

C/M/S/

Law.Tax

Why is the

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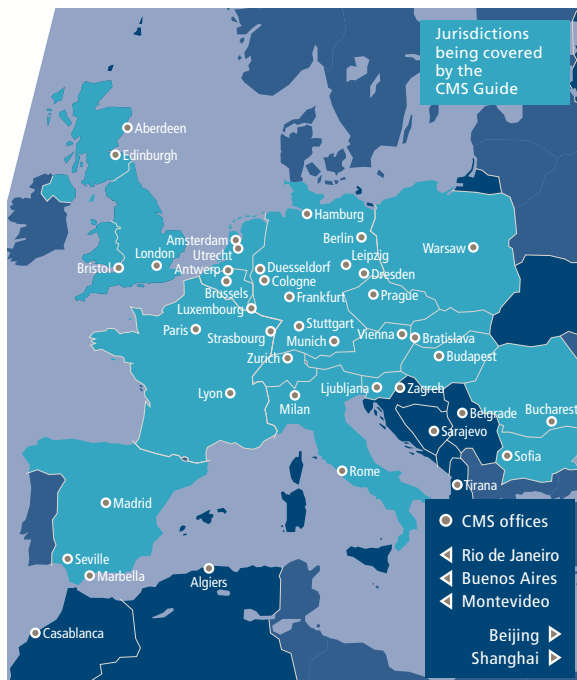
CMS Guide

to Cross-Border Merger

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relevant for you?

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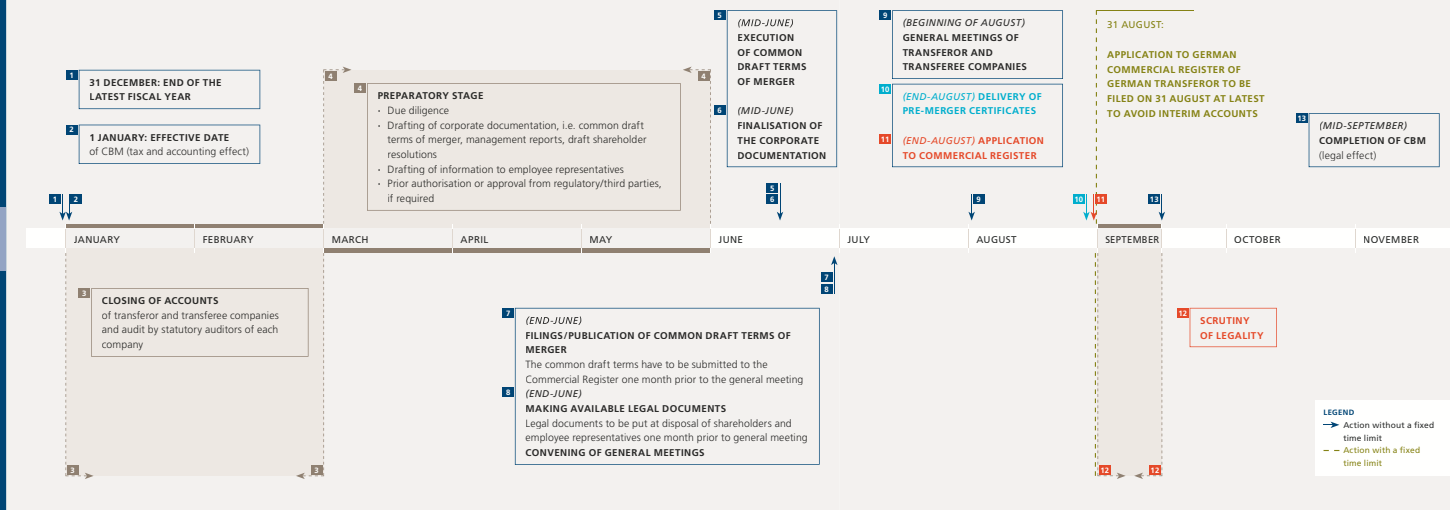
# CMS Guide to Cross-Border Merger

## What the CMS Guide provides:

- Covers 17 jurisdictions across Europe
- Comprises for each country a structured chapter with information on prerequisites and consequences of a Cross-Border Merger, i.e. timing, required documents and content, involved parties, formal and publication requirements, employee participation, tax consequences etc.
- Comprises for each country a structured timeline with information on the milestones for implementing a Cross-Border Merger
- Country chapters and timelines can easily be extracted and compared (thanks to folder format)
- Online Planner accessible via internet provides opportunity to select jurisdictions involved in your cross-border merger project to visualize selected timelines on screen, to harmonize timing for milestones and to print and distribute timelines to team members

### Germany: simplified timeline of a CBM

### Country timeline



## Your situation:

- You are planning a Cross-Border Merger and need guidance to decide whether a Cross-Border Merger is possible and sensible
- Despite the transition of EU Directive on Cross-Border Mergers, national legislations vary on important aspects

## Your benefits:

- Gives you an initial overview over key milestones, timing aspects, individuals and authorities to be involved
- Provides you with the opportunity to initially structure the documentation and the process
- Combines corporate law, labor law and tax aspects for each jurisdiction

### Germany

#### I. Corporate law

##### Consequences of the cross-border merger

|                        |   |
|------------------------|---|
| Legal effects          | <ul style="list-style-type: none"> <li>— Transfer of all assets, liabilities and employees to the transferee company.</li> <li>— Change of membership.</li> <li>— Termination of the transferor company.</li> </ul>   |
| Major tax consequences | <ul style="list-style-type: none"> <li>— No taxation at the level of the transferor shareholders.</li> <li>— Taxation of assets of the transferor company at the transferee company on a real value basis; continuation of book value possible if German transferee company.</li> </ul> |

##### Merging companies

|   |  |
|---|--|
| German companies which can participate in a cross-border merger | <ul style="list-style-type: none"> <li>— Limited liability company (<i>Gesellschaft mit beschränkter Haftung</i> or GmbH).</li> <li>— Stock corporation (<i>Aktiengesellschaft</i> or AG).</li> <li>— Limited partnership on stock (<i>Kommanditgesellschaft auf Aktien</i> or KGaA).</li> <li>— Societas Europaea (SE) with its seat in Germany.</li> </ul> |
| Rules for other companies or partnerships                       | <ul style="list-style-type: none"> <li>— No specific rules apply; a cross-border merger involving partnerships is possible on the basis of the Sevic decision of the European Court of Justice.</li> </ul>   |

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#### III. Tax law

##### Tax aspects

|  |   |
|--|---|
| Retroactivity  | <ul style="list-style-type: none"> <li>— The effective date for taxation purposes can be set back using a balance sheet that dates back as long as eight months.</li> <li>— If reorganisation is to be carried out on the basis of the balance sheet dated 31 December of the preceding year, the reorganisation must be filed for registration in the Commercial Register by 31 August.</li> </ul>                 |
| Tax loss carry-forward, or loss of losses?                         | <ul style="list-style-type: none"> <li>— Tax loss carry-forwards in Germany will be lost in case of a merger if the company carrying the losses ceases to exist due to the merger. Nevertheless, losses might be used to match a merger profit due to the fact that the merger is conducted by fully or partly using hidden reserves as far as this is possible under the German minimum taxation rules.</li> </ul> |
| Voluntary or required disclosure of hidden reserves and taxability | <ul style="list-style-type: none"> <li>— As a general rule, hidden reserves are to be disclosed.</li> <li>— Upon application, however, the assets may be assessed at book value or any other value between market value and book value, if the receiving Member State is subject to Art. 8 of the Merger Tax Directive (90/434/EEC).</li> <li>— The transferee company may benefit from that step-up.</li> </ul>    |
| Need for a binding ruling from financial authorities               | <ul style="list-style-type: none"> <li>— There is generally no need for a binding ruling.</li> <li>— In case of legal uncertainties, a binding ruling may be obtained.</li> <li>— A new administrative decree concerning the taxation of transformations will be released shortly.</li> </ul>   |