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

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1. The *Status quo*

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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

**Cross-Border Mobility Directive**

- cross-border mergers
- cross-border divisions
- cross-border conversions

*scope: all legal entities within the meaning of Article 54 TFEU*

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