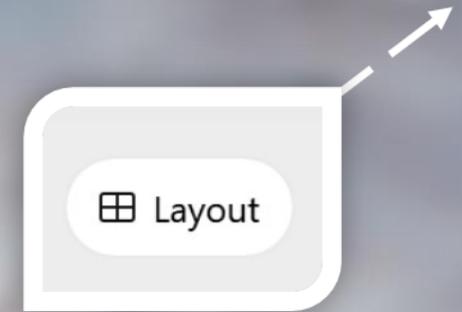
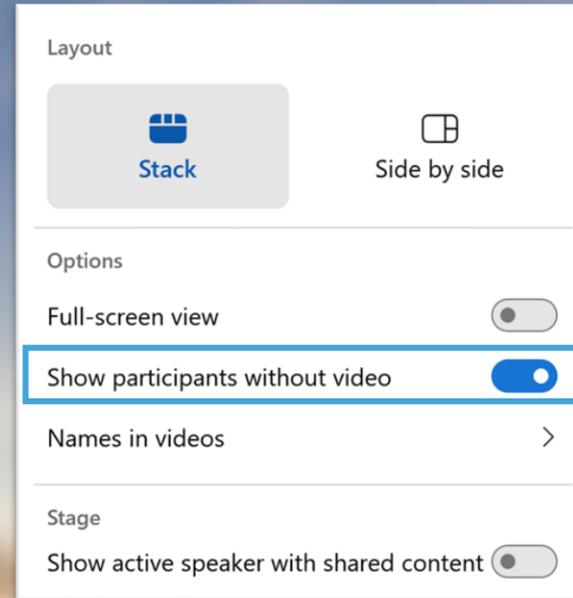


CLIFFORD CHANCE



**WELCOME!
THIS EVENT WILL
BEGIN SHORTLY**



Your lines have been automatically muted upon entry and the video function has been deactivated.



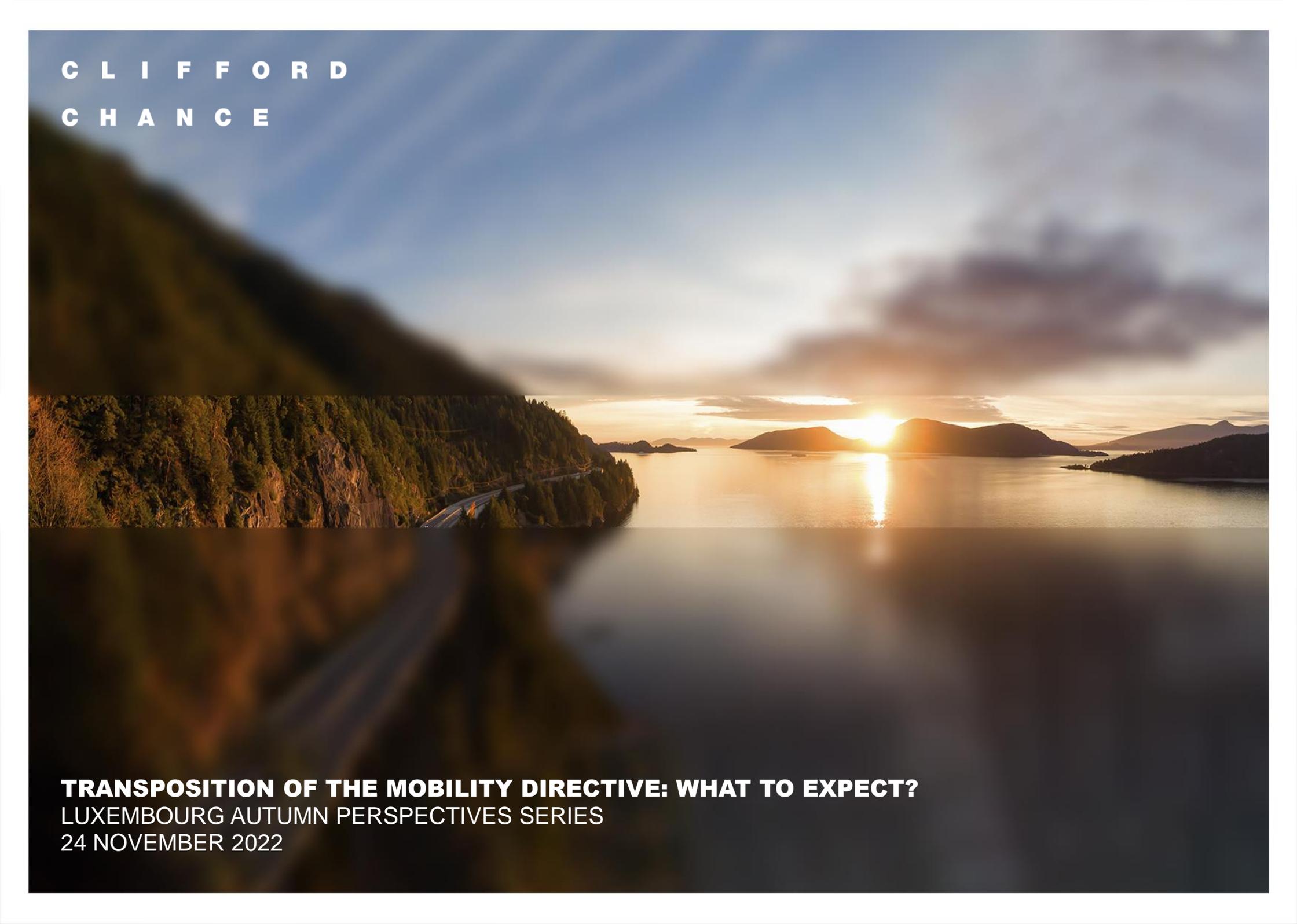
During the presentation, you can ask **questions via the chat**.



Please note that the list of participants cannot be viewed by the attendees due to GDPR regulations.



This webinar is being recorded.



C L I F F O R D
C H A N C E

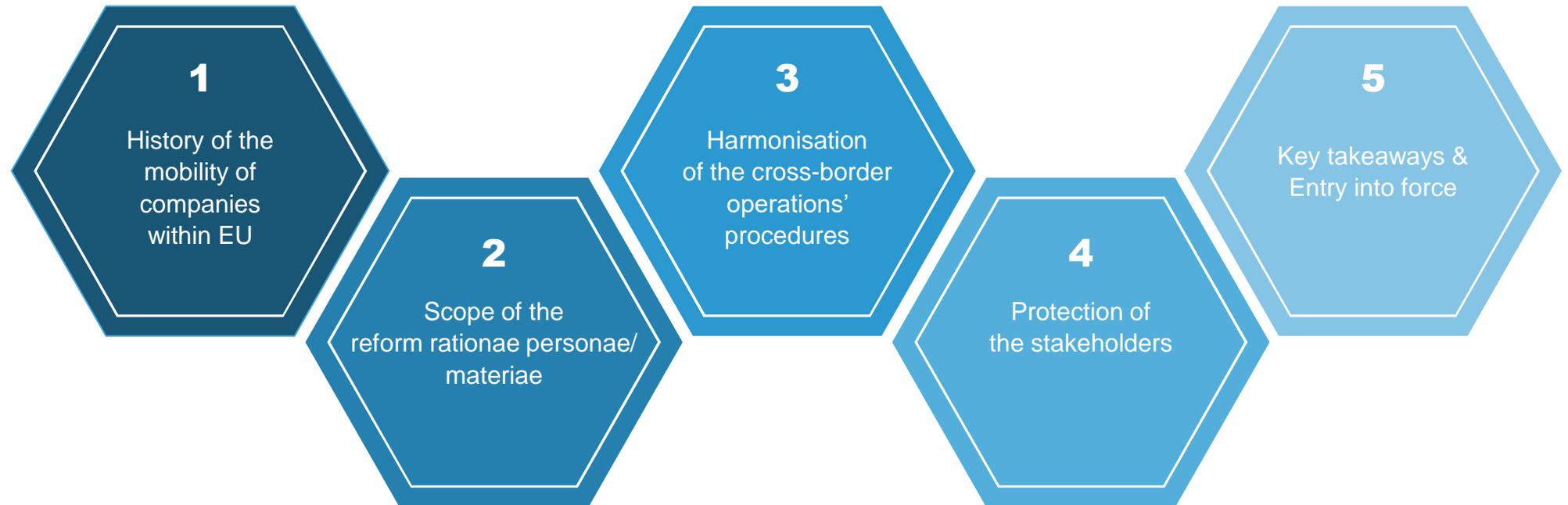
TRANSPOSITION OF THE MOBILITY DIRECTIVE: WHAT TO EXPECT?

LUXEMBOURG AUTUMN PERSPECTIVES SERIES

24 NOVEMBER 2022

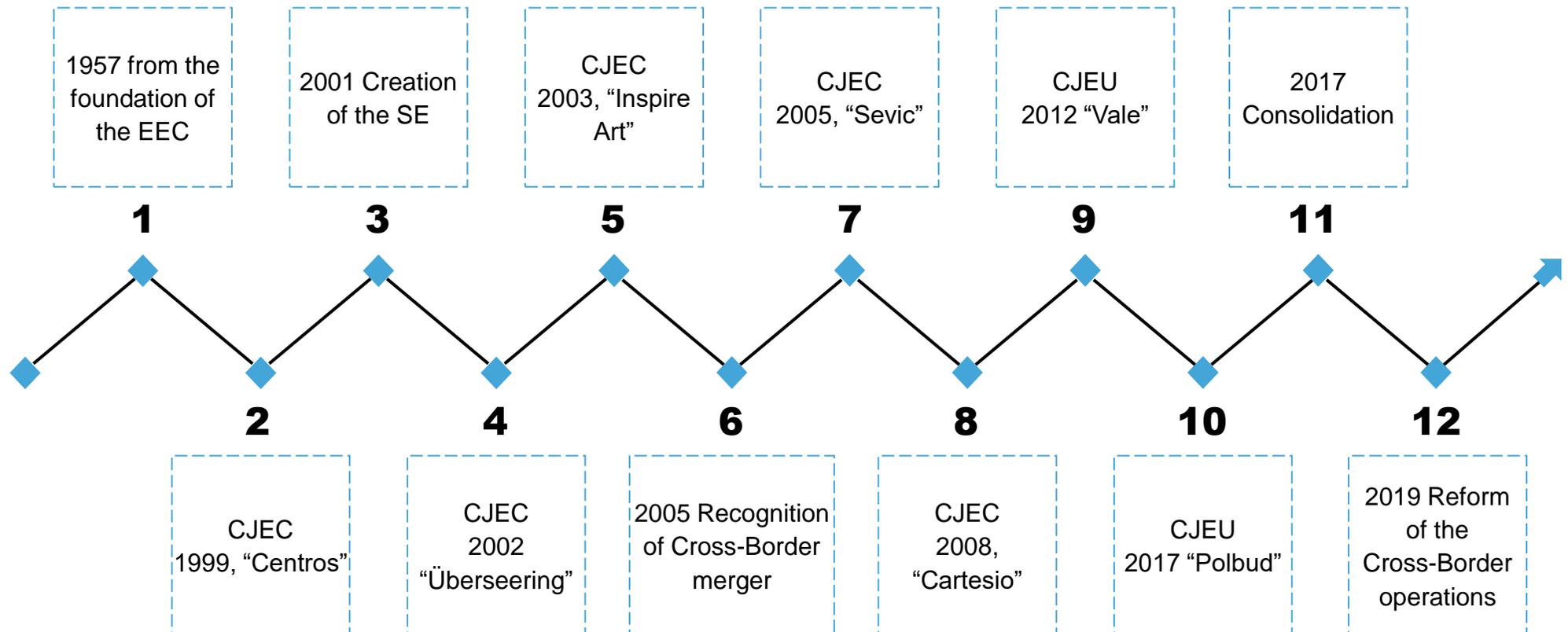
TRANSPOSITION OF THE MOBILITY DIRECTIVE

WHAT TO EXPECT?



HISTORY OF THE MOBILITY OF COMPANIES WITHIN EU

MAIN MILESTONES



SCOPE OF THE REFORM

TRANSPOSITION OF DIRECTIVE (EU) 2019/2121 INTO LUXEMBOURG LAW

The bill of law n°8053 amends:

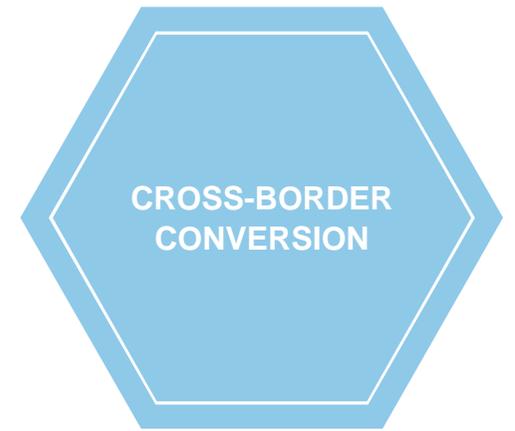
- the law of 10 August 1915
- the law of 19 December 2002.

TRANSPOSITION METHODOLOGY BASED ON TWO PILARS

“The whole directive, nothing but the directive”

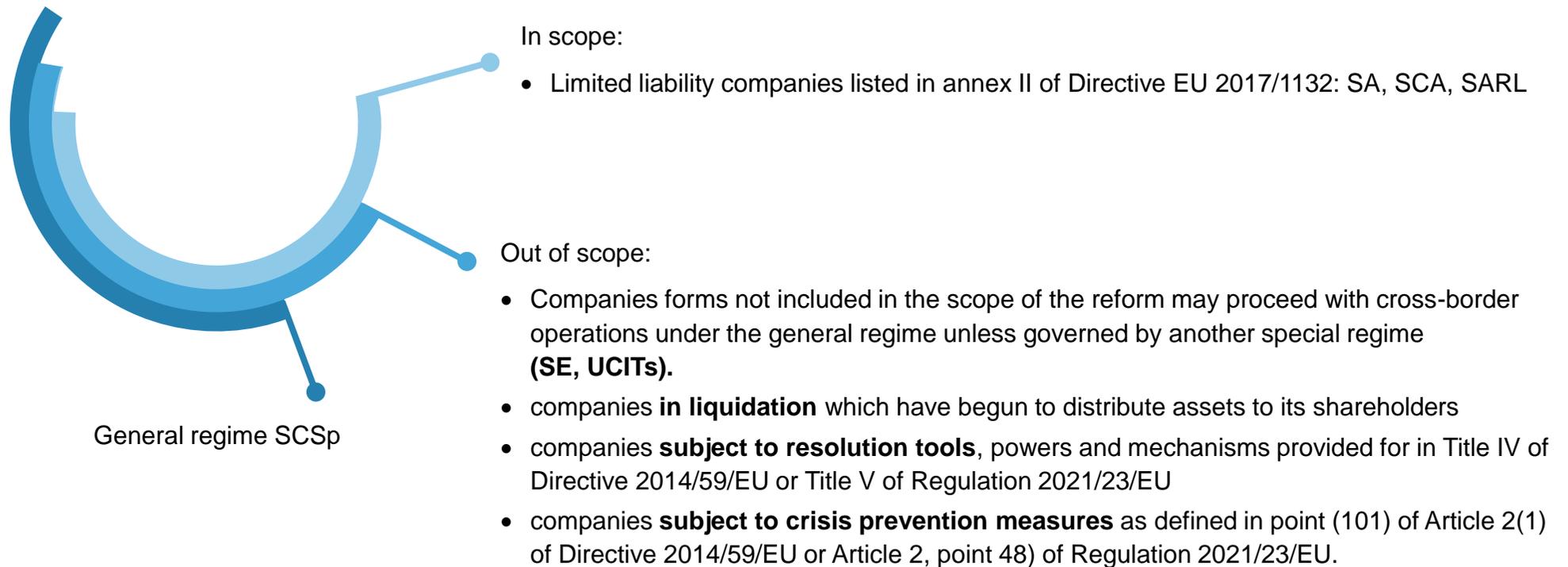
Use all the latitude of the Directive to set up a flexible regime

RATIONAE MATERIAE



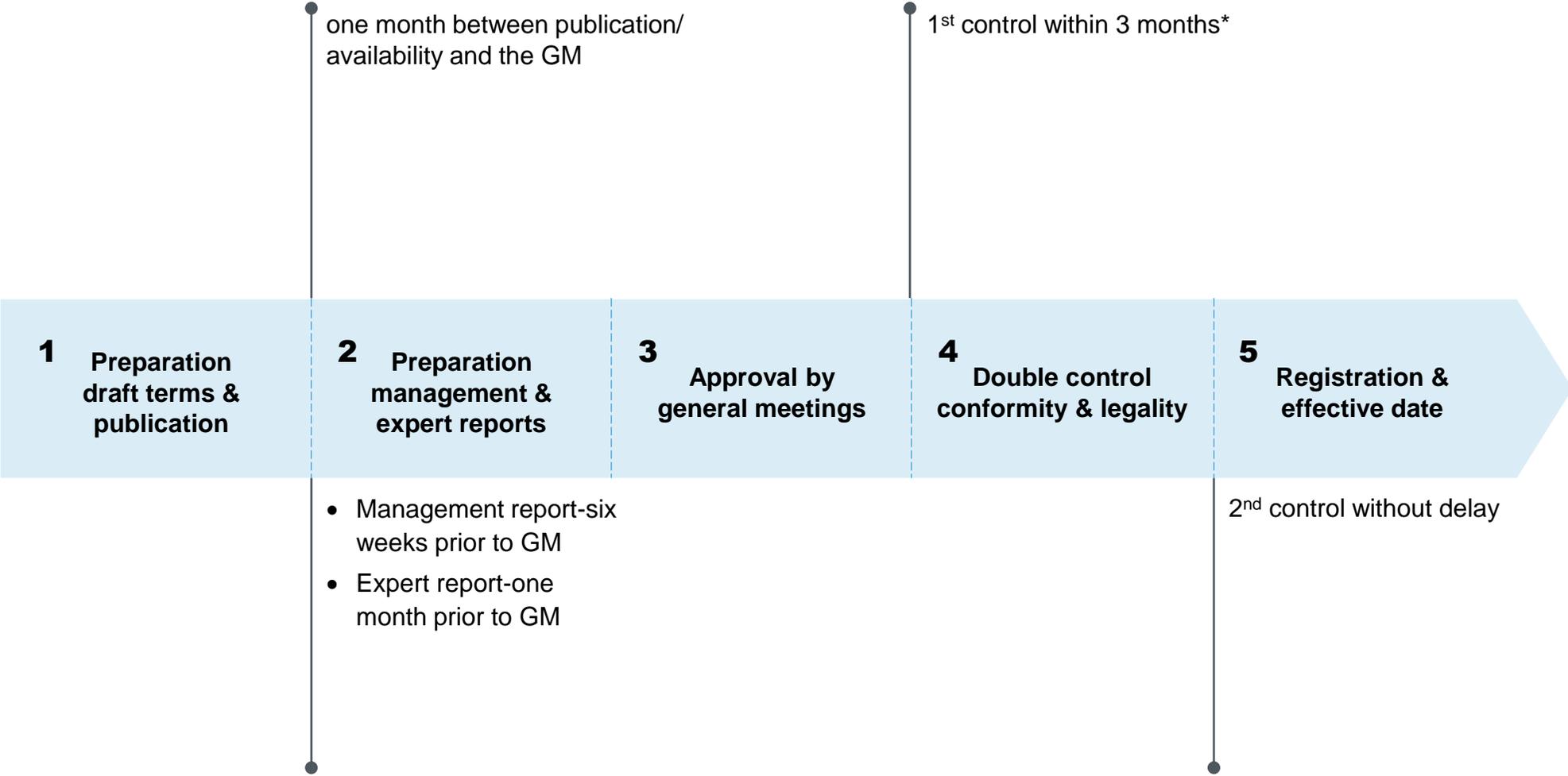
RATIONAE PERSONAE

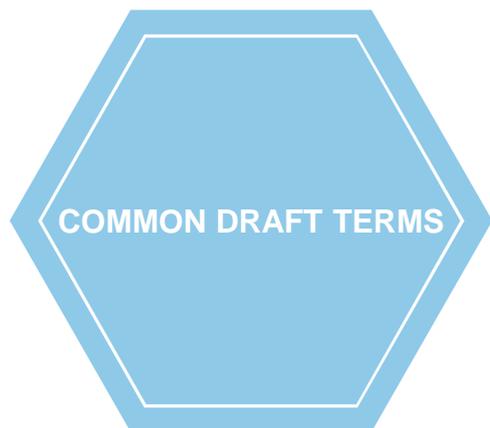
COMPANIES ELIGIBLE



HARMONISATION OF THE PROCEDURE

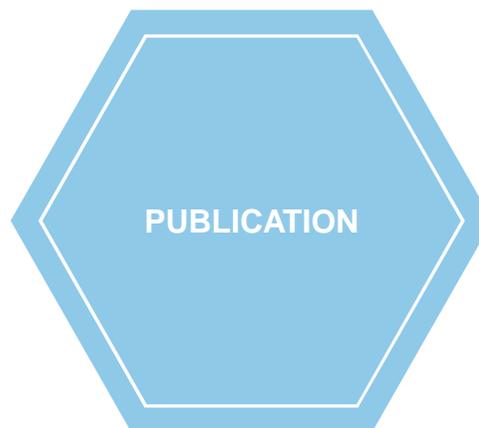
EUROPEAN CROSS-BORDER MERGER





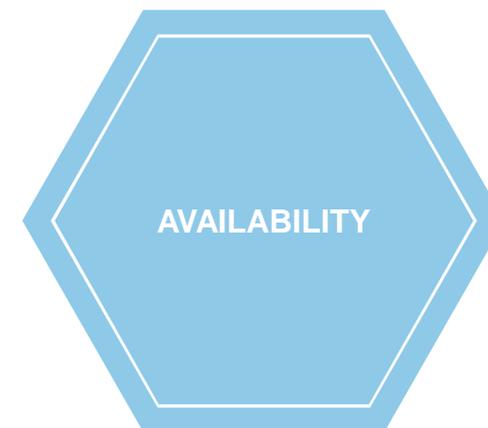
COMMON DRAFT TERMS

- Form
- New mentions:
 - incentive/subsides received
 - safeguards to creditors



PUBLICATION

- draft terms of the merger
- an information notice
- one month prior to GM



AVAILABILITY

- one month prior to GM

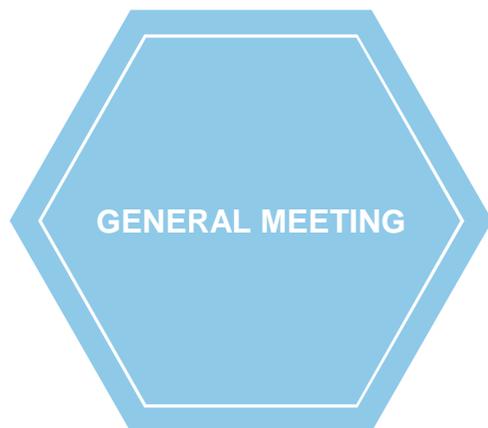


- two sections:
 - To shareholders
 - To employees
- **six weeks** prior to GM
- Exceptions.



- to shareholders.
- **one month** prior to GM.
- Exceptions.





- Form
- Exemptions
- Amend/approve/reject the draft terms and to adapt (or not) the articles of association.



FIRST CONTROL: CONTROL OF CONFORMITY

- by the designated authority of the country of departure (in Luxembourg – > the notary)
- issuance of a pre-merger certificate:
 - all conditions are fulfilled: issuance within **3 months**
 - all conditions are not fulfilled: possibility of rectification within **3 months**
 - if abusive or fraudulent leading to or aimed at the evasion or circumvention of EU or national law, or for criminal purposes: refusal
 - If serious doubt : possibility to extend up to **3 additional months** for further investigation.
- filing with RCS and transmission to the country of destination.

SECOND CONTROL: CONTROL OF LEGALITY

- by the designated authority in the country of destination (in Luxembourg – > the notary):
- the notary shall receive
 - ✓ the draft terms as approved by GM
 - ✓ the pre-operation certificate from the departure country
- **as soon as** it has determined that all applicable conditions have been fulfilled.



REGISTRATION
FORMALITIES &
EFFECTIVE DATE

Between the parties: following the second control of legality as of the date of the statement of the notary confirming that the operation is duly completed.

Toward third parties: as from publication of the minutes of the general meeting of the company approving the merger in the RESA.

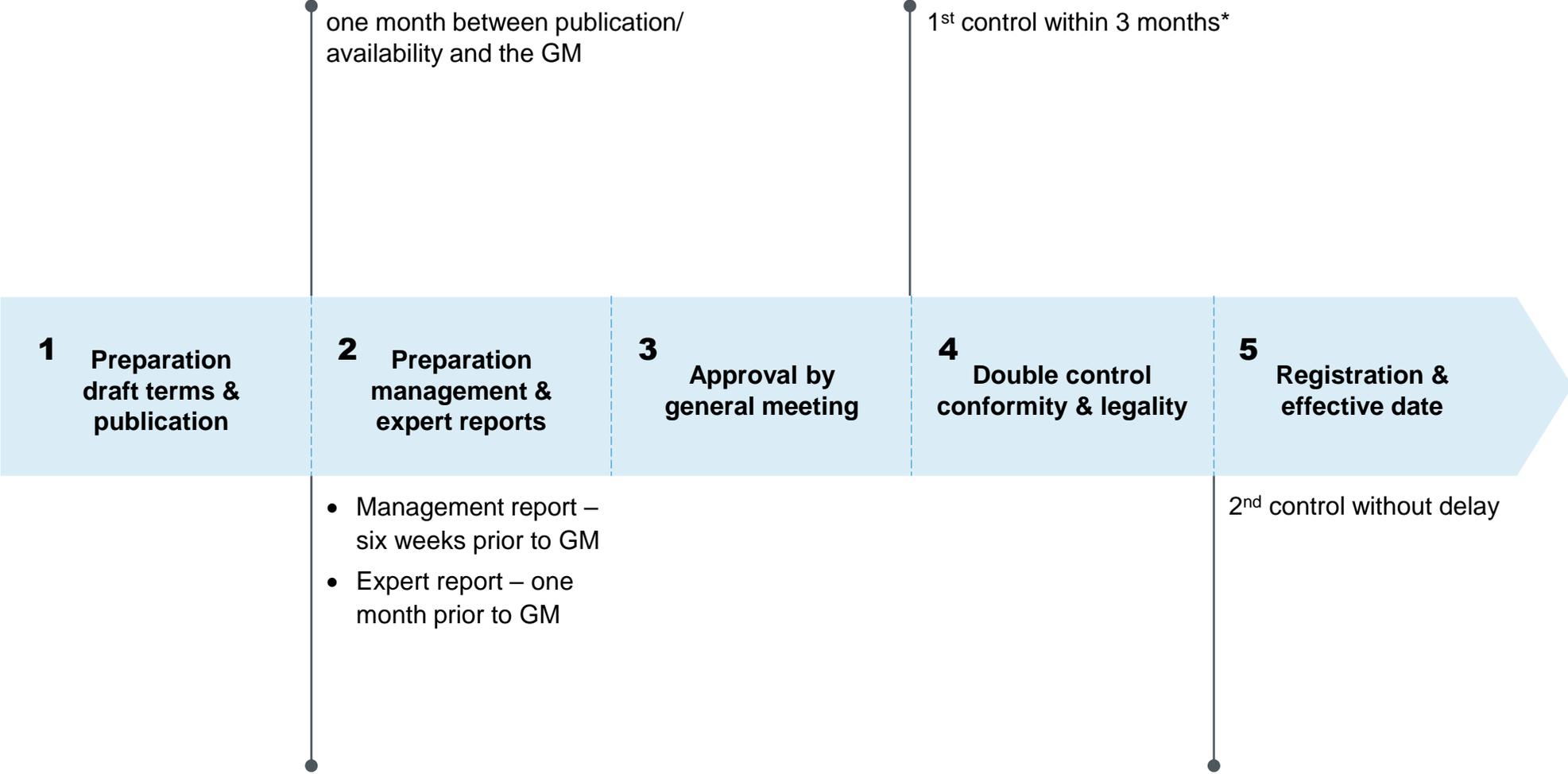
CROSS BORDER CONVERSION

Legislative recognition of cross-border conversion under a general regime in line with current practice

Introduction of a special regime of “**European cross-border conversion**” derogating from the general regime

HARMONISATION OF THE PROCEDURE

EUROPEAN CROSS-BORDER CONVERSION



PROTECTION OF THE SHAREHOLDERS

Shareholders benefit from two mechanisms of protection:

Minority shareholders opposed to the operation have the **right to exit** the company against appropriate cash payment (*soulte en espèce*).

Shall be declared **during the general meeting**

Right to dispute the cash payment.

Within **one month** following the general meeting (without suspensive effect).

For merger and division, shareholders that did not exercise their right to exit have the right to **dispute the share exchange ratio** set out in the draft terms and request for an additional cash payment (*soulte en espèce*).

Within **one month** following the general meeting (without suspensive effect).

- Transposition a minima so as not to obstruct the operation
- Restrictions to exit right resulting from national initiatives :
 - Only applicable for full exit unless provided otherwise in the draft terms
 - N/A to shares acquired after the publication of the draft terms of the operation.

PROTECTION OF THE CREDITORS

The possibilities for creditors to request for additional safeguards:

creditors with claims preceding the date of publication of the draft terms.

Prior notification to the company – recourse introduced within 3 months as from the date of the publication of the draft terms (without suspensive effect).

creditors shall credibly demonstrate that, due to the cross-border operation, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.

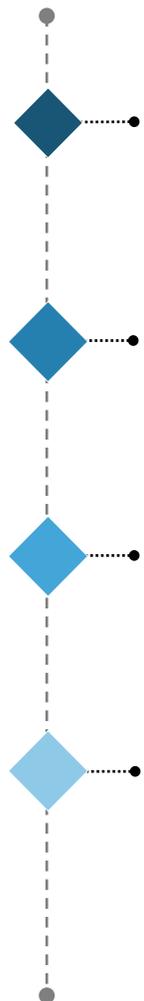
- Additional safeguards will be granted subject to the completion of the operation

PROTECTION OF THE EMPLOYEES

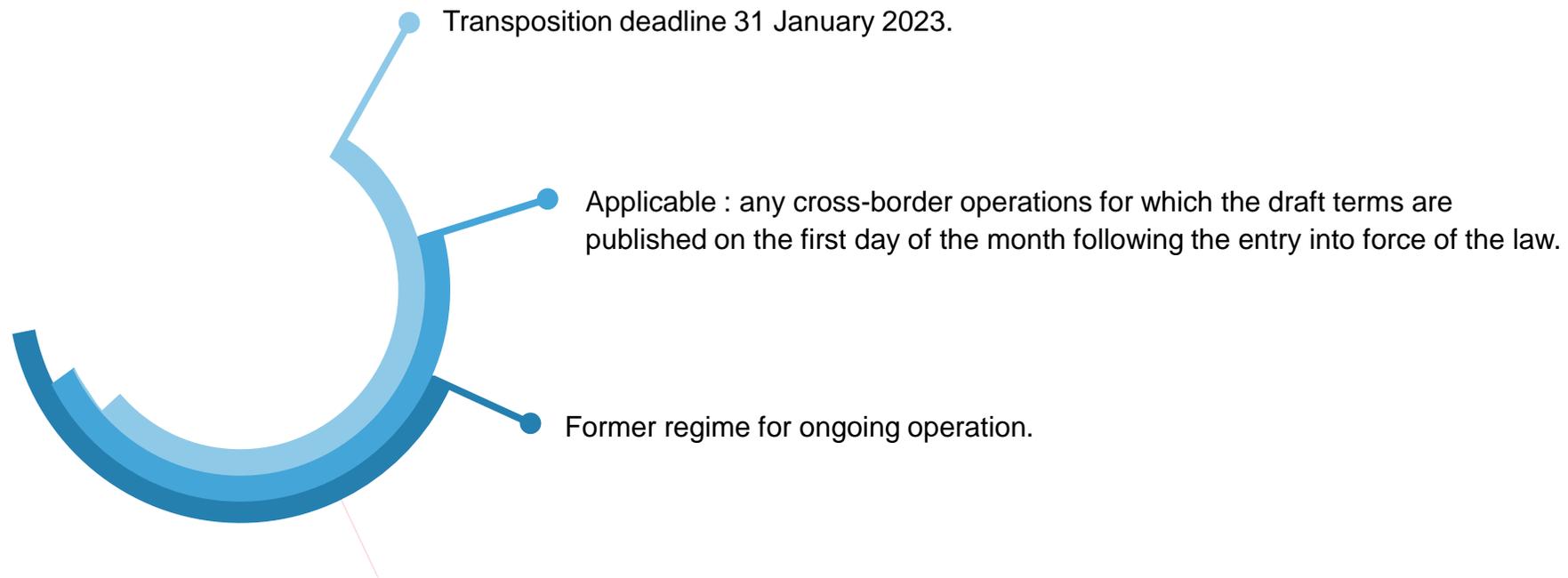
An enhanced right of participation and information:

- In addition to the protection mechanisms provided in the national labor law
- Management report which shall include
 - any material changes amongst other to employment conditions, collective agreements and company's place of business;
 - information on the change in the relations of work and the measures to maintain these relations; and
 - explain any impact on company's direct and indirect subsidiaries if any.
- Subject to the control of legality

KEY TAKEAWAYS

- 
- Introduction of a procedure for cross-border conversion (migration) and a procedure for cross-border demerger by the incorporation of new companies, both of which are harmonised with the cross-border merger procedure;
 - Opening of the internal and cross-border merger and demerger operations to special limited partnerships to further enhance their attractiveness;
 - Transposition of a double control of legality procedure, including an anti-abuse control to be performed by the notary;
 - Protection of minority shareholders consisting of (i) a right of withdrawal against fair remuneration if they are opposed to the cross-border operation; and (ii) the possibility to challenge the exchange ratio.

ENTRY INTO FORCE OF THE NEW REGIME



QUESTIONS?



KEY CONTACTS

TEAM OVERVIEW



JUDIT STERN
COUNSEL

T +352 48 50 50 426
M +352 661485033
E judit.stern
@cliffordchance.com



**DUNJA PRALONG-
DAMJANOVIC**
COUNSEL

T +352 48 50 50 222
M +352 691406872
E dunja.pralong-damjanovic
@cliffordchance.com



AURÉLIEN LE RET
SENIOR KNOWLEDGE LAWYER

T +352 48 50 50 446
M +352 661485026
E aurelien.leret
@cliffordchance.com

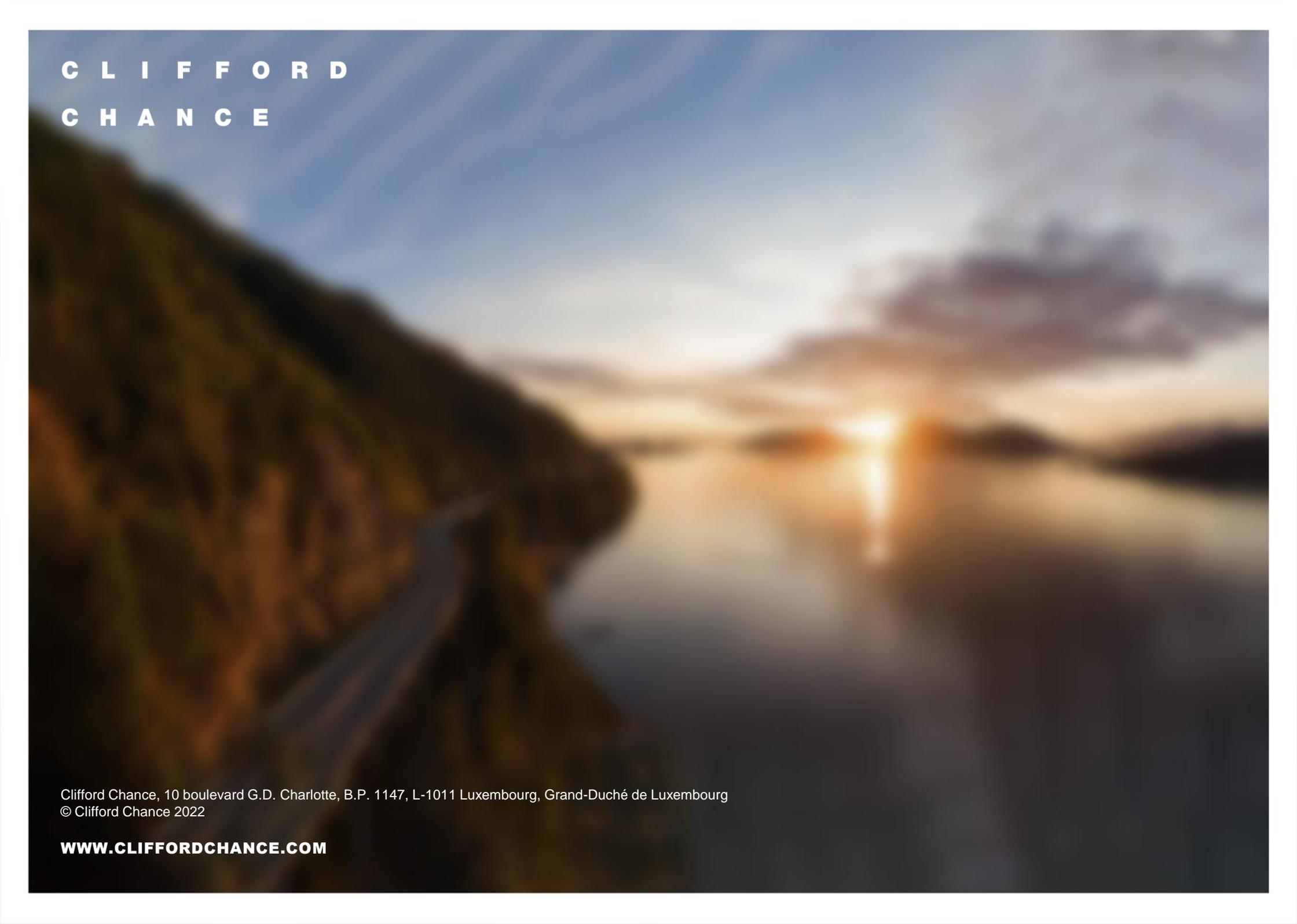
WHY CLIFFORD CHANCE
OUR INTERNATIONAL NETWORK

31 OFFICES
21 COUNTRIES

ABU DHABI	CASABLANCA	ISTANBUL	NEWCASTLE	SÃO PAULO	WASHINGTON, D.C.
AMSTERDAM	DELHI	LONDON	NEW YORK	SHANGHAI	
BARCELONA	DUBAI	LUXEMBOURG	PARIS	SINGAPORE	KYIV ¹
BEIJING	DÜSSELDORF	MADRID	PERTH	SYDNEY	RIYADH ²
BRUSSELS	FRANKFURT	MILAN	PRAGUE	TOKYO	
BUCHAREST	HONG KONG	MUNICH	ROME	WARSAW	

1. Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

2. Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.



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C H A N C E

Clifford Chance, 10 boulevard G.D. Charlotte, B.P. 1147, L-1011 Luxembourg, Grand-Duché de Luxembourg
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