



On 23 January 2025, the Luxembourg Parliament adopted the law transposing Directive (EU) 2019/2121 (the Law) on the cross-border mobility of companies (the Mobility Directive). The Law introduces a harmonised legal framework for cross-border mergers, demergers and conversions, thereby strengthening legal certainty and the protection of stakeholders.



The major changes:

- **Targeted scope:** the Law applies to **SA (société anonyme), SARL (société à responsabilité limitée), and SCA (société en commandite par actions)** excluding certain entities such as companies in liquidation, insolvency or preventive restructuring:
 - o **Cross-border mergers**, already regulated by European law, they now benefit from a clarified and strengthened process. The Law introduces the possibility of **simplified mergers between sister companies (side-stream mergers)** without the issue of new shares. This applies where one party directly or indirectly holds all the shares in the acquiring and acquired companies, or where the same parties hold the same proportion of shares in each of the merging companies;
 - o **Cross-border demergers** fall within a framework limited to demergers by the formation of new companies and demergers by separation, while demergers by absorption remain subject to national law.
 - o **Cross-border conversions** now benefit from a harmonised and structured process, with the Law introducing a clear legal framework for cross-border conversions, previously governed only by CJEU case law, leading to legal uncertainty. Henceforth, all cross-border operations undergo a **two-stage legality check**, with controls in both the departure and host countries to ensure compliance and prevent abuse.

- **Reinforcement of the legality check for all cross-border operations:** a three-phase process with a key role for the Luxembourg notary
 - o **Preparatory phase:** management bodies publish the terms of the project and inform stakeholders, guaranteeing **improved rights to information**. Detailed reports are drawn up for shareholders and employees to provide them with a clear analysis of the legal and economic stakes involved in the transaction. An independent expert examines these documents, unless shareholders waive this requirement.
 - o **Approval phase:** At least one month after publication of the proposal, the general meeting of shareholders must vote on the transaction. Once the transaction has been approved, a **double control of legality** is carried out. The competent authority of **the State of departure** carries out an initial control to verify the conformity of the project, then **the host State** carries out a final control of conformity before the transaction takes effect under its national law. In Luxembourg, it will be up to the **notary** to ensure compliance with the applicable law and to prevent fraud or abuse.
 - o **Implementation phase:** Once the legality check has been validated, the deed is executed in the destination country and registered with the relevant registers (in Luxembourg, the register of commerce and companies).

- **Enhanced protection for stakeholders**, with specific measures for each category:
 - For **employees**, in addition to the detailed report prepared during the preparatory phase, the Law provides for enhanced protection of employees' rights, particularly with regard to information and consultation.
 - **Creditors** whose claims predate the publication of the proposed transaction have the right to request guarantees from the competent authorities within three months of publication.
 - Shareholders, creditors and employees have the opportunity to express their concerns before the decisive general meeting.
 - Moreover, **minority shareholders** have exit or compensation options if they disagree with the terms of the transaction. Thus, those who oppose the transaction have the right to withdraw from the company in exchange for an appropriate cash payment. In the case of mergers and demergers, those who do not withdraw may challenge the share exchange ratio within one month of the general meeting and request an additional cash payment.

The date on which the Law transposing the Mobility Directive will come into force remains unknown, but the new regime will apply to cross-border transactions for which drafts are published after the first day of the month following its entry into force. Until then, the current procedures and legislation will continue to govern these operations.

Our experts are your disposal to discuss the impact of the Law on your intended restructurings and transactions.



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