

Implementation Mobility Directive

What is it about

The Mobility Directive is a European directive aiming to eliminate unjustified barriers to EU companies' freedom of establishment in the single market. This Directive provides a legal framework and legal procedure for EU companies who want to proceed with a cross-border merger, conversion or division. Prior to the Mobility Directive, only cross-border mergers within the EU were regulated, whereas the new Directive also introduces a legal framework and legal procedure when EU companies want to convert within the EU borders or want to proceed with a cross-border division.

Status

Belgium missed the transposition deadline of 31 January 2023 (date on which EU Member States were obliged to have the Mobility Directive transposed into national law).

On 16 June 2023, the Belgian Act transposing Mobility Directive has entered into force:

Special transitional measures are included in the draft Belgian Act. It provides that the new rules will only apply to transactions for which the common draft terms are filed after the entry into force of the Act. In other words, transactions that are already underway can be completed under the existing rules as included in the Belgian Code of Companies and Associations ('CCA').

Implementation Mobility Directive (cont'd)

Employees

Increased protection of employees:

Additional information and consultation requirements

- Employees, who have to be informed on the implications of the proposed x-border operation on their employment situation, will have the **right to provide an opinion on the common draft terms**

Safeguarding employees' participation rights

- **What?** Possibility for employees to have a say in the appointment of members of a company's advisory - or management board
- **Currently:** Not all EU Member States provide the same level of employee participation rights or even no participation rights at all.
- **Impact Mobility Directive:**
 - Strengthens the existing regulations that aim to prevent companies from using a cross-border merger to circumvent a Member State's rules on employee participation (so-called 'forum-shopping') and applies them to cross-border conversions and divisions as well.
 - Mobility Directive's provisions on employee participation were transposed into Belgian law in December last year by means of Collective Bargaining Agreement no. 94/1, with effect as of 31 January 2023.

Shareholders

The harmonised protection of shareholders in x-border transactions has three dimensions.

1. Introduction of a right for shareholders who **vote against the approval of the common draft terms** to dispose of their shares against a cash compensation payment also known as the **'exit right'** (both shareholders and holders of profit certificates).
2. Shareholders who **exercise the exit right**, but who believe that the cash compensation offered is inadequate, have the **right to lodge a claim in court for an additional cash payment**.
3. Shareholders who do not exercise the exit right, but who consider that the **share exchange ratio** set out in the common draft terms of the cross-border transaction is **inadequate**, have the **right to lodge a claim in court for an additional cash payment or to be granted additional shares**.

Creditors

X-border transactions

1. A three-month period from the publication of the common draft terms during which **creditors dissatisfied with the securities (guarantees and pledges) included in the draft terms** should be able to **request additional safeguards** from the company **and, if no agreement** can be reached between both, **from the competent judicial authority**, also known as the **'creditor's opposition right'**.
2. EU Member States should be allowed to require the management body to make a **solvency declaration**. The **Belgian Act** transposing the Mobility Directive **does not include this additional level of protection, however**, under the CCA, the management body needs to draft a statement of assets and liabilities which should not be older than 4 months at the extraordinary shareholders' meeting.

X-border conversions:

1. Creditors of a company that have undertaken a x-border conversion will have the **possibility to open court proceedings in the departure EU Member State within two years after the x-border conversion takes effect**.

Implementation Mobility Directive (cont'd)

How can PwC Legal help you?

We assist you from A to Z to proceed with a cross-border merger / division / conversion. Our services in principle will include the following:

Feasibility assessment / study

- Analysing the main consequences and key tax and legal matters of attention for the contemplated cross-border transaction
- Identifying the legal procedure both nationally and across borders to efficiently and effectively realise the cross-border transaction
- Those findings will be included in a country-by-country analysis, allowing you to decide upon the actual implementation of the cross-border transaction

Implementation assistance

- Drafting of an integrated legal and tax action plan indicating the necessary steps from both a Belgian and foreign legal and tax point of view, indicative timing and overview of the stakeholders involved to proceed with the cross-border transaction
- Drafting of the necessary legal documents
- Reviewing the necessary legal documents from a tax point of view
- (If needed) requesting a ruling for the cross-border transaction
- (If needed) coordination with the statutory auditor
- Coordination with the Belgian notary
- Coordination with our PwC colleagues abroad
- Follow-up post implementation actions both from a tax and legal point of view