

Cross-border mergers after Brexit with Luxembourg

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This Q&A considers the potential impact of the UK's departure from the European Union on the use of cross-border mergers.

The Cross-Border Merger Regulations 2007, as amended (SI 2007/2974) (UK Regulations) implemented the Directive 2005/56/EC on cross-border mergers of limited liability companies (Cross-border Mergers Directive) in the UK (as repealed and codified with effect from 20 July 2017 by Directive (EU) 2017/1132). The UK Regulations establish a framework for cross-border mergers to occur between companies in the UK and companies from other EEA states.

This Q&A attempts to provide a picture of how Luxembourg might allow cross-border mergers with UK companies after Brexit without effecting the statutory merger process under the Cross-border Mergers Directive.

Brexit: cross-border mergers

1. Do you think UK companies would still be able to carry out cross-border mergers with companies in your jurisdiction after the UK leaves the EU?

Directive 2005/56/EC on cross-border mergers of limited liability companies (Cross-border Mergers Directive) was implemented into domestic law in Luxembourg by the Law of 10 June 2009 on cross-border mergers (the Cross-Border Mergers Directive having been repealed and codified with effect from 20 July 2017 by Directive (EU) 2017/1132 relating to certain aspects of company law (codification)). Implementation of the Cross-Border Mergers Directive took place via amendment of the Law of 10 August 1915 on commercial companies (Company Law).

The Luxembourg implementing legislation went beyond the scope of the Cross-Border Mergers Directive, which is limited to cross-border mergers of limited liability companies (today, those types of companies referred to in Article 119 of Directive (EU) 2017/1132, being essentially those listed in Annex II of such Directive).

Luxembourg law therefore provides for national and cross-border mergers involving any form of Luxembourg commercial company with legal personality and/or Luxembourg economic interest groupings with a foreign company of any form or in any jurisdiction and/or with a foreign law-governed economic interest grouping of any jurisdiction, provided both:

- The national law of the foreign merger participant does not prohibit such a transaction.
- The foreign merger participant complies with the provisions and formalities of its national law.

In addition, any such merger must also comply with Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation).

Article 1020-1 of the Company Law provides in its third paragraph that Luxembourg commercial companies with legal personality and Luxembourg economic interest groupings can enter into a cross-border merger transaction with a foreign company or a foreign law-governed economic interest grouping. It is irrelevant whether the foreign merger participant is located in an EU or EEA member state.

With the UK becoming a non-EU and non-EEA jurisdiction after Brexit, merger transactions with Luxembourg companies will still be possible from a Luxembourg perspective subject to the above.

2. Does your jurisdiction allow for cross-border mergers with non-EEA companies?

Article 1020-1 of the Company Law allows cross-border mergers between Luxembourg companies and non-EU or non-EEA companies provided the national law of the foreign merger participant does not prohibit such a transaction (see [Question 1](#)). From a Luxembourg corporate law point of view, there are no significant differences between a cross-border merger involving an EU or EEA company, or a non-EU or non-EEA company.

3. If a cross-border merger is structured using the usual rules applicable in your jurisdiction to mergers with non-EEA companies, what would the likely effect be on the merger timetable?

From a Luxembourg law point of view, there will not be any differences with respect to the timetable in the case of a cross-border merger of a Luxembourg company with another EEA or EU company and a cross-border merger with a non-EU or a non-EEA company. This is because the Company Law essentially applies identical rules to both cases (see [Question 1](#)).

4. If a cross-border merger is structured using the usual rules applicable in your jurisdiction to mergers with non-EEA companies, are there any other considerations that may be relevant?

There are no significant differences as compared to mergers with EU or EEA companies.

5. Has there been any indication in your jurisdiction as to whether cross-border mergers involving a UK company that commence prior to the Brexit deadline of 29 March 2019 would be unable to complete if the deadline for completion is due to fall after the UK leaves the EU?

There has not been any such indication from a Luxembourg authority or court and, given the current Luxembourg law, no further indications are expected.

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