The Mergers & Acquisitions Review

Thirteenth Edition

Editor
Mark Zerdin

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PREFACE

2018 was the year of the mega-deal, with an unprecedented number of big-ticket mergers taking place across a range of jurisdictions and sectors. In the first six months of 2018, global deal value rose by 59 per cent compared to 2017, despite volumes falling by 12 per cent. Although there was a considerable drop off in activity in the second half of the year, 2018 nonetheless saw robust overall performance by market participants, with global activity in 2018 exceeding US$3 trillion for the fifth consecutive year.

The United States remained the most targeted and acquisitive region globally in 2018; however, the deal-making landscape in the US for the remainder of 2019 presents a mixed picture. On the one hand, tax reform, a more relaxed US regulatory climate and growing cash reserves present a favourable environment for investors. On the other, dealmakers are likely to be concerned by the trade dispute between the US and China – which is already threatening economic growth and, at the time of writing, shows no sign of abating – and the ongoing uncertainty regarding antitrust policies, which may lead to increased scrutiny of M&A deals.

In Europe, after a record-breaking start to the year, the prolonged uncertainty caused by stuttering Brexit negotiations and wider political tensions across the continent finally caught up with dealmakers in the second half of 2018. In line with a softening of the global economy, the value of European deals in H2 plummeted to its lowest level since 2013, and the volume of transatlantic deals between North America and Europe also fell by 29 per cent year-on-year.

One of the main disruptors to M&A activity over the past 12 months has been the rise in political intervention in cross-border deals. In particular, concerns over national security have led to the tightening of foreign investment regimes and antitrust regulations, coupled with more active enforcement by regulators. This growth in protectionism is likely to remain one of the main obstacles facing dealmakers in the near future.

Nevertheless, looking forwards into the remainder of 2019, there is certainly cause for optimism: private equity continues to enjoy record-breaking levels of dry powder, and developments in technology are driving both the sector itself and the facilitation of deals more broadly. Finally, and perhaps most importantly, the past 12 months have highlighted the resilience of companies and private equity firms in their navigation of global political uncertainty and economic shifts.

I would like to thank the contributors for their support in producing the 13th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 47 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
July 2019

Chapter 1

EU OVERVIEW

Mark Zerdin[1]

I OVERVIEW OF M&A ACTIVITY

Following on from a reasonably strong year for M&A in 2017, the start of 2018 saw high levels of activity across Europe. Indeed, the value of deals in the first half of 2018 reached €509 billion – up 16 per cent from the same period in 2017.[2] Mega mergers were the driving force behind these record-breaking statistics, consistent with the emerging global trend towards fewer, but larger, deals. In the first quarter of 2018, six deals surpassed the US$10 billion mark – the highest Q1 deal value since the financial crisis – and, in Q2, the value of deals rose even further to €292.5 billion.[3]

European deal-making spanned a wide range of sectors throughout 2018, but the most notable in terms of deal value was the technology, media and telecoms (TMT) sector, in which four of the top 20 deals in Europe were recorded.[4] Most M&A activity was concentrated in the UK, which accounted for 25 per cent of total value for the first half of 2018, followed by Germany (15 per cent of value) and the Republic of Ireland (14 per cent).[5] Particularly notable European deals included the Japanese drugs giant Takeda's £46 billion acquisition of Irish pharmaceuticals firm Shire; Comcast's high profile takeover of Sky for €42 billion; and the renewable energy deal struck by RWE, E.ON and Innogy for over €37 billion.

Nevertheless, in the face of continued geopolitical uncertainty, European M&A experienced a considerable decline in the second half of 2018. Following an exceptional start to the year, M&A activity fell suddenly by 52.8 per cent in H2. In Q4, the value of European deals dropped to US$146.2 billion – the lowest quarterly value since Q1 2013. Indeed, of the 11 deals worth over US$10 billion recorded in 2018, all were announced in the first five months of the year. Only 10 deals worth over US$5 billion were announced in H2 2018.

In 2019, M&A activity has thus far been similarly subdued. In addition to the obvious concerns arising out of the continued political and economic uncertainty, an important contributing factor to this fall in activity has been the rise of protectionism across Europe and, indeed, globally. At both Member State level and EU level there have been moves towards greater scrutiny of foreign investment in strategic assets or critical infrastructure. Earlier this year, for example, the UK updated its merger and takeover rules to give the government stronger powers of veto over foreign takeovers of certain types of technology businesses. At

1 Mark Zerdin is a partner at Slaughter and May.
2 Mergermarket, 'Scanning the horizon: European M&A Outlook 2018'.
3 Ibid.
4 Mergermarket, 'Deal Drivers EMEA 2018 Full Year Edition'.
5 Mergermarket, 'Scanning the horizon: European M&A Outlook 2018'.

EU level, there have been proposals to increase scrutiny of foreign direct investment and to create a cooperation mechanism between Member States in cases where foreign investment poses a potential threat to security.

It has not, however, been a wholly bleak affair across the board: in a bid to deploy record amounts of dry powder, private equity firms have taken centre stage over the past 12 months. In 2018, European private equity saw €170 billion in buyout deal value – the highest so far this decade. This trend looks set to continue into 2019, with private equity buyouts accounting for 29.2 per cent of all European M&A activity during the first quarter – the highest figure at this stage of the year on Mergermarket records.[6] The top three deals thus far have all been inbound investments conducted by North American investors and consortia, such as the €5.7 billion acquisition of Scout24 by the Hellman & Friedman and Blackstone consortium.[7]

Going into 2019, the TMT sector was the most profitable and active sector in the first quarter of the year, with buyout deals valued at €7.5 billion and 54 exits recorded. This is the first time on Mergermarket records that the TMT sector has, on a quarterly basis, surpassed the industrials and chemicals sector (which saw €6.3 billion of buyout deals and 27 exits in Q1).

The clear drop-off in M&A activity since the second half of 2018 may concern dealmakers and, with the European Central Bank ending quantitative easing and the eurozone economy entering a slower rate of growth, 2019 is unlikely to present a favourable environment for M&A activity. On top of these conditions, geopolitical uncertainty and growing protectionism will be important factors for market participants to consider before making significant investment decisions. Nevertheless, as companies learn to navigate uncertainty in Europe, it is hoped that market participants will have the confidence to remain inquisitive and acquisitive.

II RECENT EUROPEAN LAW MEASURES RELATING TO CORPORATE LAW

i Brexit update

At the time of writing, there is significant uncertainty regarding the UK's withdrawal from the European Union. On 29 March 2019, the date that the UK was originally scheduled to leave, the UK Parliament rejected the withdrawal agreement negotiated between the Prime Minister, Theresa May, and the EU for the third time. Consequently, EU leaders agreed to delay Brexit for up to six months. The revised departure date has been set for 31 October 2019, with the option for the UK to leave earlier if a withdrawal agreement is reached. At present, it remains to be seen whether a withdrawal agreement will come into force or if the UK will exit the EU without an agreement. Indeed, as political pressure for a second referendum mounts, it also possible that the UK will reverse its decision to leave.

On the assumption that the UK will ultimately leave the EU, the government has published several pieces of secondary legislation, which will come into force on exit day. The intention of this legislation is to facilitate the effective functioning of the UK's company law framework and the operation of the UK takeovers regime on a freestanding basis outside the EU framework post-Brexit.

6 Mergermarket, 'EMEA MA activity during Q1 2019'.
7 Ibid.

ii General Data Protection Regulation

As discussed in the previous edition of *The Mergers & Acquisitions Review*, the General Data Protection Regulation (GDPR) was published in the Official Journal on 4 May 2016 and, as a regulation, it has had a direct effect in all EU Member States from 25 May 2018. The aim of the GDPR is to harmonise the data protection regime across the European Union, replacing existing national laws based on the Data Protection Directive of 1995 (which is implemented in the United Kingdom through the Data Protection Act 1998). Under the GDPR, the territorial scope of the EU data protection regime will be significantly expanded to apply to any organisation that offers goods and services to individuals in the European Union (including those that are free of charge), or any organisation that monitors their behaviour. This means that a larger number of overseas businesses are likely to be affected. The GDPR also brings with it greater enforcement powers, and sanctions for non-compliance may lead to fines of up to 4 per cent of annual worldwide turnover or €20 million (whichever is greater). As under the current law, the GDPR will regulate the transfer of personal data to countries or companies outside the European Union, providing formal mechanisms to permit international data flows.

Despite the many similarities between the GDPR and the preceding Data Protection Act, companies need to ensure that their data processing systems are compliant with the new elements and enhancements introduced by the GDPR. The Information Commissioner's Office (ICO), the UK's data protection regulator, maintains and frequently updates a guide to the GDPR, which aims to help organisations comply with the GDPR requirements.[8]

After formally exiting the European Union, the GDPR will continue to apply to the United Kingdom because, as stated above, the United Kingdom intends to enact EU legislative provisions directly into domestic legislation to prevent uncertainty about the status of EU law after Brexit. Thus, the provisions of the Data Protection Bill 2017 will align the United Kingdom with the GDPR by repealing and replacing the Data Protection Act 1998.

iii New Prospectus Regulation

On 30 June 2017, the New Prospectus Regulation[9] was published in the Official Journal of the European Union; it repeals and replaces the Prospectus Directive.[10] The stated aim is to lower one of the main regulatory hurdles that companies face when issuing equity and debt securities, by simplifying administrative obligations related to the publication of prospectuses but in a manner that still ensures that investors are well informed.[11]

One of the key changes that the New Prospective Regulation provides for is a simplified disclosure regime for small and medium-sized enterprises and secondary issuances. For example, the reformed prospectus regime limits the inclusion of risk factors to those that are specific to the issuer of the securities and that are material to making an informed decision. Risk factors will be divided into a limited number of categories and, within each category, the most material risk factor will need to be mentioned first. The summary of the prospectus will now be limited to seven sides of A4 paper when printed, and the requirement for the format

8 Information Commissioner's Office, 'Guide to the General Data Protection Regulation (GDPR)'. https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr.

9 Regulation (EU) 2017/1129.

10 Directive (EU) 2003/71.

11 Council of the European Union press release 260/17, 'Capital markets union: new prospectus rules adopted', 16 May 2017.

to consist of five tables has been removed. While the new rules still require the summary to have a uniform format, it is less prescriptive both in terms of content and structure. The increased emphasis on uniformity and materiality should also reduce the cost of accessing European capital markets.

While a handful of changes have already been implemented, the majority of the provisions of the New Prospectus Regulation and delegated acts will come into force on 21 July 2019. On 31 January 2019, ESMA published a new Q&A on the application of the Prospectus Directive and its implementing measures, which includes guidance on how the New Prospectus Regulation will apply in the event that the UK leaves the EU without a withdrawal agreement.

iv The Fifth Anti-Money Laundering Directive

The Fifth Money Laundering Directive (MLD5)[12] came into effect on 9 July 2018 and will amend the Fourth Money Laundering Directive (MLD4)[13] once it has been transposed by Member States, which must be done by 10 January 2020. MDL4, and therefore also MDL5, are part of the European Commission's proposal to strengthen the fight against terrorist financing against the backdrop of the Panama Papers revelations in April 2016 and recent terrorist attacks. They apply to a wide range of businesses: in essence, any business deemed at risk of being involved in money laundering or terrorist financing. The aim of the directive is to 'ensure more transparency and help competent authorities to effectively detect criminal and terrorist financing flows'.[14] The proposed amendments, which extend the scope of MLD4 even further, seek, among other things, to address the risks associated with prepaid cards and virtual currencies; broaden access to information on beneficial ownership; and to award further powers to financial intelligence units (FIUs), including a requirement for Member States to establish national central mechanisms allowing FIUs to better identify holders and controllers of bank and payment accounts and safe-deposit boxes.[15]

v Cross-border insolvency

The EC Regulation on Insolvency Proceedings[16] (ECIR) was introduced to facilitate the efficient conduct of cross-border insolvencies by, inter alia, allocating jurisdiction between Member States (excluding Denmark, which has opted out), and providing that there will only be one main insolvency proceeding. On 20 May 2015, the European Parliament approved a recast version of the ECIR (Recast Insolvency Regulation), which included changes such as extending the regulations to rescue proceedings (including debtor-led pre-insolvency proceedings); the removal of a restriction that secondary proceedings must be winding-up proceedings; and the introduction of a concept of group coordination proceedings where a group coordinator is appointed to oversee the insolvency or restructuring of a group of

12 The Fifth Money Laundering Directive ((EU) 2018/843)(MLD5).

13 The Fourth Money Laundering Directive ((EU) 2015/849)(MLD4) .

14 European Commission. Executive Summary of the Impact Assessment accompanying the document 'Proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC'. 5 July 2016.

15 Practical Law Financial Services, 'Hot topics: MLD5'.

16 Council Regulation (EC) No. 1346/2000.

companies.[17] The Recast ECIR came into force on 26 June 2017 and applies to proceedings that are based on a law relating to insolvency. However, it does not apply to proceedings that are based on general company law.

From a UK perspective, the impact of the Recast ECIR on acquisitions from or of insolvent companies will largely depend on the terms of the UK's planned withdrawal from the EU. If a deal is reached and the EU withdrawal agreement comes into force, the Recast ECIR will, broadly speaking, continue during the transition period, which, unless extended, is due to run until 31 December 2020. In the event of a no deal scenario, however, the Insolvency (Amendment) (EU Exit) Regulations 2019 made on 30 January 2019 will come into force on exit day.[18] The most significant overall effect of these regulations is likely to be that cross-border insolvency proceedings will become more complex, as proceedings started elsewhere in the EU will no longer be automatically recognised; parties will instead be required to seek permission for proceedings in each jurisdiction.

III RECENT COMPETITION LAW DEVELOPMENTS

i Treatment of mergers by the European Commission

Between January 2018 and the end of March 2019, the Commission received 506 merger notifications under the European Merger Regulation (EUMR). During that period, 460 cases were cleared unconditionally at Phase I. In 22 cases, Phase I clearance was conditional on certain remedies being implemented, while 14 cases were referred to Phase II for in-depth consideration. Of the seven Phase II decisions made during the period, four cases were cleared unconditionally, seven cases were given clearance conditional upon remedies being implemented and two cases were prohibited.

In February 2019, the Commission prohibited two separate transactions on the same day, namely Siemens's proposed acquisition of Alstom and Wieland's proposed acquisition of Aurubis Rolled Products and Schwermetall. These landmark decisions have generated considerable debate around whether the EU merger control rules should be reformed to enable the creation of 'European champions' in the face of increasing competition from China and elsewhere. However, Commissioner Margrethe Vestager has defended the current rules, noting that European business champions cannot be built 'with mergers that harm competition, or by looking the other way when Europe's businesses break our rules'.[19]

In terms of substantive assessment, the Commission has continued to focus on the effects of mergers on longer-term innovation and competition in several cases. The Commission has identified concerns in various industries where a transaction would remove a player with significant pipeline products or R&D capabilities, or both, or where it would otherwise negatively affect innovation, including the pharmaceutical and medical devices, energy and agrochemicals sectors. The former Deputy Director of General Mergers, Carles Esteva Mosso, has emphasised that 'innovation analysis is an important part of our merger control practice [. . .] the Commission is keen to ensure that innovation competition is not

17 Regulation (EU) 2015/848.
18 The Insolvency (Amendment) (EU Exit) Regulations 2019 (SI 2019/146).
19 'The Champions Europe Needs' (speech by Commissioner Margrethe Vestager at the WELT Economic Summit, Berlin), 9 January 2019.

harmed by mergers, which is a particular risk in transactions combining close and important innovators in concentrated industries with high barriers to entry and well-paced innovation processes'.[20]

The trend of requesting significant volumes of internal documents as part the merger notification has also continued, particularly in respect of more complex cases. The Director General for Competition, Johannes Laitenberger, has noted that 'internal documents are important, because they can help us understand the plans that companies have for the future and make better decisions'.[21] The best practice guidelines that were announced in 2018 and intended to clarify the Commission's approach in this area are still awaited at the time of writing.

The Commission has also continued its strict approach to ensuring compliance with the EU merger control procedures. Following the imposition of a €124.5 million fine on Altice in April 2018 for implementing its acquisition of PT Portugal prior to notifying the merger to the Commission and receiving clearance, the Commission imposed a fine of €52 million on General Electric in April 2019 for providing incorrect information about its proposed acquisition of LM Wind.

ii Possible reforms to the EUMR

Possible reforms to the EUMR are still under consideration following a public consultation between October 2016 and February 2017. The consultation sought to explore the potential for further simplification of EU merger control review, streamlining of the referral system between the Commission and European national competition authorities, and the introduction of complementary jurisdictional thresholds based on transaction values. These latter proposals stem from a debate about the effectiveness of the turnover-based jurisdictional thresholds in the context of some high-value transactions (particularly in the digital economy) involving target companies with limited or no turnover, which were not notifiable under the EUMR but may have had significant competitive effects in the EEA. A similar debate has occurred at the national level in the EU, and the German and Austrian governments have recently introduced additional jurisdictional thresholds relating to the transaction value, which apply as an alternative to the existing turnover-based criteria. The Commission published a summary of the consultation responses received, which showed mixed views on the proposals, in particular in relation to the proposals for new jurisdictional thresholds.[22]

A separate expert report commissioned by the Commission to examine future challenges of digitisation for competition policy concluded that the merger control regime is largely fit for purpose.[23] In respect of the proposals for new jurisdictional thresholds, the report suggests that the Commission should wait and assess how the new transaction value-based thresholds

20 Innovation in EU Merger Control (speech by Carles Esteva Mosso at the ABA Section of Antitrust Law Spring Meeting, Washington), 12 April 2018.

21 Enforcing EU competition law in a time of change: 'Is Disruptive Competition Disrupting Competition Enforcement' (speech by Johannes Laitenberger), 1 March 2018.

22 Summary of replies to the Public Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control, July 2017.

23 'Competition Policy for the digital era', a report by Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, April 2019.

in Austria and Germany play out in practice, and examine whether the referral system is sufficient to ensure that transactions of EU-wide relevance are ultimately analysed at the EU level.

It is unclear at this stage if the Commission will propose any legislative changes to the merger regime in response to the 2016 consultation or the 2019 expert report.

IV RECENT TAX LAW DEVELOPMENTS

It appears that the Commission is increasingly frustrated with the lack of progress on tax policy initiatives: no progress has been made on the common consolidated corporate tax base or the financial transaction tax, and the Commission's original proposals for a digital services tax were rejected late last year (see subsection ii). Therefore, on 15 January 2019 the European Commission published a proposal to reform the decision-making process for areas of EU taxation policy by transitioning from unanimous voting to qualified majority voting at the Council level. If this proposal is agreed (which is doubted), a more dynamic approach to EU tax legislation could be expected.

i State aid

Between 10 January 2019 and 2 April 2019, the Commission opened four new state aid investigations relating to tax rulings granted by the Netherlands to Nike[24] and Luxembourg to the Finnish food drink packaging company Huhtamäki,[25] Danish tax support measures for the Øresundlink public infrastructure project[26] and Slovakia's turnover tax for food retailers.[27] State aid investigations are therefore still a live risk.

In an M&A context, reliance on tax rulings should be scoped out during the due diligence process. One crucial question in assessing the state aid risk in respect of a particular ruling is whether the ruling reflects the law or approves a more advantageous position. While the double non-taxation of McDonald's Europe franchising pursuant to its Luxembourg tax rulings was not state aid, given that it was not the derogation from, but the application of, Luxembourg law and the double tax treaty between Luxembourg and the US that led to the double non-taxation,[28] the Commission found that Engie's favourable treatment pursuant to its Luxembourg tax rulings did amount to state aid.[29]

The Commission's decision[30] in relation to the group financing exemption under the UK controlled foreign companies regime was good news for groups with offshore finance subsidiaries of substance that are merely funded from the UK. The Commission decided that exempting finance income that would otherwise be brought into charge as a result of it being derived from UK-connected capital is not state aid. In contrast, exempting finance income that would otherwise be brought into charge as a result of it being derived from UK activity is state aid. This means that, since 1 January 2019, when the group financing exemption was tightened to exempt only the former and not the latter, it has been fully compliant.

24 Press release IP/19/322.
25 Press release IP/19/1591.
26 Press release IP/19/1468.
27 Press release IP/19/1950.
28 Press release IP/18/5831 and decision C(2018) 6076 final.
29 Press release IP/18/4228 and decision C(2018) 3839 final.
30 Press release IP/19/1948 and decision C(2019) 2526 final.

In *Heitkamp BauHolding*,[31] the CJEU overturned a 2016 judgment of the General Court (GC), and annulled the Commission's decision that the corporate rescue exemption from the German anti-loss-buying rules constituted state aid. This is good news for those looking to invest in distressed companies. Taken together with two other recent cases where the GC annulled the Commission's state aid decisions,[32] it also shows that the European Courts do not merely rubber stamp the Commission's decisions.

ii Taxation of the digital economy and beyond

Base Erosion Profit Shifting (BEPS) Action 1 seeks to address the tax challenges of the digital economy. Following the publication of an interim report on 16 March 2018, the OECD published a policy note and a public consultation document in early 2019 proposing a two-pillared approach to the discussion of further reform of the international tax system. The first pillar addresses the challenges of the digital economy, setting out the following proposals: profit allocation on the basis of user participation; the allocation of income associated with marketing intangibles and their risks to the market jurisdiction; and taxation on the basis of a significant economic, rather than a significant physical, presence. The second pillar addresses remaining BEPS issues that go beyond the digital economy, discussing the introduction of an income inclusion rule under which an entity would pay tax on the income of its controlled entities or permanent establishments if such income would not otherwise be subject to tax at a minimum rate, and of an under-taxed payments rule that would deny tax deductions for payments to related parties if such payments are not subject to a minimum effective rate of tax. A public consultation on the OECD's proposal took place in February and March 2019, and the OECD submitted a progress report to the G20 finance ministers in June 2019. The OECD's aim continues to be a consensus-based, long-term solution in 2020.

Meanwhile, there is a growing number of countries that are taking matters into their own hands. At the time of writing, six EU Member States (namely, Austria, Belgium, France, Italy, Spain and the UK) have introduced or announced digital services taxes. In contrast, similar proposals at the EU level seem unlikely to come to fruition. The Economic and Financial Affairs Council of the EU failed to agree the European Commission's original proposals during its meeting on 4 December 2018, and then failed to agree an amended and more limited digital services tax during its meeting on 12 March 2019.

It is further noted that on 10 March 2019, the International Monetary Fund (IMF) published a policy paper entitled Corporate Taxation in the Global Economy that addresses issues similar to those under consideration by the OECD; among other things, the IMF paper looks at minimum taxes on outbound and inbound investment. It is clear that the political desire to address perceived avoidance is still strong. In particular, the OECD's proposals, if widely implemented, may require a reevaluation of existing group and widely used acquisition structures.

31 Case C-203/16 P.

32 Belgian excess profit exemption cases (T-131/16 and T-263/16) and the Spanish case *Futbol Club Barcelona* (T-865/16).

iii Acquisition structuring

The CJEU's judgments in the *Danish conduit* cases[33] call for caution in relation to acquisition structures set up to take advantage of the exemption from withholding tax under the Interest and Royalties Directive (IRD)[34] or the Parent and Subsidiary Directive (PID), or both.[35] The Danish tax authority had denied the exemption in respect of dividend or interest payments from a Danish company to its intermediate parent on the basis that the recipient was merely a conduit and the actual beneficial owners were non-EU entities, and the CJEU confirmed that the benefit of the IRD and the PID must be denied if there is an abuse of rights. This would be the case in respect of structures that meet the formal conditions of the IRD or the PID, but not its purpose, and were set up with the intention of claiming the exemption from withholding tax by artificially creating the pre-condition therefor. The factors that the CJEU indicated would be taken into account in determining whether there is an abuse of rights include:

a the circumstances around the set-up of the structure;
b a quick on-payment of payments received;
c the recipient's ability to economically benefit from, and determine how to use, the payments received; and
d the recipient's other activities (if any).

As part of the drive to discourage aggressive cross-border tax planning, DAC6[36] requires intermediaries to report cross-border arrangements if they meet certain conditions. These conditions are, however, so widely drawn that they may catch arrangements that would not normally be thought of as aggressive. In this respect, a lot will depend on the terms of the national implementation legislation of which, at the time of writing, only a few countries have published drafts. In any event, potential reporting duties should be considered in respect of certain existing and any new acquisition or financing structures: while no reports have to be made before 1 July 2020, structures implemented as early as June 2018 may have to be reported.

iv Warranty and indemnity insurance

In respect of warranty and indemnity insurance for cross-border transactions, the CJEU confirmed in *A Ltd v. Finland*[37] that insurance premium tax is chargeable where the policyholder (rather than the target) is located.

33 Judgment in the joined cases *N Luxembourg 1* (case C-115/16), *X Denmark* (case C-118/16), *Danmark I* (case C-119/16) and *Z Denmark ApS v. Skatteministeriet* (case C-299/16); and judgment in the joined cases *T Danmark and Y Denmark Aps* (C-116/16 and C-117/16).

34 Council Directive 2003/49/EC of 3 June 2003.

35 Council Directive 90/435/EEC of 23 July 1990 as amended by Council Directive 2003/123/EC of 22 December 2003.

36 Council Directive (EU) 2018/822 of 25 May 2018.

37 Case C-74/18.

Appendix 1

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