Contact points

Austria
Vienna
CMS Reich-Rohrwig Hainz
Bernhard Hainz
bernhard.hainz@cms-rrh.com
Christoph Wolf
christoph.wolf@cms-rrh.com
T +43 1 40 443 0
F +43 1 40 443 9000

Belgium
Brussels
CMS DeBacker
Stanislas van Wassenhove
stanislas.vanwassenhove@cms-db.com
Michael de Leersnyder
michael.deleersnyder@cms-db.com
T +32 2 743 69 00
F +32 2 743 69 01

Antwerp
CMS DeBacker
Jef Degrauwe
jef.degrauwe@cms-db.com
T +32 3 206 01 40
F +32 3 206 01 50

Bulgaria
Sofia
CMS Cameron McKenna EOOD
Gentscho Pavlov
gentscho.pavlov@cms-rrh.com
T +359 2 921 9922
F +359 2 921 9921

China
Beijing
CMS Cameron McKenna
Jonathan Selvadoray
jonathan.selvadoray@cmck.com
T +86 10 8518 2585
F +386 10 8518 1820

China
Shanghai
CMS Cameron McKenna
Jonathan Selvadoray
jonathan.selvadoray@shanghai.cmslegal.com
Ulrike Glueck
ulrike.gluek@cms-hs.com
T +86 21 6289 6363
F +86 21 6289 9696

Croatia
Zagreb
CMS Reich-Rohrwig Hainz d.o.o.
Gregor Famira
gregor.famira@cms-rrh.com
T +385 1 4825 600
F +385 1 4825 601

Czech Republic
Prague
CMS Cameron McKenna v.o.s.
Antonin Kazda
antonin.kazda@cms-cmck.com
T +420 2 9679 8111
F +420 2 2109 8000

France
Paris
CMS Bureau Francis Lefebvre
Nicolas Callies
nicolas.callies@cms-bfl.com
Alain Herrmann
alain.herrmann@cms-bfl.com
Thierry Romand
thierry.romand@cms-bfl.com
Nicolas de Sevin
nicolas.desevin@cms-bfl.com
T +33 1 47 38 55 00
F +33 1 47 38 55 55

Lyon
CMS Bureau Francis Lefebvre Lyon
François Coutard
f.coutard@bfl-avocats-lyon.com
T +33 4 78 95 47 99
F +33 4 72 61 84 27

Germany
Berlin
CMS Hasche Sigle
Marion Bernhardt
marion.bernhardt@cms-hs.com
T +49 30 203 60 0
F +49 30 203 60 290

Cologne
CMS Hasche Sigle
Björn Gaul
bjoern.gaul@cms-hs.com
Gerlind Wisskirchen
gerlind.wisskirchen@cms-hs.com
T +49 221 77 160
F +49 221 77 161 10

Dusseldorf
CMS Hasche Sigle
Barbara Bittmann
barbara.bittmann@cms-hs.com
T +49 211 4934-0
F +49 211 49200-127

Frankfurt am Main
CMS Hasche Sigle
Reiner Kurschat
reiner.kurschat@cms-hs.com
T +49 69 71 701 0
F +49 69 71 701 40410

Hamburg
CMS Hasche Sigle
Bernd Roock
bernd.roock@cms-hs.com
T +49 40 376 30 311
F +49 40 376 30 40 511

Leipzig
CMS Hasche Sigle
Eckhart Braun
eckhart.braun@cms-hs.com
T +49 34 12 16 720
F +49 34 12 16 72 33

Munich
CMS Hasche Sigle
Dieter Straub
dieter.straub@cms-hs.com
T +49 89 23 80 70
F +49 89 23 80 71 10

Stuttgart
CMS Hasche Sigle
Antje-Kathrin Uhl
kathrin.uhl@cms-hs.com
T +49 711 97 64-0
F +49 711 97 64-900

Hungary
Budapest
Ormai és Társai CMS Cameron McKenna
Gabriella Ormai
gabriella.ormai@cms-cmck.com
T +36 1 483 4800
F +36 1 483 4801

Italy
Rome
CMS Adonnino Ascoli & Cavasola Scamoni
Fabrizio Spagnolo
fabrizio.spagnolo@cms-aacs.com
T +39 06 478151
F +39 06 483755

The Netherlands
Amsterdam
CMS Derks Star Busmann
Marco Meijer
marco.meijer@cms-dsb.com
Jos W.M. Pothof
jos.pothof@cms-dsb.com
T +31 20 3016 301
F +31 20 3016 333

Poland
Warsaw
CMS Cameron McKenna LLP
Katarzyna Dulewicz
katarzyna.dulewicz@cms-cmck.com
T +48 22 5205 555
F +48 22 5205 556

Romania
Bucharest
CMS Cameron McKenna SCA
Delia Dragomir
delia.dragomir@cms-cmck.com
T +40 21 407 38 00
F +40 21 407 39 00

Russia
Moscow
CMS Cameron McKenna LLP
Leonid Zubarev
leonid.zubarev@cms-cmck.com
T +7 495 258 5000
F +7 495 7979 080

CMS Hasche Sigle
Anastasija Schestopalowa
anastasija.schestopalowa@cms-hs.com
T +7 495 79 79 070
F +7 495 79 79 07

Serbia
Belgrade
CMS Reich-Rohrwig Hasche-Sigle d.o.o.
Radivoje Petrikić
radivoje.petrikic@cms-rrh.com
T +381 11 32 08 900
F +381 11 30 38 930

Slovakia
Bratislava
Advokatska kancelaria JUDr. Jaroslav Ruzicka
in association with CMS Cameron McKenna
v.o.s. and CMS Reich-Rohrwig Hainz
Peter Šimo
peter.simo@cms-rrh.com
T +421 2 544 33 490/171
F +421 2 544 35 906

Slovenia
Ljubljana
CMS Reich-Rohrwig Hainz
Ales Lunder
ales.lunder@cms-rrh.com
T +386 1 620 52 10
F +386 1 620 55 11

Spain
Madrid
CMS Albiñana & Suárez de Lezo
Diana Rodriguez
drodriguez@cms-asl.com
T +34 91 451 93 26
F +34 91 442 97 35

Switzerland
Zurich
CMS von Erlach Henrici
Damiano Brusa
damiano.brusa@cms-veh.com
Aline Wey Spiers
aline.wey@cms-veh.com
T +41 44 285 11 11
F +41 44 285 11 22

Turkey
Turkish Department Vienna
CMS Reich-Rohrwig Hainz
Döne Yalçin
doene.yalcin@cms-rrh.com
T +43 1 40443 145
F +43 1 40443 9145

Ukraina
Kyiv
CMS Cameron McKenna LLC
Yaroslav Petrov
yaroslav.petrov@cms-cmck.com
T +380 44 391 3377
F +380 44 391 3388

United Kingdom
London
CMS Cameron McKenna LLP
Anthony Fincham– Employment
anthony.fincham@cms-cmck.com
Mark Atkinson – Pensions
mark.atkinson@cms-cmck.com
T +44 20 7367 3000
F +44 20 7367 2000

CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 28 jurisdictions with 56 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,200 lawyers and is headquartered in Frankfurt, Germany.

CMS nine member firms are: CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (Netherlands); CMS von Erlach Henrici (Switzerland); CMS Hasche Sigle (Germany); and CMS Reich-Rohrwig Hainz (Austria).

CMS offices and associated offices:
Amsterdam, Berlin, Brussels, London, Madrid, Paris, Rome, Vienna, Zurich, Aberdeen, Algiers, Antwerp, Arnhem, Beijing, Belgrade, Bratislava, Bristol, Bucharest, Budapest, Buenos Aires, Casablanca, Cologne, Dresden, Dusseldorf, Edinburgh, Frankfurt, Hamburg, Kyiv, Leipzig, Ljubljana, Lyon, Marbella, Milan, Montevideo, Moscow, Munich, New York, Prague, Sao Paulo, Sarajavo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Utrecht, Warsaw and Zagreb.

The members of CMS are in association with The Levant Lawyers with offices in Beirut, Abu Dhabi, Dubai and Kuwait.

www.cmslegal.com

C/M/S/
The alliance of major
European law firms

CMS Adonnino Ascoli & Cavasola Scamoni CMS Albiñana & Suárez de Lezo
CMS Bureau Francis Lefebvre CMS Cameron McKenna LLP CMS DeBacker CMS Derks Star Busmann
CMS von Erlach Henrici CMS Hasche Sigle CMS Reich-Rohrwig Hainz

EU Cross-Border Mergers Employee Participation

The CMS Employment and Pensions Group

EU Cross-Border Mergers

Introduction

Within the European Union, there is a wide variety of different practices in the field of employee participation. In some countries, works councils are well established, while in others they rarely exist and, where they do, have a strictly limited role. In some member states the employee representatives may sit on the board.

Legal framework

The EU Cross Border Mergers Directive (2005/56/EC) came into force in December 2005 with an implementation date by member states of 15 December 2007.

This applies to mergers of limited liability companies (as defined in the directive) formed in accordance with the law of a member state, and having a registered office, central administration or principal place of business in the European Union, provided at least two of the merging companies are governed by the laws of different member states.

The directive does not impose any new participation requirements where employee participation rights do not exist in any of the merging companies. However, one broad effect of the directive is to preserve pre-existing employee participation rights in the new company. That means that (i) employee participation may be exported across jurisdictions and take place in member states which have no real experience of the concept or how it works in practice and/or (ii) that companies with existing employee participation rights may be able to prevent a further increase of such rights by preserving their current arrangements. Until the Cross Border Mergers Directive the preservation of employee participation rights has only been possible by transforming companies into a Societas Europaea (SE).

However, the regulations of the Cross Border Mergers Directive are to some extent more favourable in terms of mandatory employee representation (as it increases the threshold required when the standard rules apply from 25% to 33 ⅓%).

In what circumstances may this come about?

The general principle is that the company resulting from the cross-border merger will be subject to the national laws in force concerning employee participation (if any) in the member state where it has its registered office. However there are exceptions:

- *where at least one of the merging companies has, in the six month period before publication of the draft terms of merger, an average number of employees exceeding 500 and is operating under an employee participation system; or*
- *where the national law applicable to the resulting company would give the employees participation rights which are less than those operated in any of the merging companies; or*
- *where the national law where the newly formed company has its registered office does not provide for employees of establishments of the company in other EEA states the same entitlement to exercise participation rights as those in the state of registration.*

Where these exceptions apply employee participation rights may be imported to a country which currently has no or limited participation rights.

Form of employee participation

There is provision for this to be agreed, failing which default standard rules take effect. They require employee representatives at board level at the highest level of the other merging companies. In some cases there is a limit, for example the employee representatives must be no greater than 33 ⅓% of the total board in the UK.

How can CMS help?

Effective advice in this area can only be given on a cross-European basis from specialists with experience in the relevant different jurisdictions. It is essential that advice is properly co-ordinated. The CMS employment group has specialists in the great majority of EU jurisdictions who regularly work together on cross-border projects to provide harmonious and consistent advice.

CMS Employment and Pensions Group

The Employment and Pensions group of CMS advises national and international organisations on all aspects of employment law issues that affect businesses across Europe. Our solutions are based on a broad experience in specific business environments and industry sectors.

We offer coordinated European advice through a single point of contact. Thus, clients can deal with a local firm in their own country using their own language whilst benefiting from the integrated expertise of a wide multi-jurisdictional team of more than 200 practitioners.

Full range of employment law services

Our lawyers have particular expertise in all the legal aspects of the following areas:

- Compliance with national and international laws and standards
- Individual and collective dismissals
- Employee share/stock ownership
- Employee pension schemes
- Social security contributions
- Labour/trade union issues/disputes
- Employee and pensions aspects of mergers and acquisions, outsourcing, nationalisation, privatisation
- Litigation to prevent employees competing with their former employer
- Drafting employment contracts, company policies and collective agreements
- Works councils at company, national and international levels

Study on the Application of Directive 2001/23/EC to Cross-Border Transfers of Undertakings

The European Commission commissioned the CMS employment group to write a study on the application of the Acquired Rights Directive (2001/23/EC) to cross-border transfers of undertakings. The study identified the main legal and technical problems using a comparative law approach.

It concluded that some of the provisions of the Acquired Rights Directive needed to be clarified and made more precise and as a result of this the European Commission embarked on a consultation exercise among the member states as to whether there should be changes to the Acquired Rights Directive.

The CMS study has already been heavily cited in the December 2007 UK Employment Appeal Tribunal judgment in Holis Metal Industries Ltd v GMB (UK EAT/017/07) which considered the application of TUPE to cross-border transfers.

About CMS

CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 28 jurisdictions with 56 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,200 lawyers and is headquartered in Frankfurt, Germany.

More information

Please phone your nearest CMS office or contact us at www.cmslegal.com for more details about CMS and the Employment and Pensions group.