

PORTUGAL IMPLEMENTS CROSS-BORDER MERGERS DIRECTIVE

Portugal has recently transposed Directive (EU) 2019/2121, of 27 November 2019, harmonizing its rules on cross-border conversions, mergers and divisions of commercial companies with the European standard. This included removing restrictions on the exercise of freedom of establishment, and added protection to employees, creditors and shareholders in those actions.

Portugal has recently transposed [Directive \(EU\) 2019/2121, of 27 November 2019 \("Directive"\)](#) on cross-border conversions, mergers and divisions of commercial companies, that amended [Directive 2017/1132, of 14 June 2017 \("Directive \(EU\) 2017/1132"\)](#), on mergers and divisions of public limited liability companies at national level and cross-border mergers of limited liability companies at European level.

This has been done through [Decree-Law no. 114-D/2023, of 5 December \("Decree-Law"\)](#) which made changes to the rules of the Commercial Companies Code, to the Commercial Registry Code and to Decree-Law no. 24/2019 on cross-border transformations, mergers and divisions, to be applicable within in the European Union; removed restrictions on the exercise of freedom of establishment, and added protection to employees, creditors and shareholders in those actions.

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Of those changes we highlight the following:

- Obligation on the part of the board of directors of the participating companies to draw up a report for shareholders and employees setting out the legal and economic grounds for the decision to merge, divide or convert across borders;
- A Legal requirement for prior review of the legality of cross-border conversions, divisions and new mergers, in addition to those already enshrined in Directive (EU) 2017/1132, now amended;
- Obligation to register projects and internal or cross-border conversions, mergers and divisions;
- Obligation on the part of the national commercial registry, as in other member states, to notify the competent national registry of each of the participating companies of all acts relating to the process, to make the acts more transparent and subject to easier and more efficient supervision; and
- Protection of employees through participation in cross-border conversions, mergers and divisions processes, while guaranteeing their right to consult the respective projects and related documents.

This Decree-Law will enter into force on 4th January 2024.

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