

Directive (EU) 2019/2121

on cross-border reorganizations

April 2023

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. A yellow chevron shape is positioned above the 'Y'.

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Introduction

Dear Reader,

On 27 November 2019, the European Parliament adopted Directive (EU) 2019/2121 amending Directive (EU) 2017/1132 with regard to cross-border conversions, mergers and divisions. The new regulation is intended to support the common market with regard to the global mobility of companies and to create a uniform legal framework within the European Union.

As certain procedures are already available to companies in some countries for cross-border business, the regulator intends to extend the options to the other countries in the European Union as well and take into account the main provisions regarding the freedom of establishment of businesses across the European Union (Court of Justice of the EU, judgment of 25 October 2017, C-106/16). In addition, the EU intends to put in place an adequate protection mechanism for shareholders, creditors and employees of companies involved in restructuring processes.

A deadline of 31 January 2023 was set for the implementation of the directive. At the time of writing, several countries have not yet implemented it. What's more, the directive offers the individual member states a wide range of options for transposing the addressed key issues into local law. It is therefore necessary to examine in detail how companies can use the newly introduced opportunities for cross-border business operations in practice.

To help you understand the implications of the Directive, the following pages will provide you with an overview of the cross-border solutions accepted by specific EU countries.

The document has been prepared based on the information we received from our local practices in Europe. If you have further questions, please contact me or one of my colleagues in the relevant countries. You will find the key contacts for each of these jurisdictions at the back of this publication.

With kind regards,



Magdalena Kasiarz

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Overview

This document provides a comparison between a number of EU jurisdictions in relation to the implementation of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 (the Directive). The Directive amends Directive (EU) 2017/1132 relating to cross-border conversions, mergers and divisions.

At this point, the directive has yet to be implemented in 16 of the 21 countries we surveyed. However, 10 countries (Austria, Czech Republic, Denmark, France, Italy, Latvia, Lithuania, Luxembourg, Netherlands and Poland) have already reviewed their

respective bills, so any responses affecting those jurisdictions will be treated as if the bills had already been passed and are in effect.

In six jurisdictions (Bulgaria, Croatia, Greece, Portugal, Romania and Slovakia), the draft laws transposing the Directive have not yet been published. Hence, we have not included these jurisdictions in the overview of country specifics.

This publication is not intended to be a source of comprehensive legal advice but is intended to encourage an in-depth study of the rules applicable to cross-border mergers, transformations and divisions of public companies in the relevant countries.

Surveyed countries



Austria



Bulgaria



Croatia



Czech Republic



Denmark



Estonia



Finland



France



Germany



Greece



Hungary



Italy



Latvia



Lithuania



Luxembourg



The Netherlands



Poland



Portugal



Romania



Slovakia



Sweden

Directive (EU) 2019/2121 – Implementation status as of April 2023











The implementation of the directive in the individual EU countries varies. Currently, most EU countries are preparing and adopting the relevant local laws. In this respect, the guideline (despite setting a deadline) is not yet present in all local legal systems.

2023






Implemented

	Hungary	Implemented and effective as of 1 September 2022 (partially effective as of 1 August 2022)
	Finland	Implemented on 29 December 2022 and effective as of 31 January 2023
	Germany	Implemented by two acts on 13 January 2023 and 28 February 2023 and effective as of 31 January 2023 and 1 March 2023 (respectively)
	Sweden	Implemented and effective as of 31 January 2023
	Estonia	Implemented and effective as of 1 February 2023

Draft law published

	Austria	In the process of consultation
	Czech Republic	In the process of consultation
	Denmark	In the process of adoption
	France	In the process of consultation before parliament
	Italy	In the process of adoption
	Latvia	In the process of adoption
	Lithuania	In the process of consultation
	Luxembourg	In the process of consultation
	Netherlands	In the process of consultation before parliament
	Poland	In the process of consultation

Draft law publication pending

	Bulgaria
	Croatia
	Greece
	Romania
	Slovakia

Key questions

	Did the demerger by separation exist in the national law prior to the implementation of the Directive 2019/2121?	Is the administrative or management body of each of the merging companies required to provide a declaration that accurately reflects its current financial status?	Is it provided that the company resulting from the cross-border merger or divided company may pay shares or other compensation instead of cash compensation?
Austria	✓	✗	✓
Bulgaria	✗	Not clear yet	Not clear yet
Croatia	✓	Not clear yet	Not clear yet
Czech Republic	✗	✓	✓
Denmark	✓	✗	✓
Estonia	✓	✓	✓
Finland	✓	✗	✗
France	✓	Not clear yet	Not clear yet
Germany	✓	✗	✓
Greece	✓	Not clear yet	Not clear yet
Hungary	✗	✗	✗
Italy	✗	Not clear yet	✗
Latvia	✓	✗	✗
Lithuania	✓	✗	✓
Luxembourg	✗	✗	✓
The Netherlands	✓	✗	✗
Poland	✗	✗	✓
Portugal	✗	Not clear yet	Not clear yet
Romania	✗	✗	✗
Slovakia	✗	Not clear yet	Not clear yet
Sweden	✗	✗	✓

Cross-border reorganization – country specifics

Jurisdictions: directive implemented	Are there any additional legal instruments included in the implementation of the Directive, not explicitly specified therein?	Are there any new types of companies or procedures with regard to the existing companies implemented?	If the examination of the report by an independent expert is required, does such a report have to be disclosed in the public register?	Do only shareholders who voted against the approval of the draft terms of the cross-merger (or demerger) have the right to dispose their shares?	What entity is designated as the competent authority to scrutinize the legality of cross-border operations?
 Austria	No	No	Yes, the report has to be registered with the competent court	No, in the case of a non-proportional demerger, also each shareholder who did not consent to the non-proportional demerger has the right to dispose the shares	The Commercial Court of first instance
 Czech Republic	Yes, mainly regulations aimed at facilitating and digitalizing the process	No	No, the company may disclose the report on its website	Yes	The notary public
 Denmark	Yes, removal of current requirement for interim balance sheets in cross-border operations	No	Yes, the report must be uploaded to the Danish Business Authority	Yes	The Danish Business Authority
 Estonia	Yes, relating to employees' rights and exclusion of certain information from independent expert's report	No	No, the company may disclose the documents on its website in a format that can be reproduced in writing	No, in general all shareholders may freely transfer their shares to other shareholders	The Registration Department of the Tartu County Court (the Registrar)
 Finland	No	No	Yes, the report is published through registration at the Finnish Patent and Registration Office	Yes	The Finnish Patent and Registration Office

Cross-border reorganization – country specifics (contd.)

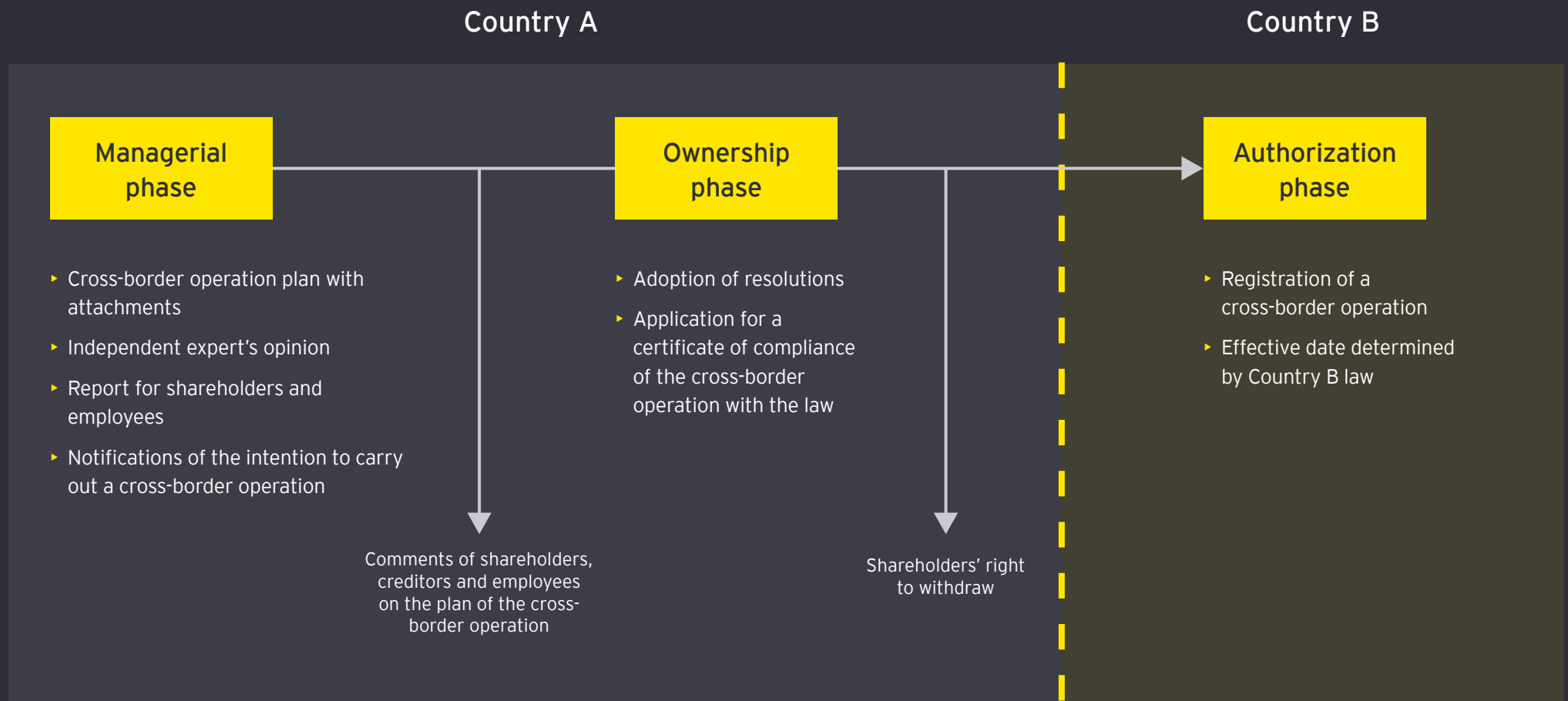
Jurisdictions: directive implemented	Are there any additional legal instruments included in the implementation of the Directive, not explicitly specified therein?	Are there any new types of companies or procedures with regard to the existing companies implemented?	If the examination of the report by an independent expert is required, does such a report have to be disclosed in the public register?	Do only shareholders who voted against the approval of the draft terms of the cross-merger (or demerger) have the right to dispose their shares?	What entity is designated as the competent authority to scrutinize the legality of cross-border operations?
 France	Yes, in relation to partial demerger	Yes, new procedure of partial demerger	Not decided yet	Not decided yet	Most probably the clerks of the French Commercial Courts (not decided yet)
 Germany	Yes, in certain cases cross-border demerger is also possible with already existing legal entities	No	No, such a requirement has not been included	Yes	The registry courts
 Hungary	No	No	No, such a requirement has not been included	Yes	The Court of Registration
 Italy	Yes, regarding the introduction of new types of divisions and simplified cross-border procedures as well as the transfer of office abroad	Yes, new simplified procedure for cross-border transactions implemented by non-incorporation companies	Yes, the report has to be published in the relevant register	Yes, only shareholders who voted against the approval of the draft have the right to exit (dispose) their shares	The notary public
 Latvia	Yes, mainly regulations aimed at facilitating and simplifying the reorganization procedures	No	No, the company may disclose the report in accordance with general rules of the Commercial Law	Yes	The Enterprises Register of the Republic of Latvia
 Lithuania	Yes, in relation to the liability of independent experts to shareholders and the introduction of a new type of simplified merger	No	Yes, the report has to be published in the relevant register	No, all shareholders have the right to dispose their shares	The Register of Legal Entities

Cross-border reorganization – country specifics (contd.)

Jurisdictions: directive implemented	Are there any additional legal instruments included in the implementation of the Directive, not explicitly specified therein?	Are there any new types of companies or procedures with regard to the existing companies implemented?	If the examination of the report by an independent expert is required, does such a report have to be disclosed in the public register?	Do only shareholders who voted against the approval of the draft terms of the cross-merger (or demerger) have the right to dispose their shares?	What entity is designated as the competent authority to scrutinize the legality of cross-border operations?
 Luxembourg	Yes, in relation to demerger of mergers and demergers into two separate regimes and simplified merger procedure	Yes, Luxembourg special limited partnerships (société en commandite spéciale) can take part in reorganization proceedings as acquiring or divided entity	Yes, the report has to be published in the relevant register	Yes	The notary public
 The Netherlands	Yes, in relation to cross-border conversions, demergers by separation and amendments to the pre-existing arrangements	No	Yes, the report has to be published in the relevant register	No, also the holders of non-voting shares have the right to exit (dispose) their shares	The Dutch notary
 Poland	Yes, in relation to the introduction of demerger by separation, a new type of simplified merger and the exclusion of information from an independent expert's report	Yes, limited joint-stock partnerships can take part in reorganization proceedings as acquiring or divided entity	Yes, the report has to be published in the relevant register	No, the right extends to shareholders deemed to be unreasonably denied the opportunity to participate in the general meeting regarding the adoption of the resolutions	The registry court
 Sweden	No	No	Yes, the report has to be made public by the Swedish Companies Registration Office (SCRO)	Yes	The SCRO

Cross-border reorganization – phases

The following cross-border processes (merger, demerger and conversion) as well as a comprehensive step-by-step plan (divided into phases) are necessary in order to fully implement the respective process and use it in practice.



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