New Opportunities in Cross-Border Mergers, Divisions and Conversions

Newsletter

Content

I. Introduction

With the adoption of the Company Law Package by the Parliament of the European Union, the implementation of probably one of the largest reform projects of European company law has been initiated. As part of the Company Law Package, *the Directive (EU) 2019/2121 of the European Parliament and of the Council of 27th November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions had to be implemented until* ***31 January 2023***. Besides reforming the already existing European provisions on cross-border mergers, the European legislator finally decided to introduce an EU-uniform legal framework for cross-border conversions and divisions. The unification of provisions concerning cross-border conversions, mergers and divisions (each also called a **"cross-border operation"**, collectively called **"cross-border operations"**) throughout the European Union will represent a significant milestone in improving the functioning of the European market and will give companies and firms a legally secure and efficient procedure for cross-border operations. The following article gives a brief overview of major changes to the existing legal framework for cross-border operations in Germany, France, Italy, Austria and Luxembourg.

II. Germany

According to the draft for implementing the directive, a new 6th book has been added to the national *Umwandlungsgesetz (UmwG)*, which now bundles all provisions on cross-border operations. It is to be welcomed, that the legislator makes use of the well-known and established reference technique of the UmwG as it declares the corresponding provisions relevant for national mergers, divisions and conversions to be applicable for cross-border operations, insofar as nothing to the contrary results from the newly implemented provisions. In line with the directive, currently all provisions on cross-border operations are limited to corporations only. The main changes relate in particular to (i) creditor protection, (ii) the protection of shareholders and (iii) the introduction of an abuse scrutiny.

1. Protection of creditors

When it comes to creditor protection, the directive in general requires each member state to provide an appropriate level of creditor security. The protection of creditors is not new to German law, as for national mergers, divisions and conversions the UmwG provides detailed provisions, giving creditors, provided certain legal requirements are met, a claim for security after the respective measure has been filed with the commercial register. Following the directive's implementation into German law, the German legislator differentiates, as far as cross border mergers and divisions are concerned, between creditors of the transferring and creditors of the transferee legal entity. Whilst creditors of the transferring legal entity will be granted a claim for security prior to the entry of the cross-border merger/division in the commercial register, those of the transferee legal entity are given a claim for security after entry of the cross-border merger/division in the commercial register. When it comes to cross-border conversions, all creditors are given an advance claim for security.

2. Protection of shareholders

A further significant amendment is the harmonisation of the protection of shareholders, which has been regulated very differently from one EU member state to another in the past. The directive provides for a unifying system of protection consisting of basically three core elements: the shareholders' right to dispose of their shares for adequate cash compensation, the exclusion of the right to challenge resolutions consenting to cross-border operations due to certain defects and, in case of cross-border mergers and divisions, an additional right to dispute the share exchange ratio set out in the draft of terms of the cross-border merger/division and the subsequent claim for a cash payment. Although the UmwG has long been familiar in particular with the right of share disposal for cash compensation and the right to dispute the share exchange ratio, the directive's implementation leads to some significant changes nonetheless. Particularly noteworthy are the changes to the right to dispute the share exchange ratio. In future, in both cross-border and even national mergers and divisions, the shareholders of both the transferring and the transferee legal entity will have a right to dispute the share exchange ratio and may claim an additional cash payment. In the past, only shareholders of the transferring legal entity had such a claim. Another new feature will be the possibility of granting additional shares instead of an additional cash payment.

3. Abuse control

From a German perspective, the new abuse control that has been introduced for all cross-border operations as part of the scrutiny for the issuance of the respective pre-cross-border operation certificate is also a novelty. Now the registry court, in case of evidence, is obliged to scrutinise whether the intended cross-border operation is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes. This check will take place as part of the general scrutiny of legality of the respective cross border operation, which is obligatory for the issuance of the respective certificate testifying the compliance with all relevant conditions and to the proper completion of all procedures and formalities in Germany. If the registry court qualifies the intended cross-border operation abusive or fraudulent, it shall refuse to file it with the commercial register. If necessary, the register court may extend the examination beyond the standard period of three months for issuing the pre-cross-border certificate by a further three months to a total of six months, which could possibly lead to a considerable delay in the execution of the intended cross-border operation. Moreover, the assessment of abusive or fraudulent purposes raises a number of questions of interpretation and procedure which, at least in the initial period of the reformed UmwG, might result in some legal uncertainty.

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III. France

France has not yet transposed Directive (EU) 2019/2121 of November 27, 2019.

Law No. 2023-171 of March 9, 2023, *on various provisions to adapt [French law] to European Union law in the areas of economy, health, employment, transport and agriculture*, was published on March 10, 2023. Pursuant to Article 13 of this law, the French Government has been authorised to directly adopt by Ordinance, within a 3-months period, "all measures within the scope of the law necessary to reform the regimes governing mergers, divisions, partial contributions of assets and transfers of registered offices of commercial companies" in order to (1°) implement Directive (EU) 2019/2121 and (2°) harmonise, simplify, complete and modernise the current regimes applicable to such operations.

By this legal process, the French Government was granted the authorisation to take a measure that normally requires legislation. This measure, delegated by the legislative power to the executive power by virtue of article 38 of the French Constitution, will thus take effect through an Ordinance, with the objective to accelerate the process of transposition of the Directive.

It is therefore a governmental Ordinance that will transpose the Directive without us having at this stage any precise visibility on the content of the modifications that will be made in this framework to the legal system in force, except that Article 13 of the abovementioned law has specified that:

- The authority in charge of the scrutiny of the legality of cross-border conversions, mergers and divisions shall be the Clerk of the Commercial Court; and that
- The possibility to limit the proportion of employee representatives in the management body of the company resulting from the conversion or of the recipient companies in a

cross-border division shall be excluded.

In addition to the issues set out above, i.e. the protection of creditors and shareholders, and the anti-abuse and anti-fraud control, and while anticipating the Ordinance modifying French law, there is particular interest in the provisions governing the transfer of registered offices (i.e. cross-border conversions), simplified cross-border mergers for sister companies and partial divisions, which will surely be applied in cross-border transactions.

In French law, simplified mergers of sister companies are already an existing mechanism. As in French law and in order to be fully operational at European level, the accounting treatment of the disappearance of the securities of the absorbed company at the level of the parent company may raise implementation difficulties if it is not subject to a harmonised mechanism.

The Directive also provides for partial divisions, i.e. the transfer of part of the assets and liabilities of the company being divided *"to one 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 (…)"*. As indicated in the impact study preceding the abovementioned law No. 2023-171 of March 9, 2023, such mechanism is not currently provided for under French law, requiring practitioners to proceed in two steps to complete such operation (a partial transfer of assets followed by a distribution in kind by the recipient company to its shareholders). The transposition of the Directive should thus also be the opportunity to provide partial divisions with a specific national legal framework.

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IV. Italy

The directive has been transposed in Italy by means of the Italian Legislative Decree no. 19, issued on March 2, 2023, which has been published on the Italian Official Gazette on March 7, 2023 (the "**Transposition Legislative Decree**").

The Transposition Legislative Decree will enter into force starting from March 22, 2023 and will regulate cross-border operations, for which the relevant project is filed after July 3, 2023.

The Transposition Legislative Decree expressly provides that, with effect from July 3, 2023, it will repeal and replace the previous Legislative Decree no. 108/2008, which regulates exclusively cross-border mergers and will continue to apply also after July 3, 2023, but only with regard to cross-border mergers in which, at such date, one of the merging companies has published the common draft project of merger.

In addition to transposing the Directive provisions, the Transposition Legislative Decree also regulates a series of further related aspects. In particular, the Transposition Legislative Decree provides that, to the extent compatible, its provisions apply also to cross-border and/or international mergers, demergers and transformations involving: (i) non-corporations (such as partnerships), provided they are registered in the company's register, with the exclusion of cooperative companies with prevalent mutuality; (ii) non-EU companies; (iii) companies under insolvency or crisis management procedures.

With regard to the procedural structure of cross-border/international merger and demerger operations, the Transposition Legislative Decree, notwithstanding the implementation of new elements, provides for a structure of main fulfilments which largely matches the rules governing the internal operations, namely the preliminary stages of the merger/demerger project, the decisional stage by the shareholders' meeting and the conclusive phase of the public deed of merger/demerger.

The transformation refers to the transfer abroad of company's registered office resulting in a change in the law governing the company itself.

In line with the directive, the Transposition Legislative Decree contains, *inter alia*, specific provisions introducing innovations and new fulfilments concerning: (i) anti-abuse control; (ii) the protection of creditors; and (iii) the protection of shareholders and employees.

With reference to the violation of the provisions related to the preliminary certificate, the Transposition Legislative Decree introduced a new crime concerning "*false or omitted declarations for the issuance of the preliminary certificate*", which sanctions with imprisonment from four months to three years and with the temporary disqualification from the executive offices of legal entities, anyone who prepares totally or partially false documents, alters true documents, makes false declarations or omits relevant information, in order to make it appear that the conditions for issuing the preliminary certificate have been fulfilled. The aforementioned offence has also been included among the offences triggering the application of the Italian legislation regulating the administrative liability of legal entities (Legislative Decree no. 231/2001).

1. Anti-abuse controls – preliminary certificate and legality check on the operation

The Transposition Legislative Decree contains specific provisions aimed at avoiding abusive or fraudulent effects of cross-borders/international operations.

The legality checks of the cross-border operations have been entrusted by the Transposition Legislative Decree to the notary in its capacity as public official.

The project of the operation involving an Italian company must provide a set of information expressly required by the Transposition Legislative Decree, including, *inter alia*, whether the Italian company involved received public contributions during the five years (or 10 years in the case of international transactions) prior to the publication of the project, specifying the amount of such contributions and the public entities that have granted the same.

The approved project of the cross-border operation and a set of additional documents and information must be filed with a notary who, should all the required conditions be met, will (i) issue a preliminary certificate stating the regular fulfillment in accordance with the law of the preliminary deeds and formalities necessary to the implementation of the operation, (ii) publish it at the company's register of such documents and (iii) transmit it to the competent authorities of the other countries involved in the operation.

Specific documents and/or guarantees are required to prove either the absence of debts towards the state or any public entities or, should such debs exist, to guarantee the regular payment of the same.

A further legality check takes place in the destination country contextually with the public deed for the finalisation of the operation, on the basis of preliminary certificates or similar documents received from the competent authorities of the other countries involved in the operation. The successful outcome of the legality check allows for the finalisation of the operation and its registration in the company's registers.

2. Protection of creditors

The Transposition Legislative Decree provides a term of 90 days running from the filing of the project of the operation at the company's register in order to allow the opposition of creditors who consider themselves affected by the cross-border operation.

The preliminary certificate mentioned above cannot be issued before the elapsing of 90 days from the filing of the project of the operation at the company's register in order to allow the opposition of creditors who consider themselves affected by the cross-border operation.

However, the issue of such preliminary certificate may take place before such 90 days term in the following alternative cases: (i) all creditors expressly agree to the envisaged transaction; (ii) the company pays all credits due to creditors who oppose the cross-border operation; (iii) the company deposits an amount corresponding to the amounts due to the creditors refusing their consent (iv) the expert report on the congruity of the exchange ratio underlying the cross-border operation is prepared by one audit firm for all companies involved, which expressly confirms that there is no need to provide guarantees to protect the creditors.

In the case of opposition to the cross-border operation by the creditors, the competent Italian court may authorise the relevant operation if the prejudice for the creditors is not actually proven or if the company provides suitable security.

3. Protection of shareholders and employees

Under a different perspective, the project of the cross-border operation approved by the management body must be filed with the company's register or published in the company's website at least 30 days prior to the shareholders' meeting called for its approval. Such project shall also include a notice to shareholders (quotaholders and partners, as the case may be) and to the representatives of the employees, informing them on the possibility to submit comments to the envisaged operation until five days before the date of the shareholders meeting.

The Transposition Legislative Decree provides for a right of withdrawal afforded to shareholders of the involved companies which did not approve the cross-border operation. The provisions on withdrawal differ depending on whether the company resulting from the operation will be based in Italy or abroad. The exercise of such withdrawal right does not prevent the finalisation of the relevant operation.

With reference to mergers and demergers, the congruity of the exchange ratio between shares must be confirmed by a report of an audit firm or an auditor. In this respect, the shareholders who did not approve the operation are entitled to contest the established exchange ratio, in order to obtain the payment of the difference between the value of the participation held, as determined with what they believe should be the correct exchange ratio and the value actually determined in the project of the operation. The aforementioned claim concerning the exchange ratio does not prevent the finalisation of the relevant operation.

4. Other amendments

From a different perspective, not directly related to cross-border operations, it is worth noting that the Transposition Legislative Decree has introduced in the Italian legal system the division by separation.

According to the newly introduced section 2506.1 of the Italian Civil Code, the division by separation is the operation whereby the being divided company transfers only part of its assets and liabilities to one or more newly incorporated recipient companies, in exchange for the issue to the same being divided company – which continues its activity – of a participation in the recipient companies.

The division by separation - which might represent an alternative to contribution in kind for a company which intends to transfer assets and liabilities to other companies - is not allowed if (i) the recipient companies are already existing and (ii) the being divided company is in liquidation and has started the distribution of its assets.

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V. Austria

The *Directive (EU) 2019/2121 on cross-border conversions, mergers and divisions (EU Mobility Directive)* will be implemented in Austria in the new *EU-Umgründungsgesetz (EU-UmgrG)*. This law is only available as a draft so far, although the period for transformation into national law ended on 31 January 2023. We expect the law to enter into force before summer 2023 without major further amendments. Since the previous Austrian law on mergers and divisions has worked well in practice, the legislator sees no need to fundamentally change it within the framework of the directive.

The new EU-UmgrG regulates three types of cross-border reorganisations: (i) cross-border conversion, (ii) cross-border merger and (iii) cross-border division/demerger.

The cross-border conversion (which was usually referred to as cross-border transfer of the registered office [*Verlegung des Satzungssitzes*]) was not regulated by law in Austria until now. Although it was possible based on the case law of the European Court of Justice in the *Polbud* case, it sometimes encountered practical hurdles at the registry courts. Due to the harmonisation established by the directive, such measures will be subject to greater legal certainty in the future. The EU-UmgrG now contains detailed regulations for cross-border conversions in the form of "outward conversion" (out of Austria) and "inward conversion" (into Austria).

The possibility of a cross-border merger has already existed since 2007 on the basis of the *EU-Verschmelzungsgesetz (EU-VerschG)*. Its rules will basically still apply, although the EU-VerschG will cease to be in force once the new EU-UmgrG enters into force. Here, too, the law differentiates between an "outward (or export) merger" and an "inward (or import) merger". Such cross-border mergers are current practice in Austria, and KWR has already advised on a number of such transactions.

A new possibility is the cross-border division. However, The EU Mobility Directive only provides for divisions for the purpose of re-establishment (*Spaltung zur Neugründung*) in another Member State, but not divisions for the purpose of absorption (*Spaltung zur Aufnahme*; i.e. demergers where the acquiring company already exists). Demergers for the purpose of absorption must therefore still be carried out in two stages, either (1) by first carrying out a domestic demerger and then a cross-border merger or (2) by carrying out a cross-border division followed by a national merger of the newly established company. This is, however, primarily a defect of the Directive, not the national transformation into Austrian law.

A significant, but also problematic "innovation" under EU law is the new abuse control, which in the future must be carried out by the competent authority of the member state of departure (in Austria: by the commercial register court) for all cross-border operations stated by the EU-Mobility Directive. Accordingly, the court has to examine whether the cross border operation is intended to be carried out for abusive or fraudulent purposes which lead or are intended to lead to evading or circumventing European or national law, or for criminal purposes. If such purposes exist, the commercial register court shall refuse the entry of the intended cross border operation in the commercial register. The court may, in particular, request information and documents from the company, from authorities or agencies (including authorities or agencies of other member states) or appoint an expert. If the company submits a ruling from the tax authority (*Auskunftsbescheid*) in which the existence of an abuse under tax law is denied with regard to the transaction, no abuse is to be assumed in this respect.

In all cases of cross-border reorganisations, there are three vulnerable groups of persons that must be carefully protected: shareholders, employees and creditors. Accordingly, the EU Mobility Directive and its Austrian transformation provide for special protection rights (in particular information and/or objection rights). As far as shareholders are concerned, they must be informed at least six weeks before the resolution is passed and have a right of objection and an exit right in return for a cash compensation (with the possibility of review of the amount of this cash compensation by an independent expert and by the court). The respective reorganisation plan must also be disclosed to the general public by submitting it to the commercial register. Creditors of the company may demand security from the company within three months of the announcement of the reorganisation plan by means of an action if they can make it plausible that the fulfillment of their claim will be jeopardised by the reorganisation.

If all national requirements are met, the commercial register will issue a pre-conversion/merger/division certificate stating such fulfilment, which will form the basis for the registration of the transaction in the other country involved.

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VI. Luxembourg

In Luxembourg, draft bill nr 8053 has been lodged on 27 July 2022 with the Luxembourg parliament in order to transpose the directive in Luxembourg domestic law. Such a draft bill is still currently in parliamentary consultation and therefore subject to amendments.

Under the terms of the draft bill, each of the conversions, mergers and divisions operations are to be restructured and organised under two distinct legal regimes:

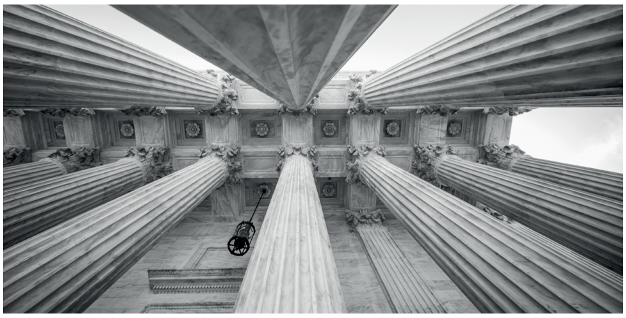
- a general regime applicable to domestic operations (i.e. operations involving only one or more Luxembourg companies) and cross-border operations that do not fall under the scope of the special regime (including cross-border operations with non-EU companies); and
- a special regime applicable to cross-border operations involving either a Luxembourg limited liability company (i.e. a public limited liability company (*société anonyme – SA*), or a private limited liability company (*société à responsabilité limitée – SARL*) or a partnership limited by shares (*société en commandite par actions – SCA*)) and at least one EU limited liability company (as foreseen by the relevant annexes in the directive).

By way of a general rule, the draft bill provides that any aspects of an operation covered by the special regime which are not explicitly regulated by the special regime shall be subject to the provisions of the general regime.

1. General regime

Mergers and divisions – As the draft bill stands, the general regime applicable to mergers and divisions will be mainly equivalent to the current procedures provided for in the Luxembourg Law dated 10 August 1915 on commercial companies, as amended, except for some amendments, of which the following are worth noting:

- domestic and cross-border mergers and demergers extended to special limited partnerships (*sociétés en commandite spéciale – SCSp*);
- general meetings of shareholders entitled to modify the draft terms of the operation and make the effectiveness of the operation subject to certain particular conditions or time limits;
- single-member companies automatically exempted from the requirement to prepare a management report and to obtain a report from an independent expert on the draft terms of the operation;
- extension of the simplified merger procedure to sidestream mergers and no requirement in this case to hold a shareholders meeting of the absorbed company;
- effectiveness of the operation towards third parties as from the publication of the minutes of the shareholders meeting of the absorbing/divided company approving the operation;
- effectiveness of a cross-border merger or division will now be determined by reference to the law of the country governing the absorbing/divided company;
- in case of a merger by absorption of a Luxembourg company by a foreign company, the deletion of the Luxembourg company from the Luxembourg trade and companies register (the **"Lux RCS"**) may be made on the basis of any conclusive evidence that the merger has taken effect.



Conversions – Although possible in practice, Luxembourg law does not currently provide for any provisions setting out the specific process for migration of companies. The new general regime shall provide that a Luxembourg company may be converted into a foreign company, as long as the destination country also recognises such possibility. While not expressly addressed, inbound conversions shall also be possible under the conditions governing the incorporating of such company in Luxembourg. Operations that do not fall under the scope of the special regime will remain subject to the current, more simple procedure which derives from a well-established legal and notarial practice.

2. Special regime

While a set of common European rules already existed for cross border mergers of limited liability companies and domestic divisions of public limited liability companies, cross border conversions are currently not harmonised at all at EU level. Such operations are expected to be subject mutatis mutandis to the same formalities as those foreseen for cross-border mergers and divisions which procedures shall thus be more complex, expensive and longer than they currently are.

The following paragraphs give a brief overview of major changes made by the draft bill as it currently stands to the existing legal framework for cross border mergers.

- **Common draft terms** – The draft terms of the merger will need to include at least certain listed particulars, including the details of the offer of cash compensation for shareholders exercising their exit right and any safeguards offered to creditors, such as guarantees or pledges.
- **Publication formalities** – The publication of the draft terms (that shall occur at least one month before the shareholders meetings resolving upon the merger) shall also be accompanied by a notice informing the shareholders, creditors and employees that they may submit observations on the draft terms to the company at least five working days before the shareholders meetings.
- **Report of the management body** – Either a joint report (with two distinct sections) or two separate reports shall be drawn up by each company involved to be addressed and made available to their shareholders and workers by electronic means not less than six weeks before the relevant shareholders meeting.
  - the report for shareholders shall not be required (i) if all the shareholders have waived that requirement or (ii) for single-member companies;
  - the report for employees shall not be required where the merging company and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.
- **Approval by the general meeting** – Meetings of shareholders of each of the merging companies shall be entitled to amend the draft terms and to make the effectiveness of the operation subject to certain particular conditions or time limits.
- **Protection of minority shareholders** – Minority shareholders shall be given two protective rights:
  - **Exit right for minority shareholders who voted against the approval of the draft terms of merger** – They shall have the right to dispose of all of their shares (except non-voting shares and shares transferred *inter vivos* since the

publication of the draft terms) in return for an adequate cash payment in accordance with the relevant legal procedure. The shareholders wishing to exit shall request the notary to record their express opposition to the draft terms of the merger and their intention to exercise their exit right.
  - **Right to challenge the exchange ratio for pro-merger shareholders** – Shareholders having approved the merger shall still be entitled to challenge in court the share exchange ratio and claim additional cash compensation (which may also be paid in kind).
- **Creditor protection** – Unlike the general regime, (i) creditors whose receivables are not due on the publication date of the draft terms are excluded from the benefit of this protection, (ii) prior notification to the debtor company is required, (iii) the time limit to bring legal action is extended to three months from the publication of the draft terms, and (iv) such legal action is granted a suspensive effect.
- **Double legality control** – The Luxembourg notary shall carry out two legality controls:
  - **First legality control (including an anti-abuse control):** The notary shall first verify the compliance and completion of the operation with all relevant provisions of the Luxembourg law, within three months (renewable) from the date of receipt of the required documents and information and shall result in the notary issuing (or refusing to issue) a pre-merger certificate.
    - The notary shall refuse the issuance of the pre-merger certificate if the operation is considered as clearly carried out for abusive or fraudulent purposes leading to or aiming at circumventing EU or national law or for criminal purposes.
    - The notary may consult other qualified authorities (e.g. request for certificates as for a Luxembourg one step dissolution) and/or use the services of an independent expert (tax expert, lawyer, professor, accountant, auditor...) at the company's expenses.
    - The pre-merger certificate shall be filed with the Lux RCS and transmitted by such register to the registers in which the merging companies are registered.
  - **Second legality control:** If the absorbing company is a Luxembourg company, the notary, relying on the pre-merger certificate(s) issued by the foreign authorities, shall also verify and confirm that all applicable conditions (both Luxembourg and foreign) have been fulfilled (and in particular that the draft terms of merger have been approved in the same terms by all merging companies).
- **Effective date of the merger** – It shall be determined by the law of the absorbing company. Shall the absorbing company be Luxembourgish:
  - The merger shall be effective between the merging companies as from the issuance of the legality certificate by the Luxembourg notary and no longer as from the publication of the minutes of the shareholders meeting of the absorbing company.
  - The merger shall be enforceable towards third parties as from the publication of the minutes of the shareholders meeting of the absorbing company.
- **Deregistration of the absorbed company** – Where the absorbed company is subject to Luxembourg law, the latter shall be deleted from the Lux RCS upon receipt of the notification of the merger taking effect from the register of the absorbing company (via the EU registers interconnection system).
- **Nullity** – Once the operation has become effective, its validity may no longer be challenged.

According to the draft bill, the operations for which the draft terms have been published prior to the entry into force of the Luxembourg transposing law but which are not closed prior to it shall not be subject to the new legal regime but instead, remain subject to the current rules.

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VII. Summary

Altogether, the new provisions on cross-border operations are to be welcomed. The reformed legal framework gives companies new security which will further simplify cross border trade and other economic activity within the European Union. In addition to cross-border mergers, which are already very widely used, the way is now finally paved for cross-border divisions and conversions on a clear legal basis. It can be assumed that multinational corporations will make active use of the new possibilities, especially from a tax and governance point of view.

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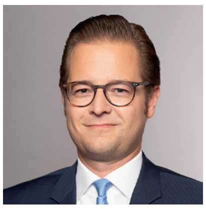

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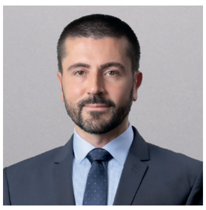

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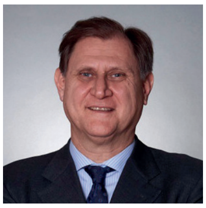

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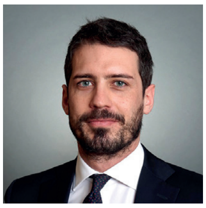

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