Cross-border mergers and minority protection
An open-ended harmonization

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Abstract
Minority protection is an important, though difficult, issue in company law, and a subtle balance must be struck between the legitimate interests of the majority and minority shareholder(s). The rules on minority protection in the context of the Cross-border Mergers Directive, which was recently adopted and should have been transposed into Member States' national law towards the end of 2007, are examined in this paper. The authors analyse how minority shareholders are protected within the scope of this Directive and how some of the Member States (such as Germany, Italy, Belgium and the Netherlands) have transposed or will transpose some of these protective provisions. The different levels of minority protection (information rights, consultation rights, rights to challenge majority decisions and other specific rights) are considered, as well as which types of shareholders can benefit from such protection, and why they should be afforded protection. With respect to the last question, the authors conclude that the change in corporate law encountered especially by the shareholders of the disappearing company seems to be the major rationale underlying the European legislator's decision to introduce minority protection (but not oblige Member States to do so). The authors submit that this reflects too narrow a vision on the need for minority protection because it ignores the fact that the change of the corporate form as a consequence of a merger is in itself sufficient rationale for protecting minority shareholders. It remains somewhat of a mystery as to why the European legislator, while confirming that a cross-border merger should be subject to the same rules as a national merger, has created one possible and very vague exception to that rule.

Keywords
minority shareholders; cross-border mergers; tenth directive; EU company law

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