LAW PRACTITIONER SERIES

Cross-Border Mergers in Europe

VOLUME II

General Editor
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CAMBRIDGE

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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applicable to mergers between parent companies and their subsidiaries located in different Member States, which has been replaced by Council Directive 2009/133/EC of 19 October 2009 which did not change the content (in this book referred to as the 'Merger Tax Directive').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.

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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.

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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

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Finland

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I Introduction

1. The Cross-border Merger Directive was implemented in Finland on 31 December 2007 by acts amending the Companies Act, the Act on Cooperatives and the Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company.

II Scope of the new rules

2. The rules apply to private and public limited companies and cooperatives as well as credit institutions in the form of a limited company, a cooperative or a savings bank and such mutual real estate limited companies to which the Finnish Housing Companies Act is applied.

3. A Finnish limited liability company may participate only in a cross-border merger where the surviving company or the disappearing company qualifies as a limited liability company, as defined in the Cross-border Merger Directive. However, in the event of a parent-subsidiary merger, a Finnish limited liability company may merge into a foreign legal entity registered in another Member State and to which the laws of the said Member State are applied, if the foreign legal entity is comparable to a Finnish cooperative, cooperative bank, savings bank or mutual insurance company. A prerequisite is that the foreign legal entity owns all shares of its Finnish subsidiary.

III Cash payment

4. With regard to the merger consideration, the Companies Act is based on the assumption that the consideration is shares or securities giving an entitlement to shares issued by the receiving company. The Companies Act does not, however, limit the type of merger consideration, which may be cash or other assets. The provisions regarding equal treatment of shareholders shall be taken into consideration, if assets other than shares of the receiving company are given as merger consideration.

IV Legal consequences and enforceability of a cross-border merger

5. As a result of a cross-border merger all assets and liabilities of the disappearing companies will be considered transferred without the liquidation of the disappearing company to the receiving company upon the entry into force of the cross-border merger, i.e. with the following legal effects:

(i) the merging company will cease to exist;
(ii) the assets and liabilities, including all the rights and obligations, will be transferred to the surviving company;
(iii) the shareholders of the merging companies will become shareholders of the surviving company;
(iv) at the moment of registration of the implementation of the merger, the shareholders of the merging company and the holders of option rights and other special rights entitling to shares will become entitled to the merger consideration in accordance with the draft terms of merger. The new shares to be issued as merger consideration will carry shareholder rights as of the moment of registration; and
(v) the final settlement of accounts takes place in the merging company.

6. The transfer of all rights and obligations shall be applied also to contractual relationships in force, including but not limited to the employment contracts and employment relations existing on the date of the enforcement of the cross-border merger.

V Procedure

1 Draft terms of cross-border merger

7. The management or administrative organ of each participating company (in case of a Finnish limited liability company, the board of directors) must prepare the common draft terms of cross-border merger. The said document shall be sent to the registration authorities for registration within one month of its signing.

8. The draft terms should include the information described in Chapter 1, no. 19 of this book (i.e. the requirements under Article 5 of the Cross-border Merger Directive (see Volume I)). In addition, also the following information should be included:

(i) information on the corporate form of the companies participating in the merger and of the possible provider of merger consideration, as well as a proposal for the corporate form of a company to be established by a combination merger;
(ii) information on the registers where the foreign companies participating in the merger have been registered, and the contact details of the said registers;
(iii) an account of the reasons for the merger;
(iv) a proposal for the amendment of the articles of association, if necessary;
(v) a proposal, where appropriate, for the number of shares given as consideration broken down by share class, as well as whether new shares or treasury shares are to be issued;
(vi) a proposal for any other possible consideration and, if the consideration consists of options or other special rights entitling to shares, their terms;
(vii) a proposal for the allocation of the consideration, date of distribution and any other terms and conditions related to the distribution, as well as an account of their grounds;
(viii) an account of or a proposal for the rights of the merging company's option-holders, and the holders of any other special rights entitling to shares in the merging company, in the merger;
(ix) a proposal, where appropriate, for the increase of the share capital of the surviving company;
(x) an account of the merging company's assets, liabilities and equity and the matters influencing their valuation, the intended effect of the merger