CONTENTS

LIST OF E	DISTRIBUTORS	17
LIST OF A	ABBREVIATIONS	19
FOREWO	PRD	25
	PART I	
FREEDO	OM OF ESTABLISHMENT OF COMPANIES IN THE EU	
Chapter 1	THE CROSS-BORDER MOBILITY DIRECTIVE AND CONFLICT OF LAWS – PLEASE MIND THE GAP	29
l.	Introduction	31
II.	Jurisdictional Rules of the Directive	33
III.	Conflict-of-Laws and the Cross-Border Mobility Directive	34
	Explicit Conflict-of-Laws Rules in the Cross-Border Mobility Directive	34
	2. An Indirect Choice of Law for Companies	36
	3. Evasion of Law	39
	4. Connecting Factors to Determine the Law Applicable to Companies	41
	5. Divergent Conflict-of-Laws Theories as a Potential Obstacle to the Free Movement of Companies	43
IV.	Future Perspectives	44
	1. The Need for an EU Regulation on the Conflict of Laws of Companies	44
	2. Regulatory Options	46
	2.1. Selection of the connecting factor	46

	2.2. Personal scope of the conflict-of-laws rules.					
	2.3. Universal application					
	2.4. Means of protection available in conflict-of-laws					
	2.5. Material scope of the governing law					
V.	Conclusion					
Chapter 2	COMPANY & INSOLVENCY LAW PERSPECTIVES ON A CHOICE OF LAW FOR LIMITED LIABILITY COMPANIES					
1.	Introduction					
II.	The European Legal Framework					
	1. The Lack of a Regulation					
	2. Influence of the Case Law on Freedom of Establishment of Companies					
	3. The Scope of Lex Societatis As a «Second Level Problem»					
III.	The Scope of The Law of Companies. Between Solvency and Insolvency					
	1. The Scope of <i>Lex Societatis</i> . An Overview					
	2. The Scope of <i>Lex Concursus</i> According to EIR					
	3. Insolvency as a Limit to the choice of Law					
	4. Insolvency and Split of the <i>Einheitsstatut</i>					
	5. Conclusive Consideration					
IV.	Recapitulation. Grounds for Developing a Doctrine on The Law Applicable To Creditor Protection					
Chapter 3	FIGHTING LETTER-BOX COMPANIES WITH AN ANTI-ABUSE MECHANISM INTRODUCED BY DIRECTIVE 2019/212 AMENDING DIRECTIVE (EU) 2017/1132 AS REGARDS CROSS-BORDER CONVERSIONS, MERGERS AND DIVISIONS					
I.	Introduction					
II.	Corporate Law and Regulatory Arbitrage					
	1. General Description of Corporate Regulatory Arbitrage					
	2. Legislative Responses to Regulatory Arbitrage					

III.	Brief Taxonomy of LBCs (Ab)uses in Cross-Border Restructurings					
IV.	Non-Company Law Rules Concerning Abusive LBCs					
V.	New Law on Cross-Border Corporate Restructurings					
	1. General Remark on the Amending Directive	93				
	2. New Approach to Tackling Abuses	95				
	3. The Centre of Gravity Test	97				
	4. The Artificial Arrangements Test	98				
	5. General Anti-Abuse Clause	102				
	5.1. General observations	102				
	5.2. Premises of the anti-abuse clause	104				
	5.3. Abuse	105				
	5.4. Fraud	106				
	5.5. Abusive and fraudulent purpose	107				
	5.6. Indicative factors	109				
	5.7. Evasion or circumvention situations	112				
VI.	Conclusions	113				
Chapter 4	MUCH ADO ABOUT PROFIT? – ON THE PER- SONAL SCOPE OF FREEDOM OF ESTABLISH- MENT	115				
I.	Introduction					
II.	The For-Profit Requirement and Its Conceptual Frame-					
	work	118				
	1. Language Asymmetries	119				
	2. Conceptual Divergences at the Domestic Level	121				
III.	A functional Approach to Profit as an Autonomous Concept of EU Law					
	1. From Sodemare to Kennemer	123				
	2. A Missed Opportunity in Stauffer	125				
	3. Profit as an Autonomous Concept of EU Tax Law after Golfclub	126				
IV.	Profit within the System of Fundamental Freedoms of					
	the Internal Market	128				

	Ι.	TFEU					
	2.						
		2.1.	Subjective profit and the non-distribution constraint				
		2.2.	Objective profit and economic activity				
		2.3.	Objective profit and the lasting economic connection				
V.			plications for the Freedom of Establishment anies and Firms				
	1.	An A	ctivity-Based Test for EU Non-Profit Law?				
	2.	Repe	rcussions and Limitations				
		2.1.	Primary freedom of establishment, namely, cross-border mobility				
		2.2.	Secondary freedom of establishment				
	3.	The F	Problem of Philanthropic Activities				
	Coi	nclusio	ons				
			PART II				
CROSS	-BOR	DER C	ONVERSIONS, MERGERS AND DIVISIONS IN THE EU				
Chapter		GAL F	S-BORDER CONVERSIONS UNDER THE LE- RAMEWORK INTRODUCED BY THE DIREC- EU) 2019/2121: SELECTED ISSUES				
l.	Intr	oducti	on				
II.	Key	[,] Chara	acteristics of the Cross-Border Conversion				
III.			Substantive Safeguard for Minority Share-				
IV	. Ant	i-Abus	e Mechanism				
V.	Cor	ncludir	ng Remarks				
Chapter		mobii – A G	HE EVE OF THE TRANSPOSITION OF THE LITY DIRECTIVE INTO MEMBER STATE LAW ILIMPSE BACK AND FORTH FROM A GERAND AUSTRIAN PERSPECTIVE				
l.	Intr	oducti	on				

II.	Cross-Border Conversions and Underlying ECJ Case Law				
III.	Accepted Principle and Controversial Details				
	 The Possibility of Cross-border Conversions 				
	2. Disputed Bases for Analogous Application				
	3. Example A: Publication of the Draft Terms of a Cross-border Conversion				
	4. Example B: Waiting Period between Disclosure of Conversion Plan and Shareholder Resolution				
	5. Costly Uncertainty				
IV.	Relevance of Mobility Directive (EU) 2019/2121 before Expiry of the Transposition Period				
	1. Higher Regional Court of Saarbrücken on Example A				
	2. Criticism and the Advance Effect of Directives				
	3. «Orientational Effect» of Directives for National Interpretation				
	4. Application to Example B				
V.	Concluding Remarks				
Chapter 7	THE NEW REGIME FOR CROSS-BORDER MERG- ERS UNDER DIRECTIVE (EU) 2019/2121				
I.	A «Significant Milestone in Improving the Functioning of the Internal Market»				
II.	Main Deficit of the Old Regime: A Confusing Pattern of Stakeholder Protection Rules				
III.	The Cornerstones of the New Harmonisation of Stakeholder Protection				
	1. The Approach of Minimum Harmonisation				
	2. Protection of Minority Shareholders, Art. 126a New CLD				
	2.1. The right to dispose of their shares for adequate cash compensation (short: right of				
	withdrawal), Art. 126a(1)–(5) new CLD				
	2.1.1. Content of the right of withdrawal.				
	2.1.2. Beneficiaries of the right of with- drawal				

			2.1.3.	Exercise of the right of withdrawal, Art. 126a(2) new CLD	210	
			2.1.4.	Debtor of the cash compensation and review of its appropriateness	211	
			2.1.5.	Procedural enforcement of the claim to additional cash compensation, Art. 126a(4),(5) new CLD	212	
		2.2.		t to improve the exchange ratio, Art. (7) new CLD	213	
			2.2.1.	The content of the right to improve the exchange ratio	214	
			2.2.2.	Prerequisites of the right to improve the exchange ratio	215	
			2.2.3.	Problem: Procedural enforcement in «parallel» proceedings	217	
		2.3.	Facilitat	ion for groups of companies	220	
	3.	Protec	ction of C	Creditors, Art. 126b new CLD	220	
		3.1.		of creditors to be mandatorily pro-	222	
		3.2.	Indication	on of safeguards offered in the merg- Art. 122(n) new CLD	223	
		3.3.		tion for appropriate safeguards, Art. new CLD	223	
		3.4.	Solvenc	y declaration, Art. 126b(2) new CLD	225	
	4.	Protec	ction of E	Employees, Art. 133 new CLD	225	
IV.	Par	tnershi	ps – Still	Left Out, Art. 118 Old as New CLD	226	
V.	Conclusion: A Significant, But Still Not Sufficient Improvement					
Chapter 8	POSSIBILITIES AND PROCEDURAL ASPECTS OF EU CROSS-BORDER DIVISIONS 22					
I.	Introduction: Legal and Judicial Background 23					
II.	General Overview: The Scope of the New EU Legal Framework for Cross-Border Divisions					
	1.	: -	ogical E	xtension: Limited Liability Compa-	235	
	2.			s-Border Divisions: Full and Partial Divisions by Separation	237	

	2 Fuelustana
	3. Exclusions
III.	Preparation of the EU Cross-Border Division
	1. The Draft Terms
	2. The Management Report and the Expert's Report.
	3. Disclosure of Information
IV.	Approval by the General Meeting
V.	Execution of the EU Cross-Border Division
	1. The Ex Ante Control: The «Pre-division Certificate»
	1.1. The Public Compliance Check
	1.2. The Anti-Abuse Check
	2. The <i>Ex Post</i> Control and the Registration of the EU Cross-Border Division
	3. Validity Protection and Effects of the EU Cross-Border Division
	4. Simplified Formalities for Cross-Border Divisions by Separation
VI.	Final Remarks
Chapter 9	CREDITOR PROTECTION IN CROSS-BORDER CONVERSIONS, MERGERS AND DIVISIONS: THE HARMONISED EU REGIME
I.	Introduction
II. III.	The Directive Rules on Creditor Protection
	How Cross-Border Conversions, Mergers and Divisions May Harm Creditors
	1. Harms Connected to the Specific Type of Transaction Entered Into
	2. Harms Connected to the Cross-Border Nature of the Transaction
IV.	Are The Protections Set Forth in the Directive Justified?
Chapter 1	
I.	Introduction
II.	Shareholder Protection Model

	1.	Shareholder Protection Before the Adoption of the New Directive			
	2.	Change of Applicable Law as a Reason for Mandatory Protection			
III.	Protection Mechanisms in a Broader Sense				
	1.	Protection Through Disclosure			
		1.1. Draft terms			
		1.2. Management or administrative body report .			
		1.3. Independent expert report			
	2.	Right to be Consulted			
	3.	Right to Decide on Cross-Border Operations			
		3.1. Required thresholds and veto right			
		3.2. Exclusion of grounds for challenging the approval			
IV.	Pro	tection Mechanisms in a Narrower Sense			
	1.	Right to Exit the Company			
		1.1. Members entitled to exit the company			
		1.2. Procedure of protection			
		1.3. Right to claim additional cash compensation			
	2.	Right to Challenge the Share Exchange Ratio			
V.	Cor	nclusion			
Chapter 1		THE EXIT RIGHT OF SHAREHOLDERS IN CROSS-BORDER CONVERSIONS, MERGERS, DIVISIONS			
I.	Intr	oduction			
II.	Me	mbers' Risks			
	1.	Tools for the Protection of Minority Members in Cross-Border Operations: The Right to Exit the Company			
		1.1. Rationale and foundations of the right			
		1.2. Exercise and content of the exit right			
		1.3. The effects of the exercise of the exit right			
		1.4. The claim for an additional cash compensation			
		1.5 Adequacy of the cash compensation			

Chapter 1	2 EMPLOYEE PARTICIPATION IN EU CROSS-BOR- DER COMPANY MOBILITY	347
I.	Introduction	349
II.	Policy Options on Codetermination in Cross-Border	
	Operations	353
III.	Scope of Application of EU Codetermination Rules	
	1. Threshold Rule and Perpetuation Clause	359
	2. Level of Employee Participation Rights	362
	3. Divergences on Employee Participation Rights	362
IV.	Codetermination's Legal Alternatives	
	1. Law of the State of Destination	364
	2. Law of the Settlement	365
	3. Law of the State of Origin	368