



Transposition of the EU mobility directive into Luxembourg law

On 26 February 2025, the Luxembourg law of 17 February 2025, modernizing the law of August 10, 1915, on Luxembourg companies, as amended (the “1915 Law”) was published (the “New Law”). The New Law entered into force on 2 March 2025 and transposes Directive (EU) 2019/2121 of November 27, 2019, on cross-border conversions, mergers, and divisions (“the Mobility Directive”) into Luxembourg national law. It will be applicable to all European cross-border operations which will have their draft terms published on or after 1 April 2025.

1. INTRODUCTION

The aim of the Mobility Directive is to harmonize procedures for EU cross-border mergers, divisions, and conversions.

It should especially be noted that the New Law introduces the so-called EU cross-border conversions, whereby a company, without being dissolved, converts the legal form under which it is registered in a departure EU Member State into a legal form of the EU destination Member State, and transfers at least its registered office to the EU member destination State.

For Luxembourg, especially the process for these cross-border conversions (formerly cross-border transfer of registered office) within the EU will significantly change.

The New Law will reorganize “Title 10: Restructuring” of the 1915 Law as follows:

- ▶ The chapters on mergers (Chapter 2) and divisions (Chapter 3) have been reorganized to introduce two distinct regimes, a **general** and a **specific** regime;
- ▶ Introduction of a new chapter VI applicable to cross border conversions, with a **general** and a **specific** regime;
- ▶ Other small amendments to the existing rules.

1.1 The general regime

The general regime for mergers and divisions comprises the existing rules of the 1915 Law together with a few amendments to these rules introduced by the New Law. This regime applies to all national and cross-border mergers and divisions except those covered by the specific regime.

With respect to mergers, we would like to highlight that the following operation is recognized as simplified merger with reduced formalities:

- ▶ One or more companies, upon dissolution without liquidation, transfer all their assets and liabilities to an existing company without issuing new shares, provided that:
 - One person holds directly or indirectly all securities/shares of the merging companies; or
 - Members/shareholders of the merging companies hold securities/shares in the same proportion in all merging entities.

The general regime for conversions only covers **non-EU** cross-border conversions, allowing a Luxembourg entity to convert into a foreign legal form without losing its legal personality, provided the foreign jurisdiction permits such a transaction.

National conversions remain governed by the existing rules of the 1915 Law.



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1.2 The specific regime

The specific regime exclusively covers EU cross-border transactions (i.e. mergers, divisions and conversions as described in the New Law) involving:

- ▶ Société anonyme (SA), société à responsabilité limitée (SARL) or société en commandite par actions (SCA); and
- ▶ A public or private limited liability company from another EU Member State, as defined in Article 119, §1 of Directive (EU) 2017/1132.

Specificities to note for divisions:

- ▶ Unlike the general rules, the specific regime for EU cross-border divisions prohibits existing companies from being recipients.
- ▶ Limited to one company being divided.
- ▶ Includes divisions by separation, where a company transfers part of its assets and liabilities to one or more new companies in exchange for new shares.

2. PROCEDURE TO FOLLOW FOR EU CROSS-BORDER TRANSACTIONS

2.1 Common Draft Terms (CDT)

- ▶ Drafted jointly by the management boards of all companies involved.
Must outline the transaction's legal framework and provide information which is relevant for the shareholders, the management board, the employees and the creditors of the companies involved.
- ▶ Published at the RCS at least one month before the general shareholders' meeting together with a notice to the shareholders/representatives of employees and creditors inviting them to submit to the company - at least 5 working days before the date of the general meeting their comments concerning the CDT

Creditors dissatisfied with safeguards may apply, within 3 months of the publication of the CDT to the judge presiding the chamber of the Tribunal d'Arrondissement dealing with commercial matters to obtain adequate safeguards.

2.2 Report to Shareholders and Employees

It is prepared by the management body of the Luxembourg company and explains and justifies the legal and economic aspects of the transaction.

The report may consist of two separate reports (one for shareholders, one for employees) or one combined report with distinct sections.

The exemptions apply if all shareholders waive the report and if the company and its subsidiaries have no employees.



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2.3 Independent Expert Report

This report is prepared by a Luxembourg réviseur d'entreprises and evaluates cash compensation adequacy and valuation methods.

It is not required if all shareholders agree to waive it.

2.4 Disclosure of Documents

The following documents must be available at the registered office at least one month before the general meeting.

- CDT.
 - Annual accounts and management reports (if applicable).
 - Interim financial statements (if last accounts are older than six months).
 - Reports to shareholders and employees.
 - Independent expert reports.
- Exemption applies if documents are published online and shareholders may require to receive a copy of the documents.

2.5 Shareholders' Approval before notary with possibility of minority shareholders to exit the Company or to challenge the exchange ratio used

- Shareholders decide to approve, modify, or reject the transaction.
- Dissenting shareholders must declare opposition during the meeting and notify the notary of their intent to dispose of shares for cash compensation.
- The disposal of shares involves the transfer of all voting shares held by the dissenting shareholder at the time of the CDT's publication in the Trade and Companies Register (RCS).
 - Compensation paid within two months of transaction's legal effect, contingent on successful completion.
 - In case of non-agreement on the amount of the compensation, possibility for the dissenting shareholder to file a claim within one calendar month from the date of the general shareholders' meeting approving the transaction before the judge presiding over the chamber of the Tribunal d'Arrondissement that handles commercial matters.
- Shareholders who either did not exercise or do not possess the right to dispose of their shares, and subsequently receive shares in the new company as part of the EU cross-border transaction, retain the option to challenge the exchange ratio. These shareholders may request a reassessment of the exchange ratio to ensure that it reflects fair value.
- Shareholders may file an appeal within one calendar month from the date of the general shareholders' meeting approving the transaction before the judge presiding over the chamber of the Tribunal d'Arrondissement that handles commercial matters. This appeal is limited to obtaining additional cash compensation. New shares will not be issued as part of the outcome.



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2.6 Pre-Transaction Certificate (PTC)

The PTC is issued by a notary in the departure country, confirming legal and procedural compliance. This step ensures the legality and procedural completion of the transaction before its implementation.

The company initiating the transaction must submit an application to the notary, which may be done fully online.

The application must include all necessary documents and information, such as:

- ▶ The Common Draft Terms (CDT)
- ▶ Reports to shareholders and employees (if applicable)
- ▶ Independent expert reports (if applicable)
- ▶ Financial statements and other relevant documents as required by law.

The notary must conduct a comprehensive review of the submitted documents and information within three months from the date of receipt. His review focuses on ensuring:

- ▶ Compliance with all procedural and substantive requirements of the law.
- ▶ Proper completion of all formalities required for the EU cross-border transaction.

The notary can refuse to issue the PTC if the transaction does not comply with the law or required formalities are incomplete.

In such cases, the notary may allow the company to rectify missing documents or procedures within a maximum period of three months.

If the notary has serious concerns that the transaction is structured for abusive or fraudulent purposes, such as evading or circumventing EU or national law, or for criminal objectives, the notary may:

- ▶ Refuse to issue the Certificate
- ▶ Request additional documents or information.
- ▶ Conduct further investigations into the transaction.

If additional investigation is required, the initial three-month period may be extended by an additional three months.

Once issued, the Certificate is filed with the Luxembourg Trade and Companies Register (RCS) by the notary and transmitted to the competent authority in the destination EU country via the system of interconnection of registers.

2.7 Notarial Deed in Luxembourg

When Luxembourg is the destination country, a second legality check is performed, which is formalized through a notarial deed if all requirements are met.



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2.8 Effective Date

The effective date of the EU cross-border transaction is determined by the law of the EU country where the acquiring, divided, or destination company is established.

When the acquiring, divided, or destination company is established in Luxembourg, the transaction becomes effective vis-à-vis third parties on the date the notarial deed approving the transaction is published in the Luxembourg official gazette.

3. APPLICATION OF THE NEW LAW

The New Law applies to all EU cross-border transactions where the Common Draft Terms (CDT) are published on or after 1 April 2025.

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INTERESTED?

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