Directive (EU) 2019/2121
on cross-border reorganizations
April 2023
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
Partner, Ernst & Young Law Tałasiewicz, Zakrzewska i Wspólnicy sp.k.

April 2023
Overview


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
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.

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

<table>
<thead>
<tr>
<th>Implemented</th>
<th>Draft law published</th>
<th>Draft law publication pending</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hungary</strong></td>
<td>Implemented and effective as of 1 September 2022 (partially effective as of 1 August 2022)</td>
<td></td>
</tr>
<tr>
<td><strong>Finland</strong></td>
<td>Implemented on 29 December 2022 and effective as of 31 January 2023</td>
<td></td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td>Implemented by two acts on 13 January 2023 and 28 February 2023 and effective as of 31 January 2023 and 1 March 2023 (respectively)</td>
<td></td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>Implemented and effective as of 31 January 2023</td>
<td></td>
</tr>
<tr>
<td><strong>Estonia</strong></td>
<td>Implemented and effective as of 1 February 2023</td>
<td></td>
</tr>
<tr>
<td><strong>Austria</strong></td>
<td>In the process of consultation</td>
<td><strong>Bulgaria</strong></td>
</tr>
<tr>
<td><strong>Czech Republic</strong></td>
<td>In the process of consultation</td>
<td><strong>Croatia</strong></td>
</tr>
<tr>
<td><strong>Denmark</strong></td>
<td>In the process of adoption</td>
<td><strong>Greece</strong></td>
</tr>
<tr>
<td><strong>France</strong></td>
<td>In the process of consultation before parliament</td>
<td><strong>Romania</strong></td>
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<tr>
<td><strong>Italy</strong></td>
<td>In the process of adoption</td>
<td><strong>Slovakia</strong></td>
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<tr>
<td><strong>Latvia</strong></td>
<td>In the process of adoption</td>
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</tr>
<tr>
<td><strong>Lithuania</strong></td>
<td>In the process of consultation</td>
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<tr>
<td><strong>Luxembourg</strong></td>
<td>In the process of consultation</td>
<td></td>
</tr>
<tr>
<td><strong>Netherlands</strong></td>
<td>In the process of consultation before parliament</td>
<td></td>
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<tr>
<td><strong>Poland</strong></td>
<td>In the process of consultation</td>
<td></td>
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</tbody>
</table>
## Key questions

<table>
<thead>
<tr>
<th>Country</th>
<th>Did the demerger by separation exist in the national law prior to the implementation of the Directive 2019/2121?</th>
<th>Is the administrative or management body of each of the merging companies required to provide a declaration that accurately reflects its current financial status?</th>
<th>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?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>✔</td>
<td>✗</td>
<td>✔</td>
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<tr>
<td>Bulgaria</td>
<td>✗</td>
<td>✗</td>
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<td>Croatia</td>
<td>✔</td>
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<td>✗</td>
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<td>✗</td>
</tr>
<tr>
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<td>✗</td>
</tr>
<tr>
<td>Poland</td>
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<td>✗</td>
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<tr>
<td>Portugal</td>
<td>✗</td>
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<td>✗</td>
<td>✗</td>
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<tr>
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<td>✗</td>
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</tbody>
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Directive (EU) 2019/2121 on cross-border reorganizations | 5
## Cross-border reorganization – country specifics

<table>
<thead>
<tr>
<th>Jurisdictions: directive implemented</th>
<th>Are there any additional legal instruments included in the implementation of the Directive, not explicitly specified therein?</th>
<th>Are there any new types of companies or procedures with regard to the existing companies implemented?</th>
<th>If the examination of the report by an independent expert is required, does such a report have to be disclosed in the public register?</th>
<th>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?</th>
<th>What entity is designated as the competent authority to scrutinize the legality of cross-border operations?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>No</td>
<td>No</td>
<td>Yes, the report has to be registered with the competent court</td>
<td>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</td>
<td>The Commercial Court of first instance</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Yes, mainly regulations aimed at facilitating and digitalizing the process</td>
<td>No</td>
<td>Yes, the report must be uploaded to the Danish Business Authority</td>
<td>Yes</td>
<td>The notary public</td>
</tr>
<tr>
<td>Denmark</td>
<td>Yes, removal of current requirement for interim balance sheets in cross-border operations</td>
<td>No</td>
<td>No, the company may disclose the report on its website</td>
<td>Yes</td>
<td>The Danish Business Authority</td>
</tr>
<tr>
<td>Estonia</td>
<td>Yes, relating to employees’ rights and exclusion of certain information from independent expert’s report</td>
<td>No</td>
<td>No, the company may disclose the documents on its website in a format that can be reproduced in writing</td>
<td>No, in general all shareholders may freely transfer their shares to other shareholders</td>
<td>The Registration Department of the Tartu County Court (the Registrar)</td>
</tr>
<tr>
<td>Finland</td>
<td>No</td>
<td>No</td>
<td>Yes, the report is published through registration at the Finnish Patent and Registration Office</td>
<td>Yes</td>
<td>The Finnish Patent and Registration Office</td>
</tr>
</tbody>
</table>
## Cross-border reorganization – country specifics (contd.)

<table>
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<tr>
<th>Jurisdictions: directive implemented</th>
<th>Are there any additional legal instruments included in the implementation of the Directive, not explicitly specified therein?</th>
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</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Yes, in relation to partial demerger</td>
<td>Yes, new procedure of partial demerger</td>
<td>Not decided yet</td>
<td>Not decided yet</td>
<td>Most probably the clerks of the French Commercial Courts (not decided yet)</td>
</tr>
<tr>
<td>Germany</td>
<td>Yes, in certain cases cross-border demerger is also possible with already existing legal entities</td>
<td>No</td>
<td>No, such a requirement has not been included</td>
<td>Yes</td>
<td>The registry courts</td>
</tr>
<tr>
<td>Hungary</td>
<td>No</td>
<td>No</td>
<td>No, such a requirement has not been included</td>
<td>Yes</td>
<td>The Court of Registration</td>
</tr>
<tr>
<td>Italy</td>
<td>Yes, regarding the introduction of new types of divisions and simplified cross-border procedures as well as the transfer of office abroad</td>
<td>Yes, new simplified procedure for cross-border transactions implemented by non-corporation companies</td>
<td>Yes, the report has to be published in the relevant register</td>
<td>Yes, only shareholders who voted against the approval of the draft have the right to exit (dispose) their shares</td>
<td>The notary public</td>
</tr>
<tr>
<td>Latvia</td>
<td>Yes, mainly regulations aimed at facilitating and simplifying the reorganization procedures</td>
<td>No</td>
<td>No, the company may disclose the report in accordance with general rules of the Commercial Law</td>
<td>Yes</td>
<td>The Enterprises Register of the Republic of Latvia</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Yes, in relation to the liability of independent experts to shareholders and the introduction of a new type of simplified merger</td>
<td>No</td>
<td>Yes, the report has to be published in the relevant register</td>
<td>No, all shareholders have the right to dispose their shares</td>
<td>The Register of Legal Entities</td>
</tr>
</tbody>
</table>
### Cross-border reorganization – country specifics (contd.)

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</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td>Yes, in relation to demerger of mergers and demergers into two separate regimes and simplified merger procedure</td>
<td>Yes, Luxembourg special limited partnerships (société en commandite spéciale) can take part in reorganization proceedings as acquiring or divided entity</td>
<td>Yes, the report has to be published in the relevant register</td>
<td>Yes</td>
<td>The notary public</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Yes, in relation to cross-border conversions, demergers by separation and amendments to the pre-existing arrangements</td>
<td>No</td>
<td>Yes, the report has to be published in the relevant register</td>
<td>No, also the holders of non-voting shares have the right to exit (dispose) their shares</td>
<td>The Dutch notary</td>
</tr>
<tr>
<td>Poland</td>
<td>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</td>
<td>Yes, limited joint-stock partnerships can take part in reorganization proceedings as acquiring or divided entity</td>
<td>Yes, the report has to be published in the relevant register</td>
<td>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</td>
<td>The registry court</td>
</tr>
<tr>
<td>Sweden</td>
<td>No</td>
<td>No</td>
<td>Yes, the report has to be made public by the Swedish Companies Registration Office (SCRO)</td>
<td>Yes</td>
<td>The SCRO</td>
</tr>
</tbody>
</table>
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.
Country contacts

Austria
Isabella Ladstätter
isabella.ladstaetter@eylaw.at
+43 1 26095 2112

Bulgaria
Svetlin Adrianov
svetlin.adrianov@bg.ey.com
+35928177141

Croatia
Ana-Marija Čičak
ana-marija.cicak@hr.ey.com
+38 513 015 331

Czech Republic
Dalibor Simecek
dalibor.simecek@cz.eylaw.com
+420 704 865 101

Denmark
Tina Aae Jeppesen
tina.a.jeppesen@dk.ey.com
+45 25 29 33 97

Estonia
Maris Merilo
maris.merilo@ee.ey.com
+372 51 88 164

Finland
Tommy Holmström
tommy.holmstrom@fi.ey.com
+358 40 521 6095

France
Alexandra Arnauld
alexandra.arnould@ey-avocats.com
+33 6 82 08 61 31

Germany
Sarah Evans
sarah.evans@de.ey.com
+49 30 25471 21386

Greece
Lia Vitzilaiou
lia.vitzilaiou@gr.ey.com
+30 6940 434492

Hungary
Fruzsina Dora Hubay
fruzsina.dora.hubay@hu.ey.com
+36 70 642 3334

Italy
Marta Soler
marta.soler@lt.ey.com
+39 3332680515

Latvia
Liene Cakare
liene.cakare@lv.ey.com
+371 2 9152592

Lithuania
Ovidijus Girdauskas
ovidijus.girdauskas@lt.ey.com
+37 065 011 199

Luxembourg
Stephen d’Errico
stephen.derrico@lu.eylaw.com
+352 621 838 188

The Netherlands
Arnout Rodewijk
arnout.rodewijk@hvglaw.nl
+31 0 6 2125 2575

Poland
Magdalena Kasiarz
magdalena.kasiarz@pl.ey.com
+48 519 404 979

                  Andrzej Laprus
                  andrzej.laprus@pl.ey.com
                  +48 797 974 236

Portugal
Sofia Calado Ferreira
sofia.calado.ferreira@rrp.pt
+351 217 653 860

Romania
Georgiana Nichita
georgiana.nichita@ey.com
+40 726 748 729

Slovakia
Stefan Basista
stefan.basista@sk.ey.com
+421 910 820 389

Sweden
Eric Kollberg
eric.kollberg@law.se.ey.com
+46 72 963 21 03

Directive (EU) 2019/2121 on cross-border reorganizations | 11
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