



DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



LEGAL AFFAIRS

**Cross-border mergers and
divisions, transfers of seat:
Is there a need to legislate?**

Outline

- 1. The *Status quo***
- 2. Cross-border mergers**
- 3. Cross-border divisions**
- 4. Cross-border transfers of seat (conversions)**
- 5. Legislative implementation**

1. The *Status quo*

Type of company	cross-border mergers	cross-border divisions	cross-border transfers of seat (conversions)
limited liability companies	Cross-border Mergers Directive (CBMD)	freedom of establishment, Articles 49, 54 TFEU (<i>argumentum e Sevic, Cartesio, VALE</i>)	freedom of establishment, Articles 49, 54 TFEU (<i>Cartesio, VALE</i>)
UCITS	UCITS Directive		
other legal entities within the meaning of Article 54 TFEU	freedom of establishment, Articles 49, 54 TFEU (<i>Sevic</i>)		
SE/SCE	formation of an SE/SCE: SE/SCE-Regulation	-	Art. 8 SE-Regulation/ Art. 7 SCE-Regulation

2. Cross-border mergers

2.1. Achievements of the CBMD

- harmonised legal framework provides legal security and reduces transaction costs
- increasing number of cross-border mergers

But: problems and difficulties remain

2. Cross-border mergers

2.2. Recommendations for a revision of the CBMD

- extension of the scope to all legal entities within the meaning of Art. 54 TFEU
- further harmonisation of the rules on creditor protection (*ex post* protection system)
- harmonisation of minority shareholder protection (exit right against adequate compensation and right to get additional compensation in case of an inadequate exchange ratio)
- certain exemptions from the requirement of a merger report

2. Cross-border mergers

2.2. Recommendations for a revision (continued)

- harmonisation of the rules on the accounting date and on valuation
- standard forms for the relevant documentation and communication and in particular also the pre-merger certificate;
in addition, possibly also a single language requirement
- due to the political sensitivity of the issue of employee protection, this area should be omitted from any short-term revision (and reserved for a general review of the employee protection regimes in the various EU legal acts).

3. Cross-border divisions

3.1. The need for an EU legal framework

- enable legal entities to effectively exercise their ‘freedom to divide’
- sound economic reasons: cross-border divisions are an attractive tool for cross-border reorganisations
- crucial advantage of divisions:
(partial) universal transfer of all assets and liabilities *uno acto*
- risks for stakeholders can be tackled by implementing an appropriate legal framework

3. Cross-border divisions

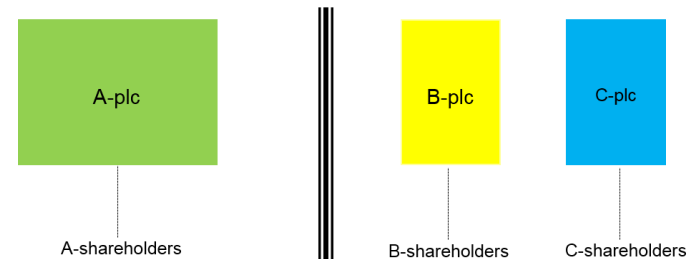
3.2. Key features of an EU directive on cross-border divisions

- general principle:
correspondence with rules on cross-border mergers
- scope: all legal entities within the meaning of Art. 54 TFEU

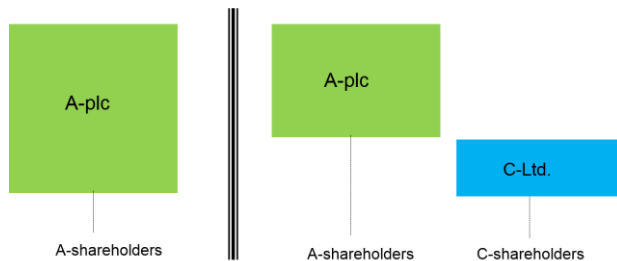
3. Cross-border divisions

types of divisions
covered

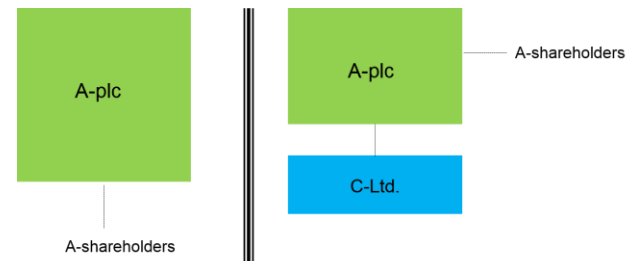
split-up



spin-off



hive-down



4. Cross-border transfers of seat (conversions)

4.1. The need for an EU legal framework

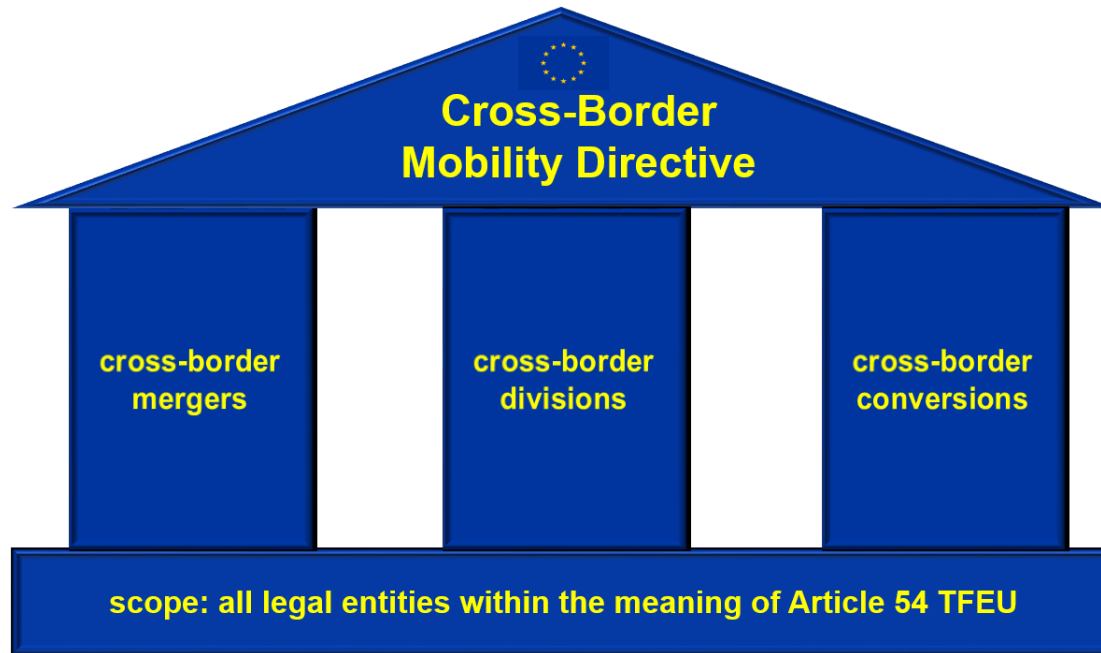
- enable legal entities to effectively exercise their ‘freedom to convert’
- economic argument: cross-border conversions are an attractive tool for cross-border reorganisations
- other options currently available to ‘move’ the registered office to another Member State (re-incorporation, CBMD, SE/SCE) are in fact not really equivalent alternatives
- EU legislative framework imperative to create a level playing field and to establish clear and harmonised standards with respect to the protection of minority shareholders, creditors and employees

4. Cross-border transfers of seat (conversions)

4.2. Key features of an EU directive on cross-border transfers of seat (conversions)

- identity-preserving conversion
- scope: all legal entities within the meaning of Art. 54 TFEU
- ‘transfer of seat’ = transfer of the registered office
- no requirement to transfer also the head office
- conversion procedure based on ‘European model for structural changes’ (like in the CBMD)
- protection rules of creditors, minority shareholders and employees
- tax neutrality

5. Legislative implementation

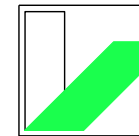


and: harmonisation of the rules on the law applicable to companies

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