, safeguards to the creditors, special rights granted to the members of the company's management and supervisory bodies, cash compensation for the shareholders, possible effects of the conversion on labor relations. The conversion terms must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of the company, if the board is not formed <p>Assessment report of conversion terms (<i>pertvarkymo sąlygų vertinimo ataskaita</i>)</p> <ul style="list-style-type: none"> The conversion terms must be examined by an independent expert – an auditor or an audit company. The report for the shareholders must be prepared by the expert. This report is not needed, if the owner of all shares of the converting company is one person or if all shareholders of the converting company agree to this <p>Conversion report (<i>pertvarkymo ataskaita</i>)</p> <ul style="list-style-type: none"> The conversion report for the shareholders and employees must explain and justify the legal and economic aspects of the conversion. The conversion report must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of the company, if the board is not formed This report for the shareholders is not needed, if the owner of all shares of the converting company is one person or if all shareholders of the converting company agree to this
Shareholders' protection	<ul style="list-style-type: none"> The decision on conversion must be taken by the shareholders' meeting by a qualified majority of votes, which must be not less than $\frac{2}{3}$ of the voting rights carried by the shares of the shareholders participating in the shareholders' meeting The shareholders have the right to dispose their shares for adequate cash compensation. The shareholder must inform the company about the decision to exercise his right to dispose the shares during the shareholders' meeting or no later than within 20 days after this shareholders' meeting If the cash compensation has not been adequately set, the shareholders have the right to apply to the court for additional cash compensation
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Centre of Registers (<i>Valstybės įmonė Registrų centras</i>)

Cross border conversion from Lithuania to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Conversion terms (<i>pertvarkymo sąlygos</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting; to be published three times at intervals of no less than 30 days or one time no later than 40 days before the shareholders' meeting, if all the creditors are notified in writing • Conversion report (<i>pertvarkymo ataskaita</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting • Assessment report of conversion terms (<i>pertvarkymo sąlygų vertinimo ataskaita</i>): to be provided to the shareholders not later than one month prior to the shareholders' meeting. • Compensation payment to shareholders: two months after completion of conversion
Formal considerations	<ul style="list-style-type: none"> • The founding documents and statutes of the company that will operate after the conversion must be prepared in accordance with the law of the destination member state • When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Pre-conversion certificate <i>(Pasirengimo pertvarkymui pažymėjimas)</i>	<ul style="list-style-type: none"> • The certificate is issued by the Register of Legal Entities • The legality of the cross border conversion is scrutinized by Register of Legal Entities, the notary, the State Labor Inspectorate (<i>Valstybinė darbo inspekcija</i>) and the State Tax Inspectorate (<i>Valstybinė mokesčių inspekcija</i>) • The certificate must be issued within 12 weeks from the date of submission of the required documents and information. This period may be extended by a maximum of 12 weeks, if additional information or an additional investigation is needed • The certificate is shared through the system of interconnection of registers (<i>Registru sąveikos sistema</i>)

Cross border conversion from other member state to Lithuania



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>): 2500 EUR (from 01 May 2023 – 1000 EUR) Public limited liability company (<i>AB</i>): 25 000 EUR
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Centre of Registers (<i>Valstybės įmonė Registrų centras</i>)
Lithuanian registration process	<ul style="list-style-type: none"> The scrutiny of the legality of the cross border conversion must be carried out when registering a company in Lithuania after the cross border conversion The company must submit to the Register of Legal Entities: <ul style="list-style-type: none"> Request to carry out a scrutiny of the conversion procedures and register the company in Lithuania; Documents required for the registration of the company operating after the conversion of the company; Conversion terms (<i>pertvarkymo sąlygos</i>) approved by the company's shareholders' meeting The submitted documents and information shall be scrutinized by the notary The Register of Legal Entities shall publish information about the registration of the company
Language requirements	<ul style="list-style-type: none"> When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>pasirengimo pertvarkymui pažymėjimas</i>) by the register: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> The cross border conversion is considered completed from the registration of the company operating after the conversion in the Register of Legal Entities The Register of Legal Entities shall inform the register of the departure member state through the system of interconnection of registers (<i>Registrų sąveikos sistema</i>) that the cross border conversion has taken effect

Cross border division from Lithuania to other member state (1/2)



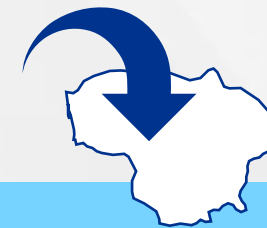
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Division types	<ul style="list-style-type: none"> Full division (<i>visiškas skaidymas</i>): a company being divided, ending its activities without a liquidation procedure, transfers all its assets and liabilities to two or more companies (the recipient companies), in exchange for the issue to the participants of the company being divided of securities of the recipient companies; Partial division (<i>dalinis skaidymas</i>): a company being divided transfers part of its assets and liabilities to one or more companies (the recipient companies), in exchange for the issue to the participants of the company being divided of securities in the recipient companies, in the company being divided or in the recipient companies and the company being divided; Division by separation (<i>skaidymas atskiriant</i>): a company being divided transfers part of its assets and liabilities to one or more companies (the recipient companies), in exchange for the issue to the company being divided of securities in the recipient companies
Required documentation	<ul style="list-style-type: none"> Division terms (<i>skaidymo sąlygos</i>) The division terms must, inter alia, indicate the preliminary division timetable, safeguards to the creditors, special rights granted to the members of the company's management and supervisory bodies, cash compensation for the shareholders, possible effects of the division on labor relations, evaluation of the assets and liabilities of the company being divided and the recipient companies. The division terms must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of the company, if the board is not formed Assessment report of division terms (<i>skaidymo sąlygų vertinimo ataskaita</i>) The division terms must be examined by an independent expert – an auditor or an audit company. The report for the shareholders must be prepared by the expert. This report is not needed, if the owner of all shares of the company being divided is one person or if all shareholders of the company being divided agree to this Division report (<i>skaidymo ataskaita</i>) The division report for the shareholders and employees must explain and justify the legal and economic aspects of the division. The division report must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of the company, if the board is not formed This report for the shareholders is not needed, if the owner of all shares of the company being divided is one person or if all shareholders of the company being divided agree to this

Cross border division from Lithuania to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> In case of full division, as well as partial division, the shareholders have the right to dispose their shares for adequate cash compensation. The shareholder must inform the company about the decision to exercise his right to dispose the shares during the shareholders' meeting or no later than within 20 days after this shareholders' meeting If the cash compensation has not been adequately set, the shareholders have the right to apply to the court for additional cash compensation
Extended liability	<ul style="list-style-type: none"> In case of full division, the recipient companies are jointly and severally liable for the claims of creditors of the company to which these obligations are assigned after the division procedure In case of partial division and division by separation, the company being divided and the recipient company are jointly and severally liable for the claims of creditors of the company to which these obligations are assigned after the division procedure
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Centre of Registers (<i>Valstybės įmonė Registrų centras</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months Division terms (<i>skaidymo sąlygos</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting; to be published three times at intervals of no less than 30 days or one time no later than 40 days before the shareholders' meeting, if all the creditors are notified in writing Division report (<i>skaidymo ataskaita</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting Assessment report of division terms (<i>skaidymo sąlygų vertinimo ataskaita</i>): to be provided to the shareholders not later than one month prior to the shareholders' meeting Compensation payment to shareholders: two months after completion of division
Formal considerations	<ul style="list-style-type: none"> The founding documents and statutes of the recipient company and amendments of these documents of the company being divided must be prepared in accordance with the applicable law of the member state When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Pre-division certificate (<i>Pasirengimo skaidymui pažymėjimas</i>)	<ul style="list-style-type: none"> The certificate is issued by the Register of Legal Entities The legality of the cross border division is scrutinized by Register of Legal Entities, the notary, the State Labour Inspectorate (<i>Valstybinė darbo inspekcija</i>) and the State Tax Inspectorate (<i>Valstybinė mokesčių inspekcija</i>) The certificate must be issued within 12 weeks from the date of submission of the required documents and information. This period may be extended by a maximum of 12 weeks, if additional information or an additional investigation is needed The certificate is shared through the system of interconnection of registers (<i>Registrų sąveikos sistema</i>)
Legal effectiveness of division	<ul style="list-style-type: none"> The division of the company is considered completed upon registration of the recipient companies in the Register of Legal Entities The Register of Legal Entities shall deregister the company being divided after receipt of information from the relevant register of the member state that the full division has taken effect The Register of Legal Entities shall inform the registers of the member state of the recipient companies through the system of interconnection of registers (<i>Registrų sąveikos sistema</i>) about the completed cross border division

Cross border division from other member state to Lithuania



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>): 2500 EUR (from 01 May 2023 – 1000 EUR) Public limited liability company (<i>AB</i>): 25 000 EUR
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Not specified in case of Lithuania
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Center of Registers (<i>Valstybės įmonė Registrų centras</i>)
Lithuanian registration process	<ul style="list-style-type: none"> The scrutiny of the legality of the cross border division must be carried out when registering a recipient company in Lithuania after the cross border division The company being divided must submit to the Register of Legal Entities: <ul style="list-style-type: none"> Request to carry out a scrutiny of the division procedures and register the recipient company in Lithuania; Documents required for the registration of the recipient company; When applicable, the decision of the company's shareholders on the division of the company and the approval of the division terms (<i>skaidymo sąlygos</i>); Division terms (<i>skaidymo sąlygos</i>) The submitted documents and information shall be scrutinized by the notary The Register of Legal Entities shall publish information about the registration of the recipient company
Language requirements	<ul style="list-style-type: none"> When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>pasirengimo skaidymui pažymėjimas</i>) by the register: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> The division of the company is considered completed upon registration of the recipient companies in the Register of Legal Entities The Register of Legal Entities shall inform the register of the member state of the company being divided through the system of interconnection of registers (<i>Registrų sąveikos sistema</i>) that the cross border division has taken effect in Lithuania

Cross border merger from Lithuania to other member state (1/2)



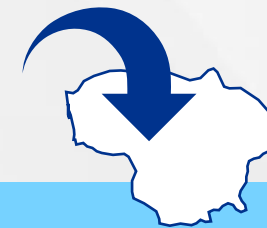
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Required documentation	<ul style="list-style-type: none"> Merger terms (<i>jungimosi sąlygos</i>) The merger terms must, inter alia, indicate the safeguards to the creditors, special rights granted to the members of the management and supervisory bodies of the merging companies, cash compensation for the shareholders, possible effects of the merger on labor relations, evaluation of the assets and liabilities that will be transferred to the company operating after the merger. The merger terms are prepared jointly with other merging companies and must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of each merging company, if the board is not formed. Assessment report of merger terms (<i>jungimosi sąlygų vertinimo ataskaita</i>) The merger terms must be examined by an independent expert – an auditor or an audit company. The report for the shareholders must be prepared by the expert. This report is not needed, if the owner of all shares of each merging company is one person or if all shareholders of the merging companies agree to this. Merger report (<i>jungimosi ataskaita</i>) The merger report for the shareholders and employees must explain and justify the legal and economic aspects of the merger. The merger report must be prepared by the board (<i>valdyba</i>) or by the manager (<i>vadovas</i>) of the merging company, if the board is not formed. This report for the shareholders is not needed, if the owner of all shares of the merging company is one person or if all shareholders of the merging company agree to this.
Capital increase	<ul style="list-style-type: none"> The shares of the merging companies are exchanged for securities or shares of the company that will operate after the merger, representing the capital of the company that will operate after the merger, except the cases provided for by the law.
Shareholders' protection	<ul style="list-style-type: none"> The shareholders of the merging company, that will terminate its activities after the merger procedures, have the right to dispose their shares for adequate cash compensation. The shareholder must inform the merging company about the decision to exercise his right to dispose the shares during the shareholders' meeting or no later than within 20 days after this shareholders' meeting. If the cash compensation has not been adequately set, the shareholders have the right to apply to the court for additional cash compensation.

Cross border merger from Lithuania to other member state (2/2)



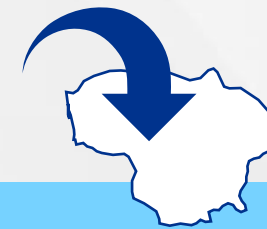
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Centre of Registers (<i>Valstybės įmonė Registrų centras</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months Merger terms (<i>jungimosi sąlygos</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting; to be published three times at intervals of no less than 30 days or one time no later than 40 days before the shareholders' meeting, if all the creditors are notified in writing Merger report (<i>jungimosi ataskaita</i>): to be provided to the shareholders and the representatives of employees (or the employees in absence of their representatives) not later than 45 days prior to the shareholders' meeting Assessment report of merger terms (<i>jungimosi sąlygų vertinimo ataskaita</i>): to be provided to the shareholders not later than one month prior to the shareholders' meeting Compensation payment to shareholders: two months after completion of merger
Formal considerations	<ul style="list-style-type: none"> The founding documents and statutes of the company that will operate after the merger must be prepared in accordance with the applicable law of the member state When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Pre-merger certificate (<i>Pasirengimo jungimuisi pažymėjimas</i>)	<ul style="list-style-type: none"> The certificate is issued by the Register of Legal Entities The legality of the cross border merger is scrutinized by the Register of Legal Entities, the notary, the State Labour Inspectorate (<i>Valstybinė darbo inspekcija</i>) and the State Tax Inspectorate (<i>Valstybinė mokesčių inspekcija</i>) The certificate must be issued within 12 weeks from the date of submission of the required documents and information. This period may be extended by a maximum of 12 weeks, if additional information or an additional investigation is needed The certificate is shared through the system of interconnection of registers (<i>Registrų sąveikos sistema</i>)
Legal effectiveness of merger	<ul style="list-style-type: none"> The merger of the company is considered completed after the registration of the company operating after the merger in the Register of Legal Entities The Register of Legal Entities shall deregister the merged company after receipt of information from the relevant register of the member state that the cross border merger has taken effect

Cross border merger to Lithuania (1/2)



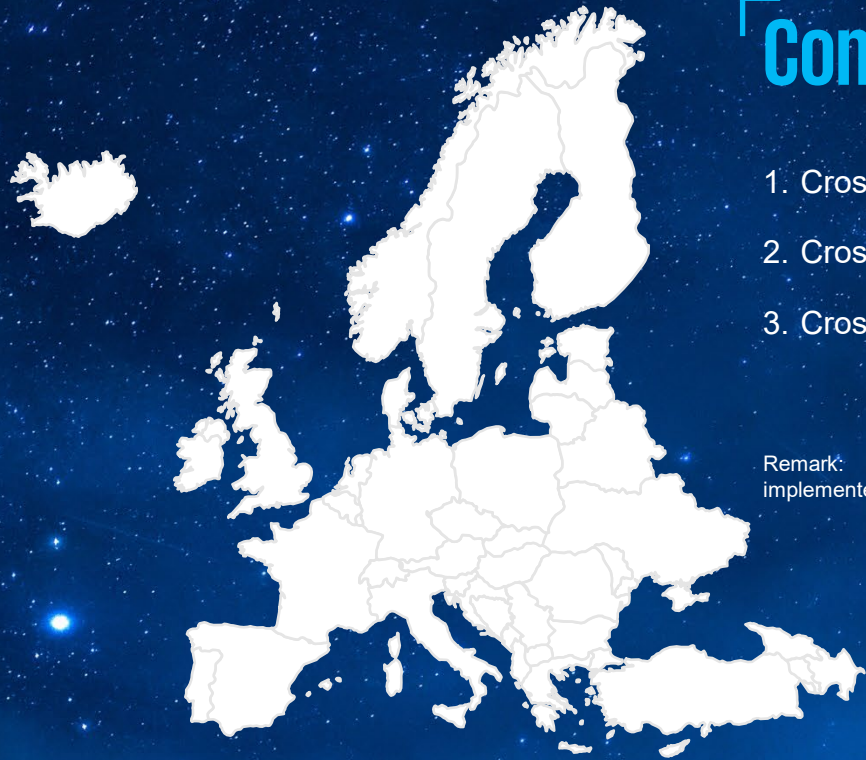
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>) Public limited liability company (<i>AB</i>)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>UAB</i>): 2500 EUR (from 01 May 2023 – 1000 EUR) Public limited liability company (<i>AB</i>): 25 000 EUR
Merger types/recipient legal entity	<ul style="list-style-type: none"> One or more companies ending their activities without liquidation procedure (the acquired companies) are merged with another operating company (the acquiring company), to which all assets and liabilities of the acquired companies are transferred; Two or more companies terminating their activities without the liquidation procedure are merged into a new company created by them, to which all assets and liabilities of the terminating companies are transferred; One or more companies that terminate their activities without liquidation procedure (the acquired companies) are merged with another operating company (the acquiring company), which has all the securities or shares of the acquired companies, representing the capital of the acquired companies, and to which all the assets and liabilities of the acquired companies are transferred; One or more companies ending their activities without the liquidation procedure (the acquired companies) are merged with another operating company (the acquiring company), to which all the assets and liabilities of the acquired companies are transferred, without the acquiring company issuing new shares of the acquiring company, when all the shares of the merging companies is directly or indirectly owned by one person or the ratio of shares held by the shareholders of the merging companies is proportional in all companies participating in the merger process (the merging companies)
Competent regulatory authority	<ul style="list-style-type: none"> Register of Legal Entities (<i>Juridinių asmenų registras</i>) of State Enterprise Center of Registers (<i>Valstybės įmonė Registrų centras</i>)
Lithuanian registration process	<ul style="list-style-type: none"> The scrutiny of the legality of the cross border merger must be carried out when registering a company that will operate in Lithuania after the cross border merger. All the merging companies must submit to the Register of Legal Entities: <ul style="list-style-type: none"> Joint request to carry out a scrutiny of the merger procedures and register the company in Lithuania; Documents required for the registration of the company that will operate after the merger; When applicable, the decisions of the company's shareholders on the merger of the companies and the approval of the merger terms (<i>jungimosi sąlygos</i>); Joint merger terms (<i>jungimosi sąlygos</i>). The submitted documents and information shall be scrutinized by the notary. The Register of Legal Entities shall publish information about the registration of the company that will operate after the merger.

Cross border merger to Lithuania (2/2)



Topic	Prerequisites
Language requirements	<ul style="list-style-type: none"> When applying to the Register of Legal Entities translations of documents written in a language other than Lithuanian must be provided
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>pasirengimo jungimuisi pažymėjimas</i>) by the register: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> The merger of the company is considered completed after the registration of the company operating after the merger in the Register of Legal Entities The Register of Legal Entities shall inform the register of the other member state through the system of interconnection of registers (<i>Registru sąveikos sistema</i>) that the cross border merger has taken effect
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Not specified in case of Lithuania

Malta



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Malta.



Antoine Demicoli

Associate Director

M +356 256 31153

antoinedemicoli@kpmg.com.mt



[Back to Country Overview](#)

Cross border conversion from Malta to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>ltd/Plc</i>)
Required documentation	<ul style="list-style-type: none"> Common draft terms of the cross border conversion Directors Report A written declaration of solvency of the directors of the Maltese registered converting company A written Independent expert's report A notice to the members, creditors and representatives of the employees of the company Shareholders' meeting extraordinary resolution approving the draft terms of the cross border conversion
Shareholders' protection	<ul style="list-style-type: none"> Any dissenting shareholders could exercise their right to have their shares redeemed Any dissenting shareholders who have declared their decision to exercise the right to have their shares redeemed but who consider that the cash compensation offered by the company has not been adequately set, may request the company to pay additional cash compensation 67% Majority requirement for mandatory extraordinary shareholders' resolution approving the draft terms of the cross border conversion at a shareholders' meeting
Competent regulatory authority	<ul style="list-style-type: none"> Malta Business Registry

Cross border conversion from Malta to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> The board of directors report for members and employees shall be made available to the members and employees not less than six (6) weeks before the date of the shareholders' meeting of the company that approves the draft terms of the cross border conversion The extraordinary resolution approving the cross border conversion shall be delivered for registration to the Registrar within fourteen (14) days from approval Upon the lapse of one (1) month from the last publication of the statement following the registration of the extraordinary resolution approving the cross border conversion, the Maltese registered converting company shall submit to the Registrar a written application in the prescribed form to obtain a pre-conversion certificate The review by Registrar and issuance of the pre-conversion certificate shall be carried out within three (3) months from the date of receipt by the Registrar of the documents No pre-conversion certificate shall be issued prior to the lapse of three (3) months from the publication of the notice consequent to the registration
Formal considerations	<ul style="list-style-type: none"> A written Independent expert's report
Pre-conversion certificate	<ul style="list-style-type: none"> Issued by the Registrar of the Malta Business Registry following the submitting of the extraordinary resolution approving the Common Draft terms for the cross border conversion, the Declaration of Solvency and the Notice to Members, Creditors and Employees
Legal effectiveness of conversion	<ul style="list-style-type: none"> The pre-conversion certificate issued by the Registrar, shall attest to compliance by the Maltese registered converting company with all relevant conditions and to the proper completion of all procedures and formalities. When the Registrar is notified by the registry of the destination jurisdiction to whose jurisdiction the Maltese registered converting company is subject, of the effective date of the cross border conversion, the Registrar shall cause a notice to be published in the Gazette or on the website maintained by the Registrar, indicating that the cross border conversion has been completed and Registrar shall strike the name of the Maltese registered converting company off the register Legal effectiveness upon striking off from the Maltese registry and registration by the authority of the destination jurisdiction

Cross border conversion from other member state to Malta



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>Ltd/plc</i>)
Share capital requirements	<ul style="list-style-type: none"> Public Company: EUR 46,588 Private Company: EUR 1,165
Competent regulatory authority	<ul style="list-style-type: none"> Malta Business Registry
Maltese registration process	<ul style="list-style-type: none"> The foreign converting company shall submit to the Maltese Registrar: (a) the draft terms of the cross border conversion approved by the company's shareholders' meeting; (b) the pre-conversion certificate issued by the departure jurisdiction; (c) the memorandum and articles of association of the foreign converting The Registrar shall accept the pre-conversion certificate hereof as conclusively attesting to the proper completion of the applicable pre-conversion procedures and formalities in the departure jurisdiction After verifying that the provisions of the regulations have been complied with, the Registrar shall, not later than ten (10) working days from the submission of the documents approve the cross border conversion and proceed to register the foreign converting company as a Maltese company The Registrar shall issue a Certificate of cross border conversion Upon the issuance of such certificate, the Registrar shall cause a statement to be published in the Gazette or on a website maintained by the Registrar confirming the completion of the cross border conversion When the Registrar issues a Certificate of cross border conversion, the Registrar shall without delay notify the registry of the departure jurisdiction that the cross border conversion has taken effect, indicating the effective date of the cross border conversion
Language requirements	<ul style="list-style-type: none"> English language due to registration with the commercial register. If the documents are not written in the English language, a translation thereof in the English language, certified to be a correct translation shall be required
Timing	<ul style="list-style-type: none"> The Registrar shall, not later than ten (10) working days from the submission of the documents, approve the cross border conversion and proceed to register the foreign converting company as a Maltese company
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effectiveness upon the Registrar issues a Certificate of cross border conversion

Cross border division from Malta to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>Ltd/plc</i>)
Division types	<ul style="list-style-type: none"> Full division: a company being divided, on being dissolved without going into liquidation, transfers all its assets and liabilities to two (2) or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of those securities or shares Partial division: a company being divided transfers part of its assets and liabilities to one (1) or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, a cash payment not exceeding 10% of the accounting par value of those securities or shares Division by separation: a company being divided transfers part of its assets and liabilities to one (1) or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies
Required documentation	<ul style="list-style-type: none"> The common draft terms of the cross border division A declaration of solvency of the directors of the Maltese company being divided A notice informing the members, creditors and employees of the company being divided A written Independent expert's report, acting on behalf of the Maltese company being divided but independent of it and approved by the Registrar. The report shall include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate Directors Report: The board of directors of the Maltese company being divided shall draw up a report for members and employees, explaining and justifying the legal and economic aspects of the cross border division, as well as explaining the implications for employees and for the future business of the company Shareholders' meeting extraordinary resolution approving the draft terms of the cross border division

Cross border division from Malta to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> Any dissenting shareholders could exercise their right to have their shares redeemed Any dissenting shareholders who have declared their decision to exercise the right to have their shares redeemed but who consider that the cash compensation offered by the company has not been adequately set may, by means of an application filed in Court, request the company to pay additional cash compensation 67% Majority requirement for mandatory extraordinary shareholders' resolution approving the draft terms of the cross border division at a shareholders' meeting
Extended liability	<ul style="list-style-type: none"> Where a creditor of the company whose debt existed prior to the publication made does not obtain satisfaction from the company to which the liability is allocated, the other recipient companies, and in the case of a partial division or a division by separation, the company being divided, shall be jointly and severally liable with the company to which the liability is allocated for that obligation. However, the maximum amount of joint and several liability of any company involved in the division shall be limited to the value, at the date on which the division takes effect, of the net assets allocated to that company
Competent regulatory authority	<ul style="list-style-type: none"> Malta Business Registry
Timing	<ul style="list-style-type: none"> The board of directors report for members and employees shall be made available together with the draft terms of the cross border division to the members and employees, not less than six (6) weeks before the date of the shareholders' meeting of the company that approves the draft terms of the cross border division and whether to amend its memorandum and articles of association The approval by the shareholders' meeting of the company of the draft terms of the cross border division should be adopted at least one (1) month after registration of the documents that the Maltese company being divided shall file with the Registrar The extraordinary resolution approving the cross border division shall be delivered for registration to the Registrar within fourteen (14) days from approval Upon the lapse of one (1) month from the last publication following the registration of the extraordinary resolution approving the cross border division, the Maltese company being divided shall submit to the Registrar a written application to obtain a pre-division certificate The review by Registrar and issuance of pre-division certificate shall be carried out within three (3) months from the date of receipt by the Registrar of the documents
Formal considerations	<ul style="list-style-type: none"> A written Independent expert's report, acting on behalf of the Maltese company being divided but independent of it and approved by the Registrar. The report shall include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate
Pre-division certificate	<ul style="list-style-type: none"> Issued by the Registrar of the Malta Business Registry following the submitting of the extraordinary resolution approving the Common Draft terms for the cross border division, the Declaration of Solvency and the Notice to Members, Creditors and Employees
Legal effectiveness of division	<ul style="list-style-type: none"> The cross border division shall become effective upon receipt of all notifications and the Registrar shall proceed to issue a Certificate of Completion of cross border division In the event of a full division, the Registrar shall immediately strike the name of the Maltese company being divided off the register and specify in his register that the striking off of the Maltese company being divided is the result of a cross border division and the Registrar shall notify the registers in the country or jurisdiction of each recipient company that the cross border division has taken effect

Cross border division from other member state to Malta



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>ltd/Plc</i>)
Share capital requirements	<ul style="list-style-type: none"> Public Company: EUR 46,588 Private Company: EUR 1,165
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Under Maltese law, "recipient company" means a company newly formed in the course of a cross border division. Therefore, the Malta Regulations do not envisage a cross border division with an existing legal entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Malta Business Registry
Maltese registration process	<ul style="list-style-type: none"> Registrar shall ensure that the Maltese recipient company complies with the provisions on the incorporation and registration of companies and where appropriate, that arrangements for employee participation have been determined The company being divided must submit to the Registrar: (1) the draft terms of the cross border division approved by the shareholders' meeting; (2) the pre-division certificate issued by the jurisdiction of the company being divided; (3) the memorandum and articles of association of the recipient company; (4) a reasoned opinion on the legality of the division only where either the dividing or any of the recipient companies are not located in a member state or EEA State Upon review that all conditions and requirements have been complied with, the Registrar must within ten working days from the submission of the documents mentioned in the previous point, approve the cross border division. It will then proceed to register the company as a Maltese company and notify the register in the jurisdiction of the company being divided of such registration
Language requirements	<ul style="list-style-type: none"> English as documents will be filed with the Malta Business Registry
Timing	<ul style="list-style-type: none"> Certificate of Registration must be issued within ten working days from the submission of all required documents to the Malta Business Registry
Legal effectiveness of division	<ul style="list-style-type: none"> Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Malta to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>ltd/Plc</i>)
Required documentation	<p>Common Draft Terms of the cross border merger</p> <ul style="list-style-type: none"> This must include: the legal form, name, location of registered office of merging companies and the acquiring company; ratio of exchange of securities or shares representing the company capital, and where appropriate the amount of any cash payment; terms of allotment of securities or shares; likely repercussions on employment; the date from which holders of shares or securities are entitled to a share in the profits, the date to be used for accounting purposes; any special advantages; the instrument of constitution of the acquiring company; information on the evaluation of assets and liabilities which are transferred to the acquiring company <p>Reasoned Opinion</p> <ul style="list-style-type: none"> Where any of the merging companies or the company resulting from the merger is incorporated outside a member state or EEA State, a reasoned opinion from a practicing advocate is required on the validity of whether such a cross border merger is permitted under the laws of that country <p>Directors' Report</p> <ul style="list-style-type: none"> To be drawn up for members and employees explaining and justifying the legal and economic aspects of the cross border merger and any implications on employees <u>Waiver</u>: possible in the section for employees <p>Declaration of Solvency</p> <ul style="list-style-type: none"> to be drawn up by the directors of the merging company <p>Independent Expert Report</p> <ul style="list-style-type: none"> to examine the common draft terms of the cross border merger and evaluate the cash compensation and share exchange ratio are adequate <p>Extraordinary Resolution approved by shareholders' meeting</p>
Capital increase	<ul style="list-style-type: none"> The members of the merging companies receive securities or shares representing the capital of the acquiring company. A cash payment not exceeding 10% of the nominal value, or in the absence of such, 10% of the accounting par value of those shares and securities is also permitted
Shareholders' protection	<ul style="list-style-type: none"> Shareholders must pass an extraordinary resolution at a shareholders' meeting. Dissenting shareholders may request the merging company to redeem the shares for an adequate cash consideration

Cross border merger from Malta to other member state (2/2)



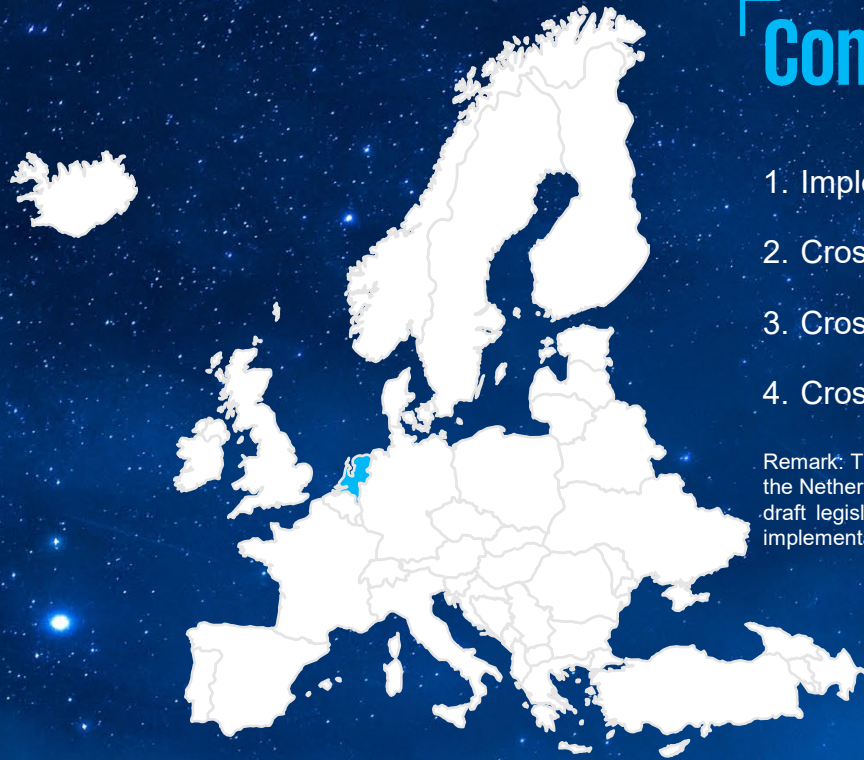
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Malta Business Registry
Timing	<ul style="list-style-type: none"> Directors' Report must be made available to members at least six weeks prior to the shareholders' meeting Common Draft Terms for the cross border merger, together with the Declaration of Solvency and a Notice informing members, creditors, and employees of the Maltese merging company that they may submit comments regarding the draft terms must be filed with the Registrar which must publish the information in the Government Gazette at least one month prior to the shareholders' meeting Extraordinary resolution is delivered to the Registrar within 14 days from approval Following the lapse of one month from the publication of the approved extraordinary resolution, the Maltese merging companies can apply for the pre-merger certificate The Registrar cannot issue a pre-merger certificate until the lapse of three months from the publication of the Common Draft Terms, the Declaration of Solvency and the Notice
Formal considerations	<p>Reasoned Opinion</p> <ul style="list-style-type: none"> Where any of the merging companies or the company resulting from the merger is incorporated outside a member state or EEA State, a reasoned opinion from a practicing advocate is required on the validity of whether such a cross border merger is permitted under the laws of that country <p>Independent Expert Report</p> <ul style="list-style-type: none"> to examine the common draft terms of the cross border merger and ensure that the cash compensation and share exchange ratio are adequate
Pre-merger certificate	<ul style="list-style-type: none"> Issued by the Registrar of the Malta Business Registry following the submitting of the extraordinary resolution approving the Common Draft terms for the cross border merger, the Declaration of Solvency and the Notice to Members, Creditors and Employees
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate to the authority of the destination jurisdiction Reasoned opinion required if destination jurisdiction is outside a member state or EEA State Striking off of merger companies from the Registry

Cross border merger to Malta



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited Liability Company (<i>ltd/Plc</i>)
Share capital requirements	<ul style="list-style-type: none"> Public Company: EUR 46,588 Private Company: EUR 1,165
Merger types/recipient legal entity	<ul style="list-style-type: none"> Merger into existing company Merger of two or more companies into new company Dissolution of existing company and transfer of all shares to the company holding all shares or securities Dissolution of existing company and transfer of all shares to new company, provided that one person holds all the shares in the merging companies
Competent regulatory authority	<ul style="list-style-type: none"> Registrar of the Malta Business Registry
Maltese registration process	<ul style="list-style-type: none"> Directors' Report must be made available to members at least six weeks prior to the shareholders' meeting Common Draft Terms for the cross border merger, together with the Declaration of Solvency and a Notice informing members, creditors, and employees of the Maltese merging company that they may submit comments regarding the draft terms must be filed with the Registrar which must publish the information in the Government Gazette at least one month prior to the shareholders' meeting Extraordinary resolution is delivered to the Registrar within 14 days from approval Following the lapse of one month from the publication of the approval of the extraordinary resolution, the Maltese merging companies can apply for the pre-merger certificate The Registrar cannot issue a pre-merger certificate until the lapse of three months from the publication of the Common Draft Terms, the Declaration of Solvency and the Notice Certification of Completion Issued within ten working days from the submittal of the Approved Resolution for the Common Draft Terms and the Pre-Merger Certificate
Language requirements	<ul style="list-style-type: none"> English
Timing	<ul style="list-style-type: none"> Minimum of three months from when documentation is to be submitted till a Pre-Merger Certificate is issued
Legal effectiveness of merger	<ul style="list-style-type: none"> Merger considered effective upon the issuance of the Certificate of Completion
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Reasoned opinion required on the legality of a cross border merger in the UK as it is not a member state or EEA State

The Netherlands



Content

1. Implementation status in the Netherlands
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in the Netherlands. The content on the following slides is based on draft legislation subject to further changes. The exact date of implementation is currently unclear.



Jan Hein Visser

Director

M +31 610 896437
visser.janhein@
meijburglegal.com



[Back to Country Overview](#)

Implementation status in the Netherlands

Current status of the implementation process in the Netherlands:

Please consider that the following slides have been drafted on the basis of the Mobility Directive and of the relevant draft of the Dutch Legislative Decree meant to implement said Mobility Directive (and namely the "*Wet implementatie richtlijn grensoverschrijdende omzettingen, fusies en splitsingen*") which is currently in the legislative process.

Cross border conversion from the Netherlands to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Required documentation	<p>The proposal for conversion (<i>voorstel tot omzetting</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, name, seat, articles of association, rights and benefits to be granted, compensation of management board and supervisory board, the acquisition of incentives or grants. In addition, the following items should be included: indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment. Proposal to be prepared by the management board (<i>bestuur</i>) of the converting entity <p>The explanatory notes (<i>schriftelijke toelichting</i>)</p> <ul style="list-style-type: none"> The management board shall give the reasons for the conversion with an explanation of the expected impact on operations and an explanation from a legal, economic and social point of view. The explanatory notes contains (if applicable) a section for shareholders and a section for employees. The management board may also choose to prepare two separate explanatory notes, one for the shareholders and one for the employees <p>Audit Report (<i>accountantsverslag</i>)</p> <ul style="list-style-type: none"> An auditor to be appointed by the management board must examine the proposal for conversion and certify whether, the proposed indemnification towards shareholders is reasonable in his opinion. In addition, the auditor need to prepare a report including his findings regarding the statements included in the section for shareholders as part of the explanatory notes <u>Waiver</u>: possible for structures with multiple shareholders if agreed by all of the shareholders The auditor report is not required by law in case all of the shares in the capital of the converting company are held by a single shareholder (not including the shares held by the company itself or its subsidiaries)
Shareholders' protection	<ul style="list-style-type: none"> The resolution to convert is taken by the shareholders' meeting, for which resolution in any event, a majority vote of at least two-third is required if less than two-third of the subscribed capital is represented at the shareholders' meeting. The articles of association may provide for higher quorums (with a maximum of 90% of the votes and/or 90% of the subscribed capital) Mandatory compensation to shareholders who (i) voted against the conversion or (ii) have non-voting shares, to be requested within one month after the date the resolution to convert is taken A resigning shareholder, who believes that the proposed compensation is not reasonable, can request the chairman of the Dutch Enterprise Chamber for additional compensation, to be determined by one or more independent experts Obligation to provide security for the satisfaction of the aforementioned compensation claim to the shareholders that requested such security
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border conversion

Cross border conversion from the Netherlands to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • The proposal for conversion (<i>voorstel tot omzetting</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available • The explanatory notes (<i>schriftelijke toelichting</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available • Opposition period: creditors may oppose to the contemplated conversion within three months after the announcement of the conversion proposal (execution of the pre-conversion certificate is however possible after one month after the announcement)
Language requirements	<ul style="list-style-type: none"> • The conversion proposal must be drafted in the Dutch language
Formal considerations	<ul style="list-style-type: none"> • The minutes of the shareholders' meeting resolving on conversion shall be laid down in a notarial deed and executed before the Dutch civil-law notary → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate (<i>attest</i>)	<ul style="list-style-type: none"> • Issued by the Dutch Notary after receipt of all relevant information and documentation • Three months review period by Dutch Notary, which can be extended up to a maximum of eight months. Execution of the pre-conversion certificate is however possible at the earliest after six weeks after the announcement and one month after the start of the opposition period • The Dutch Notary shall not issue the certificate if he establishes that the cross border conversion is designed for unlawful or fraudulent purposes leading to or aimed at evading or circumventing Union or national law, or for criminal purposes
Deregistration Dutch commercial register	<ul style="list-style-type: none"> • Following the implementation of the conversion, the Dutch commercial register shall register the conversion and deregister the respective company from the Dutch commercial register
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Filing of pre-conversion certificate with the Dutch commercial register. The Dutch commercial register will notify the commercial register of the destination jurisdiction • The conversion shall take effect in the manner and on the date determined by the law of the member state of the European Union or European Economic Area in which the converted company will have its statutory seat

Cross border conversion from other member state to the Netherlands



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Share capital requirements	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>): none (but at least one share must be issued and held by someone other than the company or its subsidiaries) The public company (<i>NV</i>): EUR 45,000
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border conversion
Dutch registration process	<ul style="list-style-type: none"> Within eight days following the execution of the notarial deed of conversion, the conversion must be registered in the Dutch commercial register by the converted company by depositing the deed of conversion including the statement of the notary The administrator of the Dutch trade register shall without delay notify the register of the member state in which the converted company had its registered seat before the conversion took effect. The register of the member state where the company had its registered office before the conversion came into effect, cancels the registration immediately after receipt of this notification
Language requirements	<ul style="list-style-type: none"> The new articles of association must be drafted in the Dutch language
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate by the Dutch civil law notary: two – four weeks
Legal effectiveness of conversion	<ul style="list-style-type: none"> The day following the execution of the notarial deed of conversion before the Dutch civil-law notary

Cross border division from the Netherlands to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>zuivere splitsing</i>) with new formation: transfer of all assets and liabilities to at least two new recipient legal entities (full split-up) Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist Cross border split-off (<i>afplitsing</i>) with new formation: transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity
Required documentation	<p>The proposal for split-up (<i>voorstel tot splitsing</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, name, seat, articles of association, the split-up variant (split-up/spit-off), description of the assets and liabilities, values of assets to be transferred and retained, rights and benefits to be granted, compensation of management board and supervisory board, financial accounting, intentions regarding continuation or termination of work, measures related to acquisition of shares. In addition, the following items should be included: indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment. Proposal to be prepared by the management board (<i>het bestuur</i>) <p>The explanatory notes (<i>schriftelijke toelichting</i>)</p> <ul style="list-style-type: none"> The management board shall give the reasons for the split-up with an explanation of the expected impact on operations and an explanation from a legal, economic and social point of view. The explanatory notes contains (if applicable) a section for shareholders and a section for employees. The management board may also choose to prepare two written explanatory notes for the shareholders and the employees <p>Audit Report (<i>accountantsverslag</i>)</p> <ul style="list-style-type: none"> An auditor to be appointed by the management board must: <ul style="list-style-type: none"> (i) examine the proposal for split-up and certify whether, the proposed share exchange ratio is reasonable in his opinion (ii) prepare a report including his findings regarding the statements that are made in view of the share exchange ratio and are included in the explanatory notes <u>Waiver</u>: possible for structures with multiple shareholders if agreed by all of the shareholders The auditor report is not required by law in case the split-up legal entity has a sole shareholder
Shareholders' protection	<ul style="list-style-type: none"> The resolution to split-up is taken by the shareholders' meeting, for which resolution in any event, a majority vote of at least two-third is required if less than two-third of the subscribed capital is represented at the shareholders' meeting. The articles of association may provide for higher quorums (with a maximum of 90% of the votes and/or 90% of the subscribed capital) Mandatory compensation to shareholders who (i) voted against the split-up or (ii) have non-voting shares, to be requested within one month after the date the resolution to split-up is taken A resigning shareholder, who believes that the proposed compensation is not reasonable, can request the chairman of the Dutch Enterprise Chamber for additional compensation, to be determined by one or more independent experts Obligation to provide security for the satisfaction of the aforementioned compensation claim to the shareholders that requested such security A shareholder who did not have the possibility to resign or has not submitted a request to resign, can submit a request to the chairman of the Dutch Enterprise Chamber to have the exchange ratio redetermined by one or more independent experts

Cross border division from the Netherlands to other member state (2/2)



Topic	Prerequisites
Extended liability	<ul style="list-style-type: none"> The recipient legal entities and split-up legal entity are jointly liable for the performance of the obligations of the split-up legal entity at the time of the split-up. For indivisible obligations (<i>ondeelbare verbintenissen</i>) this liability is several. For divisible obligations (<i>deelbare verbintenissen</i>) either the recipient legal entity or the split-up legal entity depending on whom the obligation was transferred to, is liable for the whole. The liability for divisible obligations for other companies is limited to the value of the assets and liabilities received or retained in the split-up
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border split-up
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months The proposal for split-up (<i>voorstel tot splitsing</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available The explanatory notes (<i>schriftelijke toelichting</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available Opposition period: creditors may oppose to the contemplated conversion within three months after the announcement of the proposal for split-up (execution of the pre-conversion certificate is however possible after one month after the announcement)
Language requirements	<ul style="list-style-type: none"> The proposal for split-up and the deed of division must be drafted in the Dutch language
Formal considerations	<ul style="list-style-type: none"> The minutes of the shareholders' meeting resolving on the split-up shall be laid down in a notarial deed and executed before the Dutch civil-law notary The deed of division shall be down in a notarial deed and executed before the Dutch civil-law notary → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate (attest)	<ul style="list-style-type: none"> Issued by the Dutch Notary after receipt of all relevant information and documentation Three months review period by Dutch Notary, which can be extended up to a maximum of eight months. Execution of the pre-conversion certificate is however possible at the earliest after six weeks after the announcement and one month after the start of the opposition period The Dutch Notary the notary shall not issue the certificate if he establishes that the cross border division is designed for unlawful or fraudulent purposes leading to or aimed at evading or circumventing Union or national law, or for criminal purposes
Legal effectiveness of division	<ul style="list-style-type: none"> Filing of pre-division certificate with the Dutch commercial register. The Dutch commercial register will notify the commercial register of the destination jurisdiction The split-up shall take effect in the manner and on the date determined by the law of the member state of the European Union or European Economic Area in which the recipient legal entity will have its statutory seat

Cross border division from other member state to the Netherlands



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Share capital requirements	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>): none (but at least one share must be issued and held by someone other than the company or its subsidiaries) The public company (<i>NV</i>): EUR 45,000
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border split-up
Dutch registration process	<ul style="list-style-type: none"> Upon receipt of the final division certificate (slot attest) from the Dutch civil law notary, the split-up legal entity must register the recipient legal entity in the Dutch commercial register within eight days The administrator of the Dutch trade register shall without delay notify the register of the member state in which the split-up company is registered. The register of the member state where split-up legal entity have its registered seat, cancels the registration immediately after receipt of this notification if the company ceases to exist
Language requirements	<ul style="list-style-type: none"> The articles of association of the recipient legal entity must be drafted in the Dutch language
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate by the Dutch civil law notary: two – four weeks
Legal effectiveness of division	<ul style="list-style-type: none"> Legal effectiveness upon registration by the competent authority of the departure state The cross border split-up take effect in the manner and on the date determined by the law of the member state of the European Union or European Economic Area of the split-up company, with the understanding that such date cannot be earlier than:(i) the date on which the (Dutch) civil law notary has issued the final certificate; and (ii) the Dutch trade register has notified the register where the split-up legal entity is registered that the recipient legal entity is registered

Cross border merger from the Netherlands to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Required documentation	<p>The merger proposal (<i>voorstel tot fusie</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, name, seat, articles of association, rights and benefits to be granted, compensation of management board and supervisory board, composition management board and supervisory board, financial accounting, intentions regarding continuation or termination of work, measures related to acquisition of shares. In addition, the following items should be included: indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment. Proposal to be prepared by the management board (<i>het bestuur</i>) <p>The explanatory notes (<i>schriftelijke toelichting</i>)</p> <ul style="list-style-type: none"> The management board shall give the reasons for the merger with an explanation of the expected impact on operations and an explanation from a legal, economic and social point of view. The explanatory notes contains (if applicable) a section for shareholders and a section for employees. The management board may also choose to prepare two written explanatory notes for the shareholders and the employees <p>Audit Report (<i>accountantsverslag</i>)</p> <ul style="list-style-type: none"> An auditor to be appointed by the management board must: <ul style="list-style-type: none"> (i) examine the merger proposal and certify whether, the proposed share exchange ratio is reasonable in his opinion (ii) prepare a report including his findings regarding the statements that are made in view of the share exchange ratio and are included in the explanatory notes <u>Waiver</u>: possible for structures with multiple shareholders if agreed by all of the shareholders No audit report is required by law in case the merging entity has a sole shareholder
Capital increase	<ul style="list-style-type: none"> In case the merger is not simplified the shareholders of the transferred legal entity shall receive shares in new recipient legal entity

Cross border merger from the Netherlands to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> The resolution to merge is taken by the shareholders' meeting, for which resolution in any event, a majority vote of at least two-third is required if less than two-third of the subscribed capital is represented at the shareholders' meeting. The articles of association may provide for higher quorums (with a maximum of 90% of the votes and/or 90% of the subscribed capital) Mandatory compensation to shareholders who (i) voted against the merger or (ii) have non-voting shares, to be requested within one month after the date the resolution to merge is taken A resigning shareholder, who believes that the proposed compensation is not reasonable, can request the chairman of the Dutch Enterprise Chamber for additional compensation, to be determined by one or more independent experts Obligation to provide security for the satisfaction of the aforementioned compensation claim to the shareholders that requested such security A shareholder who did not have the possibility to resign or has not submitted a request to resign, can submit a request to the chairman of the Dutch Enterprise Chamber to have the exchange ratio redetermined by one or more independent experts
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border merger
Language requirements	<ul style="list-style-type: none"> The merger proposal must be drafted in the Dutch language
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months The merger proposal (<i>het fusievoorstel</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available The explanatory notes (<i>de schriftelijke toelichting</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available Opposition period: creditors may oppose to the contemplated conversion within three months after the announcement of the merger proposal (execution of the pre-conversion certificate is however possible after one month after the announcement)
Formal considerations	<ul style="list-style-type: none"> The minutes of the shareholders' meeting resolving on the merger shall be laid down in a notarial deed and executed before the Dutch civil-law notary → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>attest</i>)	<ul style="list-style-type: none"> Issued by the Dutch Notary after receipt of all relevant information and documentation Three months review period by Dutch civil-law notary, which can be extended up to a maximum of eight months. Execution of the pre-conversion certificate is however possible at the earliest after six weeks after the announcement and one month after the start of the opposition period The Dutch Notary the notary shall not issue the certificate if he establishes that the cross border division is designed for unlawful or fraudulent purposes leading to or aimed at evading or circumventing Union or national law, or for criminal purposes
Legal effectiveness of merger	<ul style="list-style-type: none"> The cross border merger shall become effective on the date pursuant to the law applicable to recipient legal entity

Cross border merger to the Netherlands (1/2)



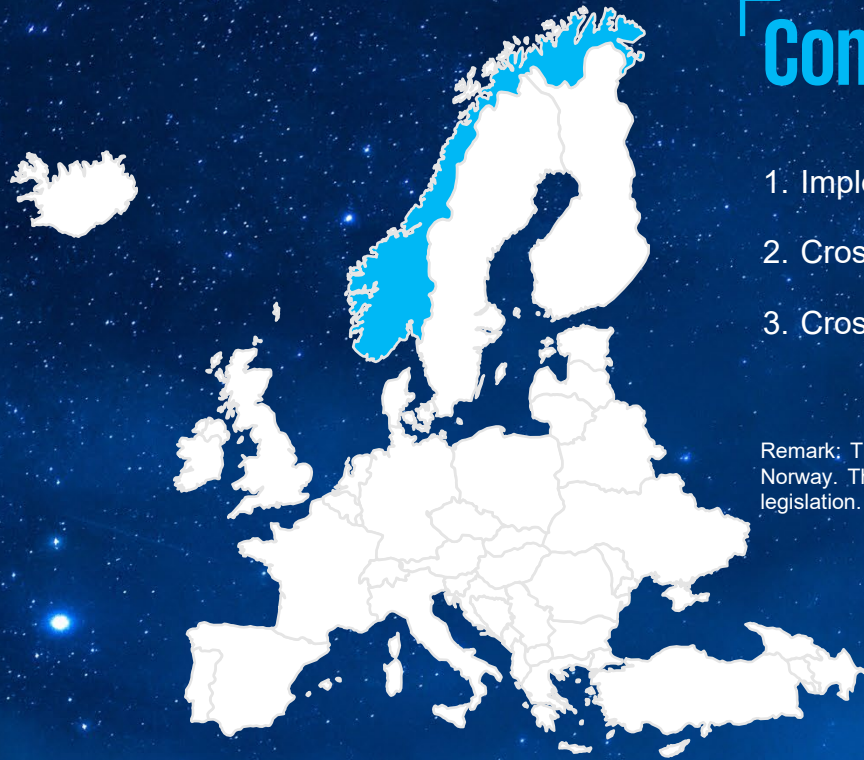
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>) The public company (<i>NV</i>)
Share capital requirements	<ul style="list-style-type: none"> The limited liability company (<i>BV</i>): none (but at least one share must be issued and held by someone other than the company or its subsidiaries) The public company (<i>NV</i>): EUR 45,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity Cross border merger with an existing legal entity as recipient
Required documentation	<p>The merger proposal (<i>voorstel tot fusie</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, name, seat, articles of association, rights and benefits to be granted, compensation of management board and supervisory board, composition management board and supervisory board, financial accounting, intentions regarding continuation or termination of work, measures related to acquisition of shares. In addition, the following items should be included: indicative time schedule, statement on specific rights of stakeholders, effects on staff and employment relationships, compensation payment. Proposal to be prepared by the management board (<i>het bestuur</i>) <p>The explanatory notes (<i>schriftelijke toelichting</i>)</p> <ul style="list-style-type: none"> The management board shall give the reasons for the merger with an explanation of the expected impact on operations and an explanation from a legal, economic and social point of view. The explanatory notes contains (if applicable) a section for shareholders and a section for employees. The management board may also choose to prepare two written explanatory notes for the shareholders and the employees <p>Audit Report (<i>accountantsverslag</i>)</p> <ul style="list-style-type: none"> An auditor to be appointed by the management board must: <ul style="list-style-type: none"> (i) examine the merger proposal and certify whether, the proposed share exchange ratio is reasonable in his opinion (ii) prepare a report including his findings regarding the statements that are made in view of the share exchange ratio and are included in the explanatory notes (iii) in case the acquiring legal entity is a <i>NV</i>, certify that the sum of the net assets of transferred legal entity as of the date to which the annual accounts or the interim statement of assets and liabilities relate, on the basis of generally acceptable valuation methods, at least corresponds to the nominal paid up amount on the aggregate number of shares to be acquired by their shareholders under the merger increased with the cash payments to which they are entitled according to the exchange ratio <p><u>Waiver</u>: statements (i) and (ii) can be waived for structures with multiple shareholders if agreed by all of the shareholders. The statement (iii) cannot be waived.</p> <ul style="list-style-type: none"> No audit report mentioned under (i) and (ii) is required in case the merging entity has a sole shareholder

Cross border merger to the Netherlands (2/2)



Topic	Prerequisites
Capital increase	<ul style="list-style-type: none"> In case the merger is not simplified the shareholders of the transferred legal entity shall receive shares in new recipient legal entity
Competent regulatory authority	<ul style="list-style-type: none"> The Dutch civil-law notary is designated as the competent authority to formalize the cross border merger
Dutch registration process	<ul style="list-style-type: none"> The acquiring company must register the merger in the Dutch commercial register within eight days following execution of the deed of merger The administrator of the Dutch trade register shall without delay notify the register of the member state in which the transferred legal entity is registered. The respective register cancels the registration immediately after receipt of this notification
Language requirements	<ul style="list-style-type: none"> The merger deed and, if applicable the articles of association of the newly incorporated recipient legal entity, must be drafted in the Dutch language
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months The merger proposal (<i>fusievoorstel</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available The explanatory notes (<i>schriftelijke toelichting</i>): ultimately six weeks prior to the shareholders' meeting at least electronically available Opposition period: creditors may oppose to the contemplated conversion within three months after the announcement of the merger proposal
Formal considerations	<ul style="list-style-type: none"> The minutes of the shareholders' meeting resolving on the merger shall be laid down in a notarial deed and executed before the Dutch civil-law notary → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Legal effectiveness of merger	<ul style="list-style-type: none"> The day following the execution of the notarial deed of merger before the Dutch civil-law notary

Norway



Content

1. Implementation status in Norway
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Norway. The content on the following slides is based on current legislation. The exact date of implementation is currently unclear.



Andreas Wulff

Partner

M +47 934 27957

andreas.wulff@kpmg.no



[Back to Country Overview](#)

Implementation status in Norway

Current status of the implementation process in Norway:

The Mobility Directive has not been transposed in Norway until the date hereof.

The implementation process is somewhat different with respect to Norway, since Norway is not an EU country but participates in the EU Internal Market through the European Economic Area (EEA) Agreement. Hence, for an EU act to apply to the EEA EFTA States, the EEA Joint Committee must adopt a decision to incorporate the act into the EEA Agreement. The aim is to incorporate acts as closely as possible to their date of entry into force in the EU in order to ensure that the same rules apply throughout the EEA. A draft joint committee decision regarding the implementation of the Mobility Directive is currently under consideration. The process of implementing the amendments into Norwegian legislation will commence once the Mobility Directive has been incorporated into the EEA Agreement. Based on the current status, we would assume that it may take some time until any amendments to the Norwegian legislation will enter into force.

The following slides present the current legal regime with regard to cross border divisions and mergers. It should be noted that current legislation in Norway does not cover cross border conversions.

Cross border division from Norway to other member state (1/2)



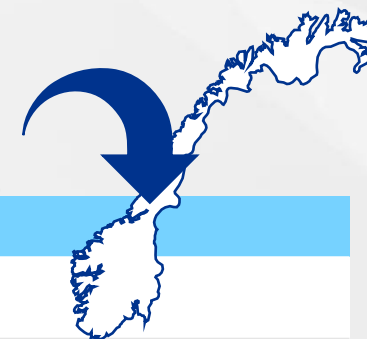
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (AS) Public limited liability company (ASA)
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Oppløsningsfisjon</i>) with new formation (<i>ved nystiftelse</i>): transfer of all assets and liabilities to at least two new recipient legal entities (full split-up) Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist Cross border split-off (<i>Likedelings/skjevdelings-fisjon</i>) with new formation (<i>ved nystiftelse</i>): transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity Beyond the scope of the Mobility Directive: Cross border split-up (<i>Oppløsningsfisjon</i>) and cross border split-off (<i>Likedelings/skjevdelings-fisjon</i>) are also possible with an existing legal entity as recipient. Pursuant to Norwegian law, the shareholder of the transferring entity may receive consideration in the existing recipient entity by way of increasing the nominal value of the shareholder's existing shares in the recipient entity (relevant in intra-group divisions) In order to create legal certainty, the jurisdiction of the other member state involved should also provide for a division with an existing entity as recipient. One should also investigate whether such member state provides for a capital increase by way of increasing the nominal value of the shareholder's existing shares in a recipient entity
Required documentation	<p>Division plan (<i>Fisjonsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, seat, articles of association, exchange ratio and distribution of shares to be granted, statement on specific rights of stakeholders, board of directors or general manager, creditor guarantees, effective date for accounting purposes, effects on staff and employment relationships, valuation of transferred assets and liabilities, compensation payment. Division plan to be prepared by the representative body <p>Report (<i>Rapport</i>)</p> <ul style="list-style-type: none"> Report from the Board of Directors (<i>Styret</i>) on the effects for employees, stakeholders and creditors Statement (<i>Redegjørelse</i>) <p>The Board of Directors of the receiving entity is obligated to prepare a statement regarding the contribution in kind</p> <p><u>Waiver</u>: Possible in case of a "equal portion" cross border split-off with new formation (<i>ved nystiftelse</i>), where the shares in the recipient entity shall be allotted to the shareholder(s) in the same portion as they own shares in the transferring entity</p> <p>Audit report</p> <ul style="list-style-type: none"> The statement prepared by the Board of Directors must be confirmed by an auditor. <p>Valuation</p> <ul style="list-style-type: none"> A valuation of the demerging company must be prepared, either by an external party or inhouse. The valuation document does not require filing to the local authorities. A valuation of the recipient must also be prepared in case this is an existing legal entity. However, this is not required in case the consideration is in the way of increasing the nominal value of the shareholder's existing shares in the recipient entity (relevant in intra-group divisions).

Cross border division from Norway to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> • $\frac{2}{3}$ of the votes cast and of the share capital represented at the shareholders' meeting
Competent regulatory authority	<ul style="list-style-type: none"> • The Register of Business Enterprises (<i>Foretaksregisteret</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): five – eight months • Division plan (<i>Fisjonsplan</i>): publication one month before the shareholders' resolution • Report (<i>Rapport</i>): to be provided to the shareholders and the union representatives, or the employees of the company, no later than one month prior to the shareholders' meeting • Creditor notice period: Six weeks from the date the decision to divide has been announced by the Register of Business Enterprises • Statement (<i>Redegjørelse</i>): to be provided to the shareholders one month prior to the shareholders' meeting. • Audit of the plan by independent auditor, resulting in a written audit report • Valuation: The time of the valuation shall not be dated further back than eight weeks prior to the shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> • Notarization by Norwegian notary is not required • The documents must be prepared in Norwegian due to registration with the Register of Business Enterprises → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-division certificate (<i>Fisjonsattest</i>)	<ul style="list-style-type: none"> • Issued by the Norwegian Register of Business Enterprises once the creditor notice period has lapsed and objections from creditors (if any) have been dealt with
Legal effectiveness of division	<ul style="list-style-type: none"> • The division will have legal effect upon on the date prescribed by the laws which apply for the destination jurisdiction → <u>Please see for further requirements the respective description for destination jurisdiction</u> • Registration in Register of Business Enterprises after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the foundation of the new legal entity

Cross border division from other member state to Norway



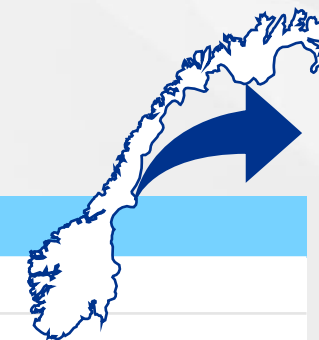
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (AS) Public limited liability company (ASA)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (AS): NOK 30,000 Public limited liability company (ASA): NOK 1,000,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: cross border divisions (split-up and split-off) to Norway are also possible with an existing legal entity as recipient. Pursuant to Norwegian law, the shareholder of the transferring entity may receive consideration in the existing recipient entity by way of increasing the nominal value of the shareholder's existing shares in the recipient entity (relevant in intra-group divisions) → Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also provide for a division with an existing entity as recipient. One should also investigate whether such member state provides for a capital increase by way of increasing the nominal value of the shareholder's existing shares in a recipient entity
Competent regulatory authority	<ul style="list-style-type: none"> The Register of Business Enterprises (<i>Foretaksregisteret</i>)
Norwegian Register of Business Enterprises process	<ul style="list-style-type: none"> First notification – the representative body of the recipient legal entity files the division plan (<i>Fisjonsplan</i>) to the Norwegian Register of Business Enterprises Second notification – the representative body of the recipient legal entity files the resolution to divide to the Norwegian Register of Business Enterprises Third notification – the representative body of the recipient legal entity files a notification stating that the company satisfies the conditions for implementing the division. The notification is sent to the Norwegian Register of Business Enterprises Fourth notification – the representative body of the recipient legal entity files a notification to implement the division to the Norwegian Register of Business Enterprises. The pre-division certificate (<i>Fisjonsattest</i>) issued by departure member state must be included in the notification Scope of review Norwegian Register of Business Enterprises: receipt of pre-division certificate (no review in substance) and mandatory provisions on establishment of recipient legal form (if applicable)
Language requirements	<ul style="list-style-type: none"> Norwegian language due to registration with the The Register of Business Enterprises (<i>Foretaksregisteret</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>Fisjonsattest</i>) by The Register of Business Enterprises : One month
Legal effectiveness of division	<ul style="list-style-type: none"> Legal effectiveness upon registration by the in The Register of Business Enterprises

Cross border merger from Norway to other member state (1/2)



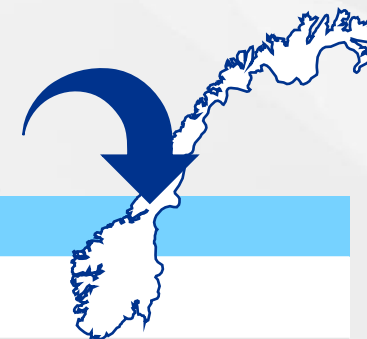
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (AS) Public limited liability company (ASA)
Required documentation	<p>Merger plan (<i>Fusjonsplan</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form, seat, articles of association, exchange ratio and distribution of shares to be granted, statement on specific rights of stakeholders, board of directors or general manager, creditor guarantees, effective date for accounting purposes, effects on staff and employment relationships, valuation of transferred assets and liabilities, compensation payment. Merger plan to be prepared by the representative body. <p>Report (<i>Rapport</i>)</p> <ul style="list-style-type: none"> Report from the Board of Directors (<i>Styret</i>) on the effects for employees, stakeholders and creditors Expert Statement/Audit Report (<i>Sakkyndig redegjørelse</i>) Audit of the plan by independent auditor, resulting in a written audit report <p><u>Waiver</u>: (1) Possible if the merger is carried out as a simplified upstream merger (intra-group) or (2) if all the shareholders in the merging companies have given their consent. For alternative 2, the Board of Directors are still obligated to prepare a statement regarding the contribution in kind. The statement must be confirmed by an auditor</p> <p>Valuation</p> <ul style="list-style-type: none"> A valuation of the merging companies must be prepared, either by an external party or inhouse. The valuation document does not require filing to the local authorities <p><u>Waiver</u>: Possible if the merger is carried out as a simplified upstream-or downstream merger (intra-group). A valuation for a downstream-merger may be required if there are any uncertainties whether the transferring company has net positive fair market values at the time of the merger</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <p><u>Waiver</u>: Possible if carried out either as an upstream-or downstream-merger (intra-group). Subsidiary mergers will most likely be included in the aforementioned list once local legislation has been amended as a result of the implementation of the Mobility Directive</p>
Shareholders' protection	<ul style="list-style-type: none"> 2/3 of the votes cast and of the share capital represented at the shareholders' meeting

Cross border merger from Norway to other member state (2/2)



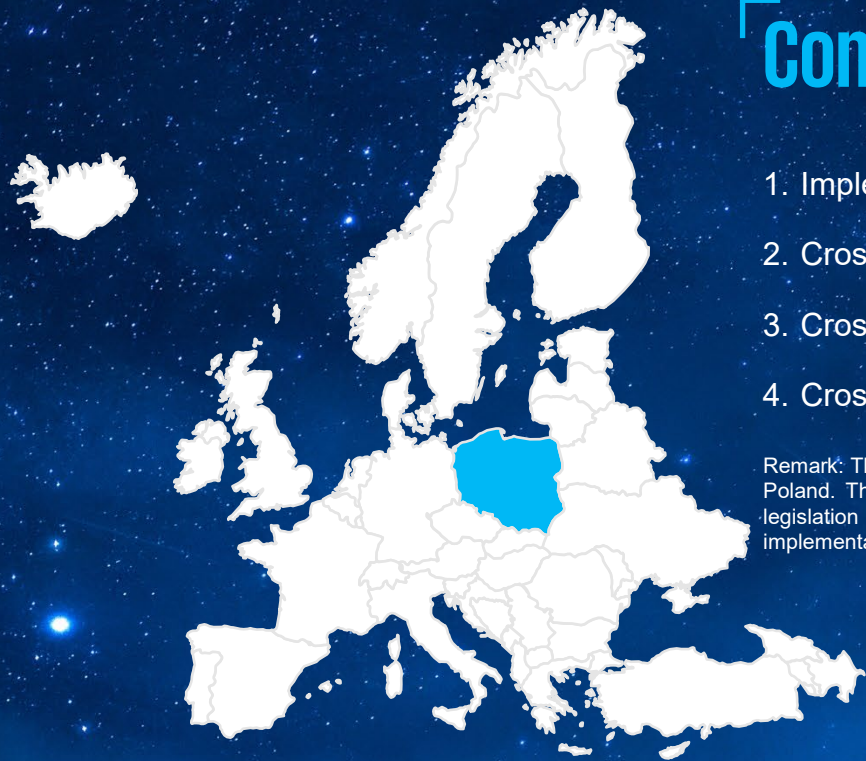
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> The Register of Business Enterprises (<i>Foretaksregisteret</i>)
Timing	<p>Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): five – eight months</p> <ul style="list-style-type: none"> Merger plan (<i>Fusjonsplan</i>): publication one month before the shareholders' resolution Report (Rapport): to be provided to the shareholders and the union representatives, or the employees of the company, no later than one month prior to the shareholders' meeting Creditor notice period: Six weeks from the date the decision to merge has been announced by the Register of Business Enterprises Expert Statement/Audit report (<i>Sakkyndig redegjørelse</i>): to be provided to the shareholders one month prior to the shareholders' meeting. Audit of the plan by independent auditor, resulting in a written audit report Valuation: The time of the valuation shall not be dated further back than eight weeks prior to the shareholders' meeting
Formal considerations	<ul style="list-style-type: none"> Notarization by Norwegian notary is not required The documents must be prepared in Norwegian due to registration with the Register of Business Enterprises → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate (<i>Fusjonsattest</i>)	<ul style="list-style-type: none"> Issued by the Norwegian Register of Business Enterprises once the creditor notice period has lapsed and objections from creditors (if any) have been dealt with
Legal effectiveness of merger	<ul style="list-style-type: none"> The merger will have legal effect upon on the date prescribed by the laws which apply for the destination jurisdiction → Please see for further requirements the respective description for destination jurisdiction Registration in Register of Business Enterprises after notification by authority of the destination jurisdiction of positive registration of the merger

Cross border merger from other member state to Norway



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (AS) Public limited liability company (ASA)
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (AS): NOK 30,000 Public limited liability company (ASA): NOK 1,000,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>ved nystiftelse</i>) Cross border merger with an existing legal entity as recipient (<i>ved opptak</i>)
Competent regulatory authority	<ul style="list-style-type: none"> The Register of Business Enterprises (<i>Foretaksregisteret</i>)
Norwegian Register of Business Enterprises process	<ul style="list-style-type: none"> First notification – the representative body of the recipient legal entity files the merger plan (<i>Fusjonsplan</i>) to the Norwegian Register of Business Enterprises Second notification – the representative body of the recipient legal entity files the resolution to merge to the Norwegian Register of Business Enterprises Third notification – the representative body of the recipient legal entity files a notification stating that the company satisfies the conditions for implementing the merger. The notification is sent to the Norwegian Register of Business Enterprises Fourth notification – the representative body of the recipient legal entity files a notification to implement the merger to the Norwegian Register of Business Enterprises. The pre-merger certificate (<i>Fusjonsattest</i>) issued by departure member state must be included in the notification Scope of review Norwegian Register of Business Enterprises: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Merger plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> Norwegian language due to registration with the Register of Business Enterprises (<i>Foretaksregisteret</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Fusjonsattest</i>) by The Register of Business Enterprises : One month
Legal effectiveness merger	<ul style="list-style-type: none"> Legal effectiveness upon registration by the in The Register of Business Enterprises
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> N/A

Poland



Content

1. Implementation status in Poland
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Poland. The content on the following slides is based on draft legislation subject to further changes. The exact date of implementation is currently unclear.



Paweł Bajno

Partner

M +48 664 080107
pbajno@kpmg.pl



[Back to Country Overview](#)

Implementation status in Poland

Current status of the implementation process in Poland:

The Mobility Directive has not been transposed completely in Poland until the date hereof.

The information contained in this report, insofar as it relates to Polish jurisdiction, has been prepared on the basis of a bill amending Polish legislation in connection with the implementation of the Mobility Directive, which is currently in the legislative process. This means that the bill referred to in the previous sentence may change and, as a consequence, the indicated information may become wholly or partially outdated.

Cross border conversion from Poland to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>spółka z ograniczoną odpowiedzialnością</i>) Joint-stock company (<i>spółka akcyjna</i>) Limited joint-stock partnership (<i>spółka komandytowo-akcyjna</i>)
Required documentation	<p>Plan (<i>Plan przekształcenia</i>)</p> <ul style="list-style-type: none"> The cross border conversion plan should contain at least the following: the legal form, business name and registered office of the company being converted and the designation of its register and company number in the register; legal form, business name and registered office proposed for the converted company; the draft articles of association of the company after conversion in accordance with the law applicable to the converted company; the proposed timetable for the cross border conversion; other rights conferred by the converted company on the shareholders or holders of securities other than shares in the company or securities offered to creditors. Plan to be prepared by the representative body <p>Audit report (<i>Opinia biegłego rewidenta</i>)</p> <ul style="list-style-type: none"> <u>Waiver</u>: Examination of the cross border conversion plan by an expert or an expert report should not be required in the case of a single-member company and if all the shareholders of the of the company being converted agreed to waive the requirement for an examination of the cross border conversion plan by an expert and an expert opinion <p>Management Board's report (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów przekształcenia transgranicznego</i>)</p> <ul style="list-style-type: none"> Report addressed to the shareholders and employees of the company being converted explaining the legal basis and justifying the economic aspects of the proposed cross border conversion <p>Two notifications to the shareholders of the company being converted of the proposed cross border conversion Minutes of the shareholders' meeting including the resolution on the cross border conversion</p>
Shareholders' protection	<p>A shareholder:</p> <ul style="list-style-type: none"> who voted against the resolution on the cross border conversion of the company and requested that an objection be recorded in the minutes no later than at the shareholders' meeting on the adoption of the resolution on the cross border conversion; was unjustifiably prevented from participating in the shareholders' meeting on the adoption of a resolution on the cross border conversion – may demand the repurchase of his shares in the company being converted resolution on cross border conversion requires a majority of three quarter of the votes representing at least half of the share capital, unless the company's articles of association stipulate stricter conditions for the required majority, not exceeding 90% of the votes
Competent regulatory authority	<ul style="list-style-type: none"> Register court of seat of legal entity (<i>sąd rejestrowy</i>)

Cross border conversion from Poland to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – nine months • Plan (<i>Plan przekształcenia</i>): the company should file the Plan with the registry court at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border conversion is to be adopted • Management Board's report to shareholders and employees (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów przekształcenia</i>): the company should file the report at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border conversion is to be adopted • Audit report (<i>Opinia biegłego rewidenta</i>): the auditor should draw up a detailed written report within a period of time specified by the registry court, but no longer than two months from the date of his appointment • Repurchase of shareholders' shares: within two months from the date of the cross border conversion
Formal considerations	<p>Notarization by Polish notary:</p> <ul style="list-style-type: none"> • Plan (<i>Plan przekształcenia</i>) • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • Polish language due to registration with the commercial register
Pre-conversion certificate	<ul style="list-style-type: none"> • The company's Management Board should apply to the registry court for the issuance of a certificate on the conformity of the cross border conversion with Polish law pursuant to the procedure subject to that law, together with a request to the competent tax authority for the issuance of an opinion in accordance with the provisions of the Tax Code. The registry court should immediately send the application to the competent tax authority
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Registration in Polish commercial register after positive review • Legal effectiveness upon registration by the Polish commercial register

Cross border conversion from other member state to Poland



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Share capital requirements	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Competent regulatory authority	<ul style="list-style-type: none"> Register court of seat of legal entity (<i>sąd rejestrowy</i>)
Polish registration process	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Language requirements	<ul style="list-style-type: none"> Polish language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Legal effectiveness of conversion	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act

Cross border division from Poland to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>spółka z ograniczoną odpowiedzialnością</i>) Joint-stock company (<i>spółka akcyjna</i>) Limited joint-stock partnership (<i>spółka komandytowo-akcyjna</i>)
Division types	<ul style="list-style-type: none"> Division by incorporation of new companies to which all the assets of the company being divided are transferred in exchange for shares in the new company or companies, which are taken up by the shareholders of the company being divided Division by acquisition and formation of a new company, i.e., by transferring all the assets of the divided company to the newly formed company or companies in exchange for the shares of the newly formed company or companies, which are taken up by the shareholders of the divided company Division by spin-off, i.e., by transferring part of the assets of the company being divided to a newly incorporated company or companies in exchange for shares in the newly incorporated company or companies, which are taken up by the shareholders of the company being divided Division by spin-off, i.e., by transferring part of the assets of the company being divided to an existing or newly incorporated company or companies in exchange for shares of the acquiring or newly incorporated company or companies, which are taken up by the company being divided
Required documentation	<p>Plan (<i>Plan podziału</i>)</p> <ul style="list-style-type: none"> The cross border division plan should contain at least: the legal form, business name and registered office of the company being divided and the designation of its register and company number in the register; the legal form, business name and registered office proposed for the newly incorporated company or companies; the ratio for the exchange of shares or other securities and the amount of any cash surcharge, unless no such exchange takes place; in the case of a division by partial division, information on the number and value of shares in the newly incorporated company or companies taken up by the company being divided; the terms and conditions governing the allotment of shares or other securities in the newly incorporated company or companies being divided; the proposed timetable for the cross border division and the likely repercussions of the cross border division on employment. Plan to be prepared by the representative body <p>Audit Report (<i>Opinia biegłego rewidenta</i>)</p> <ul style="list-style-type: none"> <u>Waiver</u>: Examination of the cross border division plan by an expert or an expert report should not be required in the case of a single-member company and if all the shareholders of the company being divided have agreed to waive the requirement for an examination of the cross border division plan by an expert and an expert opinion <p>Management Board's report (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów podziału transgranicznego</i>)</p> <ul style="list-style-type: none"> Report addressed to the shareholders and employees of the companies participating in the division explaining the legal basis and justifying the economic aspects of the proposed cross border division <p>Two notifications to the shareholders of the companies participating in the division of the proposed cross border division Minutes of the shareholders' meeting of the companies participating in the division including the resolution on the cross border division</p>

Cross border division from Poland to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<p>A shareholder:</p> <ul style="list-style-type: none"> • who voted against the resolution on the cross border division of the company and requested that an objection be recorded in the minutes no later than at the shareholders' meeting on the adoption of the resolution on the cross border division • was unjustifiably prevented from participating in the shareholders' meeting on the adoption of a resolution on the cross border division • may demand the repurchase of his shares in the company being converted <p>Resolution on cross border division requires a majority of three quarter of the votes representing at least half of the share capital, unless the company's articles of association stipulate stricter conditions for the required majority, not exceeding 90% of the votes</p>
Extended liability	<ul style="list-style-type: none"> • For the liabilities of the company being divided not assigned in the plan of cross border division to the newly formed companies, these companies and – in the case of a division by spin-off – also the company being divided, should be jointly and severally liable
Competent regulatory authority	<ul style="list-style-type: none"> • Register court of seat of legal entity (<i>sąd rejestrowy</i>)
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – nine months • Plan (<i>Plan podziału</i>): the company should file the Plan with the registry court at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border division is to be adopted • Management Board report to shareholders and employees: the company should file the report at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border division is to be adopted (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów podziału transgranicznego</i>) • Audit report (<i>Opinia biegłego rewidenta</i>): the auditor should draw up a detailed written report within a period of time specified by the court, but no longer than two months from the date of his appointment • Repurchase of shareholders' shares: within two months from the date of the cross border division
Formal considerations	<p>Notarization by Polish notary:</p> <ul style="list-style-type: none"> • Plan (<i>Plan podziału</i>) • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • Polish language due to registration with the commercial register
Pre-division certificate	<ul style="list-style-type: none"> • The company's Management Board should apply to the registry court for the issuance of a certificate on the conformity of the cross border division with Polish law pursuant to the procedure subject to that law, together with a request to the competent tax authority for the issuance of an opinion in accordance with the provisions of the Tax Code. The registry court should immediately send the application to the competent tax authority
Legal effectiveness of division	<ul style="list-style-type: none"> • Registration in Polish commercial register after positive review • Legal effectiveness upon registration by the Polish commercial register

Cross border division from other member state to Poland



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Share capital requirements	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Competent regulatory authority	<ul style="list-style-type: none"> Register court of seat of legal entity
Polish registration process	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Language requirements	<ul style="list-style-type: none"> Polish language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Legal effectiveness of division	<ul style="list-style-type: none"> Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Poland to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>spółka z ograniczoną odpowiedzialnością</i>) Joint-stock company (<i>spółka akcyjna</i>) Limited joint-stock partnership (<i>spółka komandytowo-akcyjna</i>)
Required documentation	<p>Plan (<i>Plan połączenia</i>)</p> <ul style="list-style-type: none"> The plan of cross border merger should contain at least: the type, name and registered office of the merging companies, the designation of the register and the registration number of each of the merging companies, the manner of the merger and, in the case of a merger by incorporation of a new company, also the type, name and registered office proposed for that company; the ratio of exchange of shares of the company being acquired or of the companies merging by incorporation of a new company for shares of the acquiring company or of the newly incorporated company and the amount of any cash surcharge; the procedure according to which the rules of participation of employees in the establishment of their rights of participation in the bodies of the acquiring company or the newly incorporated company will be determined, in accordance with separate regulations and the probable effect of the merger on the state of employment in the acquiring company or the newly incorporated company. Plan to be prepared by the representative body <p>Audit Report (<i>Opinia biegłego rewidenta</i>)</p> <ul style="list-style-type: none"> <u>Waiver</u>: Examination of the cross border merger plan by an expert or an expert report should not be required in the case of a single-member company and if all the shareholders of the of the companies being merged have agreed to waive the requirement for an examination of the cross border merger plan by an expert and an expert opinion <p>Management Board's Report (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów połączenia transgranicznego</i>)</p> <ul style="list-style-type: none"> Report addressed to the shareholders and employees of the companies participating in the merger explaining the legal basis and justifying the economic aspects of the proposed cross border merger <p>Two notifications to the shareholders of the companies participating in the merger of the proposed cross border merger Minutes of the shareholders' meeting of the companies participating in the merger including the resolution on the cross border merger</p>
Capital increase	<p>The shareholders of the transferred legal entity receive shares in the recipient legal entity</p> <p><u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)</p>
Shareholders' protection	<p>A shareholder:</p> <ul style="list-style-type: none"> who voted against the resolution on the cross border merger of the company and requested that an objection be recorded in the minutes no later than at the shareholders' meeting on the adoption of the resolution on the cross border merger; was unjustifiably prevented from participating in the shareholders' meeting on the adoption of a resolution on the cross border merger may demand the repurchase of his shares

Cross border merger from Poland to other member state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Register court of seat of legal entity (<i>sąd rejestrowy</i>)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): six – nine months Plan (<i>Plan połączenia</i>): the company should file the Plan with the registry court at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border merger is to be adopted Management Board report to shareholders and employees: the company should file the report at least five weeks before the date of the shareholders' meeting at which the resolution on the cross border merger is to be adopted (<i>Sprawozdanie Zarządu dla wspólników i pracowników dla celów połączenia transgranicznego</i>) Audit report (<i>Opinia biegłego rewidenta</i>): the auditor should draw up a detailed written report within a period of time specified by the court, but no longer than two months from the date of his appointment Repurchase of shareholders' shares: within two months from the date of the cross border merger
Formal considerations	<p>Notarization by Polish notary:</p> <ul style="list-style-type: none"> Plan (<i>Plan połączenia</i>) Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> Polish language due to registration with the commercial register
Pre-merger certificate	<ul style="list-style-type: none"> The company's Management Board should apply to the registry court for the issuance of a certificate on the conformity of the cross border merger with Polish law pursuant to the procedure subject to that law, together with a request to the competent tax authority for the issuance of an opinion in accordance with the provisions of the Tax Code. The registry court should immediately send the application to the competent tax authority
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Polish commercial register after positive review Legal effectiveness upon registration by the Polish commercial register

Cross border merger to Poland



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Share capital requirements	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Merger types/recipient legal entity	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Competent regulatory authority	<ul style="list-style-type: none"> Register court of seat of legal entity (<i>sąd rejestrowy</i>)
Polish registration process	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Language requirements	<ul style="list-style-type: none"> Polish language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Legal effectiveness of merger	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Not elaborated at this stage in the draft Act

Romania



Content

1. Implementation status in Romania
2. Cross border conversion
3. Cross border division
4. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Romania. The content on the following slides is based on KPMG's anticipated result of transposition subject to further changes. The exact date of implementation is currently unclear.



Vlad-Octavian Peligrad

Partner

M +40 723 283143

vpeligrad@kpmg.com



[Back to Country Overview](#)

Implementation status in Romania

Current status of the implementation process in Romania:

The Mobility Directive has not been transposed in Romania until the date hereof.

On 14 March 2023 the Ministry of Justice published a draft of the Law for amending and completing the Companies Law not 31/1990 and the Trade Registry Law no 265/2022, for the purpose of transposing the Mobility Directive provisions.

The draft of the law is still under public debate before being sent to the Parliament for the process of adoption of a new law.

There is no certainty of the text of the law that will be adopted, as the proposed text of the draft of the law may be further modified during the legislative process.

From this point of view, we presented in the following slides KPMG's view on the anticipated outcome of transposing the Mobility Directive into the national legislation, also taking into consideration the manner of transposing Directive (EU) 2017/1132 as regards cross border conversions, mergers and divisions into Romanian legislation.

However, we cannot guarantee that the competent Romanian authorities will transpose the Mobility Directive in the manner presented in the following slides and we assume no liability in this respect.

This presentation is subject to updates, depending on the progress of the legislative process, respectively timeline for publication of a draft law and adoption of the final transposition law.

Cross border conversion from Romania to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA)
Required documentation	<p>Plan (<i>Proiect de transformare transfrontalieră</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, corporate name and seat of the legal entity, articles of association, indicative time schedule, statement on specific rights of shareholders, effects on employment relationships, compensation payment. Plan to be prepared by the representative body <p>Report (<i>Raport al organului administrativ</i>)</p> <ul style="list-style-type: none"> Report of the representative body on the effects for employees and shareholders <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver and the company has no employees, other than those who are members of the administrative or management body) <p>Expert report (<i>Raport al expertului independent</i>)</p> <ul style="list-style-type: none"> Examination of the plan by independent expert, resulting in a written expert report <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver)
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholders' resolution on conversion Mandatory compensation/acquisition offer to shareholders voting against the conversion of legal form. Compensation by way of adequate cash payment by converted legal entity to shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of legal entity

Cross border conversion from Romania to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Plan (<i>Proiect de transformare transfrontalieră</i>): publication one month prior to shareholders' meeting and notification to employees' representatives (or employees in absence of employees' representatives) • Report (<i>Raport al administratorilor</i>): to be provided to the shareholders and the employees' representatives (or employees in absence of employees' representatives) six weeks prior to shareholders' meeting • Expert report (<i>Raport al expertului independent</i>): to be provided to the shareholders one month prior to the shareholders' meeting • Compensation payment to shareholders: two months after legal effectiveness of conversion of legal form
Formal considerations	<p>Notarization by Romanian notary in case real estate assets were contributed to the share capital of the legal entity:</p> <ul style="list-style-type: none"> • Plan (<i>Proiect de transformare transfrontalieră</i>) • Shareholders' resolution → Please see other country sections for requirements of the respective destination jurisdiction <p>Language:</p> <ul style="list-style-type: none"> • Romanian language due to registration with the Romanian Trade Registry → Please see other country sections for requirements of the respective destination jurisdiction
Pre-conversion certificate <i>(Certificat prelabil transformării transfrontaliere)</i>	<ul style="list-style-type: none"> • Issued by the Romanian Trade Registry Office after filing of all required documents by the representative body and positive review • Three months review period by Romanian Trade Registry Office, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Transmission of pre-conversion certificate (<i>Certificat prelabil transformării transfrontaliere</i>) to the authority of the destination jurisdiction • Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements in the respective description for the destination jurisdiction • Registration in Romanian Trade Registry after notification by authority of the destination jurisdiction of positive registration of the conversion of legal form • Legal effectiveness upon registration by the authority of the destination jurisdiction

Cross border conversion from other member state to Romania



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (SRL): EUR 0 Joint-stock company (SA): EUR 18,000 Limited partnership by shares (SCA): EUR 18,000
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of legal entity
Romanian Trade Registry process	<ul style="list-style-type: none"> Application filed by the representative body of the legal entity to the competent Romanian Trade Registry Office Application includes in particular the plan (<i>Proiect de transformare transfrontalieră</i>) Pre-conversion certificate (<i>Certificat prealabil transformării transfrontaliere</i>) transferred by departure member state regulatory body to Romanian Trade Registry Office → Please see requirements for pre-conversion certificate in the respective departure member state section Scope of review by the Romanian Trade Registry Office: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Romanian language due to registration with the Romanian Trade Registry
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-conversion certificate (<i>Certificat prealabil transformării transfrontaliere</i>) by the Trade Registry Office: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in Romanian Trade Registry after positive review Legal effectiveness upon registration by the Romanian Trade Registry

Cross border division from Romania to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA) European companies headquartered in Romania
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Divizare transfrontalieră completă</i>) with new formation (<i>Înființare a unei noi societăți</i>): transfer of all assets and liabilities to at least two new recipient legal entities (full split-up) Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist Cross border split-off (<i>Divizare transfrontalieră parțială</i>) with new formation (<i>Înființare a unei noi societăți</i>): transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity or in the new recipient legal entity and the divided company Cross border spin-off (<i>Divizare transfrontalieră prin separare</i>) with new formation (<i>Înființare a unei noi societăți</i>): transfer of part of the assets and liabilities to a new recipient legal entity Capital increase: Entity spinning-off receives shares in the new recipient legal entity
Required documentation	<p>Plan (<i>Proiect de divizare transfrontalieră</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal form and seat of the divided company and of the beneficiary company, articles of association of the new company, exchange ratio and distribution of shares to be granted, indicative time schedule, statement on specific rights of stakeholders, creditor guarantees, effects on employment relationships, summary of transferred/remaining assets and liabilities, compensation payment. Plan to be prepared by the representative body <p>Report (<i>Raport al organului administrativ</i>)</p> <ul style="list-style-type: none"> Report of the representative body on the effects for employees and shareholders <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver and the company has no employees, other than those who are part of the administrative or management body) <p>Expert report (<i>Raport al expertului independent</i>)</p> <ul style="list-style-type: none"> Examination of the plan by independent expert, resulting in a written expert report <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver) <p>Division balance sheet</p>

Cross border division from Romania to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholders' resolution on division Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment by divided legal entity to shareholders
Extended liability	<ul style="list-style-type: none"> Extended liability of the divided legal entity and the recipient legal entity as joint and several debtors (<i>debitori solidari</i>) for liabilities incurred prior to the division
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Plan (<i>Proiect de divizare transfrontalieră</i>): publication one month prior to shareholders' meeting and notification to employees' representatives (or employees in absence of employees' representatives) Report (<i>Raport al organului administrativ</i>): to be provided to the shareholders and the employees' representatives (or employees in absence of employees' representatives) six weeks prior to shareholders' meeting Expert report (<i>Raport al expertului independent</i>): to be provided to the shareholders one month prior to the shareholders' meeting Compensation payment to shareholders: two months after legal effectiveness of division
Formal considerations	<p>Notarization by Romanian notary in case real estate assets are transferred in the context of the division:</p> <ul style="list-style-type: none"> Plan (<i>Proiect de divizare transfrontalieră</i>) Shareholders' resolution → Please see other country sections for requirements of the respective destination jurisdiction <p>Language:</p> <ul style="list-style-type: none"> Romanian language due to registration with the Romanian Trade Registry → Please see other country sections for requirements of the respective destination jurisdiction
Pre-division certificate (<i>Certificat prealabil divizării transfrontaliere</i>)	<ul style="list-style-type: none"> Issued by the Romanian Trade Registry Office after filing of all required documents by the representative body and positive review Three months review period by Romanian Trade Registry Office, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of division	<ul style="list-style-type: none"> Transmission of pre-division certificate (<i>Certificat prealabil divizării transfrontaliere</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in Romanian Trade Registry after notification by authority of the destination jurisdiction of positive registration of the division which comprises the positive registration of the foundation of the new legal entity Legal effectiveness upon registration by authority of the destination jurisdiction

Cross border division from other member state to Romania



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA) European companies headquartered in Romania
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (SRL): EUR 0 Joint-stock company (SA): EUR 18,000 Limited partnership by shares (SCA): EUR 18,000
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of legal entity
Romanian Trade Registry process	<ul style="list-style-type: none"> Application filed by the representative body to the competent Romanian Trade Registry Office Application includes in particular the plan (<i>Proiect de divizare transfrontalieră</i>) Pre-division certificate (<i>Certificat prealabil divizării transfrontaliere</i>) transferred by departure member state regulatory body to Romanian Trade Registry Office → Please see requirements for pre-division certificate in the respective departure member state section Scope of review by the Romanian Trade Registry Office: receipt of pre-division certificate (no review in substance), mandatory provisions on establishment of recipient legal form, employee participation rules
Language requirements	<ul style="list-style-type: none"> Romanian language due to registration with the Romanian Trade Registry
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-division certificate (<i>Certificat prealabil divizării transfrontaliere</i>) by Trade Registry Office: one – three months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Romanian Trade Registry after positive review Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Romania to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA) European companies headquartered in Romania
Required documentation	<p>Plan (<i>Proiect de fuziune transfrontalieră</i>)</p> <ul style="list-style-type: none"> Main statutory content is the legal forms and seats of the merging companies, articles of association of the new company, if the case, exchange ratio and distribution of shares to be granted, additional cash payments, if the case, balance sheet date and merger date as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of shareholders, creditor guarantees, effects on employment relationships, compensation payment. Plan to be prepared by the representative body <p>Report (<i>Raport al organului administrativ</i>)</p> <ul style="list-style-type: none"> Report of the representative body on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver and the merging companies have no employees, other than those who are part of the administrative or management body) <p>Expert report (<i>Raport al expertului independent</i>)</p> <ul style="list-style-type: none"> Examination of the plan by independent expert, resulting in a written expert report <u>Waiver</u>: possible under specific circumstances (in particular in case all the shareholders agreed on the waiver) <p>Merger balance sheet</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> 75% majority requirement for mandatory shareholders' resolution on merger Mandatory compensation/acquisition offer to shareholders voting against the merger. Compensation by way of adequate cash payment by the recipient legal entity to shareholders

Cross border merger from Romania to other member state (2/2)



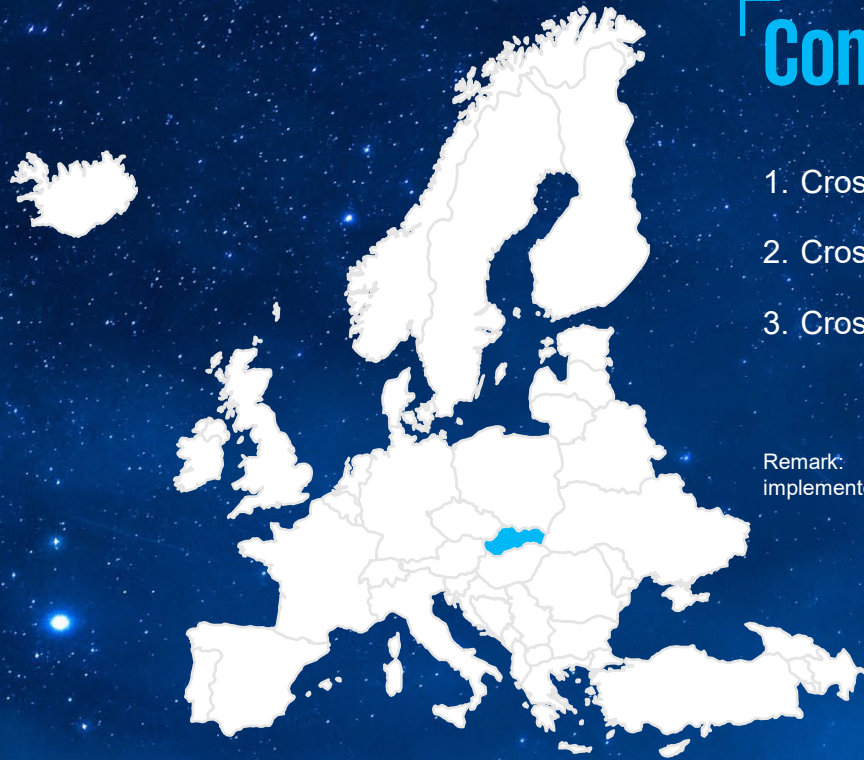
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of Romanian legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Plan (<i>Proiect de fuziune transfrontalieră</i>): publication one month before to shareholders' meeting and notification to employees' representatives (or employees in absence of employees' representatives). If a shareholders' resolution of the transferring entity is dispensable, publication shall be made one month prior to the shareholders' meetings of the other merging companies; filing with the register court, which shall make the publication without delay Report (<i>Raport al organului administrativ</i>): to be provided to the shareholders and the employees' representatives (or employees in absence of employees' representatives) six weeks prior to shareholders' meeting Expert report (<i>Raport al expertului independent</i>): to be provided to the shareholders one month prior to the shareholders' meeting Compensation payment to shareholders: two months after legal effectiveness of the merger
Formal considerations	<p>Notarization by Romanian notary in case real estate assets are transferred in the context of the merger:</p> <ul style="list-style-type: none"> Plan (<i>Proiect de fuziune transfrontalieră</i>) Shareholders' resolution → Please see other country sections for requirements of the respective destination jurisdiction <p>Language:</p> <ul style="list-style-type: none"> Romanian language due to registration with the Romanian Trade Registry → Please see other country sections for requirements of the respective destination jurisdiction
Pre-merger certificate (<i>Certificat prealabil fuziunii</i>)	<ul style="list-style-type: none"> Issued by the Romanian Trade Registry Office after filing of all required documents by the representative body and positive review Three months review period by Romanian Trade Registry Office, with additional up to three months in case of reasonable grounds of fraudulent or abusive action
Legal effectiveness of merger	<ul style="list-style-type: none"> Transmission of pre-merger certificate (<i>Certificat prealabil fuziunii transfrontaliere</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → Please see for further requirements the respective description for destination jurisdiction Registration in Romanian Trade Registry after notification by authority of the destination jurisdiction of positive registration of the merger Legal effectiveness upon registration by authority of the destination jurisdiction

Cross border merger to Romania



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (SRL) Joint-stock company (SA) Limited partnership by shares (SCA) European companies headquartered in Romania
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (SRL): EUR 0 Joint-stock company (SA): EUR 18,000 Limited partnership by shares (SCA): EUR 18,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>Fuziune prin contopire</i>) Cross border merger with an existing legal entity as recipient (<i>Fuziune prin absorbție</i>) Cross border merger with a subsidiary (<i>Fuziune prin absorbția filialei de către societatea-mamă</i>) Cross border merger between companies with the same shareholding structure and quota (<i>Fuziune prin absorbția unei societăți cu aceeași structură a capitalului social</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Trade Registry Office (<i>Oficiul Registrului Comerțului</i>) of seat of legal entity
Romanian Trade Registry process	<ul style="list-style-type: none"> Application filed by the representative body of the recipient legal entity to the competent Romanian Trade Registry Office Application includes in particular the plan (<i>Proiect de fuziune transfrontalieră</i>) Pre-merger certificate (<i>Certificat prealabil fuziunii transfrontaliere</i>) transferred by departure member state regulatory body to Romanian Trade Registry Office → Please see requirements for pre-merger certificate in the respective departure member state section Scope of review by the Romanian Trade Registry Office: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of the Plan by the merged legal entity and recipient legal entity, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> Romanian language due to registration with the Romanian Trade Registry
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Certificat prealabil fuziunii transfrontaliere</i>) by Trade Registry Office: one – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Romanian Trade Registry after positive review Legal effectiveness upon registration by the Romanian Trade Registry

Slovakia



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Slovakia.



**JUDr. Marian Dzuroška,
PhD., LL.M**

Partner

M +421 915 758936
mdzuroska@kpmg.sk



Back to Country Overview

Cross border conversion from Slovakia to other member state (1/2)



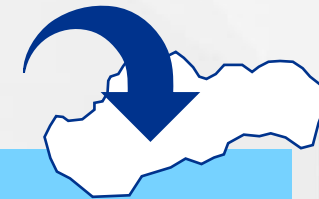
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>) Joint stock company (<i>a. s.</i>)
Required documentation	<p>Project of cross border conversion (<i>Návrh projektu cezhraničnej zmeny právnej formy</i>)</p> <ul style="list-style-type: none"> Main statutory content is a new legal form, amount of contribution to capital share of each shareholder, seat, articles of association, indicative time schedule, statement specific rights of shareholders, effects on staff and employment relationships, compensation payment. Plan to be prepared by the statutory body (<i>Štatutárny orgán</i>) <p>Report of statutory body (<i>Správa štatutárneho orgánu</i>)</p> <ul style="list-style-type: none"> Explanation and assessment of legal and economic effects and impacts of the cross border conversion on employees and shareholders. <u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions) <p>Report of supervisory board (if established in the company)</p> <ul style="list-style-type: none"> Assessment of the cross border conversion, a Project and Report of the statutory body. <p>Audit Report (<i>Správa audítora o preskúmaní návrhu projektu cezhraničnej premeny</i>)</p> <ul style="list-style-type: none"> Audit of the Project by an independent auditor, resulting in a written audit report. <u>Waiver</u>: possible under specific circumstances (in particular in intra-group conversions)
Shareholders' protection	<ul style="list-style-type: none"> 2/3 Majority requirement for mandatory shareholders' resolution on cross border conversion Mandatory compensation/acquisition offer to shareholders voting against the conversion. Compensation by way of adequate cash payment by converted legal entity to shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Okresný súd</i>) of seat of legal entity

Cross border conversion from Slovakia to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): two – eight months • Notification obligations to the tax authority and pledge creditor • Publication obligation of the Project, Report of the statutory body and financial statements • Publication obligation of the Audit report • Approval of the conversion by the shareholders • Compliance with the conditions set for the participation of the employees on cross border conversion • Assessment of the process of conversion by the notary public and • Registration in the respective company registers
Formal considerations	<p>Notarization by Slovak notary:</p> <ul style="list-style-type: none"> • Plan (<i>Projekt premeny</i>) • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • Slovak language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate <i>(Osvedčenie predchádzajúce cezhraničnej premene)</i>	<ul style="list-style-type: none"> • Issued by the Slovak notary after filing a request for elaboration of pre-conversion certificate with all necessary documentation • Three months review period by Slovak notary, with additional up to three months in case of incomplete documentation
Legal effectiveness of conversion	<ul style="list-style-type: none"> • After the delivery of announcement on legal effectiveness of cross border conversion in foreign country, the Register court will execute the deletion of the company, as at the date of its legal effectiveness thereof

Cross border conversion from other member state to Slovakia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>) Joint stock company (<i>a. s.</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>): EUR 5,000 Joint stock company (<i>a. s.</i>): EUR 25,000
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Okresný súd</i>) of seat of legal entity
Slovak registration process	<ul style="list-style-type: none"> Application filed by the statutory body (<i>Štatutárny orgán</i>) to the competent Slovak commercial register in Slovakia Scope of review Slovak commercial register: receipt of pre-conversion certificate (no review in substance), mandatory provisions on establishment of target legal form, employee participation rules, confirmation of proposal of project of cross border conversion
Language requirements	<ul style="list-style-type: none"> Slovak language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> The statutory period for the registration court to decide is two business days, however, it varies depending on the registration court. The registration process can take from two days – one month
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in Slovak commercial register after positive review Legal effectiveness upon registration by the Slovak commercial register

Cross border division from Slovakia to other member state (1/2)



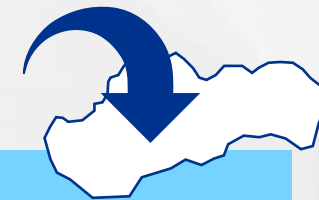
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>) Joint stock company (<i>a. s.</i>)
Division types	<p>Cross border split-up (<i>Rozštiepenie</i>) with existing legal entities (<i>Zlúčením</i>): transfer of all assets and liabilities to existing legal entities</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities (unless otherwise agreed), split-up legal entity ceases to exist <p>Cross border split-up (<i>Rozštiepenie</i>) into new legal entities (<i>Splynutím</i>): transfer of all assets and liabilities to newly created legal entities (<i>full split-up</i>)</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-up legal entity receive shares in the new recipient legal entities, split-up legal entity ceases to exist <p><u>Combination of the above</u></p> <p>Cross border spin-off (<i>Odštiepenie</i>) with existing legal entities (<i>Zlúčením</i>): transfer of part of the assets and liabilities to already existing recipient legal entity</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-off legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions) <p>Cross border spin-off (<i>Odštiepenie</i>) into new legal entities (<i>Splynutím</i>): transfer of part of the assets and liabilities to a newly created recipient legal entity(s)</p> <ul style="list-style-type: none"> Capital increase: Shareholders of the split-off legal entity receive shares in the new recipient legal entity <u>Waiver</u>: possible to waive the issuance of new shares under specific circumstances (in particular in intra-group divisions)
Required documentation	<p>Project of cross border conversion (<i>Návrh projektu cezhraničnej premeny</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, seat, articles of association, exchange ratio and distribution of shares to be granted, indicative time schedule, statement on specific rights of shareholders, creditor guarantees, effects on staff and employment relationships, summary of transferred/remaining assets and liabilities, compensation payment. Plan to be prepared by the statutory body (<i>Štatutárny orgán</i>) <p>Report of statutory body (<i>Správa štatutárneho orgánu</i>)</p> <ul style="list-style-type: none"> Explanation and assessment of legal and economic effects and impacts of the cross border division on employees and shareholders. <u>Waiver</u>: possible under specific circumstances (in particular in intra-group division) <p>Report of supervisory board (if created in the company)</p> <ul style="list-style-type: none"> Assessment of the cross border division, a Project and Report of the statutory body <p>Audit Report (<i>Správa audítora o preskúmaní návrhu projektu cezhraničnej premeny</i>)</p> <ul style="list-style-type: none"> Audit of the Project by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group division) <p>Balance sheet of dividing legal entity</p>

Cross border division from Slovakia to other member state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> • $\frac{2}{3}$ Majority requirement for mandatory shareholders' resolution on division • Mandatory compensation/acquisition offer to shareholders voting against the division. Compensation by way of adequate cash payment by divided legal entity to shareholders
Extended liability (<i>Ručenie zúčastnených spoločností</i>)	<ul style="list-style-type: none"> • Extended liability of the successor companies to guarantee liabilities of divided company up to the amount of the net equity that was transferred to successor company
Competent regulatory authority	<ul style="list-style-type: none"> • Register court (<i>Okresný súd</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Notification obligations to the tax authority and pledge creditor • Publication obligation of the Project, Report of the statutory body and financial statements • Publication obligation of the Audit report • Approval of the conversion by the shareholders • Assessment of the process of conversion by the notary public and • Registration in the respective company registers
Formal considerations	<p>Notarization by Slovak notary:</p> <ul style="list-style-type: none"> • Plan (<i>Projekt premeny</i>) • Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> • Slovak language due to registration with the commercial register → Please see other country sections for requirements of the respective destination jurisdiction
Pre-division certificate (<i>Osvedčenie predchádzajúce cezhraničnej premene</i>)	<ul style="list-style-type: none"> • Issued by the Slovak notary after filing a request for elaboration of pre-conversion certificate with all necessary documentation • Three months review period by Slovak notary, with additional up to three months for the need to complete the documentation
Legal effectiveness of division	<ul style="list-style-type: none"> • As of effectiveness in the foreign register (registration court of a successor company). After the delivery of announcement on registration of the division in foreign country, the Register court will execute the deletion (division) of the company, as at the date of its registration in the foreign register

Cross border division from other member state to Slovakia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (s. r. o.) Joint stock company (a. s.)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (s. r. o.): EUR 5,000 Joint stock company (a. s.): EUR 25,000
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Beyond the scope of the Mobility Directive: cross border divisions to Slovakia are also possible with an existing legal entity as recipient. → Please see for requirements of the local jurisdiction the respective description for the origination member state of the divided legal entity. In order to create legal certainty, the jurisdiction of the departure member state should also provide for a division with an existing entity as recipient
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Okresný súd</i>) of seat of legal entity
Slovak registration process	<ul style="list-style-type: none"> Application filed by the statutory body (<i>Štatutárny orgán</i>) to the competent Slovak commercial register in Slovakia Scope of review Slovak commercial register: receipt of pre-division certificate (no review in substance), mandatory provisions on establishment of recipient legal form, employee participation rules, confirmation of proposal of project of cross border conversion
Language requirements	<ul style="list-style-type: none"> Slovak language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> The statutory period for the registration court to decide is two business days, however, it varies depending on the registration court. The registration process can take from two days – one month
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Slovak commercial register after positive review Legal effectiveness upon registration by the competent authority of the departure state

Cross border merger from Slovakia to other member state (1/2)



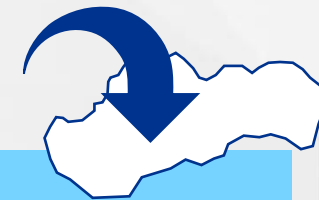
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>) Joint stock company (<i>a. s.</i>) General partnership (<i>v. o. s.</i>) Limited partnership (<i>k. s.</i>)
Required documentation	<p>Project of cross border conversion (<i>Návrh projektu cezhraničnej premeny</i>)</p> <ul style="list-style-type: none"> Main statutory content is the new legal form, seat of the merging company, articles of association, indicative time schedule, merger ratio and share to be granted, distribution scale, additional cash payments, balance sheet date and merger date as well as cut-off date for profit entitlement of shares to be granted, statement on specific rights of shareholders, effects on staff and employment relationships, creditor guarantees, compensation payment. Plan to be prepared by the statutory body (<i>Štatutárny orgán</i>) <p>Report of statutory body (<i>Správa štatutárneho orgánu</i>)</p> <ul style="list-style-type: none"> Explanation and assessment of legal and economic effects and impacts of the cross border merger on employees and shareholders. <u>Waiver</u>: possible under specific circumstances (in particular in intra-group merger) <p>Report of supervisory board (if created in the company) Assessment of the cross border merger, a Project and Report of the statutory body</p> <p>Audit Report (<i>Správa audítora o preskúmaní návrhu projektu cezhraničnej premeny</i>)</p> <ul style="list-style-type: none"> Audit of the Project by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances (in particular in intra-group merger)
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> 2/3 Majority requirement for mandatory shareholders' resolution on conversion Mandatory compensation/acquisition offer to shareholders voting against the conversion of legal form. Compensation by way of adequate cash payment by converted legal entity to shareholders

Cross border merger from Slovakia to other member state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Okresný súd</i>) of seat of legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months Notification obligations to the tax authority and pledge creditor Publication obligation of the Project, Report of the statutory body and financial statements Publication obligation of the Audit report Approval of the conversion by the shareholders Assessment of the process of conversion by the notary public and Registration in the respective company registers
Formal considerations	<p>Notarization by Slovak notary:</p> <ul style="list-style-type: none"> Plan (<i>Projekt cezhraničnej premeny</i>) Shareholders' resolution <p>Language:</p> <ul style="list-style-type: none"> Slovak language due to registration with the commercial register → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Osvedčenie predchádzajúcej cezhraničnej premeny</i>)	<ul style="list-style-type: none"> Issued by the Slovak notary after filing a request for elaboration of pre-conversion certificate with all necessary documentation Three months review period by Slovak notary, with additional up to three months in case of incomplete documentation
Legal effectiveness of merger	<ul style="list-style-type: none"> After the delivery of announcement on legal effectiveness of cross border merger in foreign country, the Register court will execute the deletion of the company, as at the date of its legal effectiveness thereof

Cross border merger to Slovakia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>) Joint stock company (<i>a. s.</i>) Public company (<i>v. o. s.</i>) Limited partnership (<i>k. s.</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>s. r. o.</i>): EUR 5,000 Joint stock company (<i>a. s.</i>): EUR 25,000 Public company (<i>v. o. s.</i>): no limitation of minimal amount of capital share Limited partnership (<i>k. s.</i>): at least EUR 250 for each limited partner
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a newly created legal entity (<i>Splynutie</i>) Cross border merger with an existing legal entity as recipient (<i>Zlúčenie</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Register court (<i>Okresný súd</i>) of seat of legal entity
Slovak registration process	<ul style="list-style-type: none"> Application filed by the statutory body (<i>Štatutárny orgán</i>) of the recipient legal entity to the commercial register in Slovakia Scope of review Slovak commercial register: receipt of pre-merger certificate (no review in substance), compliance with the registration requirements relating to the recipient legal entity, confirmation of proposal of cross border conversion, employee participation agreements, compliance with the provisions on incorporation of the new legal entity (in the case of merger with a new recipient entity)
Language requirements	<ul style="list-style-type: none"> Slovak language due to registration with the commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Osvedčenie predchádzajúce cezhraničnej premene</i>) by commercial register: two – four months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Slovak commercial register after positive review Legal effectiveness upon registration by the Slovak commercial register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> N/A

Slovenia



Content

1. Implementation status in Slovenia
2. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Romania. The content on the following slides is based on KPMG's anticipated result of transposition subject to further changes. The exact date of implementation is currently unclear.



Gregor Drnovsek

Senior Manager

M +38 614 201139

gregor.drnovsek@kpmg.si



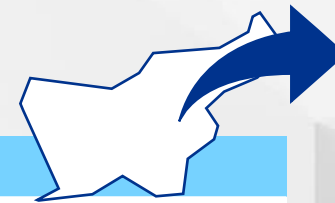
[Back to Country Overview](#)

Implementation status in Slovenia

Current status of the implementation process in Slovenia:

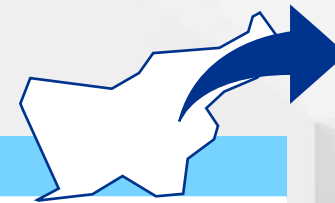
The Mobility Directive has not been transposed completely in Slovenia until the date hereof.

Cross border merger from Slovenia to other member state (1/2)



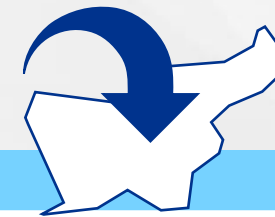
Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> • Joint stock company (<i>d.d.</i>) • Limited liability company (<i>d.o.o.</i>) • Partnership limited by shares (<i>k.d.d.</i>)
Required documentation	<ul style="list-style-type: none"> • Cross border merger plan • Minutes of the shareholders' meeting, which includes the resolution on the consent to the cross border merger • Permission of the competent authority (if required) • Explanatory report of the management on the cross border merger • Auditor's report on the cross border merger • The final report of the company being acquired • Public notice on the cross border merger and evidence that it was published • Evidence that conditions for the exercise of the rights of creditors have been met, or a statement that this was not required • Evidence on the fulfilment of conditions for the exercise of the shareholders' rights and consent of the company with its registered office in other member state to the commencement of the procedure for court review of the appropriateness of the severance pay • A statement by the management of the company being acquired stating the quantity of the shareholders executing their right to have their shares taken over against the severance pay, and on the manner, this right is executed • A statement by the management of the company being acquired stating: <ul style="list-style-type: none"> — that against the shareholder resolution on the cross border merger no action has been filed to challenge this resolution or to declare it void, or — that an action challenging the shareholder resolution has been finally dismissed, rejected or withdrawn, or — that all shareholders have signed a statement in the form of a notarial record to waive their right to challenge the resolution or to request that it be declared void
Capital increase	<ul style="list-style-type: none"> • The shareholders of the transferred legal entity receive shares in the recipient legal entity
Shareholders' protection	<ul style="list-style-type: none"> • Consent of the shareholders' meeting to merger: majority of at least three quarters of the share capital represented at the shareholders' meeting • Compensation to be paid to shareholders objecting to resolution on merger

Cross border merger from Slovenia to other member state (2/2)



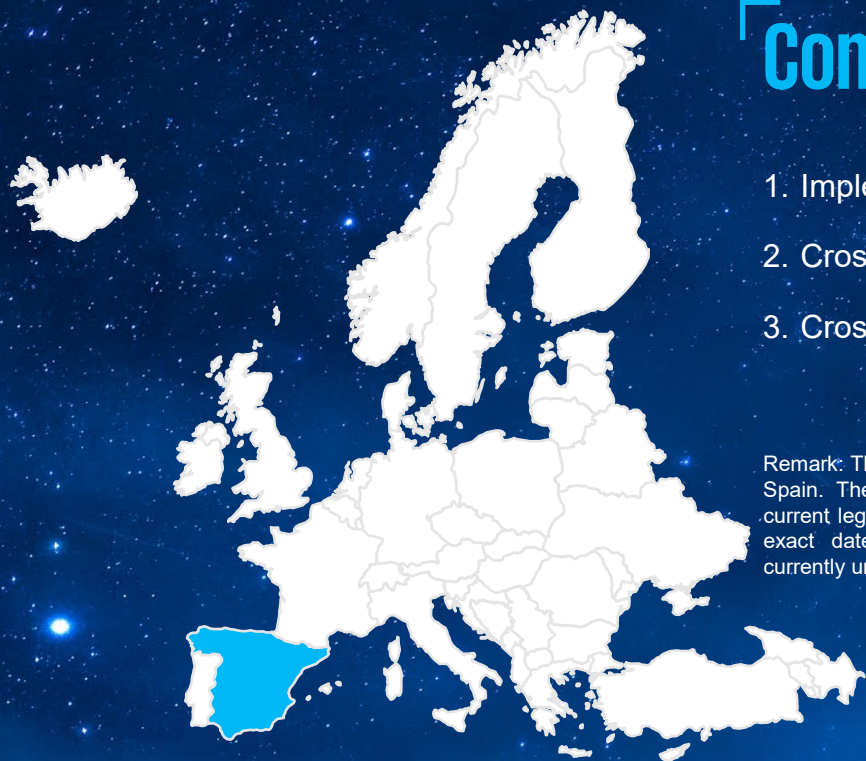
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Register court
Timing	<ul style="list-style-type: none"> Estimation for all actions encompassed by the merger (counselling, drafting of documentation, audit, shareholders' meeting, publications, entry into the court register): four – ten months
Formal considerations	<p>Involvement of a Slovenian notary:</p> <ul style="list-style-type: none"> Cross border merger plan, Usually at the shareholders' meeting (this is always the case with the joint stock company), Notary submits the application to the court register <p>Legislation on the employee's participation in decision-making in cross border mergers to be observed</p>
Pre-merger certificate	<ul style="list-style-type: none"> Issued by the register court after filing of all required documents by the management of the transferring company and positive review
Legal effectiveness of merger	<ul style="list-style-type: none"> Cross border merger is legally effective once the registration authority in the acquiring company's country decides on its entry in the register The registration authority with which the transferor company is entered shall ex officio strike off the company from the register on the basis of a notification from the competent authority of the member state regarding the entry of the company resulting from the cross border merger in the register, received through the system of interconnection of registers established in accordance with paragraph two of Article 4a of Directive 2009/101/ES

Cross border merger to Slovenia



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Joint stock company (<i>d.d.</i>) Limited liability company (<i>d.o.o.</i>) Partnership limited by shares (<i>k.d.d.</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company: EUR 7,500 Joint stock company: EUR 25,000 Partnership limited by shares: EUR 25,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger by absorption Cross border merger by formation of a new company
Competent regulatory authority	<ul style="list-style-type: none"> Register court
Slovenian registration process	<ul style="list-style-type: none"> Application filed by the management of the recipient legal entity to the register court in Slovenia Application includes documents otherwise prescribed for the merger as well as pre-merger certificate(s) issued by the member state competent authority of the transferor company's registered office. The pre-merger certificate must not be older than six months Review by the Slovenian register court pertains especially to (i) whether shareholders' meetings of the companies, participating in the cross border merger, have confirmed the same cross border merger plan, and (ii) if negotiations on worker's participation in management of the acquiring company have been executed in the transferor companies
Language requirements	<ul style="list-style-type: none"> Slovene
Timing	<ul style="list-style-type: none"> Estimation (upon receipt of all pre-merger certificates and other documents, i.e., upon submitting application to the court): ten days – two months
Legal effectiveness of merger	<ul style="list-style-type: none"> Cross border merger is legally effective once the register court decides on its entry in the register After entering the cross border merger in the register, the registration authority shall notify through the system of interconnection of registers, ex officio and without delay, the competent authority responsible for the registration of companies in the member states in which the transferor companies are registered
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> No special clauses in the Slovenian Companies Act

Spain



Content

1. Implementation status in Spain
2. Cross border conversion
3. Cross border merger

Remark: The Mobility Directive has not yet been implemented in Spain. The content on the following slides is based on the current legislation in force in the abovementioned matters. The exact date of implementation of the Mobility Directive is currently unclear.



Rafael Aguilar Mateo

Partner

M +34 660 380476
raguilar@kpmg.es



[Back to Country Overview](#)

Implementation status in Spain

Current status of the implementation process in Spain:

The Mobility Directive has not been transposed completely in Spain until the date hereof.

On February 14th, 2023, the Spanish government has drafted a preliminary draft bill (*Anteproyecto de Ley de Modificaciones de Sociedades Mercantiles*) that has been neither discussed nor passed to the Spanish Parliament in this regard. Hence, the legislative process is still on a very early stage and, based in our experience, the wording of a draft bill proposal from the Spanish government does normally suffer suffers several amendments by the Parliament before its approval.

Thus, in the following slides we address the existing applicable legislation and procedures in force to the same or similar corporate conversions provided for by the Mobility Directive.

Cross border operations in Spain

Further to the above, the existing applicable legislation in force lay dawn provisions for:

- the international transfer/migration of the registered office (which have a similar outcome as the cross border conversion) and;
- the cross border merger.

Currently, no cross border division can be executed in Spain. However, we advise for the achievement of a similar legal effect, the execution of a local division/division and a subsequent cross border merger with the resultant legal entity.

Mobility Directive transposition procedure expected timeframe

Spain has not complied with the deadline stated in the Mobility Directive (i.e. 31 January 2023), nor we may envisage any expected timeframe for its effective transposition.

Updates

We will update this report upon the Mobility Directive's transposition into Spanish law.

Cross border conversion from Spain to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (S.L.) Public limited company (S.A.) Limited partnership by shares (S. Com. por A.)
Required documentation	<ul style="list-style-type: none"> Migration Plan (<i>Proyecto de traslado</i>): Main required content is the actual name, legal form, registered office, commercial register information, new registered office, name (if applicable) and articles of association, indicative time schedule, statement on specific rights of stakeholders and effects on staff and employment relationships. Migration Plan (<i>Proyecto de traslado</i>) to be prepared by the management body (<i>órgano de administración</i>) Directors' Report (<i>Informe de los administradores</i>): Report of the management body (<i>órgano de administración</i>) justifying the legal and economic details of the proposed migration, as well as, the effects for employees and stakeholders
Shareholders' protection	<ul style="list-style-type: none"> Majority requirements for shareholders' resolutions: <ul style="list-style-type: none"> In the limited liability company (S.L.): at least passed by acceptance of $\frac{2}{3}$ of the share capital In the public limited company (S.A.) and the limited partnership by shares (S. Com. por A.): <ul style="list-style-type: none"> Mandatory quorum in the first call at the shareholders' meeting of, at least, the 50% of the share capital with voting rights, and the resolution is passed by the approval of the 50% of the issued votes; or Mandatory quorum in the second call at the shareholders' meeting of, at least, the 25% of the share capital with voting rights, and the resolution is passed by the approval of the $\frac{2}{3}$ of the share capital, either present or represented, in the shareholders' meeting Please note that the articles of association may increase the abovementioned legal majority requirements but may not required an unanimous resolution nor any less majorities than stated above Mandatory compensation/acquisition offer to shareholders voting against the international transfer of the registered office. Compensation by way of adequate cash payment by transferred legal entity or by the remaining shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Registro Mercantil</i>) where the company is registered

Cross border conversion from Spain to other member state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Migration Plan (<i>Proyecto de traslado</i>): publication prior to shareholders' meeting call • Meeting call: publication two months prior the shareholders' meeting in the Commercial Register Gazette and in one of the most widely read newspapers of the province in which the company is registered • Compensation payment to shareholders: two months after an agreement has been reached or an independent appraisal has valued the shares at fair market value (up to two months to issue its report)
Formal considerations	<p>International transfer of the registered office public deed to be executed before a Spanish Notary Public with the following attachments:</p> <ul style="list-style-type: none"> • Migration Plan (<i>Proyecto de traslado</i>) • Shareholders' resolution (passed with the abovementioned majorities) <p>Language:</p> <ul style="list-style-type: none"> • Spanish language due to registration with the Spanish Commercial Registry → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-migration certificate (Certificación previa al traslado)	<ul style="list-style-type: none"> • Issued by the Spanish Commercial Registry where the company is registered after filing of all required documents by the company and positive review by registrar
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Submission of pre-migration certificate (<i>Certificación previa al traslado</i>) to the authority of the destination jurisdiction • De-registration in Spanish commercial register after submission by the company of a certificate issued by the authority of the jurisdiction of destination declaring the positive registration of the international transfer of the registered office. Such declaration must be published in the Spanish Commercial Registry Gazette and in one of the most widely read newspapers of the province in which the Spanish company had its registered office prior to its migration • Legal effectiveness upon registration by the authority of the jurisdiction of destination

Cross border conversion from other member state to Spain



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (S.L) Public limited company (S.A.) Limited partnership by shares (S. Com. por A.)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (S.L): EUR 1 Public limited company (S.A.): EUR 60,000 Limited partnership by shares (S. Com. por A.): EUR 60,000
Competent regulatory authority	<ul style="list-style-type: none"> Commercial register (<i>Registro Mercantil</i>) where the company will have the registered office
Spanish Commercial Registry process	<ul style="list-style-type: none"> Individual financial statements: preparation of the last approved financial statements according to Spanish GAAP rules Shareholders' meeting passing the approval of financial statements and the international transfer of the registered office resolutions, along with other corporate matters. → Please see for further requirements in the respective description for the outbound jurisdiction International transfer of the registered office public deed to be executed before a Spanish Notary Public and filed into the Spanish commercial register Registration with the Spanish Commercial Registry and de-registration in the outbound jurisdiction
Language requirements	<ul style="list-style-type: none"> Spanish language due to registration with the Spanish Commercial Registry
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of the relevant documentation for the outbound jurisdiction: one – three months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Legal effectiveness upon registration by the Spanish Commercial Registry of the international/transfer/migration to Spain

Cross border merger from Spain to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Limited liability company (S.L.) Public limited company (S.A.) Limited partnership by shares (S. Com. por A.)
Required documentation	<p>Merger Plan (<i>Proyecto de fusión</i>):</p> <ul style="list-style-type: none"> Main statutory content is the corporate name, legal form, registered office, commercial register information of the merged companies and the resulting company; share exchange ratio and the cash compensation (if required); the impact on any existing ancillary obligations (<i>prestaciones accesorias</i>) in the merged companies and the compensation, if any; rights or options to be granted by the resulting company to special right and/or other title holders different from shares (e.g. bondholders); the benefits granted to experts involved, as well as for the management body and staff; cut-off date for entitlement of the profits of shares to be granted and for new company's accounting purposes; new articles of association; information regarding the valuation of the assets and liabilities transferred to the new company; dates of the financial statements taken into account for the merger conditions; possible consequences in the employment and impact on the company's social responsibility and in the gender in the management body (<i>órgano de administración</i>); and procedures to determine the participation of the employees in the resulting company, if applicable <p>Merger Plan (<i>Proyecto de fusión</i>) shall be prepared by the management body (<i>órgano de administración</i>), of each company involved in the merger, although it may be drafted as a single joint document</p> <ul style="list-style-type: none"> Under specific circumstances (in particular in intra-group mergers), some of the aforementioned statutory content may be waived <p>Directors' Report (<i>Informe de los administradores</i>):</p> <ul style="list-style-type: none"> Report of the management body (<i>órgano de administración</i>) including the legal and economic details of the Merger Plan, as well as the eventual effects for employees and stakeholders <p>If any of the merged company is a public limited company (S.A.), an expert report on the Report (<i>informe de los administradores</i>) shall be required.</p> <p>Merger balance sheet: last FY balance sheet is valid if dated six months prior the Plan's date. If not, a new a balance sheet must be drawn up after the first day of the third month preceding the date of the Plan</p>
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)
Shareholders' protection	<ul style="list-style-type: none"> Majority requirements for shareholders' resolutions: <ul style="list-style-type: none"> In the limited liability company (S.L.): at least passed by acceptance of the $\frac{2}{3}$ of the share capital In the public limited company (S.A.) and the limited partnership by shares (S. Com. por A.): <ul style="list-style-type: none"> Mandatory quorum in the first call of the shareholders' meeting of, at least, the 50% of the share capital with voting rights and the resolution is passed by acceptance of the 50% of the issued votes; or Mandatory quorum in the second call of the shareholders' meeting of, at least, the 25% of the share capital with voting rights and the resolution is passed by the acceptance of the $\frac{2}{3}$ of the share capital in the shareholders' meeting (either present or represented) <p>Please note that the by-laws can provide larger majority requirements, but never unanimous decisions nor less majorities than stated above.</p> <p><u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers)</p> Mandatory acquisition offer to shareholders voting against the international transfer of the registered office. Acquisition by way of adequate cash payment by merged legal entity or by the remaining shareholders

Cross border merger from Spain to other member state (2/2)



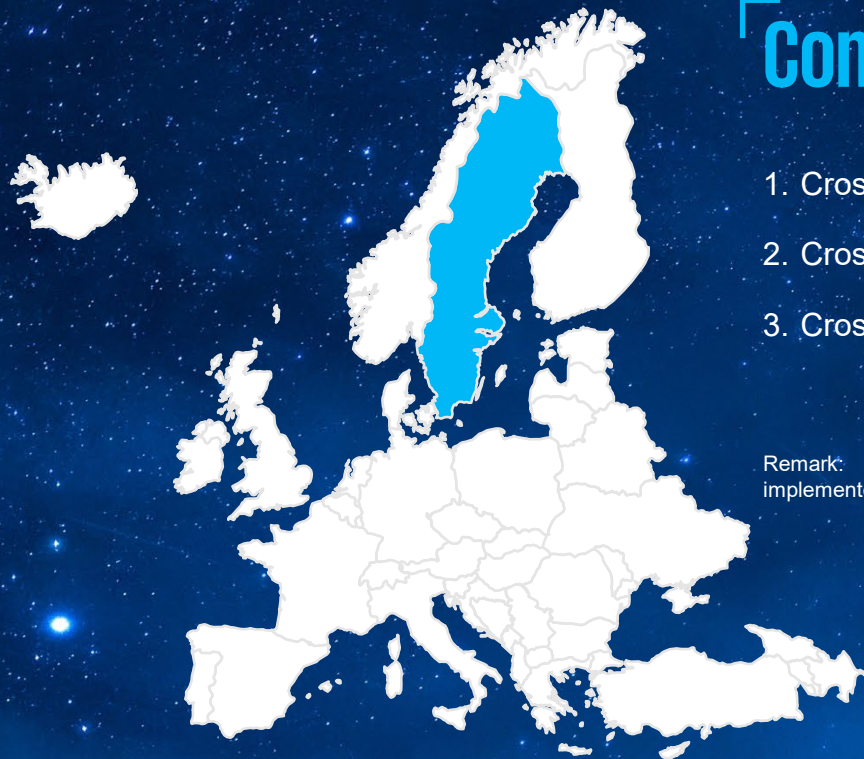
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Spanish commercial register
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months <p>Merger Plan (<i>Proyecto de fusión</i>): filing in the commercial register and publication in the Commercial Register Gazette one month prior the day of the shareholders' meeting <u>Waiver</u>: possible under specific circumstances (in particular in intra-group mergers).</p> <ul style="list-style-type: none"> Directors' Report (<i>informe de los administradores</i>): to be provided to the shareholders and the workers' representatives one month prior to the shareholders' meeting <p>Audit report (<i>Informe de auditoría</i>) is required when the audit report is mandatory for any company or companies involved in the merger</p> <ul style="list-style-type: none"> Once the relevant shareholders' resolution has been duly passed, it shall be published in the Commercial Registry Gazette and in one of the most widely read newspapers of the province in which the involved Spanish company or companies is/are registered in → Creditors opposition right: one month since the last of the aforementioned publications. In the event of any creditor opposition, the company shall guarantee or secure somehow the creditor's credit rights
Formal considerations	<p>Notarization by Spanish notary:</p> <ul style="list-style-type: none"> Merger Plan (<i>Proyecto de fusión</i>) Shareholder' resolution passed by each of the legal entities participating in the merger <p>Language:</p> <ul style="list-style-type: none"> Spanish language due to registration with the Spanish Commercial Registry → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Certificado previo a la fusión</i>)	<ul style="list-style-type: none"> Issued by the Spanish Commercial Registry after filing of all required documents by the merging legal entities and positive review of the proceedings to be followed under the Spanish law
Legal effectiveness of merger	<ul style="list-style-type: none"> Submission of pre-merger certificate (<i>Certificado previo a la fusión</i>) to the authority of the destination jurisdiction Final (limited) check of authority of the destination jurisdiction and respective registration → <u>Please see for further requirements the respective description for destination jurisdiction</u> Registration in Spanish Commercial Registry after notification by the authority of the jurisdiction of destination of the effective registration of the merger Legal effectiveness upon registration by the authority of the jurisdiction of destination

Cross border merger to Spain



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Limited liability company (S.L) Public limited company (S.A.) Limited partnership by shares (S. Com. por A.)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (S.L): EUR 1 Public limited company (S.A.): EUR 60,000 Limited partnership by shares (S. Com. por A.): EUR 60,000
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger into a new incorporated legal entity (<i>fusión por creación de nueva entidad</i>) Cross border merger into an existing legal entity (<i>fusión por absorción</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Spanish Commercial Registry (<i>Registro Mercantil</i>) where the legal entity will have its registered office
Spanish Commercial Registry process	<ul style="list-style-type: none"> Application filed by the Spanish legal entity before the Spanish Commercial Registry, including the Merger Plan (<i>Proyecto de fusión</i>) prepared with the statutory content Filing with the Spanish Companies Registry of a pre-merger certificate issued by the competent authority of the outbound jurisdiction
Language requirements	<ul style="list-style-type: none"> Spanish language due to the registration with the Spanish Commercial Registry
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps after receipt of pre-merger certificate (<i>Certificado previo a la fusión</i>) : two – three months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration of the merger deed with in Spanish Commercial Registry after positive review Legal effectiveness upon registration by the Spanish Commercial Registry
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> There are no specific provisions related to cross border merger of Spanish legal entities with UK or Northern Ireland legal entities

Sweden



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Sweden.



Mattias Bergman

Partner

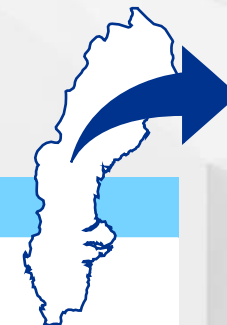
M +46 709 396664

mattias.bergman@kpmg.se



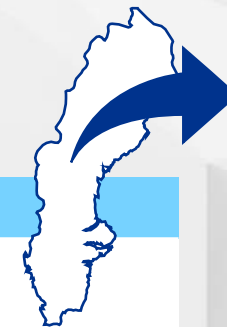
[Back to Country Overview](#)

Cross border conversion from Sweden to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>)* <p><i>* Additional rules apply for public limited liability companies whose shares are listed on a regulated marketplace</i></p>
Required documentation	<ul style="list-style-type: none"> Conversion plan Message to shareholders, creditors and employees' representatives that they may submit comments on the conversion plan within a specified timeframe New articles of association Board's report regarding the conversion's suitability for the company and its consequences for the company's future business operations and its creditors. The report shall include certain specific information addressed to the employees and the shareholders. This specific information can be divided into two separate reports; one for the shareholders and one for the employees <u>Waiver</u>: The specific information addressed to the shareholders can be waived with all shareholders' consent Auditor's statement <u>Waiver</u>: Can be waived with all shareholders' consent Notification to known creditors
Shareholders' protection	<ul style="list-style-type: none"> Majority requirements: the conversion plan shall be approved at a shareholders' meeting with two-thirds majority Shareholders who vote against approval of the conversion plan can have their shares redeemed at a price specified in the conversion plan
Competent regulatory authority	<ul style="list-style-type: none"> The Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>)

Cross border conversion from Sweden to other member state (2/2)



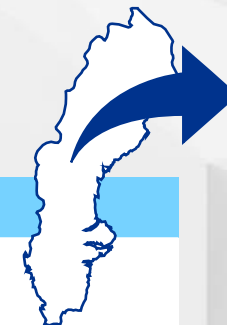
Topic	Prerequisites
Timing*	<ul style="list-style-type: none"> • Drafting conversion plan, preparing necessary appendices, drafting board's statements, auditor's review and statement: one – two months • Registration of the conversion plan with the Swedish Companies Registration Office – processing time before registration varies from time to time, likely a couple of weeks • Submission of the conversion plan to the shareholders' meeting – the shareholders' meeting may not be held earlier than one month from registration of the conversion plan and the conversion plan must have been made available for shareholders and employers' representatives for at least six weeks prior to the shareholders' meeting. • Application to execute the conversion plan – processing times will depend on complexity of the conversion and what, if any, investigations the Swedish Companies Registration Office will undertake • Notice to creditors – length of notice period not known (but the end of the period must be a minimum of three months from the registration of the conversion plan). • Pre-conversion certificate – if no creditor objects to the conversion, the certificate should be issued within days. In any event, it must be issued within three months from the date of application to execute the conversion plan (but time may be prolonged under special circumstances) <p><i>* The timing according to the wording of the law is somewhat unclear at present. The more precise timing needs to be confirmed once the Swedish Companies Registration Office has started to handle conversions under this new law</i></p>
Formal considerations	<ul style="list-style-type: none"> • Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Pre-conversion certificate	<ul style="list-style-type: none"> • Issued by the Swedish Companies Registration Office within three months from the day of the application to execute the merger plan. This period may be prolonged under special circumstances
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Legal effectiveness is decided by the laws in the state that the company is converted into • The company shall submit the conversion certificate to the relevant foreign authority within six months from the date of its issuance. Upon notification from the relevant foreign authority, the Swedish Companies Registration Office registers that the conversion has occurred

Cross border conversion from other member state to Sweden



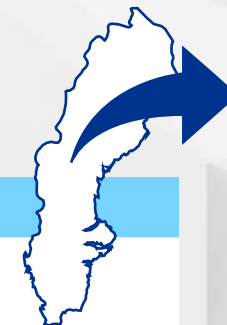
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>)* <p><i>* Additional rules apply for public limited liability companies whose shares listed on a regulated marketplace</i></p>
Share capital requirements	<ul style="list-style-type: none"> Minimum SEK 25,000 for private limited liability company (<i>AB</i>) Minimum SEK 500,000 for public limited liability company (<i>AB (publ)</i>)
Competent regulatory authority	The Swedish Companies Registration Office
Swedish registration process	<ul style="list-style-type: none"> Application to register the conversion – submitted by the board of the foreign company that is to be converted <ul style="list-style-type: none"> Application to be made within six months from the date of issuance of the conversion certificate The application shall include information on the new board members, deputy board members and auditor To the application, the following shall be appended: (i) a copy of the conversion plan, and (ii) an auditor's statement assuring that the company has coverage for its share capital The Swedish Companies Registration Office informs the relevant foreign authority once the conversion has been registered
Language requirements	<ul style="list-style-type: none"> Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Timing	<ul style="list-style-type: none"> Time required by the Swedish Companies Registration Office to process an application to register the conversion is yet unknown and is not stipulated in the law
Legal effectiveness of conversion	<ul style="list-style-type: none"> Upon registration by the Swedish Companies Registration Office Not possible to decide a date as of which the conversion shall be legally effective

Cross border division from Sweden to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>)* <p>* Additional rules apply for public limited liability companies whose shares listed on a regulated marketplace</p>
Division types	<ul style="list-style-type: none"> Full division: the company being divided transfers all assets and liabilities to two or more recipient companies Partial division: the company being divided transfers part of its assets and liabilities to one or more recipient companies, with consideration being paid to the shareholders of the company being divided Division by separation: the company being divided transfers part of its assets and liabilities to one or more recipient companies, with consideration being paid to the company being divided <p>In all instances, the recipient company or companies must be incorporated through the division (i.e. the recipient company or companies may not be already existing)</p>
Required documentation	<ul style="list-style-type: none"> Division plan Message to shareholders, creditors and employees' representatives that they may submit comments on the division plan within a specified timeframe Board's report regarding the division's suitability for the company and its consequences for the company's future business operations and its creditors. The report shall include certain specific information addressed to the employees and the shareholders. This specific information can be divided into two separate reports; one for the shareholders and one for the employees <u>Waiver</u>: The specific information addressed to the shareholders can be waived with all shareholders' consent Auditor's statement <u>Waiver</u>: Certain parts of the auditor's statement can be waived with all shareholders' consent Notification to known creditors

Cross border division from Sweden to other member state (2/2)



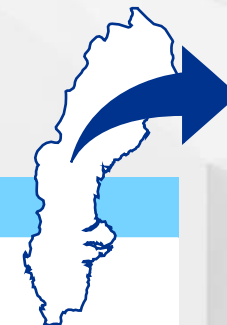
Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> Majority requirements: the division plan shall be approved at a shareholders' meeting (unless all shareholders sign the division plan, in which case there is no need for a shareholders' meeting) with two-thirds majority Shareholders who vote against approval of the division plan can have their shares redeemed at a price specified in the division plan
Extended liability	<ul style="list-style-type: none"> Yes, possible joint and several liability for debts transferred through the division
Competent regulatory authority	<ul style="list-style-type: none"> The Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>)
Timing*	<ul style="list-style-type: none"> Drafting division plan, preparing necessary appendices, drafting board's statements, auditor's review and statement: one – two months Registration of the division plan with the Swedish Companies Registration Office – within one month from preparation of the division plan. Processing time before registration varies from time to time, likely a couple of weeks Submission of the division plan to the shareholders' meeting (unless waived by all shareholder) – the shareholders' meeting may not be held earlier than one month from registration of the division plan and the division plan must have been made available for shareholders and employers' representatives for at least six weeks prior to the shareholders' meeting Application to execute the division plan – if there is no shareholders' meeting, the division plan must have been available for shareholders and employers' representatives for at least six weeks prior to applying. Processing times will depend on complexity of the division and what, if any, investigations the Swedish Companies Registration Office will undertake Notice to creditors – length of notice period not known (but the end of the period must be a minimum of three months from the registration of the conversion plan) Pre-division certificate – if no creditor objects to the division, the certificate should be issued within days. In any event, it must be issued within three months from the date of application to execute the division plan (but time may be prolonged under special circumstances) <p><i>* The timing according to the wording of the law is somewhat unclear at present. The more precise timing needs to be confirmed once the Swedish Companies Registration Office has started to handle divisions under this new law</i></p>
Formal considerations	<ul style="list-style-type: none"> Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Pre-division certificate	<ul style="list-style-type: none"> Issued by the Swedish Companies Registration Office within three months from the day of the application to execute the division plan. This period may be prolonged under special circumstances
Legal effectiveness of division	<ul style="list-style-type: none"> Swedish law determines the legal effectiveness for a cross border division out of Sweden The division is legally effective as of the registration by the Swedish Companies Registration Office of the completed division

Cross border division from other member state to Sweden



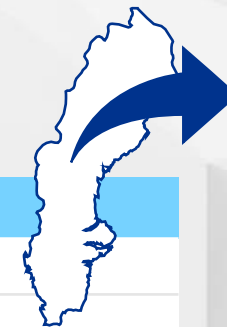
Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>)* <p>* Additional rules apply for public limited liability companies whose shares listed on a regulated marketplace</p>
Share capital requirements	<ul style="list-style-type: none"> Minimum SEK 25,000 for private limited liability company (<i>AB</i>) Minimum SEK 500,000 for public limited liability company (<i>AB (publ)</i>)
Division with existing legal entity as recipient	<ul style="list-style-type: none"> Not allowed, the recipient company must be incorporated through the division
Competent regulatory authority	<ul style="list-style-type: none"> The Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>)
Swedish registration process	<ul style="list-style-type: none"> Application to register the recipient company in the Swedish commercial register – submitted by the board of the company being divided <ul style="list-style-type: none"> Application to be made within six months from the date of issuance of the division certificate The application shall include information on the new board members, deputy board members and auditor To the application, the following shall be appended: (i) a copy of the division plan, and (ii) an auditor's statement assuring that the recipient company has coverage for its share capital The Swedish Companies Registration Office informs the relevant foreign authority once the conversion has been registered
Language requirements	<ul style="list-style-type: none"> Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Timing	<ul style="list-style-type: none"> Time required by the Swedish Companies Registration Office to process an application to register the division is yet unknown and is not stipulated in the law
Legal effectiveness of division	<ul style="list-style-type: none"> Determined by the laws of the company being divided, i.e. the departure state

Cross border merger from Sweden to other member state (1/2)



Topic	Prerequisites
Eligible legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>) Co-operative societies (Sw. <i>ekonomiska föreningar</i>)* <p><i>* The rules for co-operative societies are set forth in a separate Act but are similar to those for limited liability companies. We will however not include the rules applicable for co-operative societies in this Client Compass. Similarly, for limited liability companies performing certain regulated businesses (e.g. Banks or insurance companies), special rules apply which will not be included in this Client Compass. Additional rules apply for public limited liability companies whose shares listed on a regulated marketplace</i></p>
Required documentation	<ul style="list-style-type: none"> Merger plan Message to shareholders, creditors and employees' representatives that they may submit comments on the merger plan within a specified timeframe Board's report regarding the merger's suitability for the company and its consequences for the company's future business operations and its creditors. The report shall include certain specific information addressed to the employees and the shareholders. This specific information can be divided into two separate reports; one for the shareholders and one for the employees <u>Waiver</u>: The specific information addressed to the shareholders can be waived with all shareholders' consent Auditor's statement on the merger plan, risks for creditors, the board's report, the merger consideration and the redemption price <u>Waiver</u>: Certain parts of the auditor's statement can be waived with all shareholders' consent
Capital increase	<ul style="list-style-type: none"> More than half of the merger consideration shall be shares in the absorbing company <u>Waiver</u>: The merger consideration can be waived with the consent of all shareholders
Shareholders' protection	<ul style="list-style-type: none"> Majority requirements: the merger plan shall be approved at a shareholders' meeting (unless all shareholders sign the merger plan, in which case there is no need for a shareholders' meeting) with two-thirds majority Shareholders who vote against approval of the merger plan can have their shares redeemed at a price specified in the merger plan

Cross border merger from Sweden to other member state (2/2)



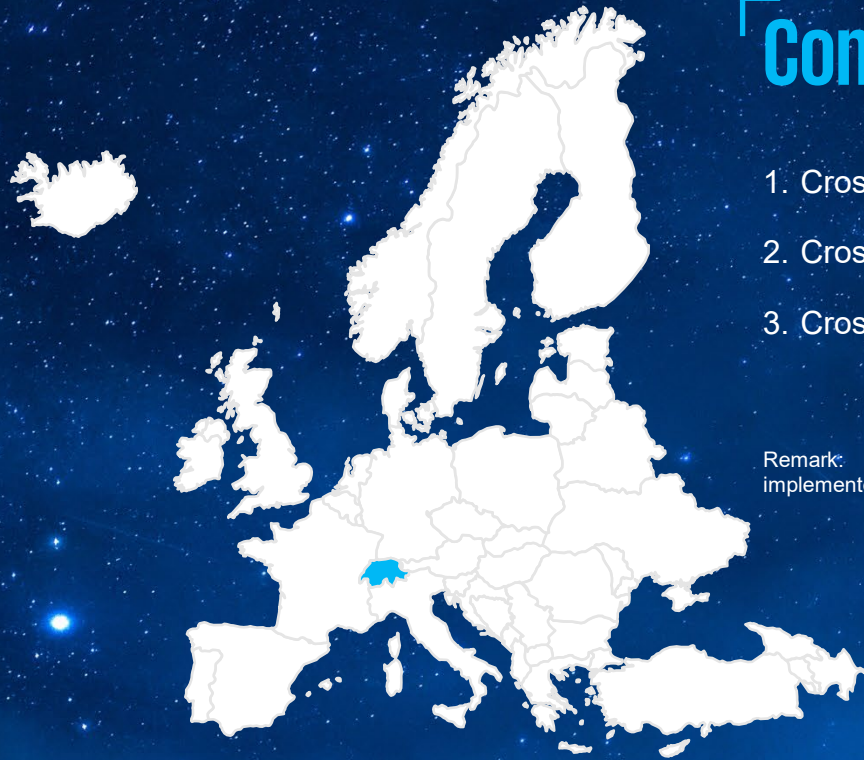
Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> The Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>)
Timing*	<ul style="list-style-type: none"> Drafting merger plan, preparing necessary appendices, drafting board's statements, auditor's review and statement: one – two months Registration of the merger plan with the Swedish Companies Registration Office – within one month from preparation of the merger plan. Processing time before registration varies from time to time, usually a couple of weeks Submission of the merger plan to the shareholders' meeting (unless waived by all shareholder) – the shareholders' meeting may not be held earlier than one month from registration of the merger plan and the merger plan must have been made available for shareholders and employers' representatives for at least six weeks prior to the shareholders' meeting Application to execute the merger plan – if there is no shareholders' meeting, the merger plan must have been available for shareholders and employers' representatives for at least six weeks prior to applying. Processing times will depend on complexity of the merger and what, if any investigations the Swedish Companies Registration Office will undertake Notice to creditors – length of notice period not known (but the end of the period must be a minimum of three months from the registration of the conversion plan) Pre-merger certificate – if no creditor objects to the merger, the certificate should be issued within days. In any event, it must be issued within three months from the date of application to execute the merger plan (but may be prolonged under special circumstances) <p><i>* The timing according to the wording of the law is somewhat unclear at present. The more precise timing needs to be confirmed once the Swedish Companies Registration Office has started to handle mergers under this new law</i></p>
Formal considerations	<ul style="list-style-type: none"> Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Pre-merger certificate	<ul style="list-style-type: none"> Issued by the Swedish Companies Registration Office within three months from the day of the application to execute the merger plan. This period may be prolonged under special circumstances
Legal effectiveness of merger	<ul style="list-style-type: none"> The legal effectiveness is determined by the laws applicable in the state of the absorbing company Upon notification to the Swedish Companies Registration Office by the competent regulatory authority in the state of the absorbing company, the Swedish Companies Registration Office will register the completed merger

Cross border merger to Sweden



Topic	Prerequisites
Target legal form	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) Public limited liability company (<i>AB (publ)</i>) Co-operative societies (Sw. <i>ekonomiska föreningar</i>)* <p><i>* The rules for co-operative societies are set forth in a separate Act but are similar to those for limited liability companies. We will however not include the rules applicable for co-operative societies in this Client Compass. Similarly, for limited liability companies performing certain regulated businesses (e.g. Banks or insurance companies), special rules apply which will not be included in this Client Compass. Additional rules apply for public limited liability companies whose shares listed on a regulated marketplace</i></p>
Share capital requirements	<ul style="list-style-type: none"> Private limited liability company (<i>AB</i>) – minimum share capital of SEK 25,000 (or corresponding amount in EUR) Public limited liability company (<i>AB (publ)</i>) – minimum share capital of SEK 500,000 (or corresponding amount in EUR) Co-operative societies (Sw. <i>ekonomiska föreningar</i>) – no share capital
Merger types/recipient legal entity	<ul style="list-style-type: none"> Merger by absorption: one company absorb one or more companies who then dissolve Merger by combination: one company is formed by two or more companies who then dissolve
Competent regulatory authority	<ul style="list-style-type: none"> The Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>)
Swedish registration process	<ul style="list-style-type: none"> Application to register the merger plan Application for permission to execute the merger plan The Swedish Companies Registration Office, amongst other things, conduct an examination to determine that the merger is not being effected for a criminal or otherwise improper purpose The Swedish Companies Registration Office convenes the creditors, who may object to the merger. The notice period a minimum of three months from the registration of the merger plan (this step has under the previous rules been possible to avoid under certain circumstances, not yet known if this will still be possible under the new rules) The Swedish Companies Registration Office issues a pre-merger certificate Application to register the completed merger
Language requirements	<ul style="list-style-type: none"> Documentation can be bilingual but Swedish version is mandatory due to registration with the Swedish Companies Registration Office
Timing	<ul style="list-style-type: none"> Time required by the Swedish Companies Registration Office to process an application to register the completed merger is yet unknown and is not stipulated in the law
Legal effectiveness of merger	<ul style="list-style-type: none"> Upon registration by the Swedish Companies Registration Office of the completed merger Not possible to decide a date as of which the merger shall be legally effective
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> Not possible since they are not part of the EU or the EEA

Switzerland



Content

1. Cross border conversion
2. Cross border division
3. Cross border merger

Remark: The Mobility Directive has been successfully implemented in Switzerland.



Dominique Gottret

Partner

M +41 582 492495
dgottret@kpmg.com



[Back to Country Overview](#)

Cross border conversion from Switzerland to other state (1/2)



Topic	Prerequisites
Preliminary remark	<ul style="list-style-type: none"> • According to Swiss law the cross border conversion is a cross border move of the seat with subsequent or preceding change of the legal form. As a result, there are no specific provisions of Swiss law regarding cross border conversion • However, in case of a change of seat from Switzerland to abroad the Swiss law requires compliance with the Swiss provisions regarding transformation
Eligible legal form	<ul style="list-style-type: none"> • Any Swiss legal entity
Required documentation	<ul style="list-style-type: none"> • Proof that the legal entity continues to exist abroad: the Swiss Institute of Comparative Law provides legal opinions; • Report of an independent expert confirming that the claims of the creditors have been secured or satisfied or that the creditors agree to the cancellation; • Resolution of the competent body by which the legal entity submits itself to foreign law; • Transformation plan (<i>Umwandlungsplan</i>); • Transformation report (<i>Umwandlungsbericht</i>): <u>Waiver</u>: possible under specific circumstances for small and midsize companies; • Transformation balance sheet (<i>Umwandlungsbilanz</i>): balance sheet date not older than six months or interim balance sheet in case of significant changes in financial situation; • Notarized transformation resolution (<i>beurkundeter Umwandlungsbeschluss</i>); • Audit report (<i>Prüfbericht</i>) on transformation plan, transformation report and transformation balance sheet: <u>Waiver</u>: possible under specific circumstances for small and midsize companies
Shareholders' protection	<ul style="list-style-type: none"> • Majority requirement depending on involved legal entities; generally, at least 2/3 majority for shareholder's resolution on transformation
Competent regulatory authority	<ul style="list-style-type: none"> • Commercial registry (<i>Handelsregister</i>) at the seat of the Swiss legal entity

Cross border conversion from Switzerland to other state (2/2)



Topic	Prerequisites
Timing	<ul style="list-style-type: none"> • Estimated overall timeframe for completion of outbound steps (advice & formal proceeding): four – eight months • Inspection right of shareholders (<i>Einsichtsrecht</i>) at the seat of the company for plan, report, audit report and annual financial statement and annual report of the last three business years: 30 days prior to shareholders' meeting <u>Waiver</u>: possible under specific circumstances for small and midsize companies • Information of creditors by publication in Swiss official Gazette of Commerce (<i>Schweizerisches Handelsamtsblatt, SHAB</i>) that company will move its seat abroad and assurance of creditor claims (<i>Sicherstellung der Forderungen</i>) if requested within two months after information • Deletion in Swiss commercial register
Formal considerations	<p>Public Notarization by Swiss notary:</p> <ul style="list-style-type: none"> • Shareholders' resolution on change of seat (<i>Sitzverlegung</i>) <p>Language:</p> <ul style="list-style-type: none"> • Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable) → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-conversion certificate (<i>Formwechselbescheinigung</i>)	<ul style="list-style-type: none"> • n/a
Legal effectiveness of conversion	<ul style="list-style-type: none"> • Registration in Swiss commercial register • Limited check of authority of the destination jurisdiction and respective registration

Cross border conversion from other state to Switzerland



Topic	Prerequisites
Main target legal forms	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Cooperative (<i>Genossenschaft</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): CHF 20,000 Stock corporation (<i>AG</i>): CHF 100,000 Cooperative (<i>Genossenschaft</i>): n/a
Competent regulatory authority	<ul style="list-style-type: none"> Commercial registry (Handelsregister) at the seat of the target legal entity in Switzerland
Swiss registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>oberstes Leitungs- oder Verwaltungsorgan</i>) to the competent Swiss commercial register Application includes especially proof that the legal entity exists abroad, proof of legal admissibility of cross border move according to foreign law, proof that adaption to Swiss law is possible, proof that core business will be moved to Switzerland and audit report that capital of the company is covered according to Swiss law Resolution of the competent body by which the legal entity submits itself to Swiss law
Language requirements	<ul style="list-style-type: none"> Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps: three – six months
Legal effectiveness of conversion	<ul style="list-style-type: none"> Registration in Swiss commercial register

Cross border division from Switzerland to other state (1/2)



Topic	Prerequisites
Main eligible legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Cooperative (<i>Genossenschaft</i>)
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Emigrationsaufspaltung</i>) with new formation or existing legal entity: transfer of all assets and liabilities to at least two recipient legal entities (full split-up) Capital increase: Shareholders of the split-up legal entity receive shares in the recipient legal entities, split-up legal entity ceases to exist Cross border split-off (<i>Emigrationsabspaltung</i>) with new formation or existing legal entity: transfer of part of the assets and liabilities to a recipient legal entity Capital increase: Shareholders of the split-off legal entity receive shares in the recipient legal entity Cross border spin-off with existing legal entity as recipient (<i>grenzüberschreitende Vermögensübertragung zur Neugründung</i>): transfer of part of the assets and liabilities to an exiting recipient legal entity (Please note that Swiss law has specific provisions for cross border spin-off)
Required documentation	<p>Division contract (<i>Spaltungsvertrag</i>) or division plan (<i>Spaltungsplan</i>)</p> <ul style="list-style-type: none"> Contract or in case of division with new formation plan, signed by the representative body (<i>oberstes Leitungs- oder Verwaltungsorgan</i>) and approved by shareholders Main content is the company's name, seat, legal form of the involved companies, inventory of transferred/remaining assets and liabilities, exchange ratio for shares and other exchange modalities as well as compensation payment, time schedule, statement on specific rights of stakeholders, list of employment relationships to be transferred <p>Division report (<i>Spaltungsbericht</i>)</p> <ul style="list-style-type: none"> Main content is the purpose and consequences of the division, contract or plan, exchange ratio for shares and compensation payment, valuation of the shares, consequences for the employees and the creditors. In addition, in case of new formation the new articles of association must be attached to the report <p><u>Waiver</u>: possible under specific circumstances for small and midsize companies</p> <p>Audit report (<i>Prüfungsbericht</i>)</p> <ul style="list-style-type: none"> Audit of the contract, of the plan and the balance sheet by independent auditor, resulting in a written audit report <p><u>Waiver</u>: possible under specific circumstances for small and midsize companies</p> <p>Annual financial statements (<i>Jahresrechnung</i>) and annual reports (<i>Jahresbericht</i>) of the last three business years</p> <p>Balance sheet of dividing legal entity not older than six months at the time of signing the contract; interim balance sheet required, if significant changes in the financial situation of the companies</p>

Cross border division from Switzerland to other state (2/2)



Topic	Prerequisites
Shareholders' protection	<ul style="list-style-type: none"> Majority requirement depending on involved legal entities; generally, at least 2/3 majority for shareholder's resolution on division
Extended liability (<i>Nachhaftung</i>)	<ul style="list-style-type: none"> Subsidiary liability of the companies Personal liability of the shareholders
Competent regulatory authority	<ul style="list-style-type: none"> Commercial registry (<i>Handelsregister</i>) at the seat of the Swiss legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Inspection right of shareholders (<i>Einsichtsrecht</i>) at the seat of the company for contract or plan, report, audit report and annual financial statements of the last three business years: two months prior to division resolution <u>Waiver</u>: possible under specific circumstances for small and midsize companies Information of creditors (<i>Aufforderung an die Gläubiger</i>) by publication in Swiss official Gazette of Commerce (<i>Schweizerisches Handelsamtsblatt, SHAB</i>): assurance of creditor claims (<i>Sicherstellung der Forderungen</i>) if requested within two months after information Deletion in Swiss commercial register
Formal considerations	<p>Public Notarization by Swiss notary:</p> <ul style="list-style-type: none"> Shareholders' resolution on division (<i>Spaltungsbeschluss</i>) <p>Language:</p> <ul style="list-style-type: none"> Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable) → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Swiss commercial register Limited check of authority of the destination jurisdiction and respective registration

Cross border division from other state to Switzerland



Topic	Prerequisites
Main target legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Cooperative (<i>Genossenschaft</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): CHF 20,000 Stock corporation (<i>AG</i>): CHF 100,000 Cooperative (<i>Genossenschaft</i>): n/a
Division types	<ul style="list-style-type: none"> Cross border split-up (<i>Immigrationsaufspaltung</i>) with new formation or existing legal entity: transfer of all assets and liabilities to at least two recipient legal entities (full split-up) Cross border split-off (<i>Immigrationsabspaltung</i>) with new formation or existing legal entity: transfer of part of the assets and liabilities to a recipient legal entity Cross border spin-off with existing legal entity as recipient (<i>grenzüberschreitende Vermögensübertragung zur Neugründung</i>): transfer of part of the assets and liabilities to an exiting recipient legal entity (Please note that Swiss law has specific provisions for cross border spin-off)
Competent regulatory authority	<ul style="list-style-type: none"> Commercial registry (<i>Handelsregister</i>) at the seat of the target legal entity in Switzerland
Swiss registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>oberstes Leitungs- oder Verwaltungsorgan</i>) to the competent Swiss commercial register Application includes in particular the contract or plan (<i>Spaltungsvertrag oder Spaltungsplan</i>), notarized division resolution of the involved companies (<i>beurkundeter Spaltungsbeschluss</i>), division report (<i>Spaltungsbericht</i>), audit report (<i>Prüfungsbericht</i>) Scope of review Swiss commercial register: mandatory provisions on establishment of recipient legal form
Language requirements	<ul style="list-style-type: none"> Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps: three – six months
Legal effectiveness of division	<ul style="list-style-type: none"> Registration in Swiss commercial register

Cross border merger from Switzerland to other state (1/2)



Topic	Prerequisites
Main eligible legal forms	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Cooperative (<i>Genossenschaft</i>)
Required documentation	<p>Merger contract (<i>Fusionsvertrag</i>)</p> <ul style="list-style-type: none"> Main statutory content is the company's name, seat, legal form of the merging companies, merger ratio and shares to be granted, other exchange modalities as well as compensation payment, time schedule, statement on specific rights of stakeholders <p>Merger report (<i>Fusionsbericht</i>)</p> <ul style="list-style-type: none"> Merger report of the representative body (<i>oberstes Leitungs- oder Verwaltungsorgan</i>) on the effects for employees and stakeholders <u>Waiver</u>: possible under specific circumstances for small and midsize companies <p>Audit report (<i>Prüfungsbericht</i>)</p> <ul style="list-style-type: none"> Audit of the merger contract, merger plan and balance sheet by independent auditor, resulting in a written audit report <u>Waiver</u>: possible under specific circumstances for small and midsize companies Annual financial statements (<i>Jahresrechnung</i>) and annual reports (<i>Jahresbericht</i>) of the last three business years Balance sheet of dividing legal entity not older than six months at the time of signing the contract, if significant changes in the financial situation of the companies happened
Capital increase	<ul style="list-style-type: none"> The shareholders of the transferred legal entity receive shares in the recipient legal entity <u>Waiver</u>: possible under specific circumstances
Shareholders' protection	<ul style="list-style-type: none"> Majority requirement depending on involved legal entities; generally, at least $\frac{2}{3}$ majority for shareholder's resolution on division

Cross border merger from Switzerland to other state (2/2)



Topic	Prerequisites
Competent regulatory authority	<ul style="list-style-type: none"> Commercial registry (<i>Handelsregister</i>) at the seat of the Swiss legal entity
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of outbound steps (advice, formal proceeding): four – eight months Inspection right for shareholders' (<i>Einsichtsrecht</i>) at seat of the company for contract or plan, report, audit report and annual financial statements of the last three business years: 30 days prior to resolution <u>Waiver</u>: possible under specific circumstances for small and midsize companies Information of creditors by publication in Swiss official Gazette of Commerce (<i>Schweizerisches Handelsamtsblatt, SHAB</i>) and assurance of creditor claims (<i>Sicherstellung der Forderungen</i>) if requested within three months after legal effectiveness of the merger Deletion from Swiss commercial registry
Formal considerations	<p>Public Notarization by Swiss notary:</p> <ul style="list-style-type: none"> Shareholders' resolutions of involved companies on merger (<i>Fusionsbeschlüsse der beteiligten Gesellschaften</i>) <p>Language:</p> <ul style="list-style-type: none"> Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable) → <u>Please see other country sections for requirements of the respective destination jurisdiction</u>
Pre-merger certificate (<i>Verschmelzungsbescheinigung</i>)	<ul style="list-style-type: none"> n/a
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in Swiss commercial register

Cross border merger to Switzerland



Topic	Prerequisites
Main Target legal form	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>) Stock corporation (<i>AG</i>) Cooperative (<i>Genossenschaft</i>)
Share capital requirements	<ul style="list-style-type: none"> Limited liability company (<i>GmbH</i>): CHF 20,000 Stock corporation (<i>AG</i>): CHF 100,000 Cooperative (<i>Genossenschaft</i>): n/a
Merger types/recipient legal entity	<ul style="list-style-type: none"> Cross border merger with a new recipient legal entity (<i>Immigrationskombination</i>) Cross border merger with an existing legal entity as recipient (<i>Immigrationsabsorption</i>)
Competent regulatory authority	<ul style="list-style-type: none"> Commercial registry (Handelsregister) at the seat of the target legal entity in Switzerland
Swiss registration process	<ul style="list-style-type: none"> Application filed by the representative body (<i>oberstes Leitungs- oder Verwaltungsorgan</i>) to the competent Swiss commercial register Application includes especially the merger contract (<i>Fusionsvertrag</i>), balance sheets of the transferring legal entities (<i>Fusionsbilanz</i>), notarized merger resolution of the shareholders' of the involved companies (<i>Fusionsbeschlüsse</i>), merger report (<i>Fusionsbericht</i>) and audit report (<i>Prüfbericht</i>) Scope of review of Swiss commercial register: all provisions according to Swiss law
Language requirements	<ul style="list-style-type: none"> Bilingual documents possible, but registration with the commercial register in local language (e.g. German, French and Italian as applicable)
Timing	<ul style="list-style-type: none"> Estimated overall timeframe for completion of inbound steps: three – six months
Legal effectiveness of merger	<ul style="list-style-type: none"> Registration in the Swiss commercial register
Cross border merger UK or Northern Ireland	<ul style="list-style-type: none"> N/A

UK



Content

1. Implementation status in the UK

Remark: The Mobility Directive does not apply to the United Kingdom. Moreover, UK law does not recognize or permit the concept of merger. The position is not expected to change in the short to medium term.



Paul Kelly

Partner

M +44 755 7150199

paul.kelly2@kpmg.co.uk



[Back to Country Overview](#)

Implementation status in the UK

Current status of the implementation process in the UK:

The Mobility Directive does not apply to the UK.

The UK left the EU on 31 January 2020 and the transitional period under the UK-EU withdrawal agreement ended on 31 December 2020. Since this date, the European directive governing cross border conversions, mergers and divisions no longer applies to the UK.

As such, cross border mergers that use the EU cross border merger regime will not be available for UK companies.
















UK law does not recognize or permit the concept of merger. As such, it would be necessary to transfer business and assets from the contributing entity to the recipient entity and separately liquidate the contributing entity.

This may therefore give rise to tax issues and a detailed tax analysis should be undertaken.





















Furthermore, it is likely that a more comprehensive legal diligence exercise would be required to consider issues such as TUPE (which remains in force under UK law), termination/change of control provisions in contracts, and any transfer requirements for specific assets such as land, shares or licences/registrations.

The position is not expected to change in the short to medium term.



















Contacts

Country	Name	Contact
 Austria	 Stefan Arnold Partner	+43 131 032564811 stefanarnold@kpmg-law.at
 Belgium	 Gert Cauwenbergh Partner	+32 475 853640 gcawwenbergh@kpmglaw.com
 Bulgaria	 Juliana Mateeva Partner	+359 296 97600 jmateeva@kpmg.com
 Croatia	 Hrvoje Pajtak Senior Manager	+385 914 668062 hpajtak@kpmg.com
 Cyprus	 Panayiota Georgiou Partner	+357 258 69259 pgeorgiou@kpmg.com
 Czech Republic	 Ladislav Karas Legal Manager	+42 073 2529392 lkaras@kpmg.cz
 Denmark	 Casper Guldhammer Jensen Partner	+45 258 34816 casper.guldhammer.jensen@kpmg-law.com
 Estonia	 Karin Oras Partner	+372 507 9241 karin.oras@kpmglaw.ee
 Finland	 Kai Soini Partner	+358 207 603273 kai.soini@kpmg.fi
 France	 Benoît Roucher Partner	+33 206 57217 broucher@kpmgavocats.fr

Contacts

Country	Name	Contact
 Germany	 Dr. Ian Maywald Partner	+49 151 52118034 imaywald@kpmg-law.com
 Greece	 Sophia Grigoriadou Partner	+30 210 6062325 sgrigoriadou@cpalaw.gr
 Hungary	 Ákos Krénusz Senior Associate	+36 703 701892 akos.krenusz@kpmg.hu
 Ireland	 Aisling Garry Director	+353 170 04173 aisling.garry@kpmglaw.ie
 Italy	 Alberto Cirillo Partner	+39 011 883166 albertocirillo@kpmg.it
 Iceland	 Jónas R. Tómasson Partner	+354 545 6180 jtomasson@kpmg.is
 Latvia	 Ieva Tillere-Tilnere Partner	+371 291 93938 ITillere@kpmglaw.lv
 Lithuania	 Inga Šutaitė Partner	+370 685 27313 inga.sutaite@kpmglaw.lt
 Malta	 Antoine Demicoli Associate Director	+356 256 31153 antoinedemicoli@kpmg.com.mt
 Netherlands	 Jan Hein Visser Director	+31 610 896437 visser.janhein@meijburglegal.com

Contacts

Country	Name	Contact
 Norway	 Andreas Wulff Partner	+47 934 27957 andreas.wulff@kpmg.no
 Poland	 Paweł Bajno Partner	+48 664 080107 pbajno@kpmg.pl
 Romania	 Vlad-Octavian Peligrad Partner	+40 723 283143 vpeligrad@kpmg.com
 Slovakia	 Marian Dzuroška Partner	+421 915 758936 mdzuroska@kpmg.sk
 Slovenia	 Gregor Drnovsek Senior Manager	+38 614 201139 gregor.drnovsek@kpmg.si
 Spain	 Rafael Aguilar Mateo Partner	+34 660 380476 raguilar@kpmg.es
 Sweden	 Mattias Bergman Partner	+46 709 396664 mattias.bergman@kpmg.se
 Switzerland	 Dominique Gottret Partner	+41 582 492495 dgottret@kpmg.com
 United Kingdom	 Paul Kelly Partner	+44 161 2464317 paul.kelly2@kpmg.co.uk

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.