Luxembourg's implementation of the EU Mobility Directive now becomes reality – Practical guidance for cross-border transactions from April 1, 2025

Luxembourg has now completed the transposition of the Mobility Directive (Directive (EU) 2019/2121) amending Directive (EU) 2017/1132 to harmonize rules regarding cross-border conversions, mergers, and divisions within the EU (the "**Mobility Directive**").

Luxembourg transposition was achieved by the adoption of the Luxembourg law dated 17 February 2025[1] (the "**New Law**") which was published in the Luxembourg Official Journal on 27 February 2025 and entered into force on 2 March 2025. This long-awaited legislation brings Luxembourg in line with EU standards, modernizing its corporate framework while reinforcing its reputation as a hub for cross-border corporate activities. The new rules aim to enhance legal certainty and facilitate the mobility of companies across the European Union.

This article provides practical guidance on the key changes introduced by the New Law, assessing its impact on corporate restructuring processes, procedural requirements, and compliance considerations for businesses engaging in cross-border operations. Beyond highlighting the opportunities created by this reform, it also addresses the challenges and missed opportunities that arise from its implementation, offering a critical perspective on its effectiveness in enhancing corporate mobility.

[1] *Loi du 17 février 2025 modifiant :*
1° la loi modifiée du 10 août 1915 concernant les sociétés commerciales ;
2° la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises,
aux fins de transposition de la directive (UE) 2019/2121 du Parlement européen et du Conseil du 27 novembre 2019 modifiant la directive (UE) 2017/1132 en ce qui concerne les transformations, fusions et scissions transfrontalières.

SCOPE OF APPLICATION

The New Law applies to corporate restructuring operations involving companies established in Luxembourg and other EU Member States, as well as EEA countries, provided that the Mobility Directive is incorporated into the EEA Agreement. The new framework introduces two distinct legal regimes under the Law of 10 August 1915 on Commercial Companies, as amended (the "**Companies Law**" or "**CL**"), namely a general/common regime ("**General Regime**") and a special regime (the "**Special Regime**"), to regulate each of the conversions, mergers and divisions operations (the "**Operations**").

<table>
<tr><th colspan="5">Mergers</th></tr>
<tr><td></td><td colspan="2">General Regime</td><td colspan="2">Special Regime</td></tr>
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▪ public limited liability company (société anonyme - SA)
▪ private limited liability company (société à responsabilité limitée - SARL)
▪ partnership limited by shares (société en commandite par actions - SCA)
Exceptions:
▪ UCITS
▪ company being in liquidation and having begun to distribute assets to its members
▪ company being subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU or Title V of Regulation 2021/23/EU
▪ company being subject to crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU or in point (48) of Article 2 of Regulation 2021/23/EU</td></tr>
<tr><td>EU/EEA</td><td>EU/EEA limited liability company (as referred to in Annex II to Directive (EU) 2017/1132)</td></tr>
<tr><td rowspan="4">Ratione Materiae</td><td>Merger by absorption</td><td colspan="3">Absorption of one or more companies by an existing company (domestic or non-EU/EEA: art. 1020-3 CL – EU/EEA: art. 1025-1(2)1° CL) - One or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the absorbing company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares.</td></tr>
<tr><td>Merger by formation of a new company</td><td colspan="3">Creation of a new company into which two or more companies are merged (domestic or non-EU/EEA: art. 1020-4 CL – EU/EEA: art. 1025-1(2)4° CL) - Two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares.</td></tr>
<tr><td>Upstream simplified merger</td><td colspan="3">Absorption by a company of its wholly-owned subsidiary (domestic or non-EU/EEA: art. 1020-5 1° CL – EU/EEA: art. 1025-1(2)2° CL) - A company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital.</td></tr>
<tr><td>Sidestream simplified merger</td><td colspan="3">Absorption by a company of its sister company (domestic or non-EU/EEA: art. 1020-5 2° CL – EU/EEA: art. 1025-1(2)3° CL) - One or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the absorbing company, without the issue of any new shares by the absorbing company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies.</td></tr>
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[2] See footnote 2.

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<tr><th colspan="5">Divisions</th></tr>
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<tr><td>EU/EEA</td><td>EU/EEA limited liability company (as referred to in Annex II to Directive (EU) 2017/1132)</td></tr>
<tr><td rowspan="3">Ratione Materiae[4]</td><td>Division by absorption (art. 1030-3 (1) CL)</td><td>Operation whereby a company, either (a) after being wound up without going into liquidation (full division) or (b) without being wound up (partial division), transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.</td><td>Full division (art. 1034-1(2)1° CL)</td><td>a company being divided, on being dissolved without going into liquidation, transfers <u>all</u> its assets and liabilities to two or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares.</td></tr>
<tr><td>Division by formation of a new company (art. 1030-4 (1) CL)</td><td>Operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.</td><td>Partial division (art. 1034-1(2)2° CL)</td><td>a company being divided transfers <u>part</u> of its assets and liabilities to one or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares.</td></tr>
<tr><td>Simplified division (art. 1031-19 CL)</td><td>Division by absorption or by formation of a new company whereby the recipient companies hold all the securities or shares representing the capital of the divided company.</td><td>Division by separation (art. 1034-1(2)3° CL)</td><td>a company being divided transfers <u>part</u> of its assets and liabilities to one or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies.</td></tr>
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[3] See footnote 2.

[4] The scope of the Special Regime does not include divisions where the recipient company is an already existing company as opposed to the General Regime.

<table>
<tr><th colspan="4">Conversions</th></tr>
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<tr><td>Ratione Loci</td><td>Applicable to domestic conversions in Luxembourg and cross-border conversions outside the EU/EEA.</td><td colspan="2">Covers conversions where the Luxembourg company is converted into a company of an EU Member State or an EEA country (if the Mobility Directive is incorporated into the EEA Agreement).</td></tr>
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<tr><td rowspan="2">Ratione Materiae</td><td>Domestic conversions (art. 1010-1 to 1010-12 CL) - Change of Luxembourg company forms referred to in art. 100-13 CL.
<u>Exceptions</u>:
- conversion of a société européenne (SE) into a société anonyme (SA) and conversion of an SA into an SE (referred to in art. 420-20 and 420-21 CL)
- conversion of a société coopérative (SC) and société coopérative européenne (SEC) and conversion of a SEC into an SC (referred to in art. 832-6 to 832-8 and 837-3 to 838-2 CL)</td><td colspan="2" rowspan="2">EU/EEA cross-border conversions (art. 1062-1 to 1062-18 CL) – Change of Luxembourg company form into one of an EU Member State or an EEA country. The company shall transfer at least its registered office to that other EU Member State or EEA country, while retaining its legal personality.</td></tr>
<tr><td>Cross-border conversions (art. 1061-1 to 1061-3 CL) - Change of Luxembourg company form into one of a foreign (non-EU/EEA) country.</td></tr>
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GENERAL REGIME: MODERNIZED FRAMEWORK FOR DOMESTIC AND NON-EU/EEA CROSS-BORDER OPERATIONS

Mergers and divisions – Key modification and procedural enhancements

While the fundamental framework governing domestic and non-EU/EEA cross-border mergers and divisions remains largely unchanged, the New Law introduces several refinements aimed at enhancing procedural efficiency, ensuring greater transparency, and bolstering protections for stakeholders. These updates modernize Luxembourg's corporate legal framework while maintaining its continuity with past regulations. Notable changes include:

- **Enhanced rights for shareholder decision-making**: Shareholders now have expanded rights to modify draft terms and attach additional conditions to the operation, increasing control over restructuring decisions.
- **Exemptions for single-shareholder companies**: Companies with a single shareholder are automatically exempt from drafting management reports or obtaining independent expert reports. Under the former regime, such an exemption required a formal waiver, except in cases of simplified mergers and divisions involving newly incorporated companies.

[5] Initially, the New Law extended domestic and cross-border operations to special limited partnerships (*sociétés en commandite spéciale* – SCSp). However, this extension was removed following objections from the Luxembourg Bar Association, which argued that such treatment could lead to misclassification of SCSp entities as companies with legal personality, potentially creating unintended tax and legal implications.

- **Extension of simplified procedures for sidestream mergers**: Simplified merger procedures for upstream mergers are extended to sidestream mergers, where no shareholders meeting of the absorbed company is required. Sidestream mergers are defined as operations where one or more companies transfer all their assets and liabilities to an existing company without issuing new shares, provided:
  - ✓ a single person directly or indirectly holds all shares in the merging companies, or
  - ✓ the shareholders hold shares in the merging companies in identical proportions.
- **Timing of effectiveness**: Operations become effective towards third parties upon the publication of the minutes of the absorbing/divided company's shareholders meeting. This replaces the previous requirement for publication of minutes from all companies involved.
- **Determination of effective date**: For cross-border mergers and divisions, the effective date will now be governed by the law applicable to the absorbing/divided company.
- **Deletion from the Luxembourg Register**: In cross-border mergers where a Luxembourg company is absorbed by a foreign company, the deletion from the Luxembourg trade and companies register (RCS) may now be based on any conclusive evidence, such as a legal opinion from a local counsel, rather than relying solely on notifications from foreign registers.

Conversions – A new legal framework for non-EU/EEA cross-border conversions

Historically, Luxembourg law did not provide an explicit legal framework for cross-border migrations of companies that preserve their legal personality, even though such operations were acknowledged in practice. The New Law introduces a structured and legally recognized process for cross-border conversions, allowing Luxembourg companies to transfer their registered office and continue operating under foreign laws, provided that the destination country acknowledges the continuity of legal personality.

The process follows Luxembourg's general requirements for amendments to a company's articles of association. Although the law does not explicitly address inbound conversions, these should remain possible under Luxembourg's incorporation principles. Conversions that do not fall within the scope of the special regime will continue to be governed by Luxembourg's well-established legal and notarial practices. Typically, such operations involve:

- **Confirmation from the home jurisdiction**: Authorities from the country of origin must certify that the transfer does not interrupt the company's legal personality, ensuring its seamless continuation under the laws of the destination country.
- **Shareholder approval**: The conversion must be formally approved by shareholders (in Luxembourg, through a notarial deed), reflecting compliance with the legal form requirements of the destination country.
- **Regulatory review and compliance checks**: Authorities may conduct a preliminary review to assess potential risks related to financial obligations or legal conformity.
- **Completion of registration formalities**: The company must complete all necessary registration and publication requirements with the trade and companies registers in both jurisdictions.

While not expressly addressed, inbound conversions shall also be possible under the conditions governing the incorporating of such company in Luxembourg.

SPECIAL REGIME: ENHANCED PROCEDURES FOR EU/EEA CROSS-BORDER TRANSACTIONS

Operations falling within the scope of the Mobility Directive are now subject to a harmonized but significantly more intricate regulatory framework. This reform has particularly notable consequences for EU/EEA cross-border conversions and divisions, which, unlike mergers, had previously been governed only by national laws, leading to disparities in procedural requirements across jurisdictions.

The newly established rules ensure a consistent procedural approach, streamlining and formalizing these Operations at an EU/EEA-wide level while adding new compliance burdens. EU/EEA cross-border conversions and divisions, which, unlike mergers, had previously been governed only by national laws, leading to disparities in procedural requirements across jurisdictions. While EU cross-border mergers of limited liability companies and domestic divisions of public limited liability companies were already harmonized, conversions and cross-border divisions now follow a unified procedural approach. Under the new regime, EU/EEA cross-border conversions and divisions must undergo a process closely mirroring that of EU/EEA cross-border mergers. This includes the preparation of draft terms containing legally required disclosures, detailed management reports, independent expert assessments, and a dual legality control mechanism to ensure compliance with EU and national regulations.

As a result, companies undertaking such Operations should anticipate an extended timeline, increased procedural complexity, and higher compliance costs, necessitating careful strategic planning.

The revised legal regime aligns the procedural requirements for EU/EEA cross-border conversions and divisions with those applicable to mergers, requiring companies to complete a set of comprehensive formalities that enhance transparency, stakeholder protection, and legal certainty. The changes reflect the EU's broader objective of unifying corporate mobility rules while balancing flexibility with protective measures for shareholders, employees, and creditors.

The following list highlights the major updates introduced by the New Law to the framework for EU/EEA cross-border mergers, which also serves as the foundation for the new legal regime governing EU/EEA cross-border divisions and conversions. These Operations now follow a harmonized approach, ensuring consistency across all three types of transactions. The most notable changes include:

- **Common draft terms and enhanced disclosures** – Companies engaging in EU cross-border conversions, mergers, or divisions must prepare detailed draft terms outlining the structural and financial impact of the Operation. This document must include explicit provisions on cash compensation offer made to shareholders exercising their exit right (see below explanation on such right), creditor safeguards (such as guarantees or security pledges), and any specific arrangements affecting employee rights.

- **Earlier finalization of common draft terms –** The common draft terms shall be finalized and signed at least six weeks before the shareholders' meeting, then effectively moving the preparation timeline beyond the one-month requirement that applied under the previous regime. While the New Law does not explicitly set this requirement, it can be deduced from the provision stating that the draft terms, together with any necessary reports, must be made available electronically to shareholders and employee representatives at least six weeks before the shareholders' meeting.

- **Publication requirements and stakeholder notification** – The common draft terms must continue to be published at least one month before the shareholders' meeting where the Operation will be approved, ensuring procedural fairness and stakeholder engagement. In addition, companies are required to publish notice informing shareholders, creditors, and employee representatives (or, in the absence of such representatives, the employees themselves), that they have the right to submit observations, express concerns, or raise objections with respect to the Operation. These stakeholders must be given a minimum period of five business days before the shareholders' meeting to present their views, ensuring their input is considered before a final decision is made. In our view, the publication of this notice may occur separately from the common draft terms, provided that it is made at least one month before the date of the shareholders' meeting.

- **Management reports with stakeholder considerations** – Each merging company must prepare a management report specifically addressed to both shareholders and workers, detailing the financial, legal, and operational implications of the restructuring. The purpose of these reports is to provide stakeholders with comprehensive insights into the proposed transaction, allowing them to make informed decisions and, where applicable, exercise their rights.

- ✓ Companies have the flexibility to either draft a **single joint report** with clearly defined sections for shareholders and employees or produce **two separate reports**, each tailored to the specific interests and rights of the respective stakeholders.
- ✓ The report(s) must be **made available electronically at least six weeks before** the shareholders' meeting, alongside the common draft terms of the operation.
- ✓ **Exemptions for shareholders report**: The report is not required if (i) all shareholders unanimously agree to waive the requirement or (ii) the company has a single shareholder.
- ✓ **Exemptions for employee report**: The report for employees is only exempted if the company and all its subsidiaries have no employees beyond members of the administrative or management body. It appears therefore that even if a merging company itself has no employees, it may still be required to produce an employee report if any of its subsidiaries (no matter how low in the corporate structure) employ workers.

- **Approval by shareholders –** The general meetings of shareholders of all participating companies must approve the operation, with shareholders retaining the right to amend the common draft terms or impose specific conditions before final approval.
- **Enhanced protection of minority shareholders –** The New Law enhances protection of minority shareholders, mainly based on a cash-out right for dissenting shareholders and, in case of mergers and divisions, a right for shareholders to challenge the share exchange ratio and claim additional compensation:
  - **Cash-out right for dissenting shareholders -** Dissenting shareholders are granted the right to exit the company by transferring all of their shares in return for cash compensation, shares, or another agreed form of consideration offered by the company resulting from the operation. This right is subject to specific conditions:
    - ✓ **Eligible shareholders**: Only shareholders holding voting shares can exercise this right. Non-voting shares and shares transferred *inter vivos* after the publication of the common draft terms are excluded.
    - ✓ **Total share disposal requirement**: Shareholders must exercise the exit right for all shares they hold at the time the common draft terms are published.
    - ✓ **Formal opposition at the shareholders general meeting**: The dissenting shareholder must express opposition to the operation and formally declare their intention to exit during the general meeting approving the cross-border operation.
    - ✓ **Predefined compensation terms**: The compensation amount and conditions must be established in advance in the draft terms of the operation, ensuring transparency and legal certainty.

    Once the cross-border operation becomes effective, dissenting shareholders must be compensated within two months. If a shareholder believes the compensation is inadequate, they may challenge the amount before the *Tribunal d'Arrondissement* (District Court) within one month of the shareholders general meeting. However, this legal action does not suspend the implementation of the operation, ensuring that corporate restructuring is not delayed while still allowing shareholders to seek redress for unfair valuation.
  - **Right to challenge the exchange ratio –** In the case of a merger or division, shareholders who approve the operation retain the right to challenge the share exchange ratio in court and request additional cash compensation. The company, however, has the option to offer an alternative form of compensation, such as shares or other financial instruments, in lieu of cash.

- **Protection of creditors** – The New Law strengthens creditor protections by introducing greater transparency measures while introducing specific restrictions and procedural nuances (as compared to the General Regime).
  - **Information and transparency requirements**:
    - ✓ The debtor company is required to formally inform its creditors about the guarantees proposed in the common draft terms to safeguard their claims.
    - ✓ Creditors have the right to submit observations on the common draft terms at least five business days before the general meeting approving the operation. However, these observations do not have a binding effect on the approval process and do not suspend the implementation of the operation.
  - **Right to challenge the sufficiency of guarantees**:
    - ✓ Creditors whose claims predate the publication of the common draft terms and are not yet due may contest the sufficiency of the proposed guarantees.
    - ✓ To successfully challenge the operation, creditors must demonstrate that the transaction jeopardizes the recovery of their claim and that the guarantees provided in the common draft terms are inadequate.
    - ✓ This legal remedy must be exercised within three months following the publication of the common draft terms.
  - **Key differences from the General Regime**:
    - ✓ **Limited scope of protection**: Unlike the General Regime, creditors whose claims are not yet due at the time of publication of the common draft terms are excluded from protection.
    - ✓ **Obligation to notify the debtor company**: Before initiating any legal proceedings, creditors must provide prior formal notification to the debtor company, a step that is not explicitly required under the General Regime.
    - ✓ **Extended challenge period**: To offset the restrictions imposed on creditor protections, the New Law provides an extended timeframe for creditors to contest the operation. Creditors now have three months from the date of publication of the common draft terms to initiate legal action, giving them a longer window to assess and challenge the adequacy of the proposed safeguards compared to restructuring procedures subject to the General Regime.
- **Double legality control** – The Mobility Directive introduces a two-step legality control process for EU cross-border operations which aims to verify (i) that the legitimate interests of all stakeholders in the proceedings have been taken into account and that the most important information has been disclosed and (ii) that the decision to approve the cross-border operation is taken in a fair, objective and non-discriminatory manner on the basis of all relevant elements required by the EU and national law:

  ⇒ **First legality control (with anti-abuse control) (pre-merger certificate)** in the Member State of the absorbed company:
  - **Purpose**: this control aims to ensure that the operation complies with all procedural and legal requirements under the national law of the Member State of the absorbed company as well as to safeguard against abuse or fraud.
  - **Authority responsible for the control**: this control will be conducted by the competent national authority designated by each Member State. In Luxembourg, the control will be conducted by a notary.

- **Scope of the control**: When the Luxembourg company is the absorbed company, the control conducted by a Luxembourg notary will encompass the two following key elements:

  ✓ **Legal compliance**: the notary shall verify the compliance of the operation with all relevant conditions and correct completion of all procedures and formalities provided for under Luxembourg law.

  ✓ **Detection of abuse or fraud**: the notary shall assess whether the operation is carried out for abusive or fraudulent purposes leading to or aiming at circumventing EU or national law or for criminal purposes.

- **Timeframe for the control**: the control must be completed within three months, starting from the date all required documents and information are provided to the notary. In cases of suspected abuse or fraud, this period may be extended by an additional three months, meaning the process can take up to six months in total.

  In practice, the timeframe for completion will largely depend on the quality and completeness of the documentation submitted to the notary. According to the Chamber of Notaries, 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. Conversely, if the information and documents submitted are incomplete, the notary will need to conduct additional verifications, which may prolong the process. Additionally, if the notary decides to consult experts as permitted under the New Law (though expected to be in limited cases) the overall duration of the control will also depend on the timeliness of responses to the notary's requests.

- **Anti-abuse control**: the New Law initially required notaries to refuse the issuance of a pre-merger certificate only if the operation was deemed "manifestly" (*manifestement*) carried out for abusive or fraudulent purposes leading to or aiming at circumventing EU or national law or for criminal purposes. However, this wording was contested:

  ✓ the Council of State argued that the Mobility Directive allows refusal based on mere suspicion of illegality, without requiring a demonstration of "manifest" abuse;

  ✓ the term "manifestly" was ultimately removed to align with the Mobility Directive, enabling notaries to refuse certificates based on mere suspicion of abuse or fraud.

  When conducting the control, the notary may evaluate factors such as whether the cross-border operation was to result in the company having its place of effective management or place of economic activity in the Member State in which the company or companies are to be registered after the cross-border operation. That would be an indication of an absence of circumstances leading to abuse or fraud.

- **Consultation and use of experts**: To conduct the legality control, the notary may:

  ✓ consult other qualified authorities to obtain additional information, documentation or certificates (e.g. request for certificates as for a Luxembourg one step dissolution) and/or

  ✓ engage independent experts such as tax advisors, lawyers, professors, accountants, or auditors, with the costs borne by the company.

  Initially, Article 1025-12(12) of the New Law stated that in cases where relevant authorities consulted by the notary did not respond within the allotted timeframe, the notary could refrain from issuing the pre-merger certificate only in exceptional circumstances. Following objections from the State Council and the Chamber of Notaries, this provision was removed.

  The Chamber of Notaries clarified that:

- Notaries must refuse to issue the certificate in the absence of a response from consulted authorities.
- If the company provides a detailed management representation letter with the required documentation (as detailed below), such refusals should be rare.
- Consultation with authorities is expected to occur only in cases where the submitted documents are inconsistent or incomplete.

- **Required documentation for the control**: The Chamber of Notaries has clarified and expanded the list of information and documents specified in Article 1025-12(2) of the New Law, which are to be submitted to the notary by management body of the merging company for the legality control. These include:
  - ✓ **Draft terms of the operation**: a complete copy of the draft terms of the EU cross-border operation.
  - ✓ **Management report**: the report of the administrative or management body to the shareholders and employees and any appended notice referred to in article 1025-6 of the New Law, where available, and, if not available, proof of waiver by the shareholders and certification that the report to the employees is not mandatory.
  - ✓ **Independent expert report**: the report of the independent expert referred to in article 1025-7 of the New Law, together with a certificate of compliance with the legal obligations relating to the content of the report, or proof that the shareholders have waived their right to this report.
  - ✓ **Stakeholders' comments**: any comments submitted by shareholders, creditors, employees' representatives or the employees themselves to the company following publication of the draft terms, or certification that no comments have been submitted.
  - ✓ **Shareholder meeting information**: information on approval by the general meeting of shareholders referred to in article 1025-9 of the New Law. The notaries expect to be provided with a certificate from the management body certifying that the preparatory documents referred to in Article 1025-8 of the New Law have been made available within the required deadlines and containing information about the general meeting of shareholders (indication of the form in which the meeting was held, quorums and voting rights required for approval);
  - ✓ **Certificates of compliance**: certificates showing that the company is in compliance with its obligations: the Chamber of Notaries recommends that these certificates be systematically requested, not only in cases of financial difficulties, as is required under Article 1100-1 paragraph 2 of the Companies Law for a Luxembourg one step dissolution;
  - ✓ **Management representation letter**: a letter from the management body certifying and justifying compliance with the legal obligations and in particular:
    - respect for the rights of employees;
    - respect for the rights of creditors;
    - respect for the rights of shareholders;
    - the absence of abusive, fraudulent or criminal purposes;
    - the absence of abusive or aggressive tax operations;
    - the undertaking to provide any documentation or certification required.

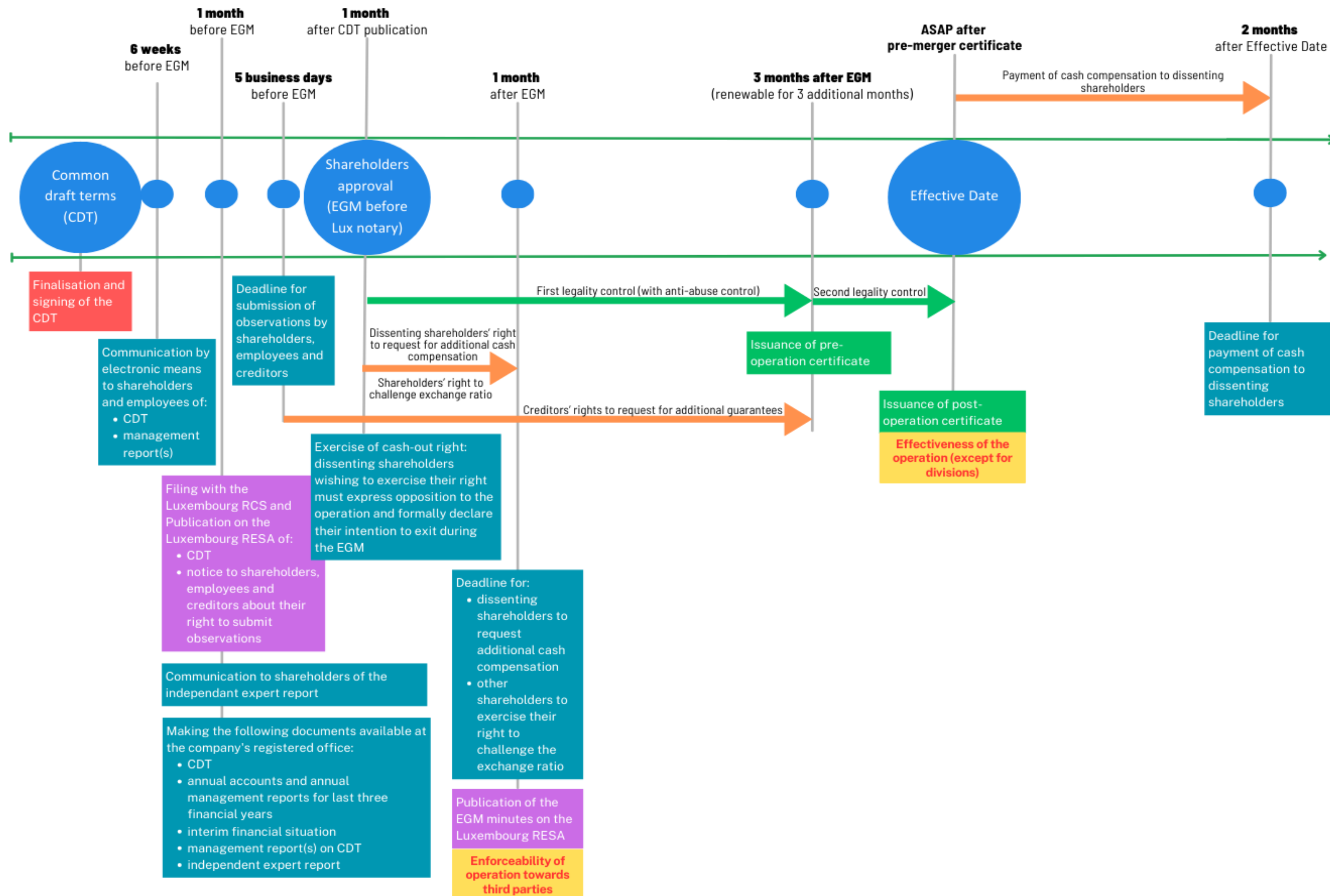
- **Issuance and filling of pre-merger certificate**: once the notary has completed, and is satisfied with, the control, the notary must issue the pre-merger certificate. While the certificate must be signed by the notary, the New Law does not prescribe any specific form (e.g., notarial deed). The certificate must then be filed with the Luxembourg trade and companies register (RCS). However, the New Law does not specify whether this filing requires publication, nor does it indicate whether such

publication, if applicable, would be in full, by extract, or by reference to the deposit. Following the filing, the Luxembourg trade and companies register (RCS) will then transmit the certificate to the corresponding registers of the other companies involved in the operation (via the EU Business Registers Interconnection System - BRIS).

⇒ **Second legality control (post-merger certificate)** in the Member State of the absorbing company:

- **Purpose**: the second legality control ensures that all applicable legal conditions under the laws of the Member State of the absorbing company have been fulfilled before the operation is finalized. This step provides a final safeguard to confirm the validity of the cross-border operation and verify compliance with procedural requirements.
- **Authority responsible for the control**: this control will be conducted by each competent national authority for the part of the procedure concerning the operation which will be subject to its national law. In Luxembourg, the control will be conducted by a notary.
- **Scope of the control**: If the absorbing company is a Luxembourg company, the control conducted by a Luxembourg notary will encompass the two following key elements:
  - ✓ **Conformity of the operation**: the notary shall ensure that all terms and approvals comply with the applicable Luxembourg legal framework and align with the draft terms.
  - ✓ **Approval across jurisdictions**: the notary shall verify that the draft terms have been approved identically by all participating companies in all jurisdictions involved.
- **Use of pre-merger certificates**: To avoid duplicating efforts, the Luxembourg notary may rely on the pre-merger certificate(s) issued by competent authorities in the Member State of the absorbed company as conclusive evidence that all pre-merger procedures and formalities required under the law of the originating Member State(s) have been properly completed.
- **Issuance and filling of post-merger certificate**: If the Luxembourg notary confirms that all conditions are fulfilled, they issue the post-merger legality certificate, which formalizes the operation under Luxembourg law. While the New Law does not specify whether such post-merger certificate shall be filled with the Luxembourg trade and companies register (RCS), the Chamber of Notaries appears to consider such filing necessary for continuity through the EU registers interconnection system, similar to the pre-merger certificate.

- **Effective date of the merger –** The effective date of the merger shall be determined by the law of the absorbing company. Shall the absorbing company be Luxembourgish:
  - ✓ The merger shall be effective **between the merging companies** as from the issuance of the legality certificate by the Luxembourg notary (effectiveness does no longer depend on the publication of the minutes of the shareholders meeting of the absorbing company).
  - ✓ The merger shall be enforceable **towards third parties** as from the publication of the minutes of the shareholders meeting of the absorbing company.
- **Deregistration of the absorbed company** – Where the absorbed company is subject to Luxembourg law, the latter shall be deleted from the Luxembourg trade and companies register (RCS) upon receipt of the notification of the merger taking effect from the register of the absorbing company (via the EU Business Registers Interconnection System - BRIS).
- **Nullity** – Once the operation has become effective, its validity may no longer be challenged.


Standard timeline of EU/EEA Cross border operation
6 weeks before EGM
1 month before EGM
5 business days before EGM
1 month after CDT publication
1 month after EGM
3 months after EGM (renewable for 3 additional months)
ASAP after pre-merger certificate
2 months after Effective Date
Payment of cash compensation to dissenting shareholders
Common draft terms (CDT)
Shareholders approval (EGM before Lux notary)
Effective Date
Finalisation and signing of the CDT
Communication by electronic means to shareholders and employees of:
• CDT
• management report(s)
Deadline for submission of observations by shareholders, employees and creditors
First legality control (with anti-abuse control)
Second legality control
Dissenting shareholders' right to request for additional cash compensation
Shareholders' right to challenge exchange ratio
Creditors' rights to request for additional guarantees
Issuance of pre-operation certificate
Issuance of post-operation certificate
Effectiveness of the operation (except for divisions)
Deadline for payment of cash compensation to dissenting shareholders
Filing with the Luxembourg RCS and Publication on the Luxembourg RESA of:
• CDT
• notice to shareholders, employees and creditors about their right to submit observations
Exercise of cash-out right: dissenting shareholders wishing to exercise their right must express opposition to the operation and formally declare their intention to exit during the EGM
Communication to shareholders of the independant expert report
Making the following documents available at the company's registered office:
• CDT
• annual accounts and annual management reports for last three financial years
• interim financial situation
• management report(s) on CDT
• independent expert report
Deadline for:
• dissenting shareholders to request additional cash compensation
• other shareholders to exercise their right to challenge the exchange ratio
Publication of the EGM minutes on the Luxembourg RESA
Enforceability of operation towards third parties

EFFECTIVENESS OF THE NEW LAW AND ASSESSMENT PERIOD

Following its **publication in the Luxembourg Official Journal on 26 February 2025**, the New Law will officially enter into force **on 2 March 2025**. This marks the point from which its provisions become legally applicable.

All operations for which the **common draft terms are published on or after 1 April 2025** will be subject to the new legal framework. Conversely, transactions where the common draft terms was published prior to that date will continue to be governed by the former legal framework, even if they are completed after the New Law has taken effect.

Recognizing the significance of these legislative changes, the Justice Commission has requested that the **Luxembourg government conduct a qualitative assessment** of the New Law **by March 2026** to evaluate its effectiveness and consider potential adjustments to the legal framework if necessary, and in particular with respect to the anti-abuse control and checks the notaries will have to do.

THE ROLE OF THE SHAREHOLDERS' MEETING IN CROSS-BORDER MERGERS: IMPORTANCE AND EXCEPTIONS

In the context of a cross-border merger, the shareholders' meeting of the absorbing company plays a crucial role in various stages of the process, particularly in the exercise of minority shareholders' withdrawal rights, the availability of preparatory documents to shareholders and stakeholders, the notarial legality controls and the enforceability of the effectiveness of the merger to third parties.

However, in certain cases, the Mobility Directive does not provide an alternative mechanism when no shareholders' meeting of the absorbing company is required. Unfortunately, the Luxembourg legislator has not fully addressed these gaps when transposing the Directive into national law.

When can the shareholders' meeting be waived?

Pursuant to the New Law, the shareholders' meeting is not required:

- ✓ For the absorbing company, if the conditions of Art. 1021-4 CL are met (Art. 1025-9(3) CL).
- ✓ For the absorbed company, in 100% parent-subsidiary mergers or sidestream mergers (Art. 1025-18(1)(2°) CL).

Implications when no shareholders' meeting is held

Aspect	Shareholders meetings	No shareholders meeting of the absorbing company	No shareholders meeting of the absorbed company or either company
Publication of preparatory documents (Art. 1025-5)	At least one month before the shareholders meeting (Art. 1025-5(1) CL).	At least one month before the shareholders meeting of the other merging company(ies) (Art. 1025-5(2)).	At least one month before the decision to merge is taken by the company in accordance with national law (in Luxembourg, by the management body of the company) (Art. 1025-18(3)).
Availability of the management report (Art. 1025-6(5))	At least six weeks before the meeting (Art. 1025-6(5), paragraph 1).	At least six weeks before the shareholders meeting of the other merging company(ies) (Art. 1025-6(5), paragraph 2).	At least one month before the decision to merge is taken by the company in accordance with national law (in Luxembourg, by the management body of the company) (Art. 1025-18(3)).
Availability of the independent expert report (Art. 1025-7(1))	At least one month before the meeting (Art. 1025-7(1), paragraph 1).	At least one month before the shareholders meeting of the other merging company(ies) (Art. 1025-7(1), paragraph 2).	At least one month before the decision to merge is taken by the company in accordance with national law (in Luxembourg, by the management body of the company) (Art. 1025-18(3)).
Access to preparatory documents by the shareholders ahead of the shareholders meeting (Art. 1025-8(1))	Shareholders have the right to review preparatory documents at the company's registered office at least one month before the meeting (Art. 1025-8(1)).	Irrelevant as no approval process requiring shareholder involvement is conducted.	Not applicable, as no approval process requiring shareholder involvement is conducted.

Aspect	Shareholders meetings	No shareholders meeting of the absorbing company	No shareholders meeting of the absorbed company or either company
Minority shareholders withdrawal rights (Art. 1025-10)	Shareholders must express their opposition and intent to exercise withdrawal rights before the notary at the meeting.	Irrelevant as the withdrawal rights concern only the absorbed company's shareholders.	The withdrawal right does not apply, as it is only granted when shareholders of the absorbed company would become shareholders of the absorbing company, which is not the case for 100% parent-subsidiary mergers or sidestream mergers.
First legality control by the notary (Art. 1025-12)	The notary must complete the legality control within three months from the date of receipt of all required documents, including those related to the shareholders meeting (Art. 1025-12(6)).	Irrelevant as the first legality control is conducted in the Member State of the absorbed company.	No specific provisions provided by the New Law. We may however assume that the notary's review will be based solely on approvals by the management body, similar to the second legality control.
Second legality control by the notary (Art. 1025-14)	Each participating company must submit to the notary the common draft terms as approved by the shareholders meeting (Art. 1025-14(2)).	Each participating company must submit to the notary the common draft terms as approved by the company in accordance with national law (in Luxembourg, by the management body of the company) (Art. 1025-14(2)).	Each participating company must submit to the notary the common draft terms as approved by the company in accordance with national law (in Luxembourg, by the management body of the company) (Art. 1025-14(2)).
Opposability of the merger's effectiveness to third parties (Art. 1025-15(3))	The merger becomes enforceable upon publication of the minutes of the shareholders meeting of the absorbing company with the Luxembourg trade and companies register (RCS).	No specific alternative is provided in the New Law, creating legal uncertainty regarding enforceability.	Irrelevant as the effective date of the merger is determined with reference to the shareholders meeting of the absorbing company.

- **A legislative gap in enforceability against third parties**

As mentioned above, when the absorbing company is Luxembourgish, the merger shall become enforceable to third parties only upon publication of the minutes of the shareholders meeting of the absorbing company with the Luxembourg trade and companies register (RCS). However, the New Law does not provide an alternative when no such meeting occurs. Unlike the mergers subject to the General Regime, where the New Law (in line with current legislation) provide in such case that the merger becomes enforceable to third parties as from the publication of a notarial certificate, no equivalent safeguard exists here, creating legal uncertainty regarding the enforceability of the merger when no shareholder meeting of the absorbing company is required.

- **Conclusion: a practical need to hold a shareholders' meeting despite legal exemptions**

The failure to address the procedural gap concerning the enforceability of the merger in cases where no shareholders' meeting is required for the absorbing company will, in practice, likely necessitate holding a shareholders' meeting of the absorbing company (even when not legally required) to ensure enforceability of the merger to third parties. The absence of a clear legal provision on this matter creates unnecessary uncertainty and could have been addressed by introducing an alternative mechanism, such as recognition of a notarial certificate confirming the merger's effectiveness. This omission represents a missed opportunity for clarification and may need to be reconsidered in future legislative refinements.

CHALLENGES IN THE EU REGISTERS INTERCONNECTION SYSTEM

The EU Business Registers Interconnection System (BRIS) plays a key role in the transmission of documents (e.g. the pre-merger certificate) between national registers.

However, past experience with this system in the context of EU cross-border mergers has shown that it can be cumbersome, with delays and inefficiencies in the transmission and processing of documents between

different national registers. Given the importance of this system in facilitating streamlined EU/EEA cross-border Operations, any operational inefficiencies could significantly impact transaction timelines.

There is hope for improvement, particularly in light of the Law of 7 July 2023, which implemented Directive (EU) 2019/1151, amending Directive (EU) 2017/1132 on the use of digital tools and processes in company law. That directive was aimed at ensuring better access to and exchange of information through the EU Business Registers Interconnection System between European company registers. It remains to be seen whether it will lead to meaningful improvements in the speed and reliability of the interconnection system in practice.

MISSED OPPORTUNITIES OF THE NEW LAW: UNADDRESSED ISSUES AND LINGERING UNCERTAINTIES

While the New Law introduces significant improvements in the regulation of cross-border mergers, it also leaves **key opportunities unaddressed**. Various professional bodies, including the Luxembourg Chamber of Commerce and the Luxembourg Bar Association, proposed amendments aimed at enhancing legal clarity and predictability, yet several of these recommendations were not incorporated into the final text.

- **The unaddressed issue of dissolution without liquidation (TUP) under the Luxembourg Civil Code**

One of the most notable omissions concerns the dissolution without liquidation (*Transmission Universelle de Patrimoine ou Dissolution-confusion – TUP*) under Article 1865 bis of the Luxembourg Civil Code. Although the question of whether TUPs should be subject to merger rules has rarely been raised, it could legitimately have arisen in the past, particularly in light of the evolving European legal framework.

Although Luxembourg law has historically recognized the coexistence of TUPs and simplified mergers, a strict interpretation of Directive (EU) 2017/1132 could already have suggested that any dissolution without liquidation may be subject to merger rules. Despite this uncertainty, Luxembourg notarial practice has consistently treated TUPs as a distinct legal mechanism, separate from the more complex merger framework.

The transposition of the Mobility Directive by the New Law has failed to clarify this issue. The Luxembourg Bar Association explicitly recommended excluding TUPs from the scope of cross-border mergers, emphasizing their unique nature and the distinct regime provided under the Civil Code. However, this recommendation was not retained by the legislator, leaving room for legal uncertainty regarding potential reclassification of TUPs as mergers.

In the absence of an explicit exclusion, uncertainty remains regarding the potential reclassification of TUPs as cross-border mergers. However, given that Luxembourg law and practice have never equated TUPs with mergers, an immediate shift in approach following this transposition appears unlikely. From a comparative standpoint, France (the jurisdiction from which Luxembourg's TUP provisions originate) still seems to maintain a clear distinction between TUPs and simplified mergers, reinforcing the argument for their separate treatment.

Particular attention should, however, be given to cases where a Luxembourg company is absorbed by a foreign entity via a TUP. In such situations, it is essential to verify whether this type of operation and its legal effects are recognized under the laws of the absorbing company's jurisdiction. This is especially critical when the absorbing entity is established in another EU Member State, where local authorities might attempt to impose the application of cross-border merger rules, potentially subjecting the transaction to more stringent requirements than those traditionally applied to TUPs under Luxembourg law.

Although the current approach continues to differentiate between TUPs and mergers, it cannot be ruled out that Luxembourg courts may eventually be called upon to assess the applicability of TUP procedures, particularly in light of the additional protective mechanisms introduced by the Mobility Directive. In this context, it is important to note that national courts are required to interpret domestic law, as far as possible, in conformity with EU directives once the transposition deadline has passed. Consequently, a judge could determine that the Mobility Directive-compliant interpretation necessitates applying the stricter rules of simplified mergers to dissolutions without liquidation.

However, this possibility must be tempered by the principle that EU directives do not have direct horizontal effect, meaning that private parties cannot invoke them directly against one another. Nonetheless, an action could be brought against the Luxembourg State, relying on the principle of vertical direct effect, to challenge a lack of proper transposition or implementation of EU law.

- **Other missed opportunities in the New Law**

In addition to the TUP issue, other key proposals were not incorporated into the final text, leading to practical challenges and legal uncertainties:

- ✓ **Lack of clarification regarding some filing and publication formalities**: while the New Law specifies that certain documents must be filed with the Luxembourg trade and companies register (RCS), it does not address whether such filings require publication, nor does it indicate whether any publication would be full, by extract, or merely by reference to the deposit. This lack of clarity may lead to inconsistencies and creates a need for additional guidance, which will likely have to be provided by the Luxembourg Business Registers (LBR) in practice. Furthermore, notaries involved in cross-border merger transactions will play a critical role in interpreting these requirements.

- ✓ **Pre-merger certificate timing**: the Luxembourg Chamber of Commerce proposed allowing the three-month period for the issuance of the pre-merger certificate to begin before the shareholders' meetings, which could have streamlined transaction timelines. This was not retained in the final law.

- ✓ **Conditions for notarial expert involvement**: no clarification was provided on the conditions under which the Luxembourg notary may engage external experts for issuing a pre-merger certificate. The Luxembourg Bar Association raised concerns that companies could be required to bear excessive, unapproved costs for expert assessments.

- ✓ **Triangular mergers**: the New Law fails to regulate triangular mergers, such as:

  - Forward triangular mergers, where a parent company absorbs a target through its wholly-owned subsidiary, issuing its own shares as consideration.

  - Reverse triangular mergers, where a target company absorbs a subsidiary of the parent, with its shareholders being compensated with shares issued by the parent company.

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