



Response from the Danish Government to the public consultation on cross-border mergers and divisions

Denmark appreciates the opportunity to provide input to a possible amendment of the cross-border merger directive (CBMD) and a possible new directive on cross-border divisions.

Denmark recognises the CBMD as important for companies in the EU when organising and restructuring companies.

From a Danish point of view it is important that the CBMD – and possible new rules on cross-border divisions – are updated and geared towards creating better opportunities for growth in European companies. This can be achieved by making the rules easy and cost effective to use in cross border operations. On the other hand it is still important that creditors and employees are adequately protected. In particular the rights of employees to participate in the management of the company should be continued to be safeguarded. We find that several of the possibilities mentioned by the Commission in the consultation can help to contribute to these goals.

In order to achieve these goals Denmark finds that the future work should focus on the following measures:

- Creditor protection rules are essential, but they should be flexible, proportionate and take into account the costs for companies. Hence, specific rights for creditors should only be required if for example an independent expert's report does not verify that the interests of the creditors of each of the merging entities are adequately protected.
- Cross-border mergers between public and private limited liability companies should be allowed. On the other hand, it can be difficult or sometimes even impossible to merge two very different types of organizational set ups, for example a limited liability company and an association or a foundation. Thus, the directive should focus on making it possible to cross-border merge different types of EU-regulated entities.

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Specifically on cross-border divisions

- The Commission should put forward a directive concerning cross-border divisions. If such a set of harmonized rules allowing and facilitating cross-border divisions was proposed in the same manner as is the case with cross-border mergers today, it would reduce costs for companies in the EU.
- The rules on cross-border mergers and divisions should be regulated identically as several issues are similar for both operations. Integration of the rules in the same directive should also be considered, as this would help to ensure that unintended divergence does not occur during the political negotiations. The Commission should also consider the possibility of the directive including rules on cross-border transfer of registered seat.

Denmark looks forward to the upcoming initiatives set forth by the Commission and to participating in further discussions on this important subject.