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Harmonisation or Fragmentation? Cross-Border Conversions under the Mobility Directive: A Comparative Analysis of Its Implementation in Germany and Denmark

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Summary

This thesis examines whether Directive (EU) 2019/2121 (the 'Mobility Directive') effectively reduces legal fragmentation in the field of cross-border conversions at the national level. Using Germany and Denmark as comparative examples, the analyses assesses whether the harmonised procedural framework introduced by the Directive achieves practical harmonisation or whether Member State discretion continues to result in divergence.

Cross-border conversions enable companies to transfer their registered office from one Member State to another while retaining their legal personality, without undergoing liquidation or dissolution. Prior to the Mobility Directive, cross-border conversions were primarily shaped by the case law of the Court of Justice of the European Union, particularly the landmark judgments in *Cartesio, VALE,* and *Polbud.* While these decisions progressively recognised cross-border conversions as falling within the scope of the freedom of establishment under Articles 49 and 54 TFEU, they left important questions unresolved, especially regarding procedural conditions and protective safeguards. The Mobility Directive responded to this fragmentation by introducing, for the first time, a comprehensive EU-level framework governing cross-border conversions, mergers and divisions.

Methodologically, the thesis combines a doctrinal and comparative legal approach. It first establishes the EU legal foundation by examining the Treaty provisions on the freedom of establishment, the relevant CJEU case law, and the provisions of the Mobility Directive. The comparative analysis then focuses on Germany and Denmark, two jurisdictions with close economic ties but differing institutional and procedural traditions in company law.

The comparative analysis reveals that, despite the introduction of a common procedural framework, significant differences remain in three core areas where the Directive leaves Member State discretion: procedural requirements, creditor protection, and abuse control. In Germany, cross-border conversions are characterised by additional formal requirements,

including mandatory notarisation of the draft terms of conversion and the shareholder resolution, as well as a higher qualified majority threshold of 75% for approving the conversion. Additionally, Germany has introduced codified statutory indicators under which the court must examine whether the conversion serves abusive purposes, particularly regarding employee participation and pension protection. Creditor protection follows a reactive, court-centred model based on individual creditor initiative and the requirement to demonstrate concrete endangerment of claims.

Denmark, on the other hand, follows a more administrative and flexible approach. The Danish system does not require notarisation, applies the minimum qualified majority threshold of two-thirds, and relies on an ex-ante expert assessment in the form of a creditor declaration rather than individual creditor litigation. Abuse control is conducted on a case-by-case basis without codified statutory indicators. These differences reflect broader procedural traditions: Germany emphasises judicial control and formal legal certainty, while Denmark prioritises administrative flexibility and efficiency.

The thesis concludes that the Mobility Directive succeeds in establishing a harmonised procedural framework at EU level, thereby significantly improving legal certainty regarding cross-border conversions compared to the pre-Directive landscape. However, harmonisation remains partial. The Directive reduced fragmentation at the structural level but does not eliminate it in practice. From a broader perspective, this outcome reflects the nature of directives as instruments of EU law, which balance harmonisation with regulatory flexibility while preserving Member States' autonomy in shaping procedural mechanisms within their national legal systems.

Preface

I still remember my first day of my internship at a law firm with a particular focus on German and Danish business law in Berlin, where I was welcomed not with formal distance, but with a level of openness and trust that felt both unfamiliar and immediately natural. During my work there, what struck me most was not only switching between German and Danish on a daily basis, but the difference in approach: discussions were more direct, hierarchies less visible, and legal problems were addressed in a solution-oriented and pragmatic way.

This experience sparked a lasting interest in cross-border legal work. It made me aware that even between countries in close geographical proximity, legal systems and professional cultures can differ in meaningful ways. At the same time, it showed how essential mutual understanding is for effective collaboration across borders. Over time, this interest developed into a desire not only to work across legal systems, but to actively contribute to building bridges between them – both in a legal and a professional sense.

This naturally led me to focus this thesis on a topic that captures these cross-border dynamics in a legal context. Corporate mobility within the European Union, and in particular cross-border conversions – allowing companies to transfer their registered office to another Member State while maintaining their legal identity – provides a compelling framework through which to examine how legal integration operates in practice. With the adoption of Directive (EU) 2019/2121, the European Union has taken a significant step towards facilitating such mobility, while leaving room for national implementation that continues to reflect different legal traditions.

The decision to adopt a comparative perspective between Germany and Denmark is therefore both academically and personally motivated. Having been educated in the German legal system while maintaining a close connection to Denmark – a connection that began during a year spent there as an exchange student more than a decade ago – this thesis offered an opportunity to bring these perspectives together. It also reflects a broader

interest in the functioning of the Internal Market and the role of law in enabling cross-border economic activity.

This thesis was written as part of the one-year LL.M. programme in European Business Law at Lund University, an environment that has further encouraged an international comparative outlook on legal questions.

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Abbreviations

ApS – Anpartsselskab (Danish private limited liability company)

AG – Aktiengesellschaft (German public limited company/ stock corporation)

AktG – Aktiengesetz (German Stock Corporation Act)

A/S – Aktieselskab (Danish public limited liability company)

CJEU – Court of Justice of the European Union

EU – European Union

GmbH – Gesellschaft mit beschränkter Haftung (German private limited liability company)

GmbHG - Gesetz betreffend die Gesellschaften mit beschränkter Haftung (German Limited Liability Company Act)

KGaA – Kommanditgesellschaft auf Aktien (German partnership limited by shares)

K/S – Kommanditaktieselskab (Danish limited partnership by shares)

Mobility Directive – Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions

SL – Selskabsloven (Danish Companies Act)

TFEU – Treaty on the Functioning of the European Union

UmRUG – Gesetz zur Umsetzung der Umwandlungsrichtlinie (Law on the Transposition of the Mobility Directive)

UmwG – Umwandlungsgesetz (German Transformation Act)

1 Introduction

1.1 Background and Problem

The European Union's Internal Market is built on the premise that economic activity should not be confined by national borders, thereby enabling the free movement of goods, persons, services, and capital.[1] Within this framework, the freedom of establishment under Articles 49 and 54 TFEU allows companies to pursue economic activities in other Member States under conditions comparable to those applicable to domestic undertakings. In practice, this freedom not only enables companies to access foreign markets, but also to structure their operations across borders in a way that reflects economic realities and strategic considerations.

Companies may expand their activities through the establishment of subsidiaries or branches, or by acquiring existing undertakings in other Member States. In addition, corporate mobility also encompasses cross-border restructuring mechanisms, including mergers, divisions, and conversions, which allow companies to reorganise their corporate structure across borders. Such restructuring operations form a natural part of a company's life cycle, enabling it to adapt to changing market conditions, explore new business opportunities, and operate more efficiently in an increasingly integrated European economy.[2]

Consider, for example, a Danish ApS (private limited liability company)[3] that intends to conduct its business primarily in Germany in order to align its legal structure with the legal and economic environment in which its main activities are carried out. While the establishment of a subsidiary would maybe enable market access, it would not allow the company itself to relocate. Similarly, a cross-border merger would typically result in the absorption of the company

[1] Art 26(2) TFEU.

[2] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions' COM(2018) 241 final ('Commission Proposal'), 1.

[3] Anpartsselskab (ApS) is a Danish private limited liability company form.

into another entity or the creation of a new legal entity.[4] By contrast, a cross-border conversion into a German GmbH[5] would allow the company to adopt a new legal form while preserving its legal identity. In essence, a cross-border conversion entails that the company transfers from the legal order of one Member State (the home State) to that of another (the host State), without undergoing liquidation or dissolution.[6] While adapting to the legal requirements of the host State, it remains the same legal entity, thereby ensuring continuity of its rights, obligations, and contractual relationships. This mechanism is particularly attractive for companies, especially smaller undertakings, as it enables relocation without the need to terminate and re-establish the company, thus reducing transactional and legal costs.[7]

At first glance, such a restructuring process may appear straightforward. However, upon closer examination, cross-border conversions are legally complex, as they involve the coordination of at least two legal systems and require compliance with both the law of the home and the host State.[8] Despite their practical relevance, cross-border conversions long remained the least harmonised form of corporate mobility within the European Union. While cross-border mergers were regulated at an early stage through EU legislation[9], cross-border conversions were primarily shaped by the case law of the Court of Justice of the European Union (CJEU). In particular, decisions such as *Cartesio*[10], *VALE*[11] and *Polbud*[12] progressively clarified the scope of the freedom of establishment regarding cross-border conversions. However, the

[4] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law [2017] OJ L 169/46 ('Company Law Directive'), arts 89-90.

[5] Gesellschaft mit beschränkter Haftung (GmbH) is a German private limited liability company form.

[6] Marek Szydło, 'Cross-border conversion of companies under freedom of establishment: Polbud and beyond' (2018) 55 *Common Market Law Review* 1549, 1550.

[7] Commission Proposal (n 2) 2.

[8] Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions [2019] OJ L 321/1 ('Mobility Directive'), art 86c. Unless otherwise stated, all references to Articles refer to Directive (EU) 2017/1132 as amended by Article 1 of Directive (EU) 2019/2121.

[9] Directive 2005/56/EC of the European Parliament and the Council of 26 October 2005 on cross-border mergers of limited liability companies [2005] OJ L 310.

[10] Case C-210/06 *Cartesio Oktató és Szolgáltató bt* [2008] ECR I-9641.

[11] Case C-378/10 *VALE Építési kft* [2012] ECLI:EU:C:2012:440.

[12] Case C-106/16 *Polbud – Wykonawstwo sp z oo* [2017] ECLI:EU:C:2017:804.

reliance on judicial development alone resulted in a fragmented legal landscape, characterised by diverging national approaches and a lack of procedural clarity.[13]

In response to these challenges, the European Union adopted Directive (EU) 2019/2121 (hereinafter 'Mobility Directive'), which– for the first time – introduced a harmonised procedural framework for cross-border conversions, alongside mergers and divisions.[14] The Directive aims to facilitate cross-border corporate mobility by reducing legal uncertainty and administrative barriers, while at the same time ensuring adequate protection for stakeholders, including creditors, shareholders, and employees.[15] However, the harmonisation achieved by the Directive is not absolute, since this legal instrument leaves discretion to Member States in its transposition and application.[16] This creates an inherent tension between the objective of legal harmonisation at EU level and the continued existence of national regulatory autonomy.

1.2 Research Question

Against this background, this thesis examines whether the Mobility Directive effectively reduces legal fragmentation in the field of cross-border conversions at the national level.

In this thesis, legal fragmentation is understood not merely as differences between national legal systems as such. Rather, it becomes relevant where such differences affect the predictability, efficiency, and practical usability of cross-border conversions. In particular, fragmentation may arise where national rules differ in their procedural requirements, in the level of protection afforded to creditors, or in their approach to preventing abusive practices.

[13] Commission Proposal (n 2).

[14] Karsten Kühnle, 'Cross-Border Conversions' in Peter Kindler and Jan Lieder (eds), *European Corporate Law: Article-by-Article Commentary* (Nomos/Hart 2021) 390.

[15] Mobility Directive, recital 5.

[16] See art 288 TFEU; Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (8th edn, Oxford University Press 2024) 140.

While the Mobility Directive has already been subject to legal commentary and practical guidance, particularly in the form of practitioner-oriented country reports[17], a systematic comparative analysis of its implementation in specific Member States remains limited.[18] Moreover, there appears to be little academic work examining how the Directive's harmonising objective translates into practice when applied in a direct comparison between two national legal systems.

Building on this gap, this thesis provides a comparative analysis of Germany and Denmark, in order to assess whether the harmonised framework introduced by the Mobility Directive effectively reduces fragmentation or whether Member State discretion continues to result in divergence in practice.

1.3 Methodology and Structure

Methodologically, the thesis combines a doctrinal and a comparative legal approach.[19] It first examines the legal framework of cross-border conversions under Article 49 and 54 TFEU, the relevant case law of the CJEU, and the provisions of the Mobility Directive regarding cross-border conversions for the purpose of establishing the legal foundation of the analysis.

[17] Tim Oliver Brandi, Mike Karl Schmidt and Julia Dingeldey, 'Germany' in Hogan Lovells, *Cross-Jurisdictional Guide on the Implementation of the Mobility Directive in EU Member States* (19 June 2024) <https://pdf.hoganlovells.com/en/our-thinking/comparative-guides/mobility-directive-in-eu-member-states-guide> accessed 22 May 2026; Mads Reinholdt Sørensen, Jens Steen Jensen and Marie Holst, 'Denmark' in Hogan Lovells, *Cross-Jurisdictional Guide on the Implementation of the Mobility Directive in EU Member States* (5 June 2024) <https://pdf.hoganlovells.com/en/our-thinking/comparative-guides/mobility-directive-in-eu-member-states-guide> accessed 22 May 2026; KPMG Law, 'EU Mobility Directive Client Compass' (April 2023) 111, 67 <https://assets.kpmg.com/content/dam/kpmgsites/es/pdf/2023/04/eu-mobility-directive-client-compass.pdf> accessed 5 May 2026.

[18] See e.g. Kühnle (n 14); Carsten Gerner-Beuerle and Michael Anderson Schillig, *Comparative Company Law* (OUP 2019); Szydło (n 6); Iryna Basova, 'Cross-Border Conversions in the European Union after the Polbud Case' (2018) 1(1) *Nordic Journal of European Law* 63.

[19] See e.g. Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn, OUP 1998); Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011); Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (3rd edn, Routledge 2025).

In order to translate this analytical framework into a concrete assessment, the thesis employs a comparative legal approach focusing on Germany and Denmark. Germany, as the largest economy within the European Union, represents a central destination for business activity within the Internal Market.[20] Denmark, in turn, maintains particularly close economic ties with Germany, which is among Denmark's most important trading partners.[21] The two countries not only share a land border, but also exhibit a high degree of economic integration, reflected in substantial trade flows, cross-border investment, and labour mobility in the border region.[22] Yet, the two Member States differ in their institutional and procedural approaches to company law. The German system tends to emphasise formal requirements, notarial involvement, and oversight through the register court.[23] The Danish system, on the other hand, seems to be more oriented towards administrative procedures by the Danish Business Authority and the Central Business Register.[24] These structural differences make the two jurisdictions particularly suitable and interesting for examining how Member States discretion under the Directive may translate into divergent legal outcomes in practice and thereby allow for a structured assessment of whether harmonisation under the Mobility Directive is achieved in practice or whether fragmentation persists.

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[20] Eurostat, 'GDP and main components (nama_10_gdp)' (2026) <https://ec.europa.eu/eurostat/databrowser/view/nama_10_gdp/default/bar?lang=en>accessed 22 May 2026; KPMG International, 'Economic Key Facts: Germany' (KPMG Germany, May 2026) <https://kpmg.com/de/en/insights/geopolitics/economic-key-facts-germany.html#tabs-35329f1780-item-e275a88d51-tab> accessed 22 May 2026.

[21] Statistics Denmark, 'Imports and exports, selected trading partners (seasonally adjusted, February 2026)' <https://www.dst.dk/en/Statistik/emner/oekonomi/betalingsbalance-og-udenrigshandel/import-og-eksport-af-varer-og-tjenester> accessed 11 April 2026; Federal Foreign Office, 'Germany and Denmark: Bilateral relations' (5 March 2026) <https://www.auswaertiges-amt.de/en/aussenpolitik/laenderinformationen/daenemark-node/denmark-227924> accessed 22 May 2026.

[22] Federal Foreign Office (n 21).

[23] See, for example, German Limited Liability Company Act (GmbH-Gesetz) (§ 2 GmbHG requiring notarial form and signature by all shareholders; § 7 GmbHG requiring mandatory registration with the district court for entry in the commercial register); Sven Gelbke and Julian Gosmann, 'An International Comparison and Study of Limited Liability Company Variants Across EU Member States' (2025) 13 *International Journal of Law and Legal Studies* 001, 002.

[24] See the official registration procedure via the Danish Business Authority and the Central Business Register: Ministry of Foreign Affairs of Denmark, *Step-by-Step Guide to Opening a Business in Denmark* (2022) <https://investindk.com/media/olglmaq1/investindk-fact-sheet-step-by-step-guide.pdf> accessed 22 May 2026.

The analysis proceeds in two steps: It first examines how the Mobility Directive has been transposed into German and Danish law and then compares how these transposition choices affect the practical application of cross-border conversions in both jurisdictions. In doing so, the thesis distinguishes between transposition and implementation. While transposition refers to the formal incorporation of the Mobility Directive into national law, implementation encompasses the broader process of applying and enforcing these rules in practice.[25] Accordingly, this thesis examines not only the legislative transposition of the Directive, but also how the respective national frameworks operate procedurally in practice. This assessment is based primarily on statutory provisions, academic literature, EU and national materials, and practitioner commentary.

The structure of the thesis reflects this approach. Chapter 2 outlines the legal framework of cross-border conversions under EU law, with a particular focus on the development of the CJEU's case law. Chapter 3 examines the relevant provisions concerning cross-border conversions under the Mobility Directive, identifying both its harmonising elements and the areas in which Member States discretion remains. Chapter 4 then analyses the transposition of the Directive into German and Danish law, followed by a comparative assessment in Chapter 5 examining how these national frameworks operate in practice, particularly with regard to procedural requirements, creditor protection and abuse control. Chapter 6 then evaluates these findings, before Chapter 7 concludes the thesis.[26]

Finally, it should be noted that this thesis focuses exclusively on cross-border conversions as one specific form of corporate mobility within the European Union. Other forms of mobility, such as cross-border mergers and divisions, are only addressed where necessary for contextual purposes. Furthermore, the analysis of the legal framework is limited to the development of the case law

[25] European Parliamentary Research Service, *Transposition, Implementation and Enforcement of EU Law* (EPRS Briefing, 2018) <https://www.europarl.europa.eu/cms-data/226403/EPRS_ATAG_627141_Transposition_implementation_and_enforcement_of_EU_law-FINAL.pdf> accessed 22 May 2026.

[26] DeepL was used for translation purposes and linguistic enhancement, particularly in relation to Danish and German source material.

relevant to cross-border conversions, in particular the *Cartesio, VALE,* and *Polbud* judgments. In addition, the comparative analysis is confined to Germany and Denmark. This selection is intended to provide an in-depth examination of how Member State discretion under the Mobility Directive operates in practice, rather than a comprehensive overview of many different EU jurisdictions.

2 Legal Framework of Cross-Border Conversions

This Chapter outlines the legal framework governing cross-border conversions under EU law, beginning with the Treaty provisions on the freedom of establishment and then turning to their progressive development through the case law of the CJEU.

2.1 Freedom of Establishment (Articles 49, 54 TFEU)

Articles 49 and 54 TFEU govern the freedom of establishment, which constitutes the primary legal basis for corporate mobility within the European Union.[27] While Article 49 TFEU is primarily addressed to natural persons, Article 54 TFEU extends its scope to companies formed in accordance with the law of a Member State, which are thereby entitled to rely on this freedom under the same conditions as nationals. As a result, companies may invoke this freedom directly before national courts.[28]

The freedom of establishment prohibits restrictions on the pursuit of economic activities in another Member State, whether through the creation of a new presence or the expansion of existing activities, unless such restrictions can be justified under EU law.[29] Such justifications are interpreted strictly and must pursue a legitimate objective recognised by EU law, such as public policy, public security or public health under Article 52 TFEU, and comply with the principle of proportionality.[30] In this context, establishment refers to *"the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period"*.[31]

[27] See also Gerner-Beuerle and Schillig (n 18) 114.

[28] Case 2/74 *Reyners v Belgium* [1974] ECR 631 (establishing the direct effect of Article 49 TFEU).

[29] Art 49 TFEU.

[30] See Case C-55/94 *Gebhard* [1995] ECR I-4165, para 37 (requiring that national measures be suitable, necessary and proportionate).

[31] Case C-221/89 *R v Secretary for Transport, ex p Factortame Ltd (No 2)* [1991] ECR I-3905, para 20.

However, the Treaty provisions do not explicitly address cross-border conversions (or any other corporate restructuring operation). While the freedom of establishment may grant a broad right to engage in cross-border activity, it does not provide any guidance on how companies may reorganise across jurisdictions while maintaining their legal identity. This absence of specific rules created a regulatory gap, leaving key questions concerning cross-border conversions to be addressed through judicial interpretation, which will be presented in the next sub-section.

2.2 Development through CJEU Case Law

The development of cross-border conversions under EU law has been largely shaped by the case law of the CJEU. Therefore, it is important to examine the CJEU's landmark cases in order to understand how cross-border conversions were progressively recognised under EU law and why a harmonised legislative framework became necessary.

The earlier decisions in *Centros*[32], *Überseering*[33] and *Inspire Art*[34] – often referred to as the "trilogy" – laid the foundation for the CJEU's interpretation of the freedom of establishment in the context of corporate mobility.[35] Taken together, these judgements established that companies validly incorporated in one Member State must, in principle, be recognised in other Member States and may carry out their economic activities across borders, even where this involves the choice of a more favourable legal regime.[36] However, these cases primarily concerned the recognition of companies formed under the law of another Member State and did not directly address structural transformations such as cross-border conversions.

[32] Case C-212/97 *Centros Ltd v Erhvervs- og Selskabsstyrelsen* [1999] ECR I-1495.

[33] Case C-208/00 *Überseering BV v Nordic Construction Company Baumanagement GmbH* [2002] ECR I-9919.

[34] Case C-167/01 *Inspire Art Ltd* [2003] ECR I-10155.

[35] Kühnle (n 14) 391.

[36] *Centros* (n 32) paras 2527; *Überseering* (n 33) paras 5963; *Inspire Art* (n 34) paras 95100; Caspar Behme, 'The Principle of Mutual Recognition in the European Internal Market With Special Regard to the Cross-Border Mobility of Companies' (2016) 1 ECFR 31.

The question of whether cross-border conversions fall within the scope of the freedom of establishment was addressed more directly in 2008 in the judgment of *Cartesio.* In this case, a Hungarian company applied to transfer its seat to Italy while maintaining its status as a company governed by Hungarian law. This request was rejected under Hungarian law, which required a company's seat to remain at its place of central administration. The Court held that, while Member States retain the competence to define the connecting factors of companies incorporated under their law, they cannot prevent an entity from converting into a legal form governed by another Member State's law - provided that the host State's law permits it.[37] While *Cartesio* therefore acknowledged in principle that cross-border conversions may fall within the scope of freedom of establishment, it did not clarify their legal conditions or practical operation, leaving significant uncertainty as to their treatment.[38]

That uncertainty was partly addressed in *VALE.* Here*,* an Italian company (*VALE Costruzioni Srl)* sought to dissolve in Italy and reincorporate in Hungary as *VALE Építési kft,* but was blocked by Hungarian authorities who refused registration on the basis that domestic law did not recognise a foreign predecessor. The Court held that where a Member State allows domestic conversions, it must also permit cross-border conversions under equivalent conditions.[39] In doing so, the Court introduced the *principle of equivalence* into the context of cross-border conversions, requiring Member States to treat cross-border situations in a manner comparable to purely domestic ones.[40] However, rather than establishing a uniform EU procedure, the judgment relied on national conversion rules as the reference point. As a result, the practical conditions for cross-border conversions continued to depend on the different national legal frameworks, thereby preserving structural differences between Member States.[41]

[37] *Cartesio* (n 10) paras 111-113.
[38] Szydło (n 6) 1550.
[39] *VALE* (n 11) para 63.
[40] *VALE* (n 11) paras 48, 54.
[41] Gerner-Beuerle and Schillig (n 18) 124.

The approach established in *VALE* was further developed in *Polbud.* In that case, a Polish company sought to transfer its registered office to Luxembourg for the purpose of converting into a company governed by Luxembourg law, without relocating its actual business activity. Polish law required a full liquidation procedure prior to such a transfer. Polbud (the Polish company) objected to these requirements, stating that compliance with the liquidation procedure was neither necessary nor possible, as the company intended to maintain its legal personality and continue its existence under Luxembourg law. The Court held that the freedom of establishment also covers situations in which a company transfers only its registered office without relocating its economic activity[42], thereby confirming that cross-border conversion may constitute an expression of regulatory choice. It further clarified that national measures which hinder or render such conversions less attractive, including mandatory liquidation requirements, constitute restrictions unless justified.[43]

2.3 From Judicial Recognition to Legislative Action

As the preceding section demonstrated, the judgements of the CJEU show a gradual recognition of cross-border conversions within the Internal Market. While progressively acknowledging cross-border conversions as falling within the scope of the freedom of establishment, the CJEU could not replace the need for a common procedural framework. This is not a result of inconsistency in the Court's reasoning, but rather reflects the structural limits of judicial law-making: while the Court is competent to define the scope of Treaty freedoms, it cannot just replace the absence of harmonised legislation by creating a detailed procedural framework for cross-border conversions. As a result, the legal framework remained largely case-driven, with general principles developed at EU level but operational rules left to national law.[44]

[42] *Polbud* (n 12) para 66.

[43] *Polbud* (n 12) paras 46-52; See also Szydło (n 6) 1557 – 1665.

[44] Carsten Gerner-Beuerle, Federico M Mucciarelli, Edmund-Philipp Schuster and Mathias Siems, 'Cross-border reincorporations in the European Union: the case for comprehensive harmonisation' (2018) 18(1) *Journal of Corporate Law Studies* 1, 3.

The dependency on the different national law systems created a gap between the formal recognition of cross-border conversions at EU level (through the case law of the CJEU) and its application in practice. While the freedom of establishment provides companies with a directly effective right to reorganise across borders, the exercise of this right depended on different national procedural frameworks. As a result, cross-border conversions were legally recognised, but their practical conditions varied between Member States. In extreme cases, the absence of coordinated procedural rules may even give rise to situations in which a company risks being removed from the register of its home State without being effectively registered in the host State, thereby creating legal uncertainty as to its continued existence.[45]

Against this background, early attempts at legislative harmonisation, including proposals to regulate the transfer of company seats at EU level, did not succeed. In particular, an early draft initiative commonly referred to as the 'Fourteenth Company Law Directive' was ultimately not adopted and was formally put on hold in 2007, reflecting persistent divergence on the extent to which company mobility should be regulated at EU level.[46] This restraint was partly based on the view that existing instruments, such as cross-border mergers, together with the developing case law of the CJEU, were already sufficient to facilitate corporate mobility, making further harmonisation appear unnecessary at the time.[47]

Following *Polbud*, the need for legislative clarification became more pressing. By confirming that cross-border conversions may fall within the scope of the freedom of establishment even in the absence of economic relocation, the Court not only expanded the understanding of corporate mobility under EU primary law, but also highlighted the absence of detailed procedural provisions governing such conversions.[48] In response, the European Commission

[45] See *VALE* (n 11); Basova (n 18) 73; Gerner-Beuerle and others (n 44) 16-17.

[46] Gert-Jan Vossestein, 'Transfer of the registered office: The European Commission's decision not to submit a proposal for a Directive' (2008) 4(1) *Utrecht Law Review* 53, 53; for further information regarding the Fourteenth Company Law Directive, see European Commission, *'Commission Staff Working Document: Impact Assessment on the Directive on the Cross-Border Transfer of Registered Office'* SEC(2007) 1707 (12 December 2007).

[47] Gerner-Beuerle and others (n 44) 13-14.

[48] *Polbud* (n 12) para 66.

presented a proposal in 2018 to amend Directive (EU) 2017/1132 with regard to cross-border conversions, mergers and divisions. This initiative explicitly sought to reduce legal uncertainty and address fragmentation arising from the application of differing national rules, in particular by introducing common procedural safeguards and minimum standards of protection for creditors and minority shareholders to create *"a dynamic and fair Single Market"*.[49] The creation of a comprehensive set of rules was intended not only to simplify the procedure but also to reduce the associated costs. The Commission estimated that the introduction of the new cross-border conversion framework would result in cost savings for companies of between €12,000 and €19,000, depending on company size and the relevant Member States involved, thereby contributing to the broader objective of simplifying cross-border mobility within the Internal Market.[50]

[49] Commission Proposal (n 2) 3; Dubravka Akšamović, Lidija Šimunović and Iva Kuna, ''Cross Border Movement of Companies: The New EU Rules on Cross Border Conversion'' (2019) 3 *EU and Comparative Law Issues Challenges Series* 943.
[50] Commission Proposal (n 2) 21.

3 The Mobility Directive: Harmonised Framework and Remaining Discretion

In 2019, the European Union finally adopted Directive (EU) 2019/2121 – the 'Mobility Directive'. This marked a legislative response to the previously fragmented legal landscape, which had largely been shaped by case law, as demonstrated in the preceding chapter. The Mobility Directive builds directly on the European Commission's proposal from 2018 and introduces – for the first time – a comprehensive legal framework governing *cross-border operations*, the new umbrella term for cross-border conversions, mergers and divisions.[51]

As highlighted in Recital 5 of the Mobility Directive, the absence of such a framework constituted a barrier to the effective exercise of the freedom of establishment under Articles 49 and 54 TFEU. At the same time, Recital 4 emphasises that the facilitation of cross-border mobility must be balanced with the protection of employees, creditors, and minority shareholders. The Mobility Directive therefore does not merely aim to liberalise cross-border operations, but to establish a structured framework that combines procedural harmonisation with minimum protection standards.[52]

Against this background, this chapter provides an overview of the provisions governing cross-border conversions. Focus lies in particular on the procedural framework and the safeguards introduced, in order to identify both the harmonised elements and the areas in which Member States retain discretion.

3.1 Harmonised Procedural Framework

The Mobility Directive establishes a structured legal process governing cross-border conversions at EU level.[53] Rather than regulating isolated elements, it introduces a coherent procedure that shapes the conversion process.

[51] 'Cross-border operations' is the new umbrella term introduced in Recital 10 of the Mobility Directive for cross-border conversions, mergers and divisions.

[52] Charlotte Ene, 'The Cross-Border Conversion – A Possible Solution for the Mobility of Companies in European Union' (2020) 9 *Perspectives of Law and Public Administration* 54, 57.

[53] Kühnle (n 14) 391.

3.1.1 Scope and Definition (Articles 86a – 86c)

The scope of the Directive is defined in Article 86a, restricting its application to limited liability companies formed under the law of a Member State. In this context, Article 86b(1) refers to Annex II, which lists the different forms of limited liability companies, including the *Aktiengesellschaft (AG)*, *Kommanditgesellschaft auf Aktien (KGaA)* and *GmbH* in Germany, and the *Aktieselskab (A/S)*, *Kommanditaktieselskab (K/S)* and *ApS* in Denmark. Article 86a(2)-(4) explicitly excludes certain entities, such as collective investment undertakings and companies in liquidation or insolvency proceedings. These exclusions already demonstrate that harmonisation is conditional and selective, rather than comprehensive. Article 86b provides the first codified definition of a cross-border conversion in EU secondary law, defining it as:

> *"an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State […] while retaining its legal personality."*

This confirms that cross-border conversions are now explicitly recognised as a distinct legal cross-border operation in which the company continues to exist in a different legal form. This is further reflected in Article 86r, which sets out the legal consequences of a conversion by providing that all assets and liabilities remain with the converted company, that members retain their status, and that employment relationships continue unchanged.

Article 86c of the Mobility Directive introduces a division of responsibilities between the home State, which governs the initial stages of the procedure, and the host State, which becomes particularly relevant at the stage of registration, as the conversion ultimately depends on compliance with the legal requirements of the host State.[54] This can be illustrated by the example

[54] Paolo Tullio, *Cross-Border Mobility of Companies in the European Union: Current Legal Framework and Persistent Barriers* (SSRN 2025) 13 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5200063> accessed 22 May 2026.

introduced in the introduction: in the case of a planned cross-border conversion of a Danish ApS into a German GmbH, Danish law applies initially, whereas German law becomes relevant upon registration in Germany. This division of responsibilities structures the procedural framework.

3.1.2 Procedure (Articles 86d – 86o)

Articles 86d-86o establish a harmonised series of procedural steps regarding cross-border conversions, leading to the issuance of a pre-conversion certificate and the completion of the conversion in the host State. The Directive repeatedly uses mandatory language such as *"shall",* thereby indicating a high degree of harmonisation regarding the procedural structure. Nevertheless, certain implementation details remain within the discretion of Member States.

For analytical clarity, the procedure can be divided into four stages[55]:

(1) Preparation Phase

In the initial phase, the administrative or management body of the company *"shall draw up"* draft terms of conversion (Article 86d) and a report for members and employees explaining the legal and economic aspects of the operation as well as the implication for employees (Article 86e). The minimum requirements of the draft terms are listed in Article 86d and include – to name but a few – the legal form and name of the company in the home State as well as the legal form and the proposed name for the converted company in the host State, the proposed schedule for the conversion, any safeguards offered to creditors, and details of the offer of cash compensation for members who might vote against the approval of the draft terms.[56] In addition to the draft terms and the report, Member States *"shall ensure"* the involvement of an independent expert to assess the draft terms including whether the cash compensation is appropriate (Article 86f), the so-called expert report.

[55] This overview is intended solely for general guidance and does not claim to be exhaustive. Rather, it is intended to illustrate the procedure and highlight where provisions have been harmonised and where Member States retain discretion.

[56] Regulated in more detail in Art 86i Mobility Directive.

These provisions harmonise both the existence and the core content of preparatory documents, thereby ensuring informed decision-making by stakeholders.[57] Nevertheless, certain elements remain flexible. Article 86d merely sets out the minimum requirements for the draft terms, which means that Member States may go beyond these requirements when transposing the provisions into national law. Furthermore, Member States *"may"* allow the preparation of separate or combined reports (Article 86e(2)) or exclude single-member companies from specific requirements (Article 86e(4)). This introduces discretion particularly in the scope and institutional organisation of the preparatory phase.

(2) Disclosure Phase

Article 86g requires Member States to ensure that the draft terms, together with a notice informing the members, creditors and any representatives of their right to comment on those terms, are published at least one month before the date of the general meeting. Although the obligation to provide transparency has been harmonised, it is left to the Member States to decide whether to disclose the independent expert report[58] and (to a certain extent) the method of publication. Member States *"may require"* publication through a national gazette or a central electronic platform (Article 86g(5)). As a result, disclosure requirements have been standardised at EU level, whilst their practical transposition – particularly with regard to the method of publication– may vary across jurisdictions.

(3) Approval Phase

At this stage, the general meeting *"shall decide"* whether to approve the proposed conversion (Article 86h). Member States are required to ensure that this decision is taken by a qualified majority: *"not less than two thirds but not more than 90%".*[59] This creates a harmonised range, but not a uniform rule,

[57] See also recital 15 of the Mobility Directive.
[58] Article 86g(1) Mobility Directive.
[59] Article 86h(3) Mobility Directive.

allowing Member States to set the exact threshold within these limits. Consequently, this phase reflects a minimum level of harmonisation, in which national company law traditions may play a role.

(4) Control and Completion Phase

The final phase of the procedure concerns the control mechanisms exercised by the home and the host State. Member States "*shall designate*" a court, notary or other competent authority responsible for issuing the pre-conversion certificate (provided that all relevant conditions are met) in the home State (Article 86m(1)) and for completing the conversion in the host State (Article 86o(1)). While the obligation to establish such control mechanisms itself is harmonised, the Directive leaves the specific nature of the authority to the Member States. This may result in a significant degree of institutional diversity across Member States.

Whilst Article 86m(2) specifies the documents that must accompany the application for the pre-conversion certificate, Article 86m(3) gives Member States the discretion to require further additional information. Moreover, Article 86m(8) introduces an abuse control mechanism, requiring authorities to refuse certification in cases of *"abusive or fraudulent purposes"*. However, the Directive does not define these terms in detail and leaves their assessment to national authorities, which may also take into account additional factors (Article 86m(9)).

3.2 Safeguards under the Directive

In addition to procedural harmonisation, the Directive introduces protective mechanisms for members, creditors and employees. These safeguards, however, primarily follow a model of minimum harmonisation.[60] Member States *"shall ensure"* that members who voted against the approval of the draft terms have the right to exit the company in exchange for *"adequate cash compensation"* for their shares.[61] While this establishes a harmonised right, the provision remains rather vague, leaving key aspects such as calculation methods and procedural enforcement to national law.

Article 86j(1) requires Member States to provide *"an adequate system of protection of the interests of creditors"* whose claims arose prior to the publication of the draft terms and were not yet due at the time of that publication. The term *"adequate"* constitutes an open-ended legal standard. This means that no uniform protection mechanism is prescribed, leaving the definition of thresholds, procedures, and remedies to the discretion of the Member States.[62] Furthermore, the protection of employees is incorporated in Articles 86k-86l through cross-references to existing EU frameworks and complex coordination rules. While certain minimum guarantees are established, the overall structure relies heavily on national implementation and existing structures.[63] Given its complexity, this aspect is not examined further in this thesis.

[60] Kühnle (n 14) 395; Oliver Mörsdorf, 'Der Entwurf einer Richtlinie für grenzüberschreitende Umwandlungen – Meilenstein oder Scheinriese?' (2019) *Europäische Zeitschrift für Wirtschaftsrecht* 141, 145.

[61] Article 86i Mobility Directive.

[62] The safeguards are offered in the draft terms of the cross-border conversion (see Article 86d(f) Mobility Directive).

[63] For further information regarding the protection of employee participation, see Kühnle (n 14) 460–467.

3.3 Member State Discretion and Remaining Fragmentation

The analysis above demonstrates that the Mobility Directive combines a high degree of procedural standardisation with minimum harmonisation and open-end standards in key areas: While Articles 86d-86o establish a harmonised four-phases-procedure through mandatory formulations such as *"shall",* the Mobility Directive simultaneously grants Member States discretion through optional provisions ("*may*"), vague standards ("*adequate*", "*competent authority*"), and the absence of institutional harmonisation. This regulatory design reflects a deliberate balance between facilitating cross-border conversions and safeguarding national autonomy in sensitive areas of company law.

The remaining discretion of Member States can be summarised and categorised into three core areas:

(1) Procedural Discretion regarding the designation of *"competent authorities"* (Article 86m, 86o), the intensity of scrutiny in the certification process (Article 86m(3)), and the practical organisation of procedures (Articles 86c, 86g).

(2) Creditor Protection Discretion regarding the definition of *"adequate safeguards"* (Article 86j).

(3) Abuse Control Discretion regarding the assessment whether a conversion meets the broad criteria for *"abusive or fraudulent purposes"* set out in Article 86m(8).

Overall, the Directive establishes a common procedural framework but leaves important elements open to national interpretation and organisation. Despite this formal harmonisation, differences between Member States may still arise in practice. The three identified areas of Member State discretion therefore form the analytical foundation for the comparative analysis of Germany and Denmark in Chapter 5.

4 National Transposition: Germany and Denmark

Prior to conducting the comparative analysis, it is necessary to examine the transposition of the provisions of the Mobility Directive outlined above into the national legal systems of Germany and Denmark in order to obtain a comprehensive overview of the respective legal frameworks. Member States had to transpose the Directive into national legislation by 31 January 2023.[64]

4.1 Germany

Germany transposed the Mobility Directive into national law through the 'Law on the Transposition of the Mobility Directive' *(Gesetz zur Umsetzung der Umwandlungsrichtlinie* - UmRUG*)* of 22 February 2023.[65] This Transposition Act supplemented and amended the existing German Transformation Act (*Umwandlungsgesetz* – UmwG[66]) and entered into force on 1 March 2023[67], one month after the transposition deadline laid down in the Directive.

The provisions governing cross-border conversions[68] are codified in Part Three of the newly introduced Book Six of the amended UmwG in sections 333 – 345, which transpose Articles 86a to 86t of the Mobility Directive into German law. Pursuant to section 333(2) UmwG, the general provisions, as

[64] Directive (EU) 2019/2121, Article 3(1) (Transposition).

[65] Gesetz zur Umsetzung der Umwandlungsrichtlinie und zur Änderung weiterer Gesetze (Law on the Transposition of the Mobility Directive and Amending Further Laws) 2023 BGBl I No 51 ('UmRUG').

[66] Umwandlungsgesetz (Transformation Act) 1994 BGBl I 3210, as last amended by art 17 of the Act of 23 October 2024, BGBl 2024 I No 323 ('UmwG'); for an official English translation, see https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html accessed 27 April 2026.

[67] Art 25(1) UmRUG.

[68] In the UmwG, cross-border conversions are referred to as 'grenzüberschreitende Formwechsel', which translates directly as 'cross-border changes of legal form'. The direct translation of the term 'conversions' would be 'Umwandlung', which in German law, however, describes cross-border operations in line with its role as an umbrella term (see 'Umwandlungsgesetz'); see also *Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Umsetzung der Umwandlungsrichtlinie* (Draft Law for the Implementation of the Conversion Directive) BT-Drs 20/3822, 1–2.

well as the specific provisions relating to corporations of Book Five on domestic transformations, apply *mutatis mutandis* unless more specific rules are provided in sections 333 et seq. or certain provisions are expressly excluded.

Whilst the Mobility Directive regulated cross-border conversions first and then mergers and divisions, the UmwG retained its customary structure and, in the context of cross-border conversions, frequently refers back to the provisions governing mergers.[69] In this respect, it remained faithful to the principles and structure of German law. The scope of application is limited to companies in the legal form of a limited liability company (GmbH), a stock corporation (AG) or a joint stock corporation (KGaA).[70]

The procedural provisions laid down in sections 333-344 UmwG apply exclusively to *outbound* cross-border conversions, covering situations in which, for example, a German company converts its legal form into one governed by foreign law. By contrast, *inbound* cross-border conversions – such as the conversion of a Danish ApS into a German GmbH, as introduced above – are governed by the relevant transposition provisions of the law of the Member State to which the company has previously been subject, in accordance with Article 86c of the Mobility Directive. In the example at hand, Danish law is therefore applicable, while German law becomes applicable only with regard to the company's new German legal form and, pursuant to section 345 UmwG, to its registration in the commercial register and the legal effects thereof.[71]

Building on these provisions, the procedure for an outbound cross-border conversion under German law can be outlined as follows: First, the management body of the company must draw up the draft terms of conversion (*Formwechselplan),* pursuant to section 335(1) UmwG, transposing Article 86d of the Mobility Directive. The conversion plan must be published, and the publication must include a notice informing shareholders, creditors and employee

[69] Michael Winter, in Joachim Schmitt and Robert Hörtnagl (eds), *Umwandlungsgesetz* (10th edn, 2024) § 333 para 5.

[70] Brandi, Schmidt and Dingeldey (n 17).

[71] Florian Drinhausen, in Arndt Stengel and Nina Leonard (eds), *Umwandlungsgesetz* (6th edn, 2025) § 333 para 3.

representatives that they may submit comments no later than five working days before the general meeting.[72] In addition, a conversion report *(Formwechselbericht)* must be prepared, explaining the legal and economic aspects of the conversion and its effects on shareholders and employees.[73] The draft terms of conversion must further be reviewed by one or more independent experts, who issue an expert report *(Formwechselprüfbericht)* in accordance with section 338 UmwG.

Subsequently, the shareholders must approve the draft terms of conversion in accordance with section 339 UmwG, transposing Article 86h(1) and (2) of the Mobility Directive. The resolution requires a majority of at least 75 % of the votes.[74] Following the shareholder approval, provisions on shareholder exit rights apply pursuant to section 340 UmwG, and creditor protection is governed by section 341 UmwG. The company must then apply for the issuance of a pre-conversion certificate pursuant to section 342 UmwG by submitting the required documentation to the competent register. Finally, the competent court examines whether all legal requirements have been fulfilled and, if so, issues the pre-conversion certificate.[75] The court must refuse the issuance of the certificate where there are any indicators of abuse, fraud, or criminal purposes. The conversion becomes effective only in accordance with the law of the host State.[76]

[72] §§ 336, 308(1) UmwG.
[73] § 337 UmwG.
[74] §§ 339(2), 193(1) UmwG.
[75] § 343 UmwG.
[76] § 343(5) UmwG.

4.2 Denmark

Denmark transposed the Mobility Directive through the 'Act amending the Companies Act and various other Acts' (*Lov om ændring af selskabsloven og forskellige andre love*) of 7 March 2023. This transposition act supplemented and amended the existing Danish Companies Act (*Selskabsloven* - SL) and entered into force on 10 March 2023, ten days later than the corresponding transposition in Germany.

The provisions governing cross-border conversions are set out in Chapter 16 of the Danish Companies Act, specifically in sections 318a – 318q SL. Chapter 16, entitled 'Cross-border mergers, divisions and conversions' (*Grænseoverskridende fusion, spaltning og omdannelse)*, follows a different structural order than the Mobility Directive. While the Mobility Directive regulates, in sequence, cross-border conversions, mergers and divisions, the Danish transposition instead addresses cross-border conversions last.[77] The scope of the application for cross-border conversions encompasses both private limited liability companies (ApS) and public limited liability companies (A/S).[78]

The rules on *outbound* cross-border conversions are contained in sections 318b – 318o SL, while *inbound* cross-border conversions are regulated in section 318p SL. Compared with the German Transformation Act, these provisions contain significantly fewer cross-references to other statutory rules – particularly governing other types of cross-border operations – which enhances their readability. An exception is section 318q SL, which addresses employee participation and refers to the provisions on cross-border mergers in sections 311-317 SL, stating that these rules shall apply *mutatis mutandis* to cross-border conversions.

[77] Erik Werlauff, *Selskabsret* [Company Law] (Gitte Søgaard rev, 12th edn, Karnov Group 2023) 804.

[78] Sørensen, Jensen and Holst (n 17).

The procedure for an outbound cross-border conversion under Danish law follows a structured sequence of steps: First, the management body must prepare the draft terms of conversion *(Omdannelsesplan)* pursuant to section 318b SL. A conversion report *(Omdannelsesredegørelse)* must then be prepared in accordance with section 318c SL, explaining the legal and economic aspects of the conversion and its effects on shareholders and employees. In addition, an independent valuation expert must issue a statement on the draft terms of conversion pursuant to section 318d SL, including an assessment of the proposed redemption offer for shareholders.

Furthermore, one or more valuation experts must provide a declaration on the position of the creditors pursuant to section 318e SL, assessing whether creditors are sufficiently protected following the conversion. Prior to the general meeting, the relevant documents must be published and submitted to the Danish Business Authority *(Erhvervsstyrelsen)* in accordance with section 318g SL, and shareholders, creditors and employees must be given the opportunity to submit comments. The company must also complete the required employee information and consultation procedures pursuant to section 318h SL. The draft terms of conversion and related documents must be made available to shareholders within the time limits set out in section 318i SL.

The cross-border conversion must then be approved by the general meeting in accordance with sections 318i and 318j SL, requiring a qualified majority of two thirds of the votes.[79] Following the resolution, provisions on shareholder exit rights apply pursuant to section 318m SL, and creditor claims are handled in accordance with section 318f SL. The adopted conversion must be filed with the Danish Business Authority within two weeks after the decision of the general meeting.[80] Finally, the Danish Business Authority examines whether the procedural requirements have been fulfilled and issues the pre-conversion certificate pursuant to section 319o SL. The Business Authority may refuse the certificate if it finds indications of abuse, fraud, or criminal

[79] §§ 318j, 106 SL.
[80] § 318n SL.

conduct. Pursuant to section 318o(8) SL, the outbound cross-border conversion takes effect in accordance with the law of the host Member State.

4.3 Comparative Observation on National Transposition

Although the Member States were required to transpose the provisions of the Mobility Directive into national legislation by 31 January 2023, neither Germany nor Denmark met this transposition deadline. The German transposition entered into force on 1 March 2023, while the Danish provisions became effective on 10 March 2023. Beyond this temporal aspect, the transposition of the Mobility Directive has resulted in structurally different national frameworks. While both jurisdictions transpose the core procedural steps laid down in the Mobility Directive – such as the preparation of the conversion plan, the adoption of a shareholder resolution, and the issuance of a pre-conversion certificate – the organisation and sequencing of these steps differ in detail. In particular, while both legal systems provide for a conversion report and an independent expert assessment of the conversion plan, Danish law further supplements this framework with a distinct expert-based mechanism in the form of a creditor protection declaration pursuant to section 318e SL, which has no direct equivalent in German law. These differences already suggest that, despite a harmonised legal framework at EU level, the procedural environment for cross-border conversions may vary in practice. This provides the basis for the comparative analysis in the following chapter.

5 Comparative Analysis

Whereas Chapter 4 focused on the formal transposition of the Mobility Directive, this chapter turns to its practical implementation in Germany and Denmark. The three areas of Member State discretion left by the Mobility Directive and identified in Chapter 3 – procedural requirements, creditor protection, and abuse control – provide a useful analytical lens through which to examine how cross-border conversions function in practice. This becomes especially clear when the German and Danish implementations are considered in relation to one another.

In the hypothetical conversion of a Danish ApS into a German GmbH, the same directive-based conversion must pass through two different legal architectures: Danish law governs the outbound phase until the Danish certificate is issued, while German law governs the inbound phase and the registration effects in Germany.[81] The comparison of Germany and Denmark therefore shows how a formally harmonised EU framework can still produce materially different conversion regimes.

5.1 Procedural Requirements

The procedural requirements of both systems structure the conversion process, while generally following the logic of Articles 86d – 86o of the Mobility Directive.

5.1.1 Formalisation and Institutional Framework

As already mentioned above, the procedure for cross-border conversions in Germany is characterised by a quite formalised structure, involving both judicial authorities and notarial participation. Central procedural steps require notarial involvement: the draft terms of conversion *(Formwechselplan)* must be notarised pursuant to section 335(3) UmwG, and the shareholder resolution approving the conversion must likewise be notarised in accordance with section 332(2) UmwG (in conjunction with section 193(3) UmwG).

[81] See Chapter 4.1.

The requirement of notarisation of the draft terms of conversion constitutes an additional requirement not provided for in Article 86d of the Mobility Directive. According to the explanatory memorandum to the German draft act, the rationale behind this is that the notarisation reflects an increased need for legal advice compared to a domestic conversion, thereby avoiding potential procedural errors and providing creditors with a legally secure basis for assessing any potential claims.[82] In practice, however, it is possible to work initially with a private draft, with notarisation often taking place only at a later stage, typically on the same date as the shareholder resolution approving the cross-border conversion.[83] This raises questions as to the practical added value of a separate notarisation of the conversion plan.[84] This high degree of formalisation is further reflected in the role of the competent authority. In Germany, the register court (*Registergericht*) is responsible for reviewing compliance with the legal requirements in both outbound and inbound cross-border conversions[85], embedding the procedure within a judicial framework of control. This corresponds to the strong role of formal requirements and judicial oversight in German company law.

In contrast, Danish law does not provide for any system of notarisation in the context of cross-border conversions. The procedure is primarily administrative and follows closely the structure set out in the sections 318b – 318p SL. The Danish Business Authority acts as the central competent authority responsible for reviewing and registering cross-border conversions.[86] The converting company submits the documentation electronically to the Danish Business Authority, for example via email[87], which reflects the more digital and administrative nature of the procedure. A notable feature of the Danish system is that, in addition to the documents required under the Mobility Directive, section 318e SL provides for a declaration by a valuation expert on

[82] BT-Drs. 20/3822, 117.
[83] Winter (n 69) § 335 para 22.
[84] Winter (n 69) § 335 para 22.
[85] §§ 343, 345 UmwG.
[86] Sørensen, Jensen and Holst (n 17).
[87] Jan Schans Christensen, *Selskabsloven med kommentarer* [The Companies Act with Commentaries] (2nd edn, Karnov Group 2024) § 318g [2].

the creditors' position ("creditor declaration"). Section 318e SL, in conjunction with section 318f SL, implements Article 86j of the Mobility Directive for the protection of creditors and constitutes a distinct expert-based element within the Danish framework of cross-border conversions.[88] A comparable provision is not found in the German UmwG.

These structural differences are also reflected in the overall duration of the procedure. While the estimated timeframe for the completion of an outbound cross-border conversion (including legal advice and the formal proceedings) is approximately four to eight months in Germany, the same process typically takes three to six months in Denmark.[89] This suggests that, in practice, the same procedure may take up to two months longer in Germany, which can be attributed, at least in part, to additional formal requirements, in particular the need for notarisation in Germany. By contrast, the estimated timeframe for completing an inbound conversion following the issuance of the pre-conversion certificate is broadly comparable in both jurisdictions, amounting to approximately one to three months.[90]

However, in regard to inbound cross-border conversions particular attention must be paid to the share capital requirements of the target legal form. While a minimum share capital of €25,000 is required for a German limited liability company (GmbH)[91], the corresponding requirement for a Danish private limited liability company (ApS) is only DKK 40,000[92], (approximately €5,350), which is significantly lower. By contrast, the share capital required for a German AG or KGaA of €50,000[93] is at a similar level to that of a Danish A/S of DKK 400,000[94], which amounts to approximately €53,500.[95]

[88] Christensen (n 87) § 318e [1].
[89] KPMG Law (n 17) 111, 67.
[90] KPMG Law (n 17) 112.
[91] § 5(1) GmbHG.
[92] § 4(2) SL.
[93] For AG: § 7 AktG; for KGaA: § 7 in conjunction with § 278(3) AktG.
[94] § 4(2) SL.
[95] KPMG Law (n 17) 112, 68; All DKK amounts have been converted to EUR using the exchange rate of 5 May 2026 (1 DKK = 0.13 EUR).

The considerably higher minimum capital requirement for the German GmbH can be explained by the role that share capital plays within the German system of limited liability companies. Under German GmbH law, the minimum share capital is intended to provide a financial basis for the company and to serve as a protective buffer for creditors in light of the shareholders' limited liability.[96] Danish law, by contrast, has increasingly questioned the practical effectiveness of high minimum capital requirements for private limited liability companies. Such requirements have partly been criticised as providing only limited real protection for creditors while simultaneously increasing costs and barriers to company formation.[97] This discussion contributed to the gradual reduction of the minimum capital requirement for Danish ApS companies from DKK 125,000 to DKK 40,000.[98]

When converting into a German GmbH, the minimum requirements set out in section 3 GmbHG must be observed. It is therefore recommended that the articles of association include a declaration regarding the raising of the required share capital. Furthermore, it may be advisable to consult the competent register court in advance to clarify whether notarisation requirements can be fulfilled by a foreign notary in the home State.[99] This illustrates that, in practice, a proper understanding of both the outbound and inbound legal framework is necessary to ensure a smooth and legally compliant conversion process.

Overall, both systems require a considerable amount of documentation. The Danish provisions, however, are more clearly structured and easier to follow, whereas the German framework relies more heavily on cross-references to other provisions, which makes it less intuitive in practice. Furthermore, the

[96] Christian Schwandtner, in: Holger Fleischer and Wulf Goette (eds), *Münchener Kommentar zum GmbHG*, § 5 GmbHG, paras 2932.
[97] Christensen (n 87) § 4 [4].
[98] Christensen (n 87) § 4 [4].
[99] Winter (n 69) § 345 para 7.

notary fees incurred as a result of the requirement for notarisation are not to be overlooked.[100]

5.1.2 Shareholders' Approval and Procedural Safeguards

The requirements regarding the majority needed for the shareholders' approval at the general meeting differ between Germany and Denmark. Under the Mobility Directive, Member States must ensure that the decision is taken by a qualified majority of between two-thirds and 90%.[101] While German law requires a majority of three-quarters[102], placing it roughly in the middle of this range, Danish law applies the minimum threshold of two-thirds[103]. In addition, Germany has made use of the discretion provided in Article 86h(2) of the Mobility Directive and allows shareholders to make their approval conditional upon the confirmation of a future co-determination model.[104] Taken together with the previously explained requirement that the shareholder resolution must also be notarised, this points to a more formal approach under German law.

As mentioned in section 3.2, Member States must also ensure that shareholders who voted against the draft terms have the right to exit the company in exchange for an adequate cash payment. Under German law (section 340 UmwG), this right is exercised in two steps: First, the shareholder must declare their intention to accept the compensation offer within one month of the shareholders' resolution. In a second step, formal acceptance of the offer must be declared within two months of that resolution.[105] It should be noted, however, that the initial declaration of intention becomes obsolete if the shareholder validly declares acceptance within the first month.[106] A small but relevant detail is that, in the case of a GmbH, the formal acceptance must also be notarised by a German notary.[107] This once again reflects the

[100] For more information: Frank Rosenkranz, ‚Grenzüberschreitender Formwechsel von Kapitalgesellschaften in der EU' [2024] *RNotZ* 361, 378.
[101] Article 86h(3) Mobility Directive.
[102] §§ 333(2) No. 2, 240(1) UmwG; Winter (n 69) § 339 para 4.
[103] §§ 318j, 106 SL.
[104] Winter (n 69) § 339 para 1.
[105] Brandi, Schmidt and Dingeldey (n 17).
[106] § 340(3) UmwG.
[107] § 15(4) GmbHG; Winter (n 69) § 340 para 7.

formal approach inherent in the German system. Payment of the cash compensation must be made within two weeks after the cross-border conversion takes legal effect.[108] Consequently, the German legislature has not made full use of the maximum period of two months provided for in Article 86j(3) of the Mobility Directive.

The Danish system is more straightforward in this respect. Shareholders who oppose the conversion are given a period of four weeks following the shareholder resolution to demand redemption.[109] Once the conversion has taken legal effect, the company has two months to pay the cash compensation.[110] Denmark thus makes full use of the maximum period provided for in the Mobility Directive.

5.1.3 Procedural Flexibility

When comparing the procedural requirements for cross-border conversions in Germany and Denmark, attention should also be paid to the flexibility provided in the two legal orders.

With regard to the conversion report, it is possible in both Germany and Denmark to omit the section for shareholders if there is either only one shareholder in the company, or if all shareholders waive their right to this report.[111] However, under German law, the shareholders' decision to waive this report must be notarised[112] – Germany thus remains true to form in this respect and once again imposes a heightened formal requirement on the waiver of this report. With regard to the section specific to employees, however, the same rules do indeed apply in both Member States. This section is dispensable if there are either no employees in the company or the sole employees are members of the executive body.[113]

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[108] § 340(5) UmwG.
[109] § 318m SL.
[110] Christensen (n 87) § 318m [4].
[111] Germany: § 337(3) UmwG; Denmark: § 318c(5) SL.
[112] §§ 337(3), 192(2) UmwG.
[113] Germany: § 337(3) UmwG, Florian Drinhausen and Astrid Keinath, in Martin Henssler and Lutz Strohn (eds), *Gesellschaftsrecht* (6th edn, CH Beck 2024) § 337 UmwG para 3; Denmark: § 318c(5) SL; Christensen (n 87) § 318c [15].

With regard to the expert report, the following can be noted: In principle, it is possible to waive this requirement in both countries; however, Germany regulates this report in one provision, section 338 UmwG, whilst Denmark provides for the 'valuation expert's statement on the conversion plan' under section 318d SL and the 'valuer's statement regarding the position of creditors' under section 318e SL, thereby supplementing the expert report framework with a distinct expert statement on the position of the creditors, as already mentioned in chapter 4.3.

Section 338 UmwG and section 318d SL provide for similar conditions: either all shareholders must waive this right (in which case this decision must again be notarised in Germany), or the company must only have one shareholder. With regard to section 318e SL, it should be noted that, whilst this may also be declared dispensable by the shareholders, this declaration has consequences on the whole creditor protection process which will be discussed in more detail in the next section. It can therefore be concluded that both systems permit the same simplifications, with the sole exception that shareholder decisions in Germany must be notarised.

5.2 Creditor Protection

Creditor protection constitutes one of the most significant areas of divergence between the German and Danish implementation of the Mobility Directive. This becomes apparent already from the structure and scope of the relevant provisions themselves. While German creditor protection in cross-border conversions is primarily governed by the comparatively concise section 341 UmwG, the Danish provision in section 318f SL contains a more detailed and self-contained framework.

Under German law, section 335(2) No. 8 UmwG requires the company to indicate in the draft terms of conversion which safeguards are offered to the creditors. However, the wording of the provision is somewhat misleading, as

neither the safeguards themselves nor the inclusion of corresponding information in the draft terms is mandatory in every case.[114] The substantive creditor protection mechanism is contained in section 341(1) UmwG, which refers to the creditor protection provisions applicable to cross-border mergers under section 314 UmwG. This constitutes another example of the German's legislature's reliance on cross-references within the UmwG. Pursuant to section 314 UmwG, creditors whose claims arose prior to the disclosure of the draft terms and who can demonstrate that their claims would be jeopardized by the cross-border operation are entitled to apply to the competent court for adequate security within three months following publication of the draft terms.[115]

Accordingly, creditors may request adequate collateral where the safeguards offered by the company are considered insufficient. The claim must not yet be due at the time the request is made, since creditors with due claims may instead pursue direct enforcement. Furthermore, the creditor must demonstrate a concrete endangerment of the claim resulting from the cross-border conversion.[116]

It is precisely this requirement of concrete endangerment that reveals a structural weakness of the German approach. The concept underlying section 314 UmwG was originally designed for cross-border mergers, where assets and liabilities of different entities are combined, and the financial standing of the acquiring company may be weaker than that of the transferring entity. This rationale does not fully translate to cross-border conversions, as the converting company generally continues to exist with the same assets and liabilities while merely changing its legal form. As a result, situations in which creditor claims are considered genuinely endangered are likely to remain exceptional.[117] Such endangerment may arise, for example, where creditors would face substantial practical difficulties in enforcing their claims in the

[114] Rosenkranz (n 100) 368.
[115] Drinhausen (n 71) § 341 UmwG para 3.
[116] Winter (n 69) before § 341 para 2.
[117] Winter (n 69) before § 341 para 2.

host State, such as significantly higher litigation costs, longer procedural delays, or a lower level of creditor protection under the applicable company law regime.[118]

If creditors successfully establish the relevant requirements within the three-month period, the register court must assess whether adequate security has been provided before issuing the pre-conversion certificate. Consequently, creditor claims may significantly affect the timing and the predictability of the conversion process. In practice, the issuance of the pre-conversion certificate under section 343(2) UmwG cannot take place as long as pending creditor claims remain unresolved.[119]

German law further implements Article 86j(4) of the Mobility Directive through section 341(2) UmwG, which provides for an additional ground of international jurisdiction for German courts.[120] Where a creditor's claim arose prior to the publication of the draft terms and legal proceedings are initiated within two years after the conversion takes effect, German courts remain internationally competent. The competent venue is determined by the company's former registered office in Germany. This provision is significant because it reduced the risk that creditors would be forced to pursue claims exclusively before foreign courts following the conversion. Consequently, the mere fact that future litigation may take place abroad cannot, in itself, constitute a sufficient endangerment of creditor claims within the meaning of section 314 UmwG.[121]

By contrast, the Danish system is centred around the creditor declaration pursuant to sections 318e and 318f SL. Under section 318e SL, one or more valuation experts must assess whether the creditors of the converting company may be considered adequately protected following the conversion in light of the company's financial situation. Unlike the German model,

[118] Winter (n 69) before § 341 para 2.
[119] Rosenkranz (n 100) 368.
[120] BT-Drs 20/3822, 46; Drinhausen (n 71) § 341 UmwG para 1.
[121] Drinhausen and Keinath (n 113) § 341 UmwG para 2.

creditor protection in Denmark is therefore based primarily on an ex-ante expert assessment rather than on individual creditor litigation.

The conclusion reached in the creditor declaration must be published together with the draft terms of conversion.[122] Since the shareholders may unanimously decide to waive the preparation of the declaration, three different scenarios may arise.[123] Where the experts conclude that creditors are adequately protected, creditors are generally not entitled to request additional safeguards. If, however, the declaration concludes that creditors are insufficiently protected, creditors whose claims arose prior to publication of the draft terms may file their claims within four weeks following publication by the Danish Business Authority, unless adequate security has already been provided, the same consequences apply where no creditor declaration has been prepared due to a shareholder waiver.[124]

Section 318f SL applies to both due and undue claims. Creditors with due claims may request immediate payment, whereas creditors with claims that are not yet due may request adequate security. Importantly, creditors who fail to file their claims within the prescribed period do not lose their claims, meaning that the provision does not operate as a rule of preclusion. However, claims for which sufficient security has already been provided cannot be filed, as no additional protection is considered necessary in such cases.[125] In the event of disagreement between the company and creditors regarding the necessity or adequacy of security, either party may refer the matter to the bankruptcy court (*Skifteretten)* within three months following publication of the draft terms of conversion.[126]

Like German law, Danish law also grants creditors whose claims arose prior to publication of the draft terms of conversion the right to bring proceedings against the company before the courts at its former registered office within

[122] § 318g(2) SL.
[123] Sørensen, Jensen and Holst (n 17).
[124] § 318f(1) SL.
[125] Christensen (n 87) § 318f [2], [3].
[126] § 318f(4) SL.

two years after the conversion has taken effect.[127] This applies even where no prior proceedings concerning security were initiated before the bankruptcy court and is particularly relevant for the protection of employees and pension-related claims.[128]

A notable similarity between the two jurisdictions is that neither Germany nor Denmark implemented the optional requirement contained in the Article 86j(3) of the Mobility Directive to submit a formal declaration of solvency.

Overall, the comparison demonstrates that Germany and Denmark pursue different approaches to creditor protection in cross-border conversions. The German model is reactive, court-centred, and based on individual creditor initiative. Creditors are granted a legally structured entitlement to request security, but the practical scope of protection is limited by the requirement to demonstrate concrete endangerment. The Danish system, by contrast, is preventive and structured around the expert assessment which determines whether creditor protection applies in the first place. In this framework, creditor protection is primarily shaped by the outcome of the creditor declaration, thereby reducing the need for individual litigation. This difference becomes apparent where the shareholders waive the creditor declaration under Danish law. In such cases, creditors may file their claims irrespective of whether they would actually be adversely affected by the conversion.[129] The German system, by contrast, does not rely on such an expert mechanism but requires proof of a concrete endangerment of the claim.

While the Danish approach may provide greater procedural efficiency and predictability where a positive declaration is issued, the German system grants creditors more direct procedural rights and judicial involvement. These differences illustrate ones more how the Mobility Directive leaves considerable room for the Member States to shape creditor protection according to their legal traditions and regulatory preferences.

[127] § 318f(6) SL.
[128] Christensen (n 87) § 318f [10].
[129] Christensen (n 87) § 318f [1].

5.3 Abuse Control

As already mentioned in Chapter 3.3, the Mobility Directive leaves considerable discretion to the Member States regarding the abuse control that needs to be carried out during the pre-conversion review. Article 86m(8)-(12) of the Mobility Directive requires Member States to ensure that the competent authority refuses the issuance of the pre-conversion certificate where a cross-border conversion is carried out for *"abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes"*. However, the Directive itself does not define these concepts any further. Only the recitals of the Mobility Directive provide a non-exhaustive list of circumstances that may be taken into account where the competent authority has serious doubts regarding the legality of the conversion.[130] The assessment of what constitutes an abusive cross-border conversion is therefore largely left to national law. The analysis of the German and Danish implementations reveals different approaches in terms of both the structure and intensity of the abuse control.

Under German law, section 343(1) UmwG provides that the register court must examine whether the legal requirements for the cross-border conversion are fulfilled before issuing the pre-conversion certificate. Pursuant to section 343(3) UmwG, the court must carry out an abuse control where there are indications that the conversion is intended for abusive or fraudulent purposes aimed at circumventing Union or national law, or for criminal purposes. In such cases, the issuance of the pre-conversion certificate must be refused. At the same time, where no such indications exist, the register court is generally not required to conduct further investigations into potential abuse.[131] In this respect, the German provision remains close to the wording of Article 86m(8) of the Mobility Directive, as described above.

However, the German legislature supplemented the provision by introducing specific statutory examples indicating situations in which such suspicions

[130] Mobility Directive, recital 36; Winter (n 69) § 343 UmwG para 10.
[131] Drinhausen (n 71) § 316 UmwG para 11.

may arise.[132] The statutory examples in section 343(3) UmwG focus primarily on cases involving a presumed risk to employee participation rights or occupational pension claims.[133] The presumptive examples correspond to those applicable to cross-border mergers under section 316(3) UmwG.[134] In the view of the German legislature, abuse is therefore considered particularly likely in certain employment-related constellations.[135]

The first presumptive example in section 316(3) No. 1 UmwG concerns situations in which the required employee participation procedure was only initiated following a request by the register court. The underlying assumption appears to be that the company intentionally failed to initiate the procedure to avoid employee participation rules.[136] However, this approach may be problematic insofar as it potentially interferes with the freedom of establishment, since there may be various legitimate reasons why a company initially assumed that no negotiation procedure was required.[137]

The second presumptive example concerns situations in which the number of employees reaches at least four-fifths of the threshold relevant for employee co-determination, while at the same time no value creation takes place in the host State and the administrative seat remains in Germany.[138] The provision may be intended to address artificial structures lacking genuine economic activity in the host State. Nevertheless, this presumptive example has been heavily criticised in German literature and its compatibility with EU law has been questioned.[139] In particular, the criterion no "value creation" is carried out in the host State appears difficult to reconcile with the reasoning of the CJEU in *Polbud,* discussed in Chapter 2.2. There, the Court clarified that the

[132] § 343(3) sentence 4 UmwG.
[133] Winter (n 69) § 343 UmwG para 11.
[134] Drinhausen (n 71) § 343 UmwG para 6.
[135] Martin Henssler, in Mathias Habersack, Martin Henssler and Clemens Höpfner (eds), *Mitbestimmungsrecht* (5th edn, 2025) § 343 UmwG para 18.
[136] Drinhausen (n 71) § 316 UmwG para 12.
[137] Henssler (n 135) § 343 UmwG para 22.
[138] § 343(3) No. 2 UmwG; Brandi, Schmidt and Dingeldey (n 17).
[139] Henssler (n 135) § 343 UmwG para 23; Jessica Schmidt, 'Die weitreichende Reform des Umwandlungsrechts' [2023] NJW 1241, 1243; Markus Baschnagel, Raphael Hilser and Raphael Wagner, 'Unternehmerische Mitbestimmung bei grenzüberschreitenden Umwandlungen nach dem MgFSG' [2023] RfA 103, 109–110.

freedom of establishment also protects cross-border conversions carried out without the relocation of actual economic activity.[140] The German provision therefore raises questions regarding its compatibility with the broader understanding of regulatory choice developed by the Court.[141]

The third presumptive example concerns cases in which, following the cross-border conversion, the company remains liable for occupational pension obligations while carrying out no other operative business activities.[142] The concern underlying this provision appears to be that the company may not possess sufficient assets to satisfy its pension obligations in the long term.[143] Criticism has also been raised against this provision. It has been argued that accounting rules concerning pension provisions are already largely harmonised under EU law, meaning that the level of protection afforded to pension creditors is in principle equivalent throughout the Union, making a general presumption of abuse questionable.[144]

At the same time, it must be emphasised that the statutory presumption examples listed in section 343(3) UmwG are non-exhaustive and do not automatically establish abuse. Rather, they merely trigger a more detailed review by the register court. Whether the conversion is ultimately abusive must still be determined through an individual assessment of all relevant facts and circumstances. In this regard, recital 36 of the Mobility Directive – as already mentioned above – provides guidance by listing a range of factors which may be taken into account by the competent authority. However, it has been argued in German literature that a comprehensive examination of all these aspects could, in practice, lead to an extensive economic assessment by the register court which may be difficult to carry out effectively.[145]

Where additional investigations are necessary, section 343(3) sentence 3 UmwG allows the register court to extend the review period by up to three

[140] *Polbud* (n 12) para 66.
[141] § 343 UmwG para 27.
[142] § 343(3) No. 3 UmwG.
[143] Winter (n 69) § 343 UmwG para 11.
[144] Henssler (n 135) § 343 UmwG para 33.
[145] Henssler (n 135) § 343 UmwG para 34.

additional months. Furthermore, section 344 UmwG grants the court broad powers to request additional information and documents in order to clarify the relevant circumstances. Germany thereby transposed the abstract standard contained in Article 86m(8) of the Mobility Directive into more concrete statutory indicators, thereby reducing interpretative uncertainty while simultaneously expanding the scope of scrutiny. In particular, the German implementation reflects a strong concern regarding the circumvention of domestic employee participation and pension protection rules.

In Denmark, the legality review is carried out by the Danish Business Authority. Pursuant to section 318o(3) SL, the Business Authority must refuse the issuance of the pre-conversion certificate where it concludes that the cross-border conversion has been established for abusive or fraudulent purposes leading to or intended to lead to the evasion or circumvention of EU or national law, or for criminal purposes. In this respect, the Danish provision also largely follows the wording of Article 86m(8) of the Mobility Directive.

Unlike the German implementation, however, Danish law does not provide any codified statutory indicators of abuse. Instead, section 318o SL remains closely aligned with the open wording of the Mobility Directive. Where the Danish Business Authority has serious doubts regarding the legality of the conversion, it must take into account relevant facts and circumstances that become known during the review process, including through consultation with other authorities.[146] The assessment is therefore carried out on a case-by-case basis, which may include the involvement of other public authorities, such as the Danish Tax Agency, particularly where concerns arise regarding tax obligations or other regulatory matters.[147]

In addition, section 318o(4) SL allows the Danish Business Authority to obtain further information or conduct additional investigations where necessary for the assessment under section 318o(3) SL. Similar to German law and Article 86m(1) of the Mobility Directive, the review period may be

[146] Christensen (n 87) § 318o [7].
[147] Christensen (n 87) § 318o [7].

extended by up to three additional months. Furthermore, section 318o(6) SL permits the Danish Business Authority to require the company to obtain statements from an approved auditor, lawyer or other expert regarding the accuracy of the information provided by the company, including the existence of the company's capital bases and the legality of financial transactions connected to the conversion.[148] The Danish system therefore relies less on predefined statutory indicators and more on a flexible administrative assessment of the overall legality of the conversion.

The comparison between the German and Danish implementation regarding the abuse control mechanisms demonstrates that significant divergence remains despite the harmonised framework of the Mobility Directive. Both Member States provide for the possibility to extend the review period, request additional information and involve other authorities where necessary. However, the practical structure of the abuse control differs a lot: Germany adopted a judicial, formalised approach by codifying the three statutory presumption examples that may trigger abuse scrutiny, particularly in relation to employee participation and pension protection. Denmark, by contrast, retained an administrative and less-formalised model, leaving the assessment largely to the Danish Business Authority on a case-by-case basis. The area of abuse control creates the highest risk of divergent outcomes, leading to legal uncertainty. Especially the absence of harmonised criteria for assessing *"abusive or fraudulent purposes"* means that national authorities retain wide interpretative discretion, which may result in different thresholds of scrutiny in practice across Member States.

[148] Christensen (n 87) § 318o [9].

6 Evaluation

The core objective of this thesis was to examine whether the Mobility Directive effectively reduces legal fragmentation in the field of cross-border conversions at national level, using Germany and Denmark as comparative examples. While limited to two jurisdictions, the analysis illustrates how the discretion left by the Directive translates into different national approaches in practice.

The comparative analysis has shown that, despite the introduction of a common procedural framework by the Mobility Directive, differences remain in the national implementation. Germany follows a more formalised and judicial approach, characterised by notarisation requirements, extensive cross-references within the UmwG and codified statutory indicators in the area of abuse control.[149] Denmark, by contrast, follows a more administrative and flexible approach, relying heavily on expert assessments and administrative decision-making.[150] Despite these differences, both systems implement the same directive-based structure and pursue the same objectives of facilitating cross-border conversions while protecting shareholders, creditors and employees.

The remaining fragmentation is particularly visible in three areas. First, procedural requirements: Germany imposes additional formal requirements, such as notarisation and higher majority thresholds[151], whereas Denmark adheres more closely to the minimum structure of the Directive.[152] Second, creditor protection: Denmark relies on an ex-ante expert assessment model, while Germany follows a reactive, court-centred approach based on individual creditor action.[153] Third, abuse control: Germany codifies specific

[149] See Chapter 5.1 and 5.3.
[150] See Chapter 5.1 and 5.2.
[151] Notarisation requirements are set out in § 335(3) UmwG and § 332(2) UmwG in conjunction with § 193(3) UmwG; discussed in Chapter 5.1.1.
[152] See Chapter 4.2 and Chapter 5.1.1.
[153] See Chapter 5.2.

indicators triggering scrutiny, whereas Denmark applies a more flexible case-by-case assessment.[154]

These differences reflect not only regulatory choices but also broader procedural traditions. Germany's system emphasises judicial control and formal legal certainty, while Denmark prioritises administrative flexibility and efficiency. The comparison thus shows that the Directive reduces fragmentation in the overall framework, while preserving diversity in how procedures are structured and applied.

The same interaction between harmonisation at EU level and national implementation can be seen in the earlier example of a conversion from a Danish ApS into a German GmbH. While the outbound phase under Danish law follows a primarily administrative structure, the inbound conversion into a German GmbH triggers additional formal requirements under German law, particularly in relation to share capital requirements, notarisation and registration formalities.[155] The example illustrates that successful cross-border conversions continue to depend not only on the harmonised EU framework itself, but also on a detailed understanding of the respective national implementation rules. Although both jurisdictions operate within the same harmonised EU framework, the conversion process still requires compliance with both national legal orders. In practice, this results in differences in procedural complexity, timing and costs.

It remains to be seen how the practical application of the Mobility Directive will further develop within the Member States, particularly given that the Directive has only relatively recently been implemented into national legal orders. This applies especially to the duration and costs of procedures, abuse control mechanisms, employee participation and the practical effectiveness of stakeholder protection. Further insight may be provided by the Commission's evaluation, which is to be carried out no later than 1 February 2027.[156] In this context, Member States are required to provide

[154] See Chapter 5.3.
[155] See Chapter 3.1.1 and Chapter 4.1.
[156] Directive (EU) 2019/2121, Article 4 (Reporting and review).

data concerning the number of cross-border conversions, mergers and divisions carried out, their duration and the associated costs, rejected applications for pre-operation certificates, and data concerning employees' rights of co-determination. The Commission's evaluation may therefore provide a more precise indication of the extent to which the Mobility Directive has succeeded in achieving practical harmonisation through its national implementation.

7 Conclusion

The Mobility Directive constitutes an important development in European company law and represents a significant step towards facilitating cross-border conversions within the Internal Market. The comparative analysis of Germany and Denmark has demonstrated that the Directive succeeds in establishing a harmonised procedural framework at EU level, thereby significantly improving legal certainty compared to the pre-Directive landscape.

However, harmonisation remains partial. The discretion left to the Member States – particularly in relation to procedural requirements, creditor protection and abuse control – results in differences at the level of national implementation. The comparison of Germany and Denmark demonstrates that these differences are not incidental but reflect regulatory preferences and legal traditions.

"Harmonisation or Fragmentation?" The answer, as the comparison of Germany and Denmark shows, lies somewhere in between. The Mobility Directive reduces fragmentation at the structural level but does not eliminate it in practice. From a broader perspective, this outcome is consistent with the nature of directives as instruments of EU law. Rather than imposing full uniformity, the Mobility Directive balances harmonisation with regulatory flexibility in key regulatory areas. In doing so, it facilitates cross-border conversions while preserving Member States' autonomy in shaping procedural mechanisms that fit within their distinct national legal systems.

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