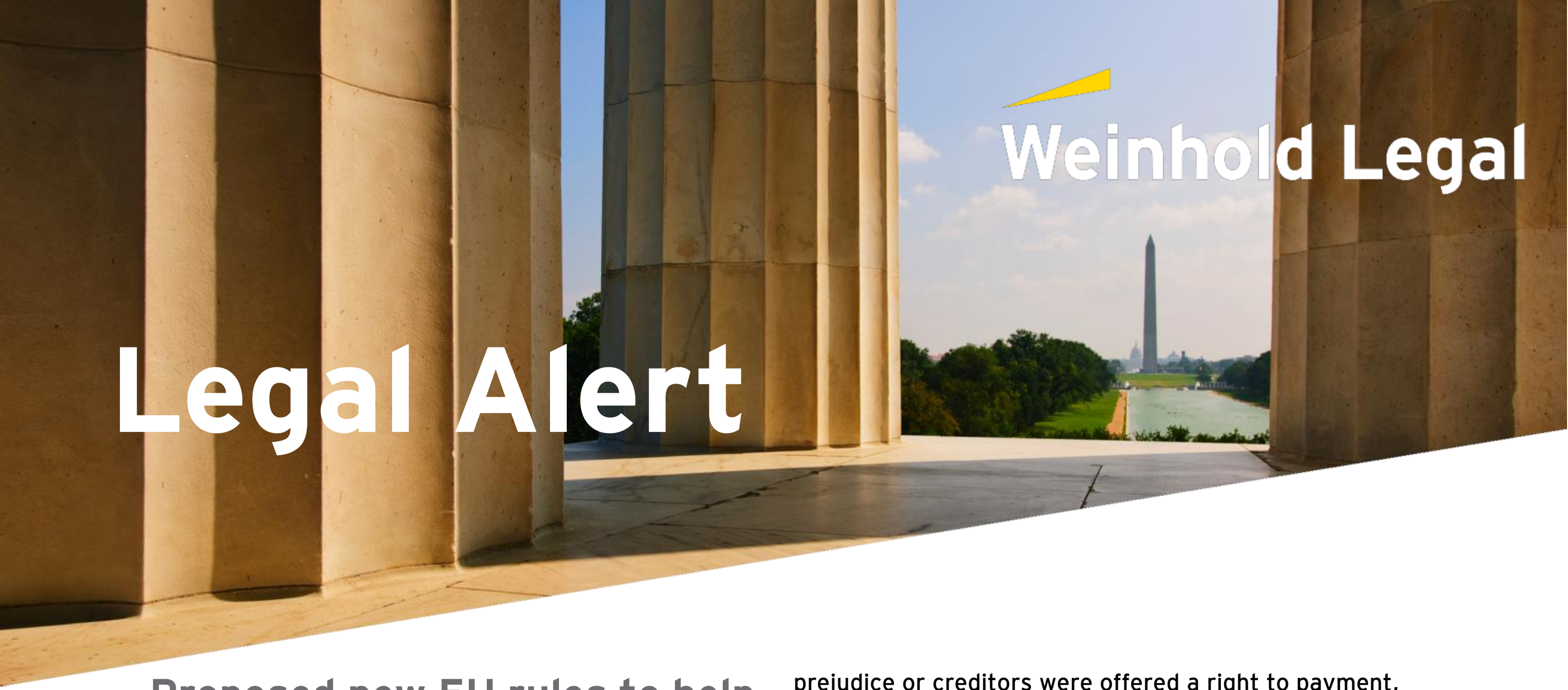

Proposed new EU rules to help companies move across borders

On 25 April 2018 a proposal for a directive was published by the European Commission with the aim of amending the Directive (EU) 2017/1132 by proposing a change in the company law rules for cross-border conversion, division and merger. Weinhold Legal provided input to a multi-jurisdictional study (available for download here) which was a basis for the published proposal for a directive (available for download here).

The purpose of the directive is to make it easier for companies to merge, divide or move within the Single Market, setting up common procedures at the EU level on how a company can move from one EU country to another, merge or divide into two or more new entities across borders with the intention to strengthen the protection of employee rights and prevention of tax abuse.

In order to enhance the protection afforded to the employees, each company carrying out a cross-border operation should provide employees with a report addressing the implications and impact that this operation may have on them. Employees will have the right to express their opinion which should be taken into consideration. Specifically for cross-border conversions and divisions, employees will also be invited to submit their views on the draft terms of the proposed operation and, where applicable, a report from an independent expert. Their views will in turn be taken into account by the authority of the departure Member State when deciding whether to issue a pre-conversion certificate.

The new rules also propose strengthening the protection of rights and interests of creditors and minority shareholders. According to the proposal the company will have to provide the envisaged protection of creditors and shareholders in the draft terms of the cross-border conversion. The creditors who will be dissatisfied with the protection offered, may apply to the appropriate administrative or judicial authority for adequate safeguards. Creditors of the merging companies should be presumed not to be prejudiced by a cross-border merger if an independent expert assessed their situation and considered there to be no prejudice or creditors were offered a right to payment, either against a third party guarantor or against the company resulting from the merger.

Minority shareholders who do not agree to a planned merger, transfer of registered seat or division will be allowed to leave the company.

According to the Commission the new rules will enable businesses to move or reorganize without unnecessary legal complexities and at a lower cost throughout the Single Market. The Commission estimates cost savings for companies of €12,000 – €19,000 per operation.

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This information in this bulletin is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made. Nor should the in-formation in this bulletin be considered an exhaustive description of the given matter and its possible ramifications. We also note that legal opinion varies regarding some of the issues raised in this bulletin due to ambiguities in the relevant provisions. Thus, it is possible that an interpretation other that the one presented here will prevail in future.

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