

Cross-Border Mergers in Europe

The Cross-border Merger Directive of 26 October 2005 sets forth rules to permit and facilitate the merger of limited liability companies situated in different Member States of the European Union and the European Economic Area. It is completed by Council Directive 90/435/EEC of 23 July 1990, which provides for a common system of taxation applicable to mergers between parent companies and their subsidiaries located in different Member States, which has been replaced by Council Directive 2009/133/EC of 19 October 2009 which did not change the content (in this book referred to as the 'Merger Tax Directive'). With respect to procedural matters, the Cross-border Merger Directive refers to the Third Council Directive, which has been implemented in all Member States.

This book discusses the Cross-border Merger Directive and its implementing legislation in each Member State of the European Union and the European Economic Area. It provides companies and their advisors with useful insight into the legal framework applicable to, and the tax treatment of, cross-border mergers throughout the European Economic Area.

This book is divided into two parts. The first part analyses the Community rules laid down in the Cross-border Merger Directive and the Community rules on the tax treatment of cross-border mergers. The second part contains chapters on the implementing legislation in each Member State, prepared in accordance with a common format and contributed by a practitioner from each state. The annexes to this book contain the Cross-border Merger Directive (Annex I), the Merger Tax Directive (Annex II) and a list of the implementing legislation in each Member State (Annex III).

This is the second volume of this book which contains chapters on the Member States that are not included in the first volume.

DIRK VAN GERVEN is a partner in the Brussels office of NautaDutilh, a leading Benelux firm, and a member of the Brussels and New York Bars. He has extensive experience in all areas of corporate and financial law and is currently President of the Dutch-speaking chapter of the Brussels Bar. Dirk has published widely in the fields of corporate and financial law. Since 2003 he has been a member of the supervisory board of Belgium's Banking, Finance and Insurance Commission. Since 2010 he has been a member of the Board of Directors of CEPINA, the Belgian arbitration institute.

Cambridge University Press
 978-0-521-48760-3 - Cross-Border Mergers in Europe: Volume II
 General Editor Dirk Van Gerven
 Frontmatter
[More information](#)

Law Practitioner Series

The *Law Practitioner Series* offers practical guidance in corporate and commercial law for the practitioner. It offers high-quality comment and analysis rather than simply restating the legislation, providing a critical framework as well as exploring the fundamental concepts which shape the law. Books in the series cover carefully chosen subjects of direct relevance and use to the practitioner.

The series will appeal to experienced specialists in each field, but is also accessible to more junior practitioners looking to develop their understanding of particular fields of practice.

The Consultant Editors and Editorial Board have outstanding expertise in the UK corporate and commercial arena, ensuring academic rigour with a practical approach.

Consultant editors

Andrew Peck, retired partner of Linklaters

Mr Justice David Richards, Judge of the High Court of Justice, Chancery Division

Editors

Chris Ashworth – Knight Vinke Asset Management

Judith Hanratty – BP Corporate Lawyer, retired

Sally James – UBS Investment Bank

Vanessa Knapp – Freshfields Bruckhaus Deringer LLP

Richard Lee – Addleshaw Goddard LLP

Charles Mayo – Simmons & Simmons LLP

Gary Milner-Moore – Herbert Smith LLP

Tim Plews – Clifford Chance LLP

Timothy Polglase – Allen & Overy LLP

Laurence Rabinowitz QC – One Essex Court

Dr Pippa Rogerson – University of Cambridge

Richard Snowden QC – Erskine Chambers

Mark Stamp – Linklaters LLP

William Underhill – Slaughter and May

Dirk Van Gerven – NautaDutilh, Brussels

Sandra Walker – Rio Tinto

Books in the series include

Good Governance for Pension Schemes

Paul Thornton and Donald Fleming

Settlement of Investment Disputes under the Energy Charter Treaty

Thomas Roe, Matthew Happold and James Dingemans QC

A Practical Guide to Private Equity Transactions

Geoff Yates and Mike Hinchliffe

Stamp Duty Land Tax

Michael Thomas; Consultant Editor David Goy QC

Accounting Principles for Lawyers

Peter Holgate

The European Company: Volume 1

General Editors: Dirk van Gerven and Paul Storm

The European Company: Volume 2

General Editors: Dirk van Gerven and Paul Storm

Capital Markets Law and Compliance: The Implications of MiFID

Paul Nelson

Reward Governance for Senior Executives

Edited by Carol Arrowsmith and Rupert McNeil

Cambridge University Press
978-0-521-48760-3 - Cross-Border Mergers in Europe: Volume II
General Editor Dirk Van Gerven
Frontmatter
[More information](#)

Prospectus for the Public Offering of Securities in Europe: Volume 1: European and National Legislation in the Member States of the European Economic Area

General Editor: Dirk van Gerven

Prospectus for the Public Offering of Securities in Europe: Volume 2: European and National Legislation in the Member States of the European Economic Area

General Editor: Dirk van Gerven

Common Legal Framework for Takeover Bids in Europe: Volume 1

General Editor: Dirk van Gerven

Common Legal Framework for Takeover Bids in Europe: Volume 2

General Editor: Dirk van Gerven

Accounting Principles for Non-Executive Directors

Peter A. Holgate and Elizabeth Buckley

The Law of Charitable Status

Robert Meakin

The Business Case for Corporate Governance

Ken Rushton

Cross-Border Mergers in Europe: Volume 1

General Editor: Dirk Van Gerven

Cross-Border Mergers in Europe: Volume 2

General Editor: Dirk Van Gerven

Cambridge University Press
978-0-521-48760-3 - Cross-Border Mergers in Europe: Volume II
General Editor Dirk Van Gerven
Frontmatter
[More information](#)

Cross-Border Mergers in Europe

VOLUME II

General Editor
DIRK VAN GERVEN



Cambridge University Press
978-0-521-48760-3 - Cross-Border Mergers in Europe: Volume II
General Editor Dirk Van Gerven
Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Tokyo, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521487603

© Cambridge University Press 2011

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2011

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Cross-border mergers in Europe / general editor, Dirk Van Gerven.

p. cm. – (Law practitioner series)

ISBN 978-0-521-48760-3 (Hardback)

1. Consolidation and merger of corporations—Law and legislation—
European Union countries. I. Gerven, Dirk van. II. Title. III. Series.
KJE6467.C76 2010
346.4'06626—dc22

ISBN 978-0-521-48760-3 Hardback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to in
this publication, and does not guarantee that any content on such websites is,
or will remain, accurate or appropriate.

Contents

<i>Contributors</i>	<i>page</i> x
<i>Preface</i>	xiii
DIRK VAN GERVEN	
<i>NautaDutilh</i>	
Part V Application in each Member State	
National Reports for the EU Member States	1
19. Finland	3
OUTI RAITASUO, JOHANNA HALTIA-TAPIO	
<i>Hannes Snellman</i>	
20. France	14
JEAN-MARC DESACHÉ	
<i>Gide Loyrette Nouel</i>	
21. Greece	29
TOM KYRIAKOPOULOS	
<i>Kelemenis & Co.</i>	
22. Ireland	44
MARGARET STACK, JENNIFER MCCARTHY,	
MICHAEL GREENE	
<i>A&L Goodbody</i>	
23. Italy	58
FRANCESCO GIANNI, MARCO ZACCAGNINI	
<i>Gianni, Origoni, Grippo & Partners</i>	

 Contents

24. Latvia	63
MARIS BRIZGO, RAYMOND L. SLAIDINS <i>LAWIN Klavins & Slaidins</i>	
JOHN JA BURKE <i>Kazakhstan Institute of Management, Economics and Strategic Research</i>	
25. Lithuania	74
IRMANTAS NORKUS, EVA SUDUIKO <i>Raidla Lejins & Norcous</i>	
26. Luxembourg	87
MARGARETHA WILKENHUYSEN, LOUISA SILCOX <i>NautaDutilh</i>	
27. Malta	101
ADRIAN GABARRETTA, COLM O'CONNOR, NADIA CASSAR <i>Ganado & Associates</i>	
28. Portugal	115
MARGARIDA BARROCCAS, MARCELO ALVES, MARIANA FERREIRA <i>Barrocas Advogados</i>	
29. Republic of Slovenia	128
JURIJ DOLŽAN, MATIJA KNAPIČ, SAMO HERIČ <i>Odvetnik Jurij Dolžan, Mitja Vidma & Igor Zemljarič</i>	
30. Romania	152
GABRIELA CACEREA <i>Nestor Nestor Diculescu Kingston Petersen</i>	
31. Spain	166
JAIME PEREDA ESPESO, JOSÉ GABRIEL MARTÍNEZ PAÑOS <i>Uría Menéndez</i>	
32. Sweden	181
JAN BERTIL ANDERSSON <i>Jönköping International Business School Linköping University</i>	

Part VI Application in the EEA Member States	189
33. Iceland	191
ÓLAFUR ARINBJÖRN SIGURÐSSON <i>LOGOS</i>	
34. Liechtenstein	201
ALEXANDER APPEL, MORITZ BLASY <i>Walch & Schurti</i>	
Part VII Annexes	213
Annex I Council Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies (the ‘Cross-border Merger Directive’)	215
Annex II Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (the ‘Merger Tax Directive’)	227
Annex III List of national laws implementing the Cross-border Merger Directive	241
<i>Index</i>	247

Contributors

FINLAND

Outi Raitasuo
 Johanna Haltia-Tapio
Hannes Snellman

FRANCE

Jean-Marc Desaché
Gide Loyrette Nouel

GREECE

Tom Kyriakopoulos
Kelemenis & Co.

IRELAND

Margaret Stack
 Jennifer McCarthy
 Michael Greene
A&L Goodbody

ITALY

Francesco Gianni
 Marco Zaccagnini
Gianni, Origoni, Grippo & Partners

LATVIA

Maris Brizgo
 Raymond L. Slaidins
LAWIN Klavins & Slaidins
 John JA Burke
*Kazakhstan Institute of Management,
 Economics and Strategic Research*

LITHUANIA

Irmantas Norkus

Eva Suduiko

Raidla Lejins & Norcous

LUXEMBOURG

Margaretha Wilkenhuysen
 Louisa Silcox
NautaDutilh

MALTA

Adrian Gabarretta
 Colm O'Connor
 Nadia Cassar
Ganado & Associates

PORTUGAL

Margarida Barrocas
 Marcelo Alves
 Mariana Ferreira
Barrocas Advogados

REPUBLIC OF SLOVENIA

Jurij Dolžan
 Matija Knapič
 Samo Herič
*Odvetnik Jurij Dolžan, Mitja Vidmar &
 Igor Zemljarič*

ROMANIA

Gabriela Cacerea
*Nestor Nestor Diculescu
 Kingston Petersen*

SPAIN

Jaime Pereda Espeso

Cambridge University Press
978-0-521-48760-3 - Cross-Border Mergers in Europe: Volume II
General Editor Dirk Van Gerven
Frontmatter
[More information](#)

Contributors

José Gabriel Martínez Paños
Uría Menéndez

SWEDEN

Jan Bertil Andersson
*Jönköping International
Business School, Linköping
University*

ICELAND

Ólafur Arinbjörn Sigurðsson
LOGOS

LIECHTENSTEIN

Alexander Appel
Moritz Blasy
Walch & Schurti

Preface

This is the second volume of the book on the Cross-border Merger Directive. The first volume contains a general discussion of the Cross-border Merger Directive and the Merger Tax Directive and chapters on the Member States that adapted their legislation first. The first volume was published by Cambridge University Press in 2010. The aim of this book is to provide a comprehensive analysis of the European legal framework on cross-border mergers and the implementing legislation in each Member State of the European Union and the European Economic Area (EEA). The Cross-border Merger Directive is made applicable through treaty to the three EEA Member States permitting cross-border mergers among companies of these states and the EU Member States.

The first volume included chapters on Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, The Netherlands, Poland, Slovak Republic, the United Kingdom and Norway.

Volume II contains chapters on Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Republic of Slovenia, Romania, Spain, Sweden, Iceland and Liechtenstein.

Thus, taken together, the two volumes contain reports on the legal framework in all twenty-seven EU Member States and the three EEA countries. It is in consequence a useful tool for those who intend to organise a cross-border merger, or advise regularly on cross-border mergers in Europe.

This book was made possible thanks to contributions from distinguished law firms in the EU and EEA member countries. A list of these contributors is included at the beginning of each volume.

Finally, I wish to thank not only the contributors, but also those whose names are not mentioned herein, in particular Bianca Porcelli and others with NautaDutilh for their continuing support in composing this second volume.

Dirk Van Gerven
Brussels, 27 December 2010