Better late than never:

Luxembourg transposes the EU Mobility Directive

For a country that prides itself on being a business-friendly jurisdiction, Luxembourg took its sweet time transposing the EU Mobility Directive (Directive (EU) 2019/2121) and is the last country within the EU to do so. But, as of 17 February 2025, the Grand Duchy has finally caught up, aligning its legal framework with the rest of the EU.

What is it about?

The new law, which came into force on 2 March 2025, modernizes the rules governing cross-border mergers, divisions, and conversions. The goal: Greater legal certainty, enhanced corporate mobility - and, of course, more paperwork. Because an EU directive without a hefty dose of bureaucratic complexity is like the Yeti – often imagined, but not really observed in real life.

What's new?

The transposition of the Mobility Directive introduces a structured legal process, aligning Luxembourg's corporate mobility rules with EU standards. The reform removes legal uncertainties around cross-border restructurings, particularly where national rules lacked harmonization. Companies undertaking mergers, divisions, or conversions now have clearer procedural requirements, ensuring greater transparency and legal predictability. The directive also reinforces protections for minority shareholders, employees, and creditors.

Luxembourg's transposition introduces a distinction between two legal regimes: a General Regime (for domestic and non-EU/EEA cross-border operations) and a Special Regime (for EU/EEA cross-border operations). The latter comes with a fresh set of compliance obligations that will make corporate restructurings even more exciting for lawyers, notaries, and accountants alike.

The new rules apply to all operations whose common draft terms are published on or after 1 April 2025 - and yes, despite the April Fools' timing, this one is no joke.

Cross-border conversions: no longer an illegal alien

Historically, Luxembourg law lacked a dedicated legal framework for cross-border conversions (this now being the technical term used by the directive instead of "migration") of companies that keep their legal personality, even though such operations were acknowledged in practice. Under the new rules, Luxembourg companies now benefit from a structured and legally recognized process for cross-border conversions. But before popping the champagne, note that the process is now more regulated than ever, particularly for EU/EEA cross-border conversions. Such operations are indeed now subject *mutatis mutandis* to the same formalities as those set out for EU cross-border mergers and divisions. This includes the preparation and publication of draft terms, a management report, a report from an independent expert, and legality controls.

Cross-border conversions with non-EU/EEA countries, while now explicitly recognized, remain less regulated and will continue to be governed primarily by Luxembourg's well-established legal and notarial practice.

Mergers & divisions: the art of complicated breakups

Cross-border mergers and divisions have long been a reality in Luxembourg, but the new law introduces a clearer and more structured legal framework.

For non-EU/EEA operations, the framework remains largely unchanged but introduces refinements for procedural efficiency, greater transparency, and stakeholder protections. Key changes include enhanced rights for shareholder decision-making and the extension of simplified procedures for sidestream mergers, making the process more adaptable while maintaining legal certainty.

For EU/EEA operations, the changes are more extensive, as these operations are now subject to stricter formalities aimed at protecting stakeholders and ensuring legal certainty. This reform has particularly notable consequences for cross-border divisions, as divisions of private limited liability companies were previously not harmonized within the EU/EEA. The new law introduces several key safeguards:
- **Shareholders**: Minority shareholders now benefit from a right to challenge share exchange ratios if they consider them unfair and, in some cases, may even opt for a right of cash-out.
- **Creditors**: Stronger creditor protections include a three-month period to seek appropriate safeguards if they believe their interests are at risk.
- **Employees**: The law enhances employee information and consultation rights, ensuring that they are properly informed and given an opportunity to provide feedback on the proposed transaction.
- **Regulatory Scrutiny**: Competent authorities now play a greater role in overseeing transactions, verifying compliance, and preventing abusive restructurings (see below). The scrutiny process implemented can take up to six months in total, significantly prolonging timelines and adding yet another layer of regulatory complexity to cross-border operations.

While these changes increase transparency and protect stakeholders, these also mean that companies will have to jump through more hoops before completing their operations.

The double-legality check: the anti-abuse edition

Companies engaging in EU/EEA cross-border operations must undergo two legality reviews, with a heightened focus on preventing abuse.

The first check takes place at home, where authorities (in Luxembourg: the notary) assess compliance with national legal requirements and ensure the operation is not abusive or fraudulent. In Luxembourg, to pass this stage, companies must submit a comprehensive file that typically includes a management representation letter certifying and justifying compliance with legal obligations, certificates from relevant authorities proving tax and corporate compliance, and detailed supporting documentation. If anything appears questionable, the notary can request further clarifications, additional supporting documents, or, in some cases, an independent expert's assessment. This process can take time, and companies should prepare for the possibility of follow-up inquiries before receiving the green light to proceed to the next stage.

Once the home country gives the green light, the company is not in the clear just yet. It must then undergo a second scrutiny round in the destination country, where local authorities (in Luxembourg: the notary) conduct their own review to ensure compliance with national legal requirements. For that purpose, the authorities can rely on the pre-merger certificate(s) issued by competent authorities in the home country as conclusive evidence that all pre-operation procedures and formalities required under the law of the originating home country have been properly completed.

With this double-layered review, speed is definitely not the priority (or at least, that's the theory). While the law allows for a scrutiny period of up to six months, the actual timeframe will largely depend on the quality and completeness of the documentation submitted to the competent authorities. In Luxembourg, the Chamber of Notaries has issued an assurance that where a clear, detailed, and well-supported representation letter is provided along with all necessary documents demonstrating compliance with legal requirements, the legality control should not require an extended timeframe. A well-prepared and complete file should therefore result in a review completed within days or, at most, a few weeks.

Conversely, incomplete submissions may lead to further verifications, additional information requests, or, in rare cases, consultations with independent experts, all of which can extend the process. Companies may therefore not need to pack a six-month supply of patience just yet. A well-organized file and proactive preparation should keep the process moving along efficiently.

Missed opportunities and unanswered questions

Despite the positive aspects of the new rules, several uncertainties remain. The treatment of cross-border dissolutions without liquidation (*Transmission Universelle de Patrimoine ou Dissolution-confusion – TUP*) under Article 1865 bis of the Luxembourg Civil Code is still unclear, raising questions about whether additional regulatory burdens will apply. Similarly, the absence of specific provisions on triangular mergers is a missed opportunity. Besides, the lack of clarity regarding publication requirements for certain documents means companies may be left waiting for guidance - most likely from the Luxembourg Business Registers (LBR), which will ultimately need to clarify how these obligations should be implemented in practice. And then there's the EU Business Registers Interconnection System (BRIS), a platform that promises seamless communication between European registers but has in the past delivered efficiency levels comparable to that of a carrier pigeon.

While the transposition of the Mobility Directive brings progress, businesses should be prepared for lingering uncertainties and the potential need for further regulatory clarifications. Until then, a mix of patience and a well-thought-out legal strategy appears to be the best way forward.

Conclusion: a step forward— with a few extra hoops

The new law undoubtedly modernizes Luxembourg's approach to cross-border restructurings, introducing legal certainty and enhanced stakeholder protections. Companies now have a clearer framework to follow, reducing the risk of legal disputes and inconsistencies in the implementation of restructuring operations. By aligning Luxembourg's rules with EU standards, the law strengthens the country's position as a key jurisdiction for international business operations. However, the added regulatory scrutiny and procedural requirements may result in longer transaction timelines and increased compliance costs. Businesses must adapt to these new obligations, ensuring that their cross-border operations align with the stricter documentation, disclosure, and oversight mechanisms. Looking ahead, further refinements to address unresolved questions and ensure smoother implementation will be crucial to maximizing the effectiveness of this reform.

In short, corporate mobility in Luxembourg has gained a stronger legal foundation and new safeguards, alongside more administrative hurdles. But on the bright side, at least we finally got there. Eventually.

For a more detailed breakdown of the new requirements and practical guidance for implementation, check out our website www.vdblaw.com

Jérémy DA SILVA REIS
Senior Associate, Corporate / M&A
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