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Streamlining Corporate Mergers and Divisions of Limited Liability Companies in Estonia:

Exploring the Simplified Proceedings and Waiver of Waiting Periods

Abstract. Corporate mergers and divisions are governed by extensive regulations and numerous restrictions designed to protect the interests of various stakeholders. However, these restrictions often render mergers and divisions less appealing to shareholders and fail to adequately safeguard their rights. This paper aims to analyse the existing simplified procedures and exceptions and their impact on the mergers and divisions of limited liability companies in Estonia. Additionally, it examines the potential waiver of the so-called waiting periods associated with corporate mergers and divisions.

While the primary focus is on the interaction between Estonian, German, and EU law, the findings may also be relevant to other countries due to the partially harmonised EU regulations on corporate mergers and divisions. The analysis concludes that the current exceptions and exemptions do not achieve their full intended purpose. Furthermore, although it is possible to waive the waiting period related to information rights, the waiting period imposed for declaring a merger or division resolution null and void cannot be waived.

Keywords: company law, corporate law, merger, division, Estonian Commercial Code

1. Introduction

Mergers and divisions of companies are common corporate law procedures in which part or all of a company's assets and liabilities are transferred to another company, which may also be a newly established company.[*1] The main objectives of the mergers and divisions of companies are to organise the structure of companies and reorganise their operations.[*2] Mergers are commonly used to simplify more complex group structures and optimise costs. Corporate divisions, on the other hand, are used to separate different business lines and allocate risks. In addition to their traditional purposes, mergers and divisions are often used in complex transactions and tax structures to prepare a transaction or as an alternative to asset disposal.[*3]

1 Arndt Stengel in Johannes Semler, Arndt Stengel, and Niina Leonard, *Umwandlungsgesetz* ('5. Auflage', CH Beck 2021) art 1, marginal 2.

2 Kalev Saare, Urmas Volens, Andres Vutt, and Margit Vutt, *Ühinguõigus I: kapitaliühingud* [Company Law I: Limited Companies] (Juura 2015) marginal 2249.

3 Christian Pitzal, 'Grundprinzipien der Bilanzierung bei Umwandlungen' in Detlef Haritz, Stefan Menner, and Andrea Bilitewski, *Umwandlungssteuergesetz* ('6. Auflage', CH Beck 2024) marginal 1–3.

Although corporate mergers and divisions seem to be great corporate tools for reorganisation, these processes entail certain risks and issues, which make their use in some circumstances disadvantageous and excessively time- and money-consuming. Considering that Estonia is a member of the European Union, such problems cannot be solved solely by amending Estonian interstate law; restrictions arising from the EU legislation must be taken into account.[*4] In particular, it is important to analyse and assess whether the directive (EU) 2017/1132 of the European Parliament and of the Council[*5] that came into force on 14 June 2017 provides solutions or opportunities to mitigate those risks and solve outstanding issues.

The Company Law Directive is a codification of numerous previous EU directives, which stems from the EU action plan for creating a modern framework for more engaged shareholders and sustainable companies with the aim of improving the business environment in Europe.[*6] The main purpose of the Company Law Directive, as stated in its explanatory letter, is to align and harmonise certain company law principles across the European Union, which includes corporate mergers and divisions.[*7] Since its publication in 2017, the Company Law Directive has been further amended; as a result, the Company Law Directive consolidates and codifies decades of knowledge and development in company law, particularly regarding mergers and divisions. Consequently, it serves as a valuable source for evaluating local regulations, including those in Estonia, related to corporate mergers and divisions of limited liability companies, and for identifying potential solutions for optimising and simplifying these processes while providing sufficient protection for affected stakeholders.

The aim of this article is to analyse the essence and legal nature of the so-called waiting periods relating to corporate merger and division processes. In addition, the author analyses whether and to what extent Estonia could use the solutions and opportunities offered by the Company Law Directive to optimise corporate mergers and divisions in this respect, focusing on simplified proceedings and exceptions from the perspective of shareholders. The author raises the hypothesis that the current legal regulation on mergers and divisions in Estonia, in its current wording and implementation practice, is excessively burdensome, but the reasons for this do not arise from the Company Law Directive.

In this article, the author focuses on three research questions in respect of shareholders. First, have the protective measures established by the Company Law Directive been applied to both private and public limited companies in Estonia, and is such application justified? Second, has Estonia used the simplified proceedings and exceptions to the maximum possible extent, and what is the essence of such exceptions? Third, is it possible to waive the so-called waiting periods related to corporate mergers and divisions to expedite these corporate processes? The author analyses the relevant research questions from the perspective of shareholders.

The author analyses the research questions by comparing the relevant Estonian provisions with the relevant German provisions, given that Estonian law in relation to corporate mergers and divisions is modelled after German law and there is significantly more legal literature available on this topic in Germany.[*8] This article specifically focuses on limited liability companies as they are the most prevalent type of entity in Estonia.

4 Julia Laffranque, Carri Ginter, Lauri Mälksoo, Jüri Põld, Andres Tupits, and Merli Vahar in Ülle Madise and others (eds), *Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne* [The Constitution of the Republic of Estonia. Commented edition] (Iuridicum 2020) 'Eesti Vabariigi põhiseaduse täiendamise seadus' art 2, marginal 8–9.

5 Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) [2017] OJ L 169, 30.6.2017, 46 (hereinafter Company Law Directive).

6 Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies' (Communication) COM/2012/0740 final.

7 Explanatory memorandum to Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) [2017] OJ L 169, 30.6.2017, 46.

8 Martin Käerdi, Sander Kärson, Villu Kõve, Arsi Pavelts, Kalev Saare, Urmas Volens, Andres Vutt, and Margit Vutt, *Ühinguõiguse revisjon. Analüüs-kontseptsioon* [Company law revised. Analysis-concept] (Justiitsministeerium 2018) 885.

2. Shareholder protective measures stipulated by the Company Law Directive

The essence of the Company Law Directive concerning corporate mergers and divisions is the protection of the interests of members and third parties, which necessitates the coordination of member states' laws regarding the mergers and divisions of public limited liability companies.[*9] This principle is further supported by the statement that the safeguards for members and third parties in mergers and divisions should encompass certain legal practices that are similar in significant respects, preventing the evasion of these protections.[*10] These are important principles stipulated in the Company Law Directive, as corporate mergers and divisions are quite complex operations that impact various stakeholders and can serve multiple purposes. Therefore, the Company Law Directive establishes a framework for mergers and divisions across all member states, with the protection of members' and third parties' (including shareholders) interests at its core.

However, it is important to note that the principles outlined in the previous paragraph are just general guidelines, which require more detailed furnishing. The protection of members' and third parties' interests is more than just a slogan; it requires the development of specific measures, regulations, and instructions to ensure that these protections are effectively implemented. Therefore, the Company Law Directive imposes numerous restrictions and specific obligations that must be followed during corporate merger and division processes, which can be quite burdensome for companies.

One of the primary measures to ensure the protection of various stakeholders' rights is through disclosure obligations. Information is a highly valuable resource, and disclosure requirements ensure that stakeholders have sufficient information to make informed decisions.[*11] This principle has been outlined in the Company Law Directive with an explanation that the basic documents of a company should be disclosed to third parties to be able to ascertain their contents and other information concerning the company, especially the particulars of the persons who are authorised to bind the company.[*12] Additionally, the Company Law Directive specifically addresses corporate mergers and divisions by stating that the disclosure requirements for protecting the interests of members and third parties should include these corporate events to keep third parties adequately informed.[*13] Consequently, the Company Law Directive and the laws of member states stipulate numerous disclosure requirements, most of which are specifically directed at shareholders.

Another set of measures pertains to the approval of mergers and divisions. These measures are specifically designed to protect the interests of shareholders. The approval measures aim to safeguard shareholders' ownership, as mergers and divisions can affect their interests' necessitating protection.[*14] Interestingly, the Company Law Directive does not include provisions for the protection of minority shareholders, leaving this responsibility to individual member states. For instance, Estonia has established a protective measure that allows shareholders who oppose the merger or division of different types of companies to request monetary compensation (Estonian Commercial Code[*15] § 404 (1) and 448 (1)).

In addition, several measures for challenging mergers and divisions have been established. In this context, the Company Law Directive outlines the conditions that member states must meet to declare a merger null and void (articles 108 and 153). Within this framework, the Company Law Directive allows member states to establish various reasons and principles based on which a merger or division can be declared null and void. For instance, in Estonia, a merger or division resolution can be contested by a shareholder or a member of the management or supervisory board.[*16] This provision ensures that these parties have the opportunity to contest unlawful mergers or divisions and avoid potential adverse consequences.

9 Company Law Directive preambular para 49 and 68.

10 Company Law Directive preambular para 53 and 72.

11 Reinhard Hillmann in Holger Fleischer, Wulf Goette (eds), *Münchener Kommentar zum GmbHG, Band 2* ('4. Auflage', CH Beck 2023) art 51a, marginal 26.

12 Company Law Directive preambular para 8.

13 Company Law Directive preambular para 52 and 71.

14 Michael Winter in Joachim Schmitt, Robert Hörtnagl (eds), *Umwandlungsgesetz, Umwandlungssteuergesetz* ('10. Auflage', CH Beck 2024) art 13, marginal 7.

15 Äriseadustik [Commercial Code]: RT I 1995, 26, 355; RT I, 06.07.2023, 131 <https://www.riigiteataja.ee/en/eli/527022024004/consolide> hereinafter the 'Commercial Code' or 'CC'.

16 Saare, Volens, Vutt, and Vutt (n 2) marginals 2294, 2335.

Lastly, a measure for allowing civil liability has been stipulated for experts, shareholders, and the members of administrative and management bodies.[*17] While the exact framework and conditions for civil liability are left to member states to regulate, the principle that certain parties involved in corporate mergers and divisions may be liable for damages has been established. For example, in Germany, members of the representative and supervisory bodies of an acquired legal entity are jointly and severally liable for the entity's shareholders and creditors in the event of a corporate merger.[*18] The same principle has also been stipulated in Commercial Code § 403 (6).

In conclusion, the Company Law Directive offers several protective measures for shareholders. By mandating comprehensive disclosure obligations, approval measures, and provisions for challenging mergers and divisions, the Company Law Directive ensures that shareholders are well-informed and their rights safeguarded. However, with such a general framework, the question arises as to how well the framework suits each member state, particularly Estonia.

3. Implementation of the Company Law Directive to corporate mergers and divisions of both public and private limited companies in Estonia

One of the key aspects of the Company Law Directive is its applicability to different types of entities. The Company Law Directive explicitly states that the regulation established for corporate mergers and divisions is applicable solely to the types of companies listed in Annexe 1, which, in respect of Estonia, is a public limited company (*aktsiaselts*).[*19] Although the Company Law Directive is not applicable to private limited companies in Estonia (*osaühing*), the Commercial Code imposes similar regulations and measures for corporate mergers and divisions on both private and public limited companies.[*20] The same approach has been taken in Germany, for comparison.[*21] Overall, this approach simplifies and creates uniform regulations but does not account for the specificities of these entities.

According to data collected by Statistics Estonia in 2024, there were a total of 139,358 private and public limited companies, of which 137,395 were private limited companies (98.59%).[*22] This raises the question of whether it is appropriate to apply restrictive measures and regulations to both private and public limited companies, given that the Company Law Directive is meant to be applied solely to public limited companies, which are significantly smaller in numbers, have fixed organisational frameworks, and are characterised by a high degree of legal paternalism.[*23]

The similar regulation of corporate mergers and divisions in Estonia for both private and public limited companies cannot be solely attributed to the Company Law Directive. In fact, regulation in Estonia allowed the mergers and divisions of companies upon the adoption of the Commercial Code after Estonia regained its independence.[*24] Therefore, the principles stipulated in the Company Law Directive were to some extent already implemented in Estonian interstate regulations in 1995.

17 Company Law Directive articles 106–107 and 152.

18 Michael Burg and Patrick Nordhues in Lars Böttcher, Oliver Habighorst, and Christian Schulte (eds), *Umwandlungsrecht* ('3. Auflage', CH Beck 2023) art 25, marginal 1–4.

19 Company Law Directive articles 87(1) and 135.

20 Käerdi, Kärson, Kõve, Pavelts, Saare, Volens, Vutt, and Vutt (n 8) 879.

21 Bernt Sagasser and Antje Luke in Thomas Bula, Bernt Sagasser (eds), *Umwandlungen* ('6. Auflage', CH Beck 2024) art 9, marginal 15–16.

22 Statistics Estonia, 'Economic units' <https://stat.ee/en/find-statistics/statistics-theme/economy/economic-units> accessed on 29 March 2025.

23 Holger Fleischer, 'Einleitung' in Holger Fleischer, Wulf Goette (eds), *Münchener Kommentar zum GmbHG, Band 1* ('4. Auflage', CH Beck 2022) marginal 322–323.

24 See n 15.

When Estonia joined the European Union on 1 May 2004, the Company Law Directive was not even in creation, and the Council Directives 78/885/EEC[*25] and 82/891/EEC[*26] were the directives effective and applicable to corporate mergers and divisions. After joining the European Union, Estonia amended the Commercial Code on 12 October 2005, implementing the principles stipulated in the Council Directives related to corporate mergers and divisions.[*27] As an example, the statutory limitation period for submitting a petition for the entry of a merger in the commercial register was reduced from three months to one month, significantly speeding up the process. However, the similar regulation for corporate mergers and divisions for limited liability companies was already established and in force in Estonia, and this was not affected by Estonia's joining the European Union.

Considering the above, it could be possible to optimise corporate mergers and divisions and amend the respective provisions for private limited companies in Estonia, regardless of the regulatory framework set out by the Company Law Directive. Consequently, it could be feasible to shorten the so-called waiting periods related to corporate merger and division proceedings for private limited companies. As an example, a waiver process in relation to declaring merger and division resolutions null and void could significantly speed up these corporate processes for private limited companies.

4. Key issues slowing down merger and division processes in Estonia

The primary factors delaying merger and division proceedings in Estonia are the mandatory waiting periods— the periods during which procedures are suspended and the subsequent steps cannot be carried out in order to finalise the respective corporate processes. Specifically, there are two key waiting periods to consider: the first pertains to various information and disclosure requirements for shareholders, and the second involves the timeframe for challenging merger and division resolutions. Both of these measures have been implemented mainly for the protection of shareholders, including the minority shareholders.

In relation to the disclosure requirements, the Commercial Code grants shareholders extensive inspection rights during both merger and division processes. It is important to emphasise that such rights have been aimed directly at shareholders and at no other stakeholders affected by the merger or the division processes. This intent is evident from the language of the relevant provisions governing disclosure obligations, as well as from the overarching principle that access to documentation must be ensured for shareholders. While, in the case of public limited companies, the merger or division agreement is made public during the preparation for the general meeting, thereby incidentally informing other interested parties, this disclosure is not designed for their protection, and such stakeholders are not entitled to invoke any special protective measures based on the information disclosed.[*28]

Regarding inspection rights, the Commercial Code specifies the terms that must be included in the draft terms of mergers and divisions (§ 392 (1) and § 435 (1)) and mandates that detailed written reports on mergers and divisions must be drawn up (§ 393 (1) and § 436 (1)) and that the draft terms must be examined by an expert (§ 394 (1) and § 437 (1)). To provide shareholders with sufficient time to review the disclosed information and documentation, Estonian law stipulates a two-week waiting period between the disclosure of the required documents and the adoption of a merger or division resolution in respect of private limited companies (§ 397 (2) and § 440 (3)).[*29] However, for public limited companies, this waiting period is extended to one month to allow for preparation for the general meeting approving the merger or division (§ 419 (1) and § 463 (1)). This one-month waiting period arises explicitly from the Company

25 Third Council Directive 78/885/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty, concerning mergers of public limited liability companies [1978] OJ L 295, 20.10.1978, 36–43.

26 Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies [1982] OJ L 378, 31.12.1982, 47.

27 552 SE, 'Seletuskiri äriseadustiku muutmise seaduse eelnõu juurde [Explanatory memorandum to act to amend Commercial Code]' <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/3c7833d5-7972-3348-8cca-c210ab5e36ea/ariseadustiku-muutmise-seadus/> accessed on 29 March 2025.

28 Käerdi, Kärson, Kõve, Pavelts, Saare, Volens, Vutt, and Vutt (n 8) 865.

29 Saare, Volens, Vutt, and Vutt (n 2) marginal 2291.

Law Directive (articles 97 (1) and 143 (1)). Considering the applicability of the Company Law Directive, it is clear that the regulation contained therein does not determine the waiting period for private limited companies and is solely relevant to public limited companies. Therefore, possible exceptions and simplified proceedings in respect of private limited companies can be implemented without taking into account the restrictions stipulated in the Company Law Directive.

The second reason causing waiting periods in merger and division proceedings relates to the rights of various stakeholders to declare a merger or division null and void. In Estonia, the material requirements for declaring a merger or division resolution null and void are the same as for any other resolution, i.e. the resolution must conflict with the law, the partnership agreement, or the articles of association (§ 398 (1) and § 441 (1) of CC). Only the deadline and the circle of eligible persons to submit such a claim have been limited.[*30] This may explain why, in Estonia, no claims for declaring a merger or division resolution null and void have been satisfied in courts (based on publicly available data), given the limited scope. However, as an example, in Germany, a merger resolution was declared null and void because the merger agreement provided disproportionate advantages to the shareholders of the transferring legal entity, while the acquiring legal entity only assumed the debts of the transferring entity from an economic perspective.[*31] Consequently, the exact conditions and requirements for declaring a merger or division resolution null and void must be assessed on a case-by-case basis, making it difficult to create a simple framework to cover all possible angles.

In Estonia, a period of one month has been established for declaring a merger or division resolution null and void for both private and public limited companies. This right has been granted to shareholders and members of the management and supervisory boards of the entities involved in these processes. Since shareholders are typically the most affected group in these corporate actions, it is natural for them to have the ability to challenge mergers and divisions. Management and supervisory board members also have this right, as these processes can result in their civil liability. However, the one-month period for declaring a merger or division resolution null and void is specific to Estonia, as it is not possible to challenge mergers and divisions after the respective entry has been registered in the commercial register (§ 403 (5) and § 446 (7) of CC).

This is regulated differently in respect of public limited companies in the Company Law Directive, which stipulates that nullification proceedings may not be initiated more than six months after the date on which either the merger or division becomes effective (articles 108 (1) (c) and 153 (1) (c)). This allows member states to permit challenges to mergers and divisions even after they have been registered. However, Estonia has opted for legal certainty, allowing challenges only before the entries are made in the commercial register for both private and public limited companies. Germany, as a comparison, has adopted the same approach.[*32]

Although the Company Law Directive allows member states to establish regulations for the nullity of corporate merger and division resolutions in respect of public limited companies, it does not specify the time periods for declaring such resolutions null and void. Specifically, the Company Law Directive does not set a period between the approval of the merger or division and the submission of a petition for entry in the commercial register. Thus, regarding the nullity of merger or division resolutions, the Company Law Directive serves only as a framework for challenging the resolutions in respect of public limited companies. The laws of specific member states must be assessed in each case, as the exact conditions for declaring a merger or division null and void are left to the member states to establish. Consequently, it is theoretically possible to shorten the time period between merger and division resolutions and the submission of applications to the register in respect of both private and public limited companies, as the Company Law Directive allows for the implementation of additional measures and process simplifications, which have not been utilised in Estonian regulations.

30 Ibid, marginal 2294.

31 Landgericht Mühlhausen Urt. v. 15.08.1996, Az.: 1 HKO 3071/96.

32 Andreas Heidinger and Ralf Knaier in Martin Henssler and Lutz Strohn (eds), *Gesellschaftsrecht, Band 2* ('6. Auflage', CH Beck 2024) art 20, marginal 64–65.

5. Specific exceptions and exemptions stipulated for corporate mergers and divisions in Estonia

Estonia has already implemented several exceptions and streamlined procedures for corporate mergers and divisions, specifically for limited liability companies, to optimise the relevant corporate processes.

In respect of public limited companies, as an exception to the general disclosure requirements and inspection rights, the Company Law Directive allows member states to opt out of extensive reporting and information requirements for mergers or divisions if all shareholders of the involved companies agree to waive such compliance.[*33] This specifically relates to drafting detailed written reports, examining the draft terms by an expert, and drafting interim balance sheets. In Estonia, the same principle has been implemented in interstate law in respect of both private and public limited companies. Therefore, if all shareholders so agree, or if simplified proceedings are applicable, no detailed written reports, examination of the draft terms, or drafting of interim balance sheets need be conducted (§ 393 (2), 394 (2), 400 (1) 11), 436 (2), 437 (2) and 443 (1) 10) of CC). Consequently, this significantly lifts the bureaucratic burden related to corporate mergers and divisions in cases where there is no conflict or few interested parties. However, the described exceptions do not shorten the so-called waiting periods.

In addition to specific exceptions, there are three simplifying exemptions established with the Commercial Code related to corporate mergers and divisions. The first exemption applies to mergers where a company holding 90% or more of the shares of the acquired company undertakes a merger by acquisition (§ 412 (3) and § 421 (4)). In this scenario, approval of the merger by the general meeting of the acquiring company is not required, provided that the decision to merge has been made and the disclosure requirements are met. This exemption aims to reduce the burden on the acquiring company, as it already largely controls the acquired entity, making strict adherence to all requirements somewhat redundant. However, this exemption does not reduce the waiting periods, as the disclosure requirements related to the merger agreement remain, the merger resolution of the company to be acquired is still required, and such resolution can be declared null and void. Neither the Commercial Code nor the Company Law Directive foresee a waiver opportunity related to these obligations. Thus, this exemption has a minor impact on the overall merger process.

The second simplifying exemption applies to mergers of wholly owned subsidiaries with their parent companies, where all assets and liabilities are transferred to a company holding all its shares (§ 412 (4) and § 421 (5)). In such a case, no merger resolutions need to be adopted at all to approve the merger. This exemption is quite logical because if the only shareholder of an entity is its parent company, the disclosure requirements do not serve their intended purpose.[*34] The parent company's management board already has continuous access to information about the subsidiary and complete control over it. Therefore, the merger of a subsidiary with its parent should fall under the autonomy of a group of companies, allowing for restructuring within the group to be as cost-effective and efficient as possible, keeping in mind the rights of minority shareholders and other interested stakeholders.

There are two important issues related to the implementation of the described exemption. First, it has not been affirmatively regulated, which is the specific effect of the waiting periods related to corporate mergers.[*35] Although the described simplifying exemption determines that the disclosure requirements do not need to be fulfilled in respect of the company being acquired, the disclosure requirements in respect of the acquiring company remain even if both companies are ultimately under the control of the same single person. Consequently, using grammatical interpretation, even if the parent company merges with its wholly owned subsidiary, the first waiting period must still be followed in respect of the acquiring company, and there are no exceptions described in the Commercial Code. In addition, there are no guidelines or regulations related to the second waiting period between fulfilling disclosure requirements and submitting the application for registering the merger to the Estonian Commercial Register. Clearly, this is an area that needs specific exemptive regulation in order to abolish waiting periods in cases where the merging companies are in total control of the same individual, as the waiting periods, which have been established to

33 Company Law Directive preambular para 75.

34 Katharina Julia Missio in Schmitt, and Hörtnagl (n 14), art 62, marginal 3.

35 Käerdi, Kärson, Kõve, Pavelts, Saare, Volens, Vutt, and Vutt (n 8) 896–897.

protect the interests of minority shareholders, are not relevant, considering that, in these kinds of situations, there are no minority shareholders whose interests require protection.

Second, it is important to note that, based on the Company Law Directive, a specific regulation has been implemented in Estonia whereby members of administrative and management bodies cannot be held liable in respect of a public limited company if it merges its wholly owned subsidiary with itself (§ 403 (6)). However, this does not apply to private limited companies, which is clearly a legislative oversight and is not in accordance with the general regulation of mergers and divisions in Estonia.[*36] Therefore, it is possible to conclude, through grammatical interpretation, that if a private limited company merges its subsidiary with itself, the members of the administrative and management bodies can still be held liable, whereas public limited companies cannot be held liable. There is no logical reason for this discrepancy, and this is most likely an error of the legislator that requires amendment.

The third simplifying exemption applies to divisions where the recipient companies collectively hold all the shares of the company being divided, meaning a subsidiary divides its assets among its shareholder or shareholders (§ 456 (4) and § 465 (4)). In this case, approval of the division by the general meeting of the company being divided is not required, provided that the decision has been made and the disclosure requirements are met. Similar to the first exemption, this does not significantly impact the division process, as only the requirement for adopting a division resolution of the dividing company is lifted, while the disclosure requirements remain quite extensive in respect of the acquiring company. Thus, the third exemption does not limit the waiting periods related to the corporate division processes.

In conclusion, while Estonia has made strides in streamlining corporate mergers and divisions through various exceptions and exemptions, there remain areas that require further refinement. The existing measures have reduced bureaucratic burdens and facilitated smoother processes for both private and public limited companies. However, the persistence of waiting periods and certain legislative oversights, particularly regarding liability and disclosure requirements, highlights the need for additional regulatory adjustments. Addressing these issues will ensure that the corporate restructuring framework in Estonia is not only efficient but also equitable, ultimately fostering a more conducive environment for business operations and growth.

6. Possibility to waive waiting periods relating to corporate mergers and divisions of limited liability companies in Estonia

As outlined above, the Commercial Code mandates certain simplified formalities and specific exceptions for corporate mergers and divisions. However, a key issue remains unresolved: the potential waiver of the time periods related to the disclosure requirements and the ability to declare merger or division resolutions null and void. In this regard, it remains uncertain whether the outlined waiting periods can be waived without amending the Commercial Code, as this issue has not been thoroughly explored in Estonian legal literature. The two waiting periods differ significantly in their nature and legal foundations. The first period is solely related to the fulfilment of the disclosure requirements, while the second is a statutory limitation period after which the entitled stakeholder cannot declare a merger or division null and void (so-called 'long-stop limitation period').

6.1. Possibility to waive the waiting period pertaining to disclosure obligations

The disclosure requirements causing the first waiting period also apply largely to simplifying exemptions. This means that even if a merger or division resolution is not required, the disclosure obligations must still be fulfilled for at least the shareholders of the acquiring company (§ 412 (3) and 421 (4) of the Commercial

[36] 549 SE, 'Seletuskiri äriseadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seaduse eelnõu [Explanatory memorandum to act on amendments to the Commercial Code and related amendments to other acts]' 7–8 <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/0e57b330-a776-4a7f-819c-93d616aa992a/ariseadustiku-muutmise-ja-sellega-seonduvalt-teiste-seaduste-muutmise-seaduse-eelnou-549-se-ii> accessed on 29 March 2025.

Code). Neither the Commercial Code nor the Company Law Directive explicitly provide ways to waive or shorten this waiting period. However, there is no logical reason to fulfil the disclosure requirements if the entity has only a sole shareholder or if all shareholders explicitly approve the corporate action and the creditors' claims can be sufficiently secured.

The issue at hand can be exemplified by the explanations provided in a court order from the Tartu District Court, dated 06.02.2024, concerning the fulfilment of the disclosure requirements for corporate mergers.[*37] In the cited case, two entities under the complete control of the same individual signed a merger agreement and adopted merger resolutions on the same date. These entities were sister companies, not in a parent-subsidiary relationship. The registrar refused to register the merger, stating that the Commercial Code does not allow exceptions to the waiting period related to the disclosure requirements, thus prohibiting the adoption of merger resolutions on the same day as the merger agreement, even if the entities are fully controlled by the same individual. Notably, the second waiting period was adhered to, with a minimum of one month before submitting the application to the Estonian Commercial Register. The Tartu District Court ultimately upheld the registrar's decision, agreeing with the provided explanations, stating that due to the non-fulfilment of the formal requirements, it was not possible to register the merger.

In the opinion of the author, it is unfortunate that the courts reached such conclusions, but the author acknowledges that a grammatical interpretation of the law can indeed lead to such outcomes. This is caused by the fact that the Commercial Code does not foresee an exemption regarding waiting periods for cases where two or more entities involved in a merger or division are 100% controlled by the same individual or where all shareholders explicitly approve either a corporate merger or division. Such a solution can be reached through the purposeful interpretation of the respective legal provisions[*38], but this does not create sufficient legal clarity and may turn out to be arbitrary. However, in the described cases, it seems unreasonable that the waiting periods cannot be waived and that the disclosure obligations must be fulfilled, as these are primarily established for the benefit of the shareholders who already control those entities and have agreed to the relevant corporate action. While specific exceptions may be applied to such mergers and divisions, they do not reduce waiting periods, rendering mergers and divisions undesirable in this respect.

The author proposes a solution to solve this issue. The first outlined waiting period is not a statutory limitation period but a deadline for the shareholders to use their information rights. The Commercial Code indeed does not explicitly foresee a possibility to either waive or shorten this waiting period. However, in this regulation, we can see analogies to the procedure for convening general meetings and the related disclosure obligations, where a period must be given for shareholders to prepare for the meeting and familiarise themselves with the relevant information (§ 172 and 294 of CC). The disclosure obligations related to corporate mergers and divisions serve the same purpose: ensuring that shareholders voting on these corporate actions can make informed decisions.

In the context of regular general meetings of shareholders, the non-fulfilment of the disclosure obligation or the provision of a shorter deadline do not always render such resolutions null and void. These resolutions are valid if the sole shareholder or all shareholders agree to the respective resolution and sign it (§ 173 (5)–(6) and § 305 of CC). Even if all shareholders at that time do not agree or sign the respective resolution, it shall remain valid if the shareholders affected by the procedural violation approve the resolution (§ 172^1 and § 296 of CC). In the opinion of the author, there is no logical reason why § 172^1, § 173 (5)–(6), § 296, and § 305 of the Commercial Code should not be applicable to the fulfilment of the disclosure requirements related to merger and division resolutions. Consequently, if all shareholders sign or approve the merger or division resolution, the breach can be considered cured, and the respective resolution is or becomes valid. Based on this, the registrar will be able to consider the first waiting period waived and proceed with the respective corporate merger or division process (§ 41 (1) of the Estonian Commercial Register Act[*39]).

The outlined solution has also been proposed in the German legal literature, where it is explained that the provision related to the disclosure requirements for corporate mergers and divisions is intended to ensure that all necessary documents for proper assessment and approval are available to shareholders in a timely manner before the resolution is adopted.[*40] Furthermore, it is emphasised that, given the dispositive

37 Tartu District Court decision 2-24-785, 6 February 2024.

38 Käerdi, Kärson, Kõve, Pavelts, Saare, Volens, Vutt, and Vutt (n 8) 897, 909.

39 Äriregistri seadus [Commercial Register Act]: RT I, 05.05.2022, 1; 14.03.2025, 10 <https://www.riigiteataja.ee/en/eli/518032025010/consolide>.

40 Jochem Reichert in Semler, Stengel, and Leonard (n 1) art 47, marginal 2.

nature of the corresponding provision in German law, shareholders can waive the waiting period related to the disclosure requirements if their rights are sufficiently protected by such regulation.[*41] Therefore, the German legal literature supports the possible waiver of the first waiting period when comparing the respective provisions with Estonian law.

Given that the Company Law Directive applies to public limited companies, it is necessary to separately assess whether the waiver of the waiting period related to the disclosure requirements is also possible for public limited companies. The Company Law Directive itself does not provide for the waiver of such waiting periods. However, as a secondary law of the European Union, the Company Law Directive sets out goals that member states must achieve, leaving the specific conditions and measures to individual countries. Therefore, the lack of waiver opportunities in the Company Law Directive does not automatically mean that such provisions cannot be stipulated in the laws of individual member states. This is supported by the commentaries of the Constitution of the Republic of Estonia, which sets out that the objectives contained in EU directives must be achieved by adopting Estonian legislation in the relevant field.[*42] Consequently, the author concludes that even if the Company Law Directive does not explicitly allow waiver opportunities for public limited companies in relation to the waiver of the waiting periods related to the disclosure requirements, such waivers are permissible as they align with the Company Law Directive's goals, specifically that all shareholders are sufficiently informed about relevant merger or division processes.

Overall, based on the assessment and comparison of both Estonian and German law and legal literature and the principles of the Company Law Directive, it can be concluded that shareholders can waive the first waiting period related to the disclosure requirements if all shareholders agree and approve the corresponding resolution, in respect of both private and public limited companies.

6.2. Possibility to waive the waiting period pertaining to declaring merger or division resolutions null and void

The second outlined waiting period is a statutory waiting period related to declaring either a merger or a division resolution null and void. The Estonian legal literature explains that this is not merely a statutory limitation period to which the relevant regulation of the Act on the General Part of the Civil Code[*43] applies, but rather the expiration of the deadline for terminating the right to declare either a merger or a division resolution null and void.[*44] Consequently, § 145 of the Act on the General Part of the Civil Code is not applicable to this waiting period, meaning that the parties cannot limit or waive the long-stop limitation period based on this provision.

Furthermore, Estonian private law does not generally recognise the possibility of limiting or waiving the long-stop limitation period unless explicitly stipulated otherwise in law.[*45] As an example, such a possibility has been stipulated in § 64 of the Estonian Code of Civil Procedure,[*46] which regulates the limitation of procedural statutory time limits. However, no similar provision exists for long-stop limitation periods in the Commercial Code or private law in general. Given that the principle of dispositiveness is not as broadly applicable in private law as it is in the Estonian Civil Code, the presumption of dispositiveness should not be assumed. Instead, the relevant legal provision must be interpreted in its essence to determine whether it is dispositive or imperative.[*47] Taking into account the strict legal consequences of the long-stop limitation period, it must therefore be concluded that the waiting periods related to declaring either a merger or division resolution null and void are not subject to the principle of dispositiveness, and as there is no

41 Missio in Schmitt, and Hörtnagl (n 14) art 47, marginal 1.

42 Laffranque, Ginter, Mälksoo, Põld, Tupits, and Vahar (n 4) 'Eesti Vabariigi põhiseaduse täiendamise seadus' art 2, marginal 10.

43 Tsiviilseadustiku üldosa seadus [An Act on the General Part of the Civil Code]: RT I 2002, 35, 216; RT I, 31.12.2024, 48 <https://www.riigiteataja.ee/en/eli/523012025003/consolide>.

44 Kalev Saare in Paul Varul and others (eds), *Tsiviilseadustiku üldosa seadus. Kommenteeritud väljaanne* [General Part of Civil Code Act. Commented edition] (Juura 2010) art 38, para 3.4.2.

45 Villu Kõve in Paul Varul and others (n 44), introduction to part 6, para 5.

46 Tsiviilkohtumenetluse seadustik [Code of Civil Procedure]: RT I 2005, 26, 197; RT I, 31.12.2024, 41 <https://www.riigiteataja.ee/en/eli/527012025002/consolide>.

47 Paul Varul in Paul Varul and others (eds), *Võlaõigusseadus I. Kommenteeritud väljaanne* [Law of Obligations Act, Commented edition] (Juura 2016) art 5, para 3.

provision in the Commercial Code for shortening such waiting periods, it is not possible under the current legal framework.

In Germany, this question has been explicitly addressed in § 16 and § 125 of the German Transformation Act (*Umwandlungsgesetz*[*48]), which outlines a waiver process. Specifically, it is possible to waive the second waiting period with a notarised declaration of waiver, thereby expediting corporate merger and division processes. This explicit regulation is necessary because § 1 (3) of the *Umwandlungsgesetz* stipulates that the act is imperative. In Estonia, a provision with a similar meaning is stipulated in § 47 of the Act on the General Part of the Civil Code. Therefore, while German law allows for the waiver of the second waiting period, Estonia has not adopted similar provisions. However, due to imperative regulation in both Germany and Estonia, such specific regulation is required in order to deviate from the principles stipulated in law. Consequently, under the current wording of the Commercial Code, the second waiting period related to corporate mergers and divisions cannot be waived without respective amendments, considering the legal substance of the second waiting period.

Summary

While the Company Law Directive is a mandatory source for shareholder protection measures in the corporate mergers and divisions of public limited companies, its excessive application to private limited companies makes these processes time-consuming and overly complex. Considering that the Company Law Directive applies solely to public limited companies, it allows Estonia to adopt a more flexible legal framework for private limited companies. If the objectives of the Company Law Directive can be achieved with less burdensome provisions, it is also possible to optimise the legal framework for public limited companies in Estonia.

Although Estonia has adopted several specific exceptions and exemptions for corporate mergers and divisions, they are worded in a complicated way and do not fulfil their intended purpose. Additionally, the streamlining of intragroup mergers and divisions has not been addressed by these exceptions and exemptions, including the possible waiver of waiting periods.

The author concludes that current law allows shareholders to waive the first waiting period related to their information rights, but it would be wise to explicitly regulate this waiver process in the Commercial Code for greater legal clarity. However, the second waiting period cannot be waived under current provisions, necessitating amendments to Estonian inter-state law to allow such waivers and streamline corporate merger and division processes.

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