



Maastricht University

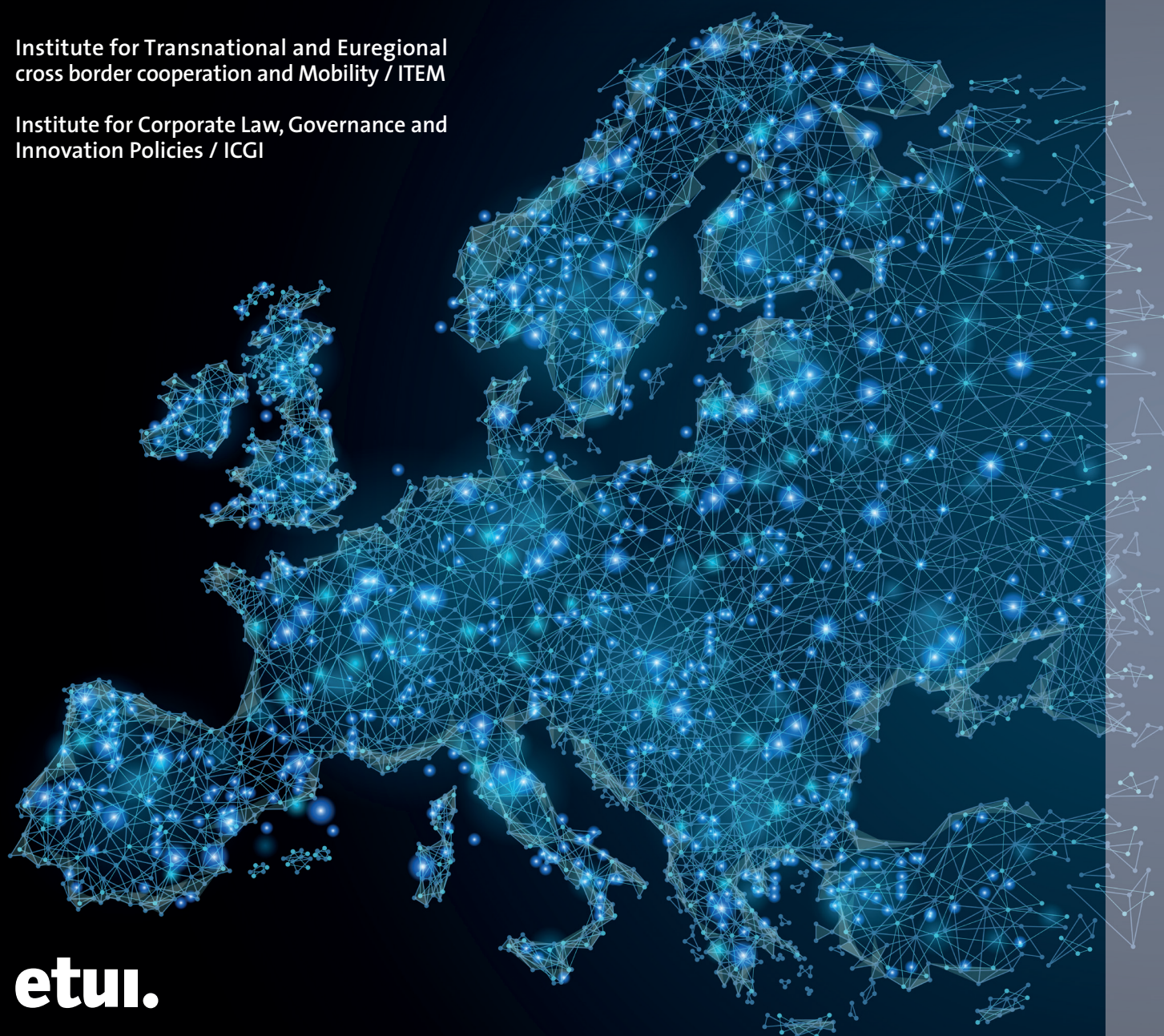
Cross-border Corporate Mobility in the EU

EMPIRICAL FINDINGS 2017

Institute for Transnational and Euregional
cross border cooperation and Mobility / ITEM

Institute for Corporate Law, Governance and
Innovation Policies / ICGI

etui.



The Cross-Border Corporate Mobility in the EU project (the “Project”) is financed by the European Trade Union Institute and is co-funded by the Erasmus+ programme of the European Union (EAC/A03/2016). The European Trade Union Institute is financially supported by the European Union.

The European Commission and the European Trade Union Institute support for the production of this publication does not constitute an endorsement of the contents which reflects the views only of the authors, and the Commission and the European Trade Union Institute cannot be held responsible for any use which may be made of the information contained therein.

The verification of the data in this report has been the sole responsibility of the project leaders.

1. Introductory words by the project leaders

Dear Readers,

It is an honour for us to present to you our first report on Cross-Border Mobility in the European Union (hereinafter the “Report”), which focuses, in its first edition, particularly on cross-border mergers and cross-border seat transfers between 2013 and 2017.

With this Report and the subsequent reports which will follow in the future, we as academics are not only fulfilling our dream of contributing, in a crucial way, to the academic debate on the topic of cross-border mobility in Europe. We also hope that we will be able to provide evidence as to the state of corporate mobility in the EU and in that sense the state of the European Single Market in the area of company mobility. Or more concretely said, the corporate mobility opportunities provided through Directive 2005/56/EC (hereinafter the “Cross-Border Mergers Directive”) and Council Regulation 2157/2001 (hereinafter the “SE Regulation”) as well as the impact of landmark cases of the Court of Justice of the European Union (hereinafter “CJEU”), such as *Cartesio* (C-210/06), *Vale* (C-378/10) and *Polbud* (C-106/16).

This first Report will provide a general overview of cross-border mergers (hereinafter also “CBMs”) and cross-border seat transfers (hereinafter also “CBSTs”). While this first edition covers a range of matters in relation to cross-border corporate mobility, the Report nevertheless has its limits. The findings are based on transactions that were collected from 9 out of 31 registries of EU/EEA Member States.¹ The countries that are covered in this Report are: Austria, Finland, France, Germany, Italy, Luxembourg, Netherlands, Spain and the United Kingdom.

It is also noteworthy that the timeframe covered per country varies and additional transactions and information will be added to the country overviews in subsequent editions of the Report. It is only at the end of the Project that a full picture for all EU/EEA Member States for the entire period can be provided. These results should therefore be treated as a preliminary overview and therefore they do not yet represent a comprehensive overview of cross-border corporate mobility within the EU. Additional research will also focus on cross-border divisions and European company forms (SE, SCE).

Finally, we would like to thank the European Trade Union Institute as well as the Erasmus+ Programme of the European Commission for their funding of this project. We would further like to thank all our country experts, our senior advisors - Professors Mieke Olaerts and Stephan Rammeloo - as well as all of the research assistants that supported us in the realisation of this Report.

Maastricht | 01.02.2018



Thomas Biermeyer
Project Leader



Marcus Meyer
Project Leader

¹ The starting point is the coverage of larger EU Member States, so as to collect as many transactions as possible; the transactions therefore cover more than the ten Member States, despite the fact that additional transactions will be added once all EU/EEA Member States have been researched.

Table of Contents

1.	Introductory words by the project leaders	ii
2.	Legal Framework	1
3.	Methodology	2
3.1	General methodology of the Project	2
3.2	Limitation of the scope of the Report	3
3.3	Further methodological points as to this Report	3
4.	Results	5
4.1	Cross-border mergers: general overview	5
4.1.1	Number of cross-border mergers per year	5
4.2	Cross-border mergers: CBMs per country (aggregated)	6
4.2.1	Total number of CBMs per Member State	6
4.2.2	Acquiring Companies per country	7
4.2.3	Merging Companies per country	7
4.3	Cross-border mergers: company form of all companies involved in CBMs	8
4.4	Cross-border mergers: field of activity ACs	11
4.5	Cross-border mergers: multi-mergers	12
4.6	Cross-border mergers: employee numbers.....	12
4.7	Cross-border mergers: country maps.....	15
4.7.1	Austria	15
4.7.2	Germany.....	16
4.7.3	The Netherlands.....	18
4.7.4	France.....	19
4.7.5	Finland.....	21
4.7.6	Italy.....	22
4.7.7	United Kingdom	24
4.8	Seat transfers: general overview	25
4.9	Seat transfers: CBSTs per country (aggregated).....	27
4.10	Seat transfers: employee numbers	29
5.	References	30
6.	Abbreviations	30
7.	Definitions	31
8.	Senior Advisors	32
9.	Country Experts	32
10.	Project Leaders.....	35
11.	Research Assistants.....	36

2. Legal Framework

It follows that the European company law form *Societas Europaea* (hereinafter “SE”) and the *Societas Cooperativa Europaea* (hereinafter “SCE”), as well as CBMs, CBSTs and cross-border divisions are governed by different legal regimes.

The SE is governed by the SE Regulation and the national transposing acts respectively, the SCE is governed by Council Regulation 1435/2003 (hereinafter the “SCE Regulation”) and the national transposing acts respectively.²

CBMs are governed by the Cross-border Mergers Directive as well as by the respective national transposing acts, which have harmonised the legislation on CBMs within the EU.³

In respect to CBSTs as well as cross-border divisions, there is no EU legislation which harmonises such national legislation. For CBSTs, it should be stressed that this Report and the Project examine the cross-border transfers of the registered office of a company and do not collect data on the transfer of the central administration of a company. A total of 12 EU Member States currently allow cross-border transfers of the registered office based on national legislation: Belgium, Cyprus, the Czech Republic, Denmark, France, Greece, Italy, Luxembourg, Malta, Portugal, Slovakia and Spain.⁴ As the Report does not focus on cross-border divisions, also further legislative information will be provided in subsequent reports.

² For an overview of the transposing acts for the SE, see: D. Van Gerven and P. Storm (eds.), *The European Company: Volume I and Volume II* (Cambridge University Press, Cambridge 2008).

³ For an overview of the transposing acts for the Cross-Border Merger Directive, see: D. Van Gerven (ed.), *Cross-Border Mergers in Europe: Volume I and Volume II* (Cambridge University Press, Cambridge 2010 and 2011) as well as T. Biermeyer, *Study on the Cross-Border Merger Directive*, conducted with Lexidale and Bech-Bruun, commissioned by the European Commission, 2013.

⁴ For an overview of the legislation on cross-border seat transfers in the European Union, see: T. Biermeyer, *Stakeholder Protection in Cross-Border Seat Transfers in the EU* (WLP, Oisterwijk 2015); see also C. Gerner-Beuerle, F.M. Mucciarelli, E. Schuster and M. Siems, ‘Cross-border reincorporations in the European Union: the case for comprehensive harmonisation’, *Journal of Corporate Law Studies* (2017). It is acknowledged that the sentence to which this footnote belongs as well as Figure 2.1 are a (necessary) simplification. For a differentiation see the literature referred to in this footnote.

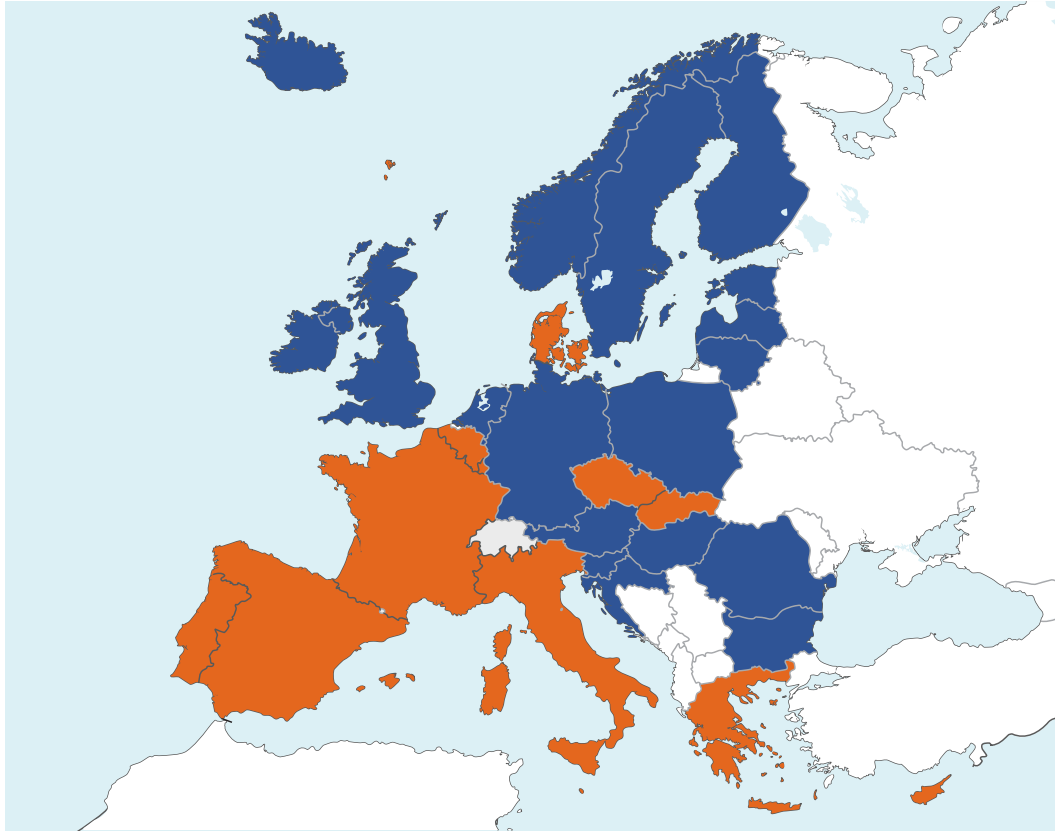


Figure 2.1 Overview of EU Member States with legislation on cross-border transfers of the registered office (orange) and EU Member States without legislation on cross-border transfers of the registered office (blue)

3. Methodology

This Report is part of the Cross-Border Mobility in the EU project and for this reason it is based on the same methodology.

3.1 General methodology of the Project

The Project envisages a monitoring and data collection exercise for the purposes of analysing cross-border company mobility within the EU. The monitoring includes:

- European company law forms (SE and SCE); and
- Cross-border company mobility instruments (cross-border mergers, cross-border seat transfers and cross-border divisions).

With regards to cross-border seat transfers, it should be stressed that the Report and the Project only examines cross-border transfers of the registered office of a company and not the cross-border transfer of the central administration.

The project is carried out for companies that are registered in the European Economic Area and for a time span between 2000 and 2020. In order to obtain the necessary data, the methodology focuses on the monitoring of the company registries and the official journals of all EU/EEA countries. This methodology is chosen for the simple reason that cross-border

mergers, seat transfers, divisions, formations of European company law forms and similar measures are published in (at least one) national official journal.

For cases in which one of these cross-border instruments is used, additional company information is collected, which is necessary in order to accurately describe the transaction and the companies (or company in the case of a seat transfer or SE) involved.

All cross-border transactions are subsequently checked via Orbis for the relevant information on the companies as well as to check for potential employee participation issues based on national thresholds for employee participation. Moreover, each transaction is verified in the respective company register (i.e., notices of deletion from the registries) in order to ensure that the cross-border transaction has indeed taken place.

3.2 Limitation of the scope of the Report

For the reason that this first Report is based on the research that was conducted during the first nine months of the Project, its scope is more limited as a consequence.

This Report only focuses on cross-border mergers and cross-border seat transfers.

Regarding CBMs, this Report is limited both geographically and temporally. Overall, data pertaining to CBMs have so far been collected between 1 January 2013 to June 2017 and on the basis of the official journals of the following countries with the following individual time periods:

- Austria (01.01.2013 – 31.12.2013);
- Finland (01.01.2014 – 31.12.2016);
- France (01.01.2013 – 01.07.2017);
- Germany (01.01.2013 – 01.06.2017);
- Italy (01.01.2015 – 01.09.2017);
- Luxembourg (01.01.2017 – 01.06.2017);
- Netherlands (01.01.2013 – 01.06.2017);
- Spain (01.01.2013 – 31.12.2014); and
- United Kingdom (01.01.2013 – 01.06.2017)

For this reason, it must be stressed that the results that are reported in Section 4 only provide a picture on the basis of the data that have been collected for such countries. Follow-up reports will complement the data with the missing countries, time periods and additional information.

In relation to CBSTs, the Report is also limited geographically as well as temporally. So far, data pertaining to CBSTs have been collected from the official journals of Germany, France, the Netherlands, Spain and the UK between the 1 January 2013 until June 2017.

3.3 Further methodological points as to this Report

It should be noted that all figures, maps and observations are based on a specific number of transactions, which is provided underneath each figure or map as “N = [number of

transactions]”. In that respect it should be noted that a transaction equals a CBM or a CBST. For CBMs, it should further be noted that for the dataset on which this Report is based, multi-mergers are counted as several individual mergers for each individual merging company involved in the transaction with the acquiring company (hereinafter “MCs”). For example, if 4 MCs merge into one acquiring company (hereinafter “AC”), the dataset will contain 4 mergers with the AC and it is indicated in a separate sheet which then shows that a multi-merger has taken place.

Linguistically, and in order for it to be more reader friendly, this Report refers to companies with different nationalities, for example a French or an Italian company. It should be noted that this refers to a company being governed, for company law purposes, by the laws of such country.

4. Results

4.1 Cross-border mergers: general overview

4.1.1 Number of cross-border mergers per year

Up until the time of writing, 1,163 CBMs were collected and could be verified between 2013 and 2017, compared to 1,227 CMBs that were presented in the Study on the Cross-Border Merger Directive that was commissioned by the European Commission for the period 2008 to 2012 and which was published in 2013.⁵ However, as was noted in the section on this Report's methodology, the current dataset only consists of data from Austria (2013), Finland (2014 - 2016), France (2013 - 2017), Germany (2013 - 2017), Italy (2015 - 2017), the Netherlands (2013 - 2017), Spain (2013 - 2014) and the United Kingdom (2013 - 2017).

The post-2012 data that were collected show 304 CBMs for 2013, 245 CBMs for 2014, 176 CBMs for 2015, 346 CBMs for 2016 and 92 CBMs for 2017. Such numbers should increase in follow-up reports, in which additional countries will be added. Moreover the collection period for 2017 will expand as it only took into account the first six months and, at the time of writing, a number of CBMs are still in progress. For this reason it seems likely that more CBMs will have taken place in the 2013 and 2017 period compared to the 2008 to 2012 period given that only 9 out of 31 countries have been covered so far. Moreover, it also seems likely that 2016 will have been the year with the highest number of CBMs during the period of 2008 to 2017. In relation to the year 2017, it should be stressed that the number should substantially increase as data were only collected for the first six months and many CBMs were still ongoing and therefore they have not yet been included in this Report.

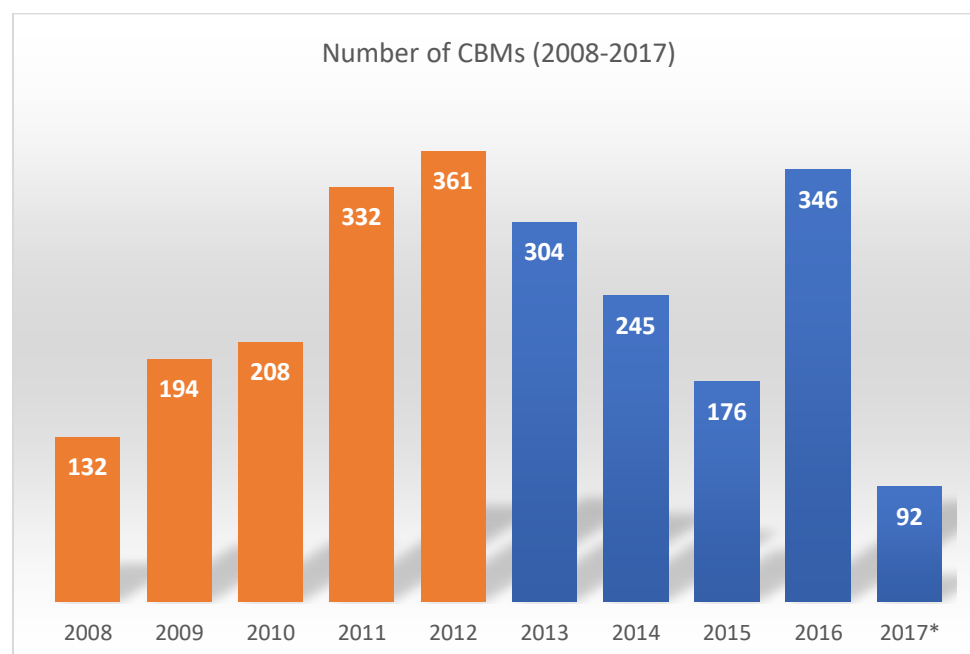


Figure 4.1 Number of CBMs per year; 2008-2012 data based on Study on Cross-Border Merger Directive (orange) (N = 1,227); 2013-2017 (June) data based on transactions collected by the Project (blue) (N = 1,163).

⁵ T. Biermeyer, *Study on the Cross-Border Merger Directive*, conducted with Lexidale and Bech-Bruun, commissioned by the European Commission, 2013.

4.2 Cross-border mergers: CBMs per country (aggregated)

In this section, the aggregated number of CBMs per Member State as well as the number of acquiring versus merging companies located in a Member State will be examined.

4.2.1 Total number of CBMs per Member State

Figure 4.2 (below) shows that companies governed by the laws of the Netherlands were most often involved in CBMs and were involved in 492 out of a total of 1,163 transactions that were collected for the 2013 to 2017 period.⁶ The country with the second highest number of CBMs is Germany, with 488 companies having been involved in a CBM. Other countries with high numbers of CBMs include Luxembourg (265), France (173), Austria (165), the UK (151) and Italy (141).

Companies from Eastern and Southern European Member States also participated in CBMs a total of five or less times in the following countries: Latvia (4), Romania (4), Greece (3), Estonia (2), Bulgaria (2), Lithuania (1) and Croatia (1).⁷ There were no transactions that involved Icelandic or Slovenian companies.

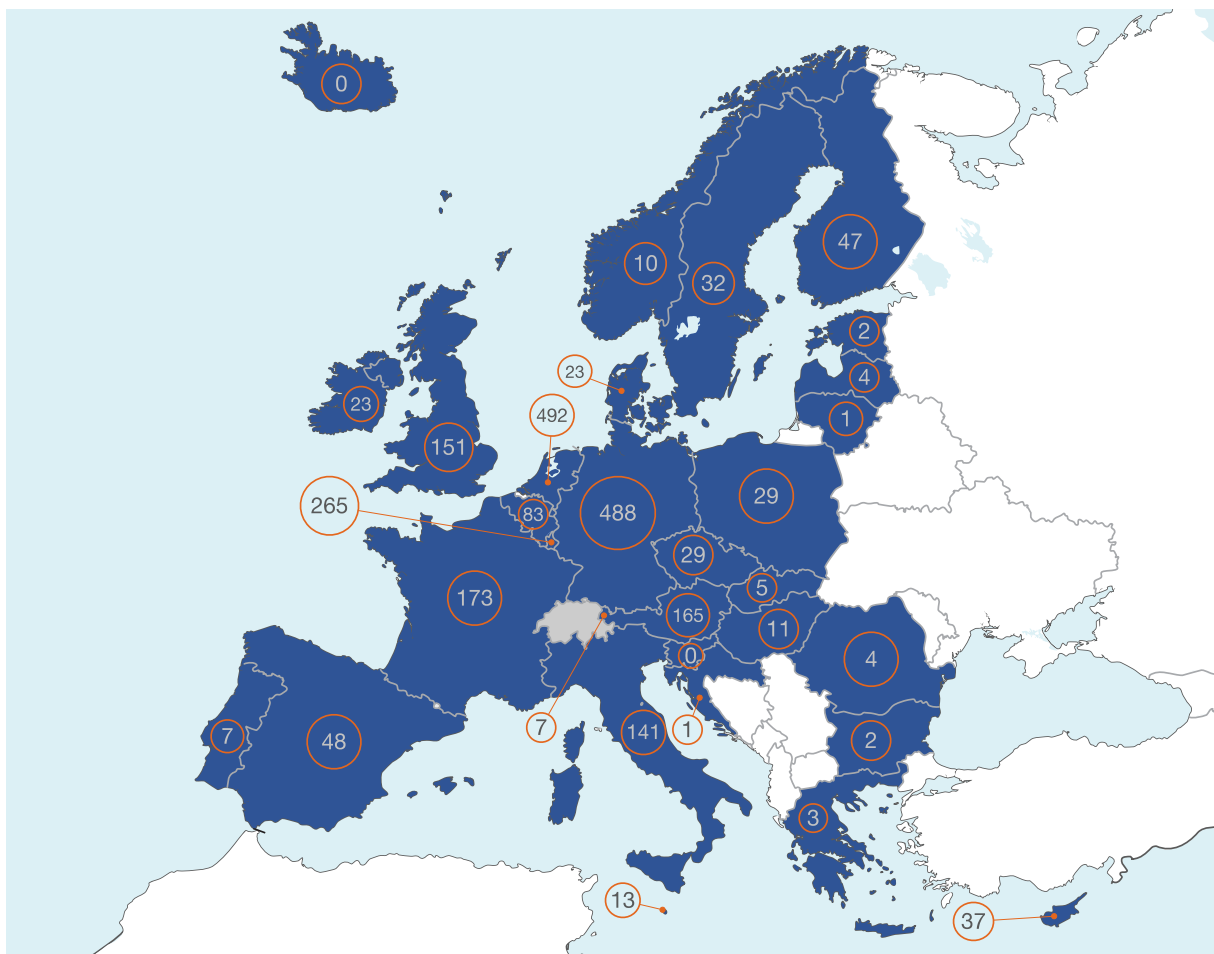


Figure 4.2 Aggregated number of CBMs in EU/EEA per Member State (both ACs and MCs combined) (N = 1,163)

⁶ Both acquiring and merging companies are counted, with an aggregated total above 100%.

⁷ However, please note that as was mentioned in the methodology section, data were not yet collected from the official journals of such countries and therefore the actual number may be higher.

4.2.2 Acquiring Companies per country

Figure 4.3 presents the number of CBMs per country, in which that country's company was the acquiring company (entry cases). Germany hosted the most ACs (257), followed by the Netherlands (226). Other countries with many acquiring companies were Luxembourg (174), France (90), Italy (84), Austria (75) and the UK (44).

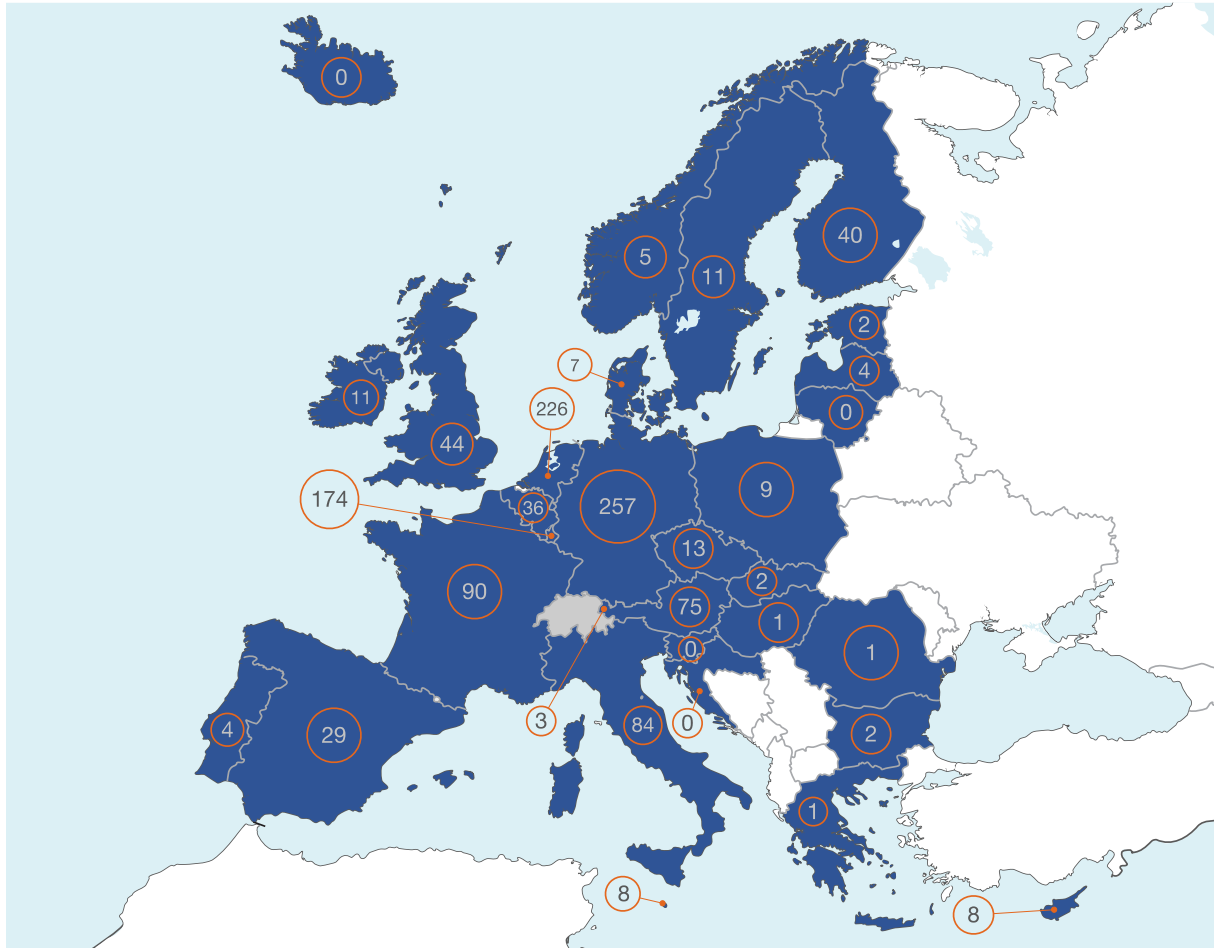


Figure 4.3 ACs in CBMs per EU Member State (N = 1,163)

More than half of the Luxembourg companies in CBMs were ACs (174 out of 265). This was also the case with German companies (257 out of 488), as well as with Italian (84 out of 141), French (90 out of 173), Finnish (40 out of 47), Spanish (29 out of 48), Maltese (8 out of 13), Latvian (4 out of 4), Estonian (2 out of 2) and Bulgarian companies (2 out of 2). This means that these countries can be regarded as 'net recipient countries'. The countries for which the contrary is the case are referred to throughout this Report as 'net sending countries'.

4.2.3 Merging Companies per country

Figure 4.4 shows the number of CBMs per country, in which that country's company was the merging company (exit cases). The highest number of MCs can be seen in the Netherlands (266), followed by Germany (231), the UK (107), Luxembourg (91), Austria (90), France (83) and Italy (57).

The Netherlands, furthermore, had more MCs than it had ACs (266 out of 492) and therefore it can be regarded as a ‘net sending country’. This means that more companies left the Netherlands than there were companies that merged with Dutch companies. The same phenomena is also salient in other countries, most notably in the UK, where more than two thirds of companies (107 out of 151) merged with non-UK companies. In Cyprus, more than three quarters of companies (29 out of 37) were MCs.

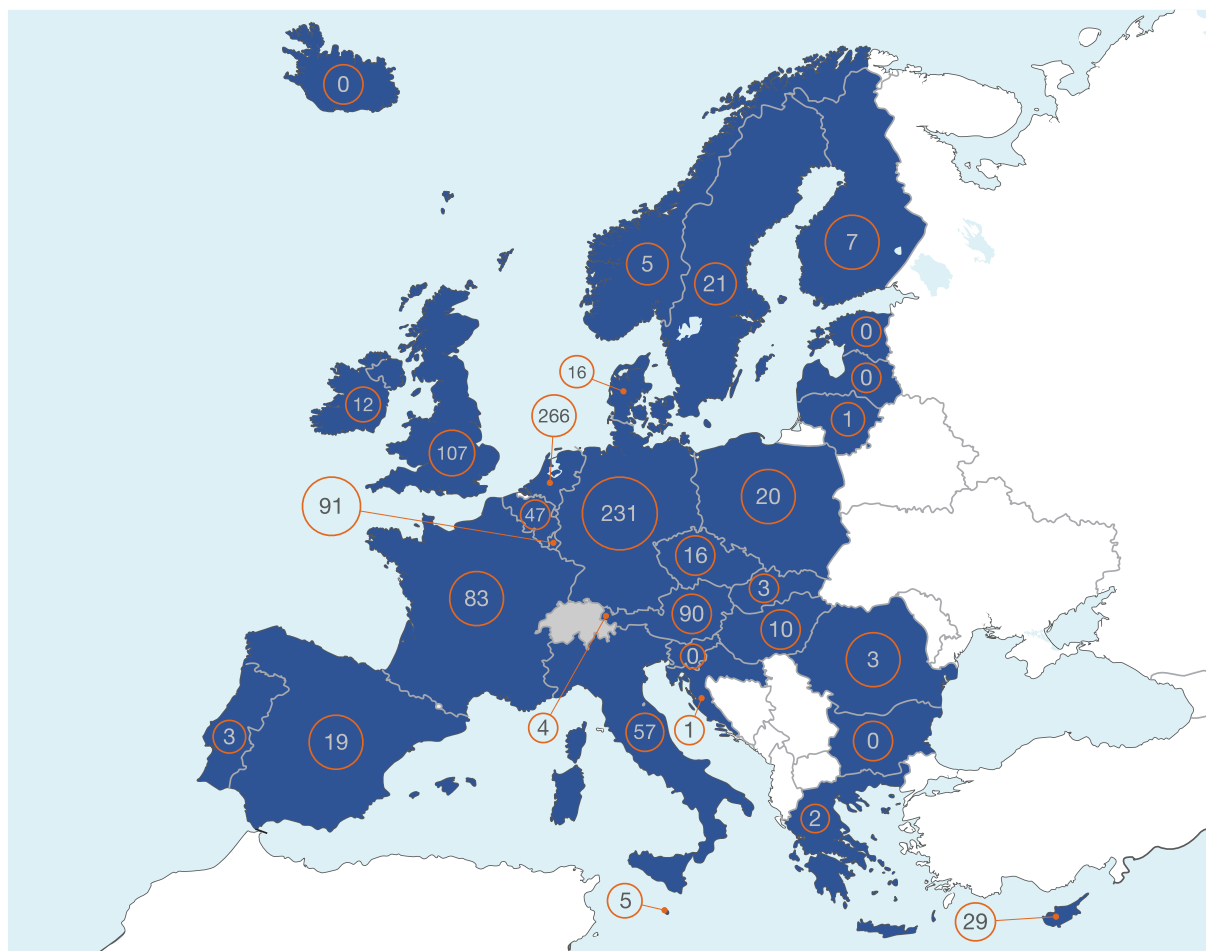


Figure 4.4 MCs in CBMs per EU Member State (N = 1,163)

4.3 Cross-border mergers: company form of all companies involved in CBMs

This Report also examines which legal company forms are most typically engaged in CBMs. The respective company forms provided by national laws were classified into the following four groups for the purposes of this Report: private limited liability companies (hereinafter “private LLCs”), public limited liability companies (hereinafter “public LLCs”), SEs and other (including, among others, investment funds, cooperative companies or partnerships).

Figures 4.5, 4.6 and 4.7 below present the company forms that were involved in cross-border transactions and that are subsequently covered by this Report respectively.

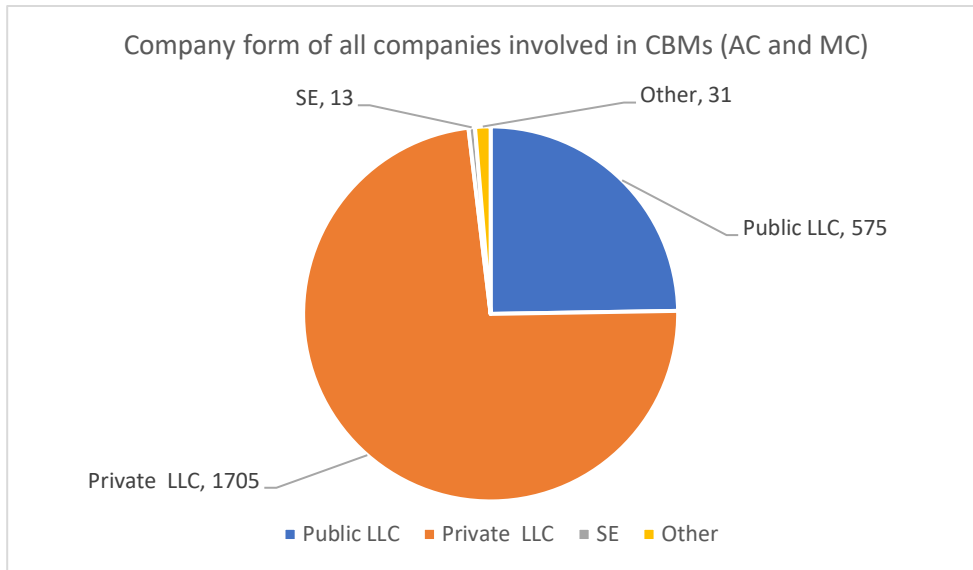


Figure 4.5 Pie chart of company form of all companies involved in CBMs (ACs + MCs) (N= 2,324)

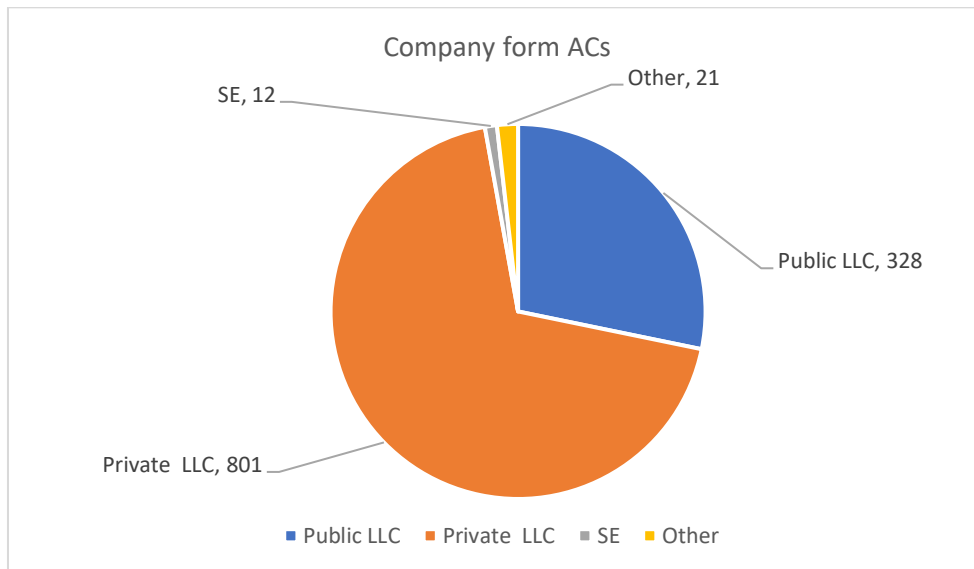


Figure 4.6 Pie chart company form ACs involved in CBMs (N= 1,162)

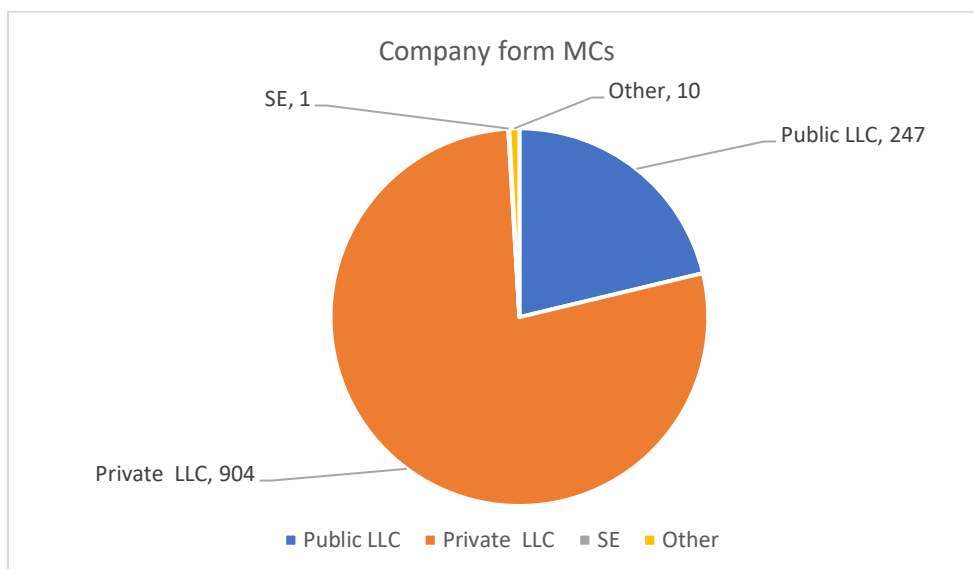


Figure 4.7 Pie chart company form MCs involved in CBMs (N= 1,162)

AC and MC company forms represent similar trends with around three-quarters of private LLCs for ACs, and around one-quarter of public LLCs in both scenarios above. There tends to be more private LLCs among MCs (78%) than ACs (69%). On the other hand, a reverse trend is visible for public LLCs, as those company forms accounted for 28% of all ACs and for only 21% percent of all MCs. Another difference between company forms of ACs and MCs can be observed in cases involving European companies. 12 SEs acted as ACs, whereas only one was on the merging side of reported transactions. Overall, very few SEs or 'other' company forms participated in CBMs, accounting for 2% of the overall number of cases.

The above-mentioned conclusions could also be observed in relation to frequencies of company form combinations, which are presented below in Figure 4.8.

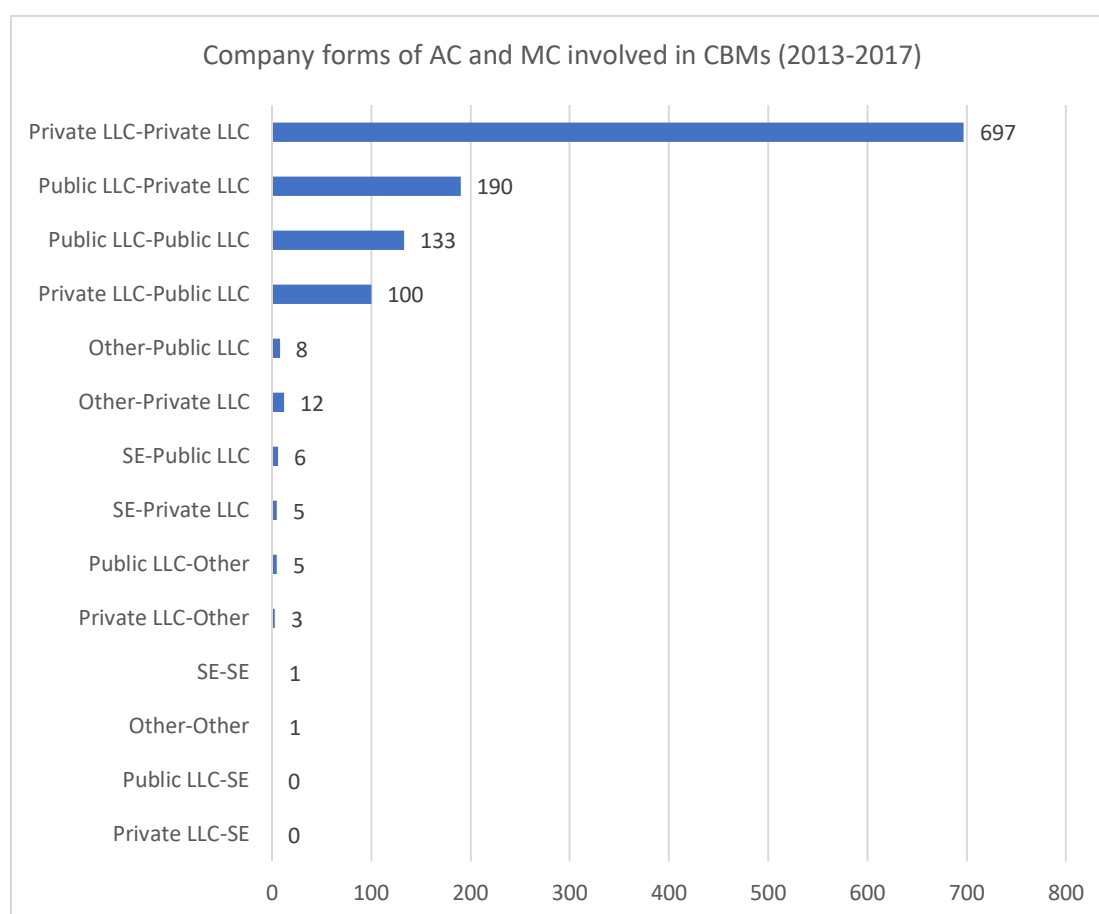


Figure 4.8 Frequencies of the recorded combinations in CBMs (N=1,161)

By far the most frequent combination was a CBM between two private LLCs (697 cases) which accounted for 60.03% of the reported transactions. 190 transactions where public LLCs merged with a private LLC were identified, making it the second most often occurring combination (16.37%). Other transaction types worth noting are those between two public LLCs (133 cases, 11.46%) and private LLCs with public LLCs (100 cases, 8.61%). The influence of the rest of the possible combinations in reported transactions was marginal, as none of them accounted for more than 1% of the total number of reported cross-border mergers.

4.4 Cross-border mergers: field of activity ACs

Reported transactions were also monitored based on the business activity that was conducted by ACs. Figure 4.9 below presents the reported transactions according to NACE codes.

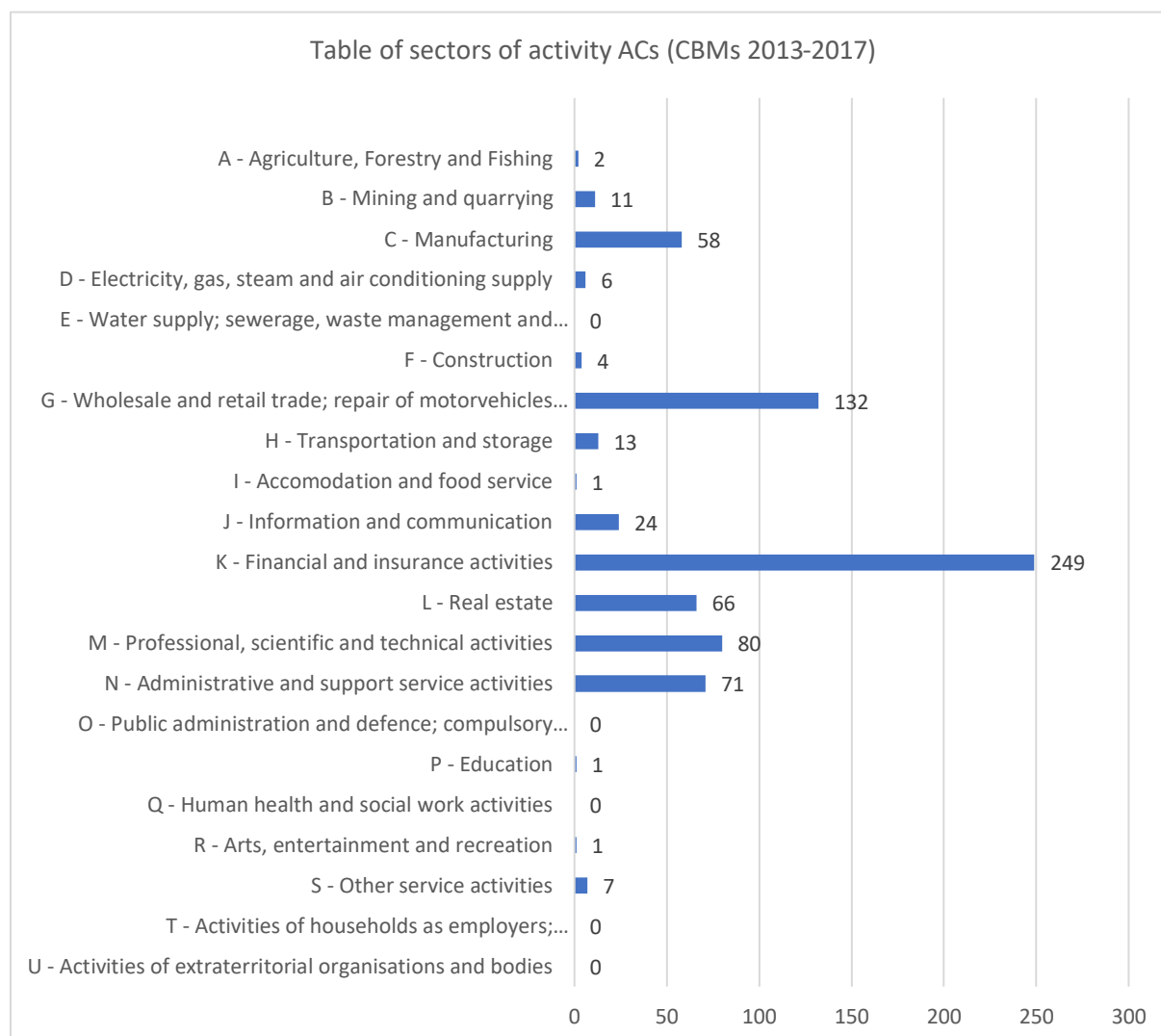


Figure 4.9 Sectors of activity (N=726)⁸

Throughout the 2013 to 2017 period, a total of 249 transactions, where the AC was active in 'financial and insurance activities' NACE code, were identified. Nevertheless, the majority of those companies are not active in the financial sector as it is generally understood. In the identified group, 164 out of 249 transactions concerned an AC as a holding company (NACE code 6420), which can explain why a significant number of ACs choose to conduct their business activities within section K of the NACE statistical classification. It indicates that cross-border transactions were very often structured so as to involve holding companies merging for their respective corporate groups. Deals where the AC was engaged in an activity covered by Section 'M – Professional, scientific and technical activities', included a significant number of transactions where the AC fell within NACE code 7010 representing head office activities. A

⁸ No data are yet available for 437 cases.

total of 40 out of the 80 transactions reported in Section M, involved an AC acting as a head office within the meaning of code 7010.

It can be further inferred, based on the collected data, that CBMs are popular among companies that are engaged in the wholesale and retail trade (132 transactions) as well as among real estate companies (66 transactions) and in the manufacturing sector (58 transactions).

4.5 Cross-border mergers: multi-mergers

As can be seen from Figure 4.10 below, 19% of the CBMs involved more than two companies and are thus qualified as multi-CBMs. The remainder of the transactions concerned 'regular' cross-border mergers, which involved only one acquiring and one merging company.

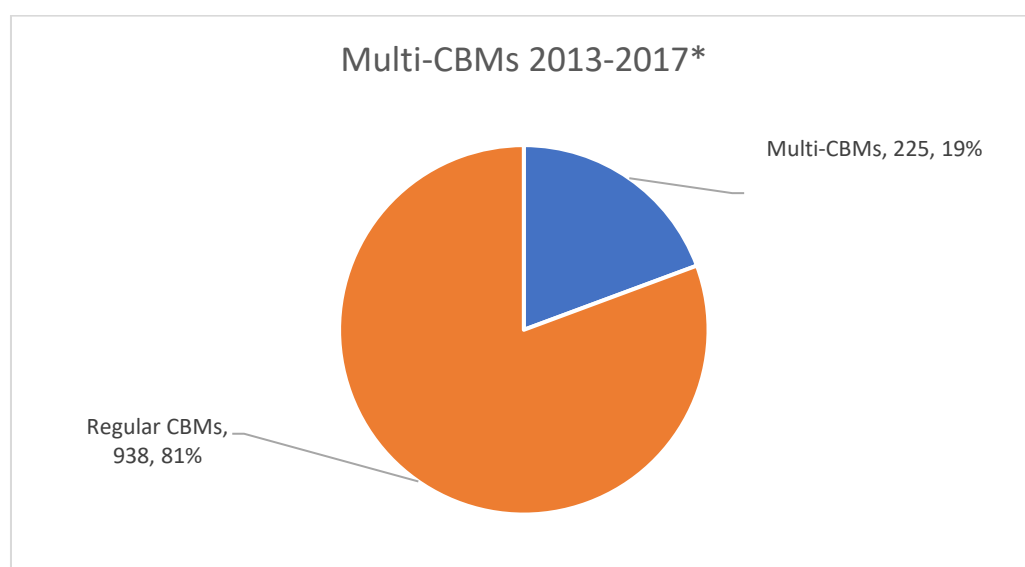


Figure 4.10 Overview of multi-CBMs found between 2013-2017 (N = 1,163)

4.6 Cross-border mergers: employee numbers

The figures in this section show the number of employees of MCs and ACs that are involved in CBMs for the 2013 - 2017 period. It should be noted that for 627 ACs and 693 MCs, there were no data available, which represents 54% of all ACs and 60% of MCs.⁹

With regard to companies that have employees, the largest number of cases are in the range of 1 to 5 employees with 175 ACs (15%) and 276 MCs (24%). These figures show that overall MCs participating in a merger have more often fewer employees compared to ACs.

The second largest share of cases concern companies, which have between 6 and 50 employees with 91 ACs (8%) and 104 MCs (9%). Here the net difference between AC and MC companies is minimal, with a difference of only 13 cases.

⁹ This large fraction of cases where no data are available through the *Orbis* database will be subject to further analysis and will likely change in subsequent reports.

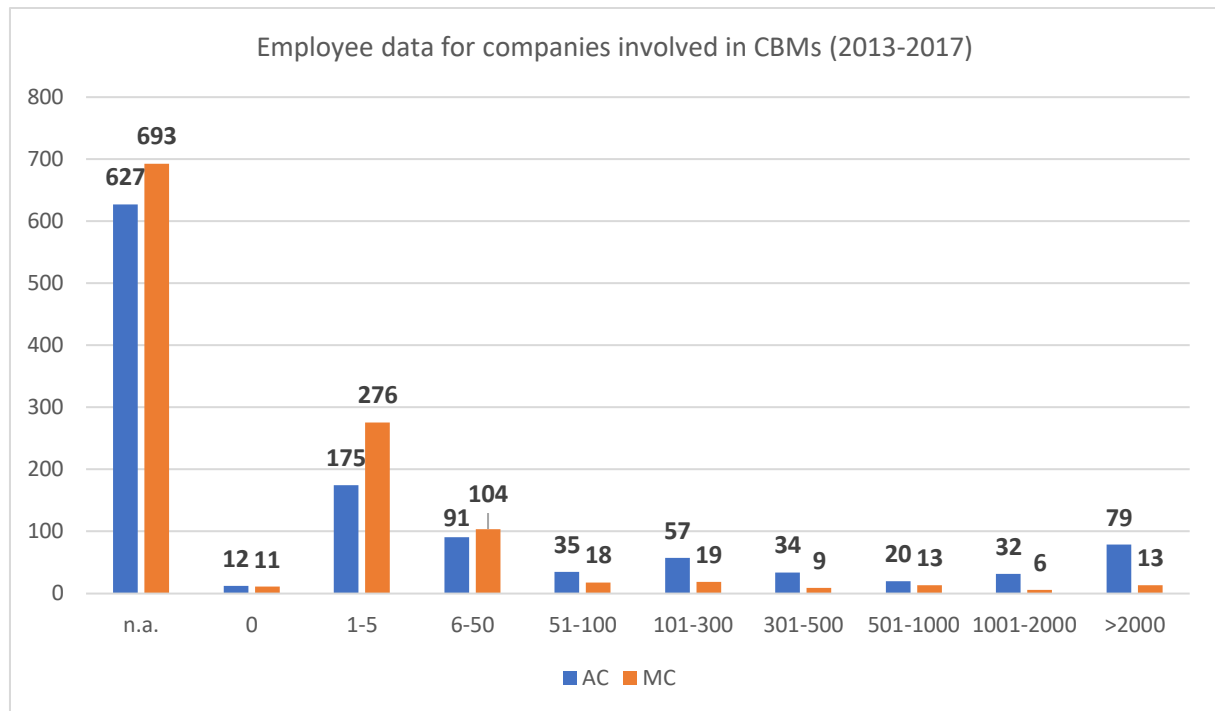


Figure 4.11 Employee figures for acquiring and merging companies in CBMs compared; in number of cases (N = 2.324)

This difference changes for the rest of the chart with more ACs than MCs being represented in the categories, which means that large companies involved in CBMs are more commonly ACs. The biggest difference can be observed for cases with companies having between 101 and 300 employees, in which the net difference is 38 (57 ACs and 19 MCs), and businesses with more than 2000 employees, as in those cases the net difference is 66 (79 ACs and 13 MCs). Acquiring companies which have more than 2000 employees represent 7% of the sample, whereas merging companies with more than 2000 employees represent only 1% of the sample.

The smallest differences can be observed in relation to those companies with 501 to 1000 employees, whereby the numbers of ACs and MCs is almost the same (20 ACs and 13 MCs respectively).

Overall, it can be concluded that a larger number of small companies with 50 employees or less are typically merging companies in a CBM, whereas in the category of 51 or more employees it is the case that there are more acquiring companies.

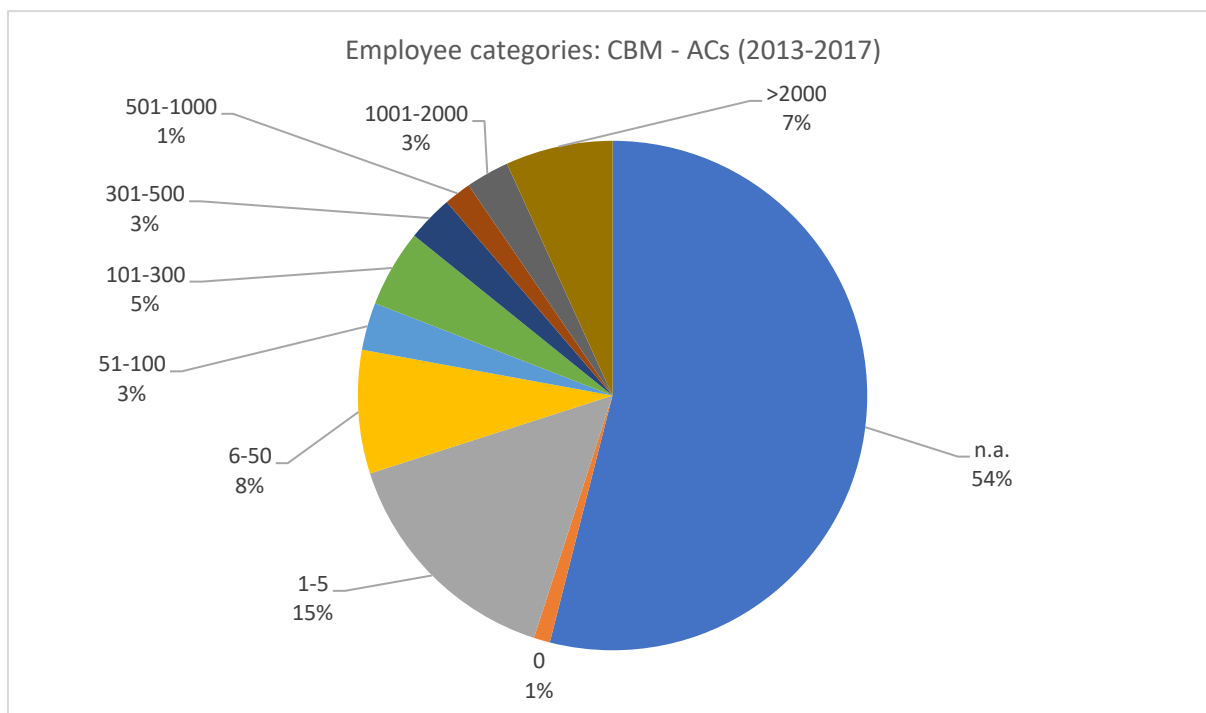


Figure 4.12 Employee figures for **acquiring** companies in CBMs compared; in number of cases (N = 1,162)

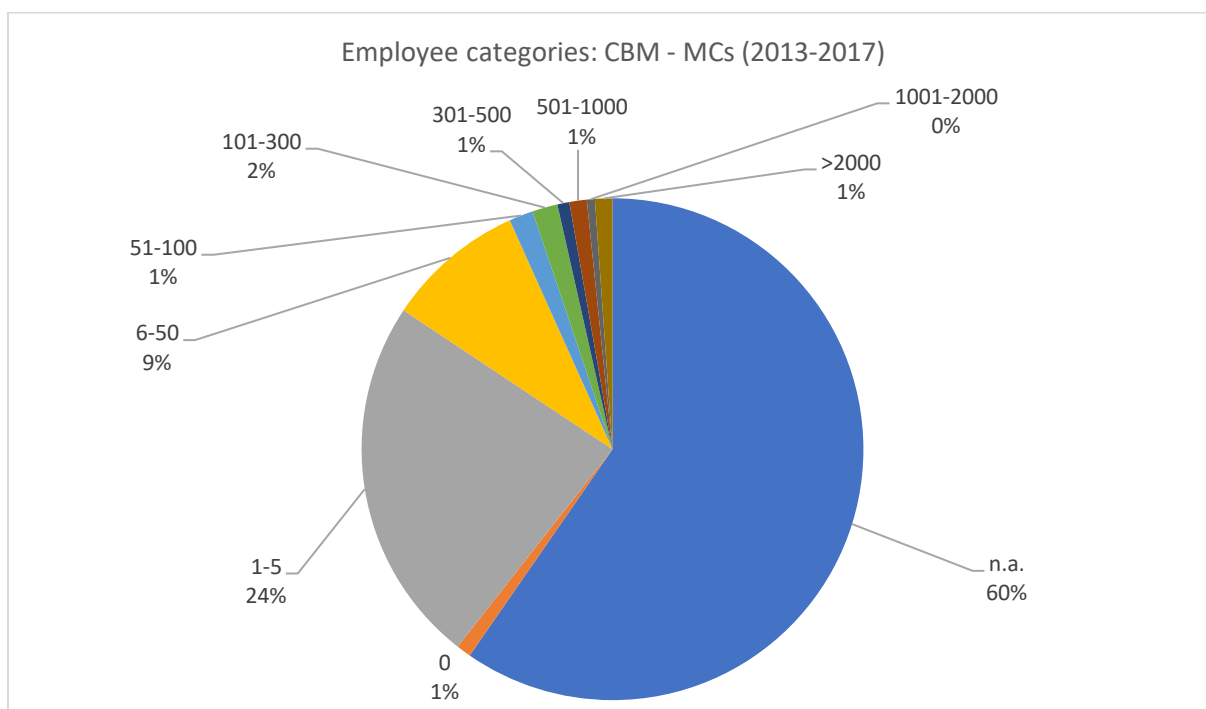


Figure 4.13 Employee figures for **merging** companies in CBMs compared; in number of cases (N = 1,162)

4.7 Cross-border mergers: country maps

In the following section, a country by country report of the transactions found will be provided. The data reported covers those countries, which were monitored and outlined according the methodological section that was described above.

4.7.1 Austria

The data collected for Austria shows that Austrian companies have been involved in 164 CBMs, including 74 with an Austrian AC and 90 with an Austrian MC. This means that Austria has a negative balance of 16 and it is therefore a 'net sending country'.

Overall, the most CBMs in which the Austrian company has acted as AC, have been with the United Kingdom (23), followed by Germany (22), the Netherlands (9), Cyprus (5) and the Czech Republic (3). Further CBMs, which fall within this category, are with MCs from Hungary (2), Italy (2), Poland (2), Slovakia (2), Denmark (1), Finland (1), France (1) and Liechtenstein (1).

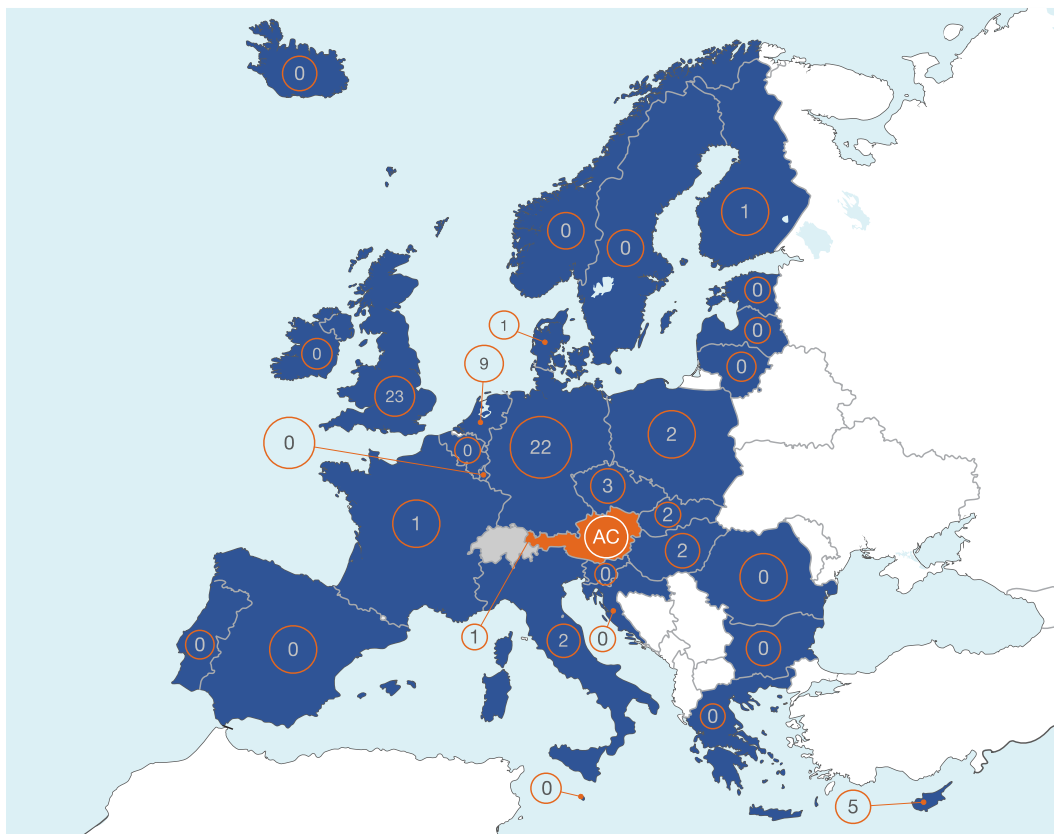


Figure 4.14 Overview of cross-border mergers with an Austrian **acquiring** company (entry) (N = 90)

The majority of CBMs in which the Austrian company has acted as the MC, have been with Germany (54), the Netherlands (15), Italy (8), France (4), Finland (3), Luxembourg (2), Belgium (1), Czech Republic (1), Malta (1) and the UK (1).

The country, with which Austria has the biggest negative net balance is Germany (-32). The second and third biggest contributors for the negative net balance are Italy (-6) and the Netherlands (-6). By way of contrast, Austria has a positive net balance with the United Kingdom (+22) and Cyprus (+5).

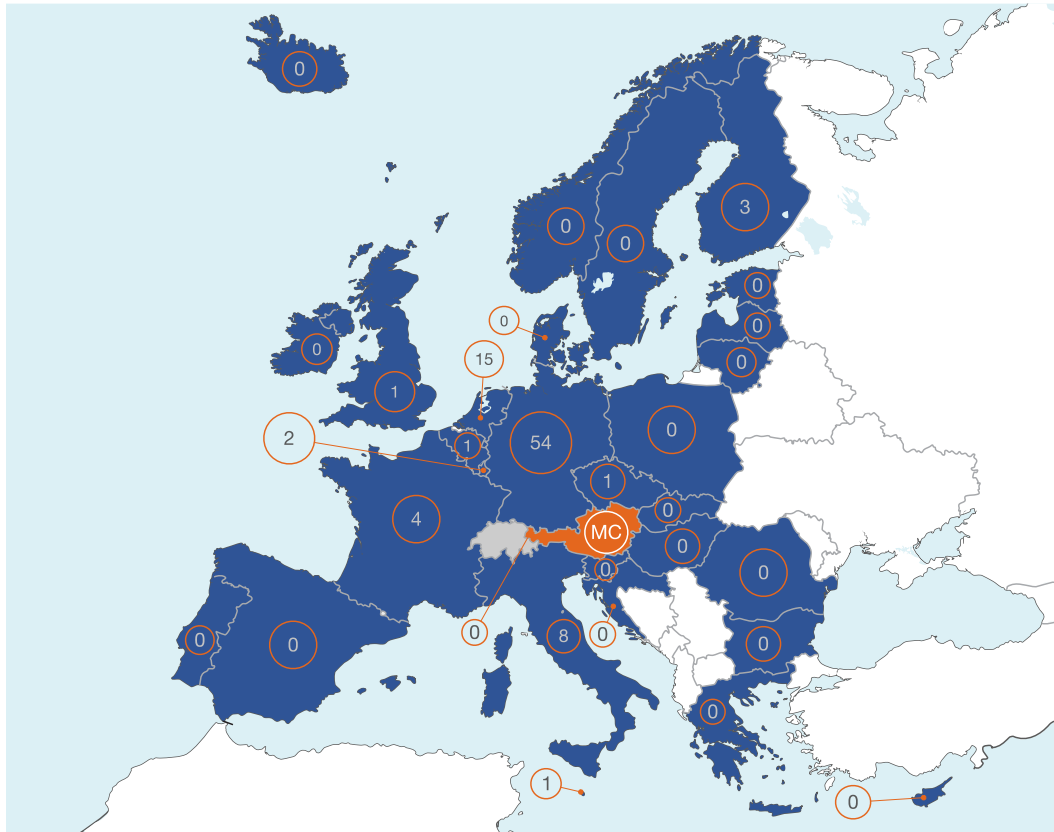


Figure 4.15 Overview of cross-border mergers with an Austrian **merging** company (exit) (N = 74)

4.7.2 Germany

The data collected for Germany shows that 488 German companies have been involved in CBMs. German companies have been the AC in 257 CBMs and German companies have been the MC in 231 CBMs. Germany has a positive net balance of 26 transactions and it is therefore a 'net receiving country'.

Additionally, the data shows that the majority of cases, in which the German company is the AC, are CBMs with Austrian (54) and UK companies (67). In comparison, there have been 22 cases, in which a German MC was involved with an Austrian AC, and 20 cases, in which a UK AC has merged with a German MC. This means that Germany has a positive net balance of 32 with Austria and 47 with the UK. The other two countries that contribute to the total positive net balance of Germany are Belgium and Poland, where the positive net balance is 9.

The data also shows that the majority of MCs are moving to Luxembourg and the Netherlands with 74 and 62 transactions respectively. By way of contrast, there have been only 22 cases in which a German AC has merged with a Luxembourg MC and 35 cases where a German company has merged with a Dutch MC. This means that Germany has a negative net balance of -52 in relation to Luxembourg and -27 in relation to the Netherlands.

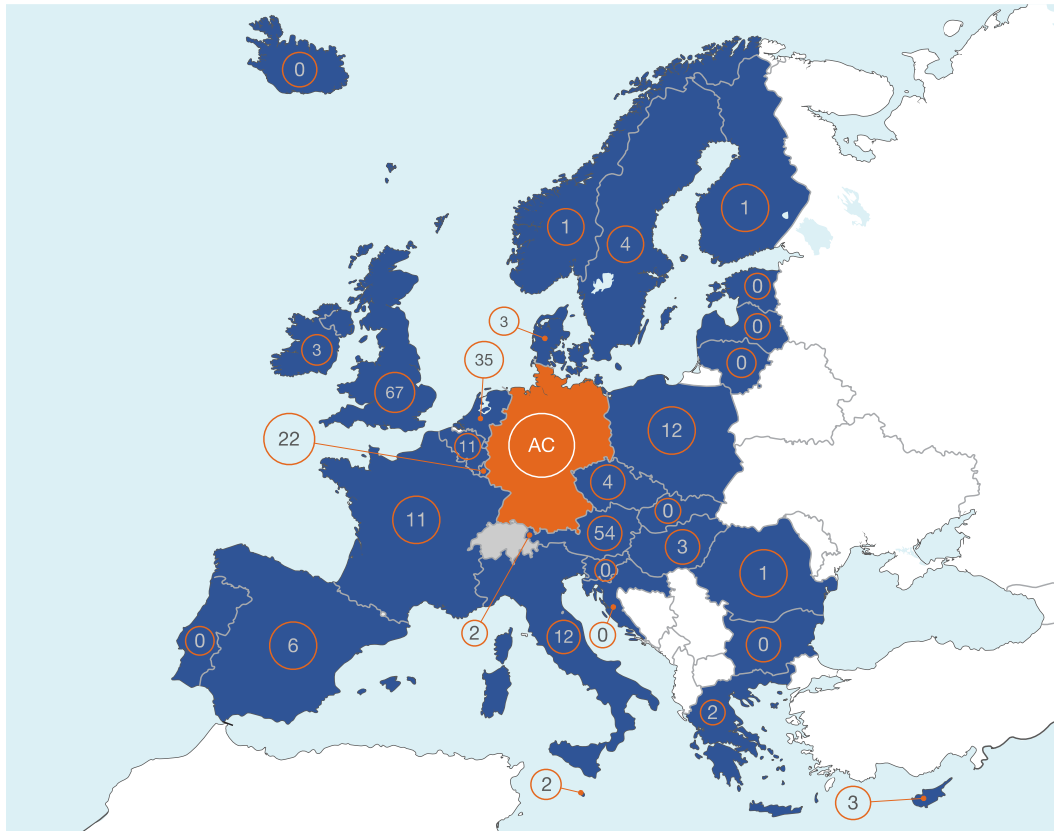


Figure 4.16 Overview of cross-border mergers with a German **acquiring** company (entry) (N = 257)

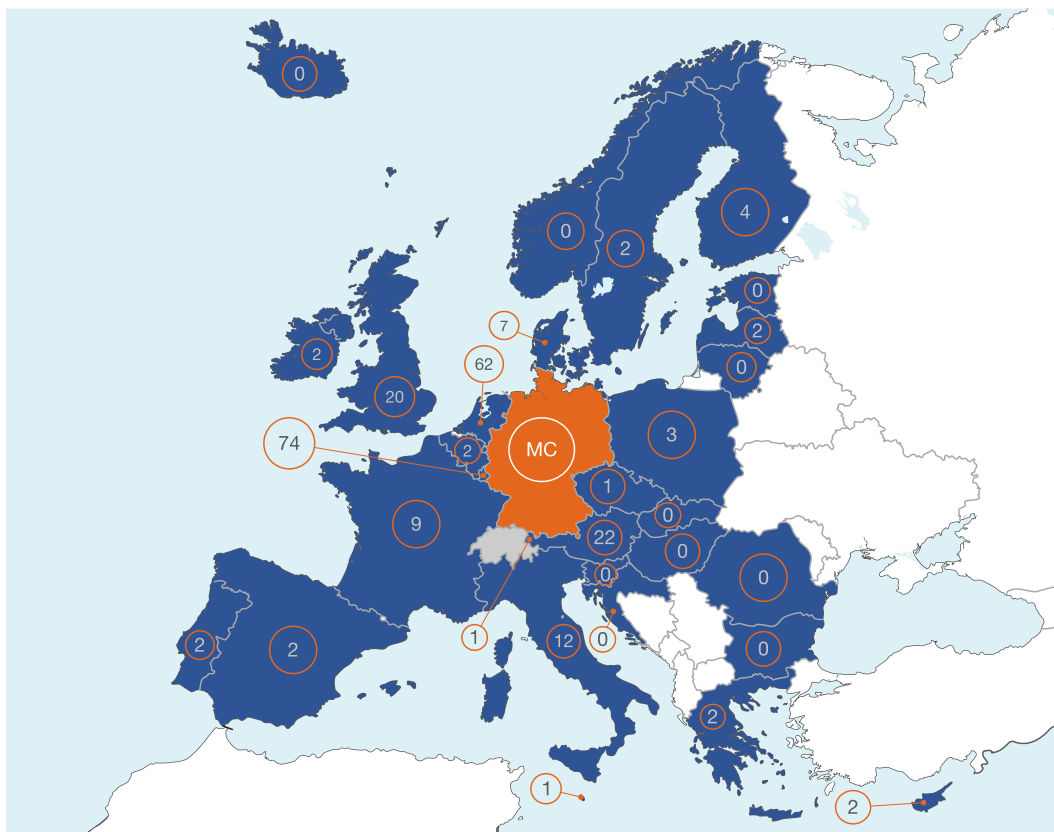


Figure 4.17 Overview of cross-border mergers with a German **merging** company (exit) (N = 231)

4.7.3 The Netherlands

492 CBMs have been identified which involve Dutch ACs and MCs.

Dutch ACs were involved in 266 CBMs. Out of those, most of them were with MCs from Germany (62), Luxembourg (29), Belgium (26), Cyprus (19), Italy (12) and France (11). It is also noteworthy that more Dutch companies acquired German (62) and Cypriot MCs (19) than Dutch companies merging with German (35) and Cypriot ACs (4). The positive net balance with Germany and Cyprus is 27 and 15 respectively.

On the other hand, 38 more Dutch companies merged with Luxembourg ACs compared to Luxembourg companies merging with Dutch ACs.

Overall, 226 of the collected CBMs involved Dutch MCs. Within those, 67 were with a Luxembourg AC. Other companies that commonly merged with Dutch MCs were from Germany (35), Belgium (28), Spain (25), and France as well as Italy (both 24)

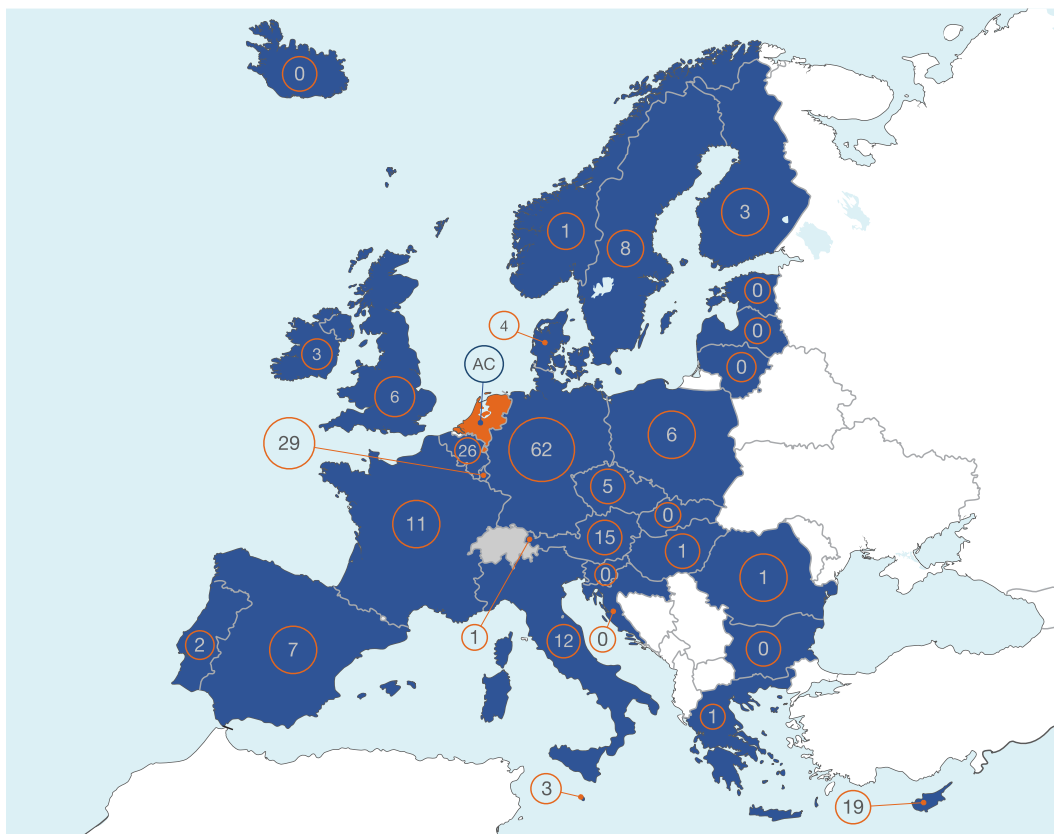


Figure 4.18 Overview of cross-border mergers with a Dutch **acquiring** company (entry) (N = 266)

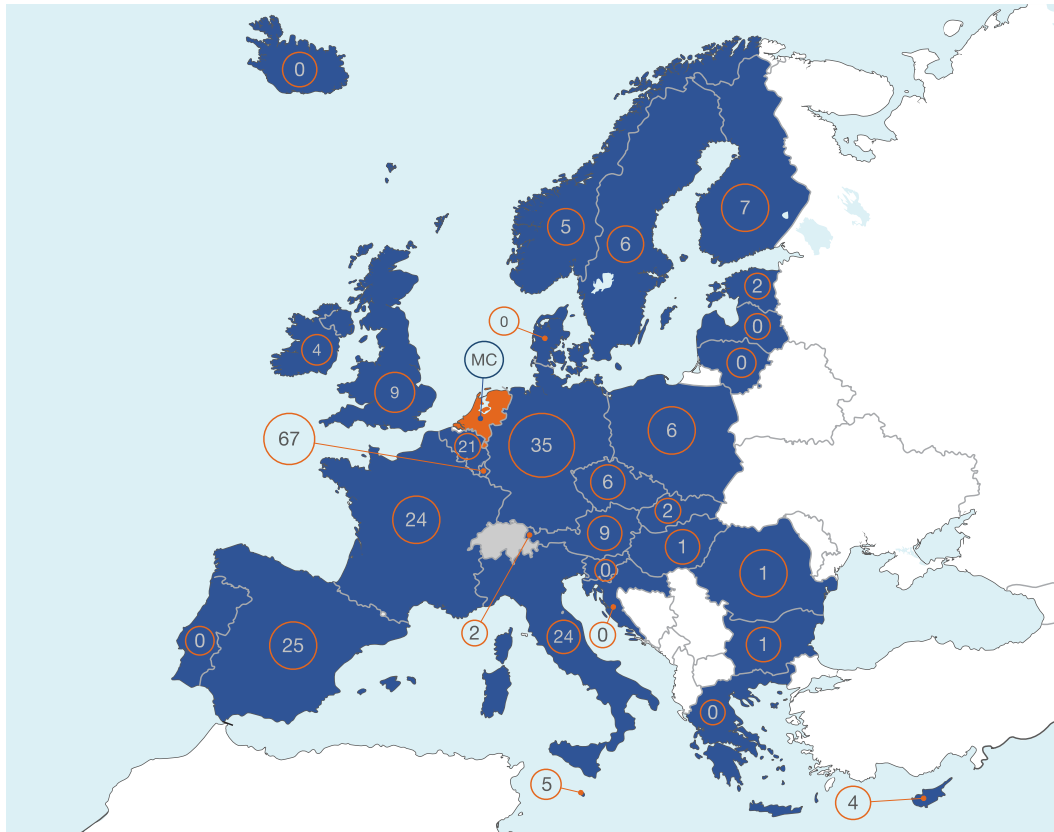


Figure 4.19 Overview of cross-border mergers with a Dutch **merging** company (exit) (N = 226)

4.7.4 France

172 CBMs have been identified which involve French companies. The net balance is positive with 83 CBMs with a French MC and 89 CBMs where the AC was governed by the laws of France.

From both the MC and AC perspective, the two jurisdictions that are most often involved in CBMs with France were Luxembourg and the Netherlands with 51 and 35 transactions respectively. Other jurisdictions worth noting were Germany with 20 transactions and Belgium with 19 transactions.

France has a positive net balance of 13 transactions with the Netherlands, with 11 CBMs including a French MC and 24 CBMs including a French AC.

Out of the 51 transactions between France and Luxembourg that were identified in the reporting period, there were 27 CBMs involving a French MC and 24 CBMs involving a French AC, meaning that there is a negative net balance for France of 3 transactions.

Vis-à-vis the UK, French companies were the MC in 8 CBMs and French companies were the AC in 3 CBMs, which means that there exists a negative net balance of 5.

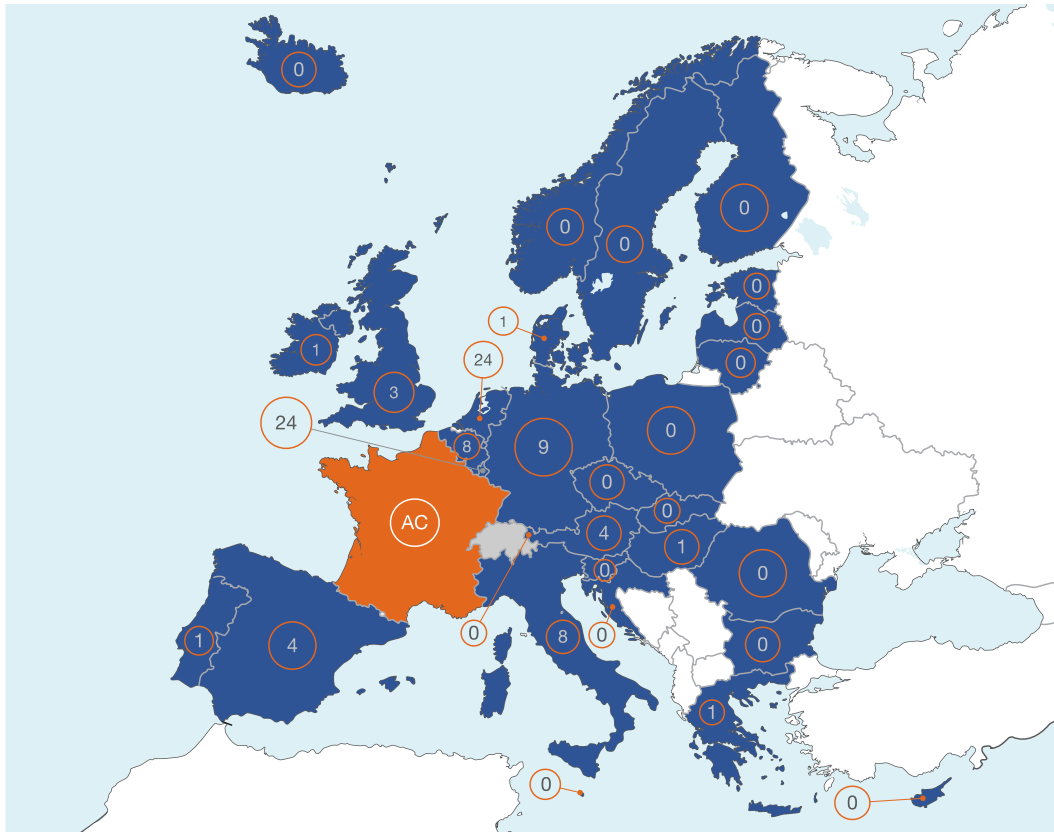


Figure 4.20 Overview of cross-border mergers with a French **acquiring** company (entry) (N = 89)

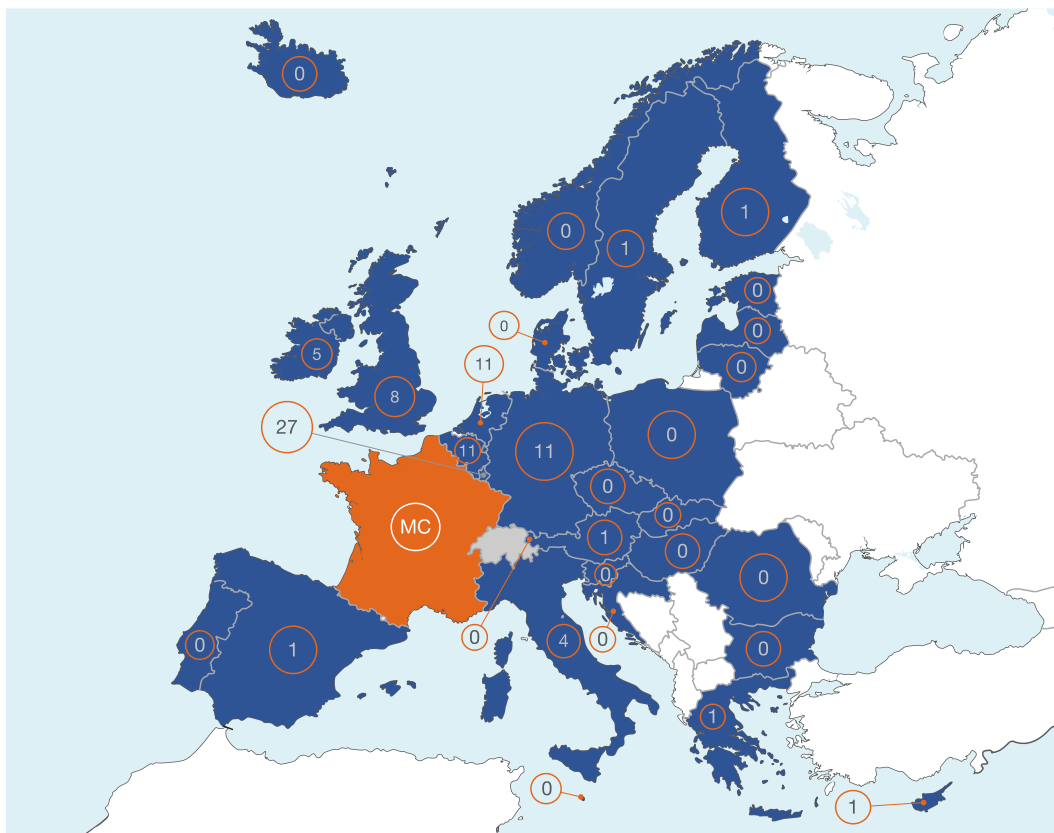


Figure 4.21 Overview of cross-border mergers with a French **merging** company (exit) (N = 83)

4.7.5 Finland

In total, there have been 40 mergers for which a company having its registered office in Finland has been the AC in the merger transaction. The largest number of CBMs in which the Finnish company has been the AC, are CBMs with a Swedish MC (9), followed by a Dutch MC (7), a Danish MC (6), a German MC (4), a Norwegian and Austrian MC (both 3) as well as a Belgian MC (2). Finnish companies merged with several MCs from various other countries only once, namely the Czech Republic, France, Greece, Hungary, Romania and Slovakia.

There were 7 CBMs for which a company having its registered office in Finland was the MC in the transaction. Such CBMs were with companies from the Netherlands (3), Sweden (2) as well as Austria and Germany (both 1).

Overall, there has thus been a positive net balance of 33 for Finland, particularly with Sweden (7), Denmark (6), the Netherlands (4), Germany (3), as well as with Austria and Belgium (2).

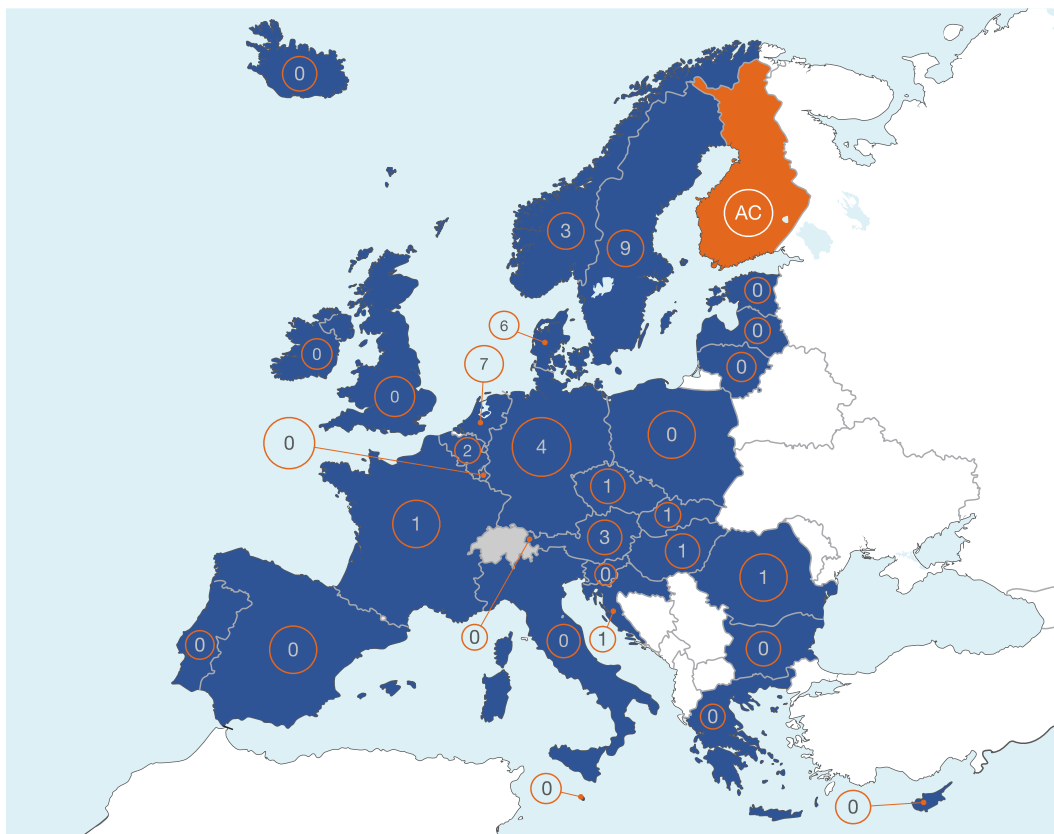


Figure 4.22 Overview of cross-border mergers with a Finnish **acquiring** company (entry) (N = 40)

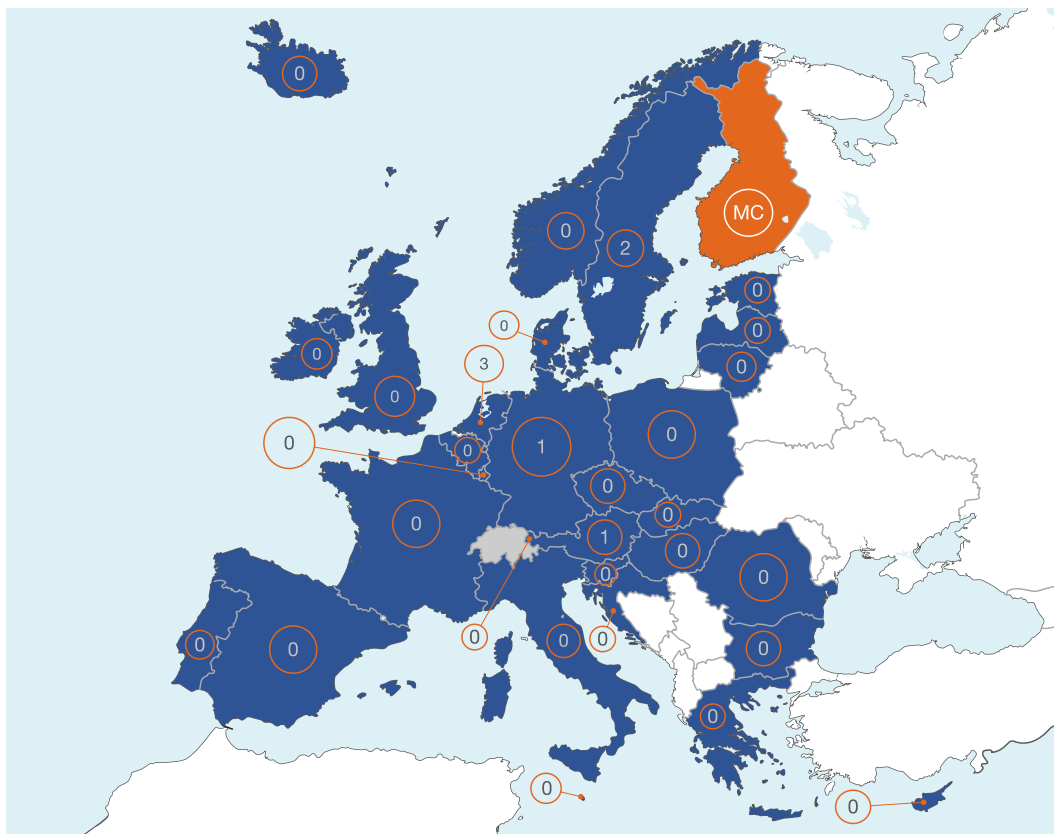


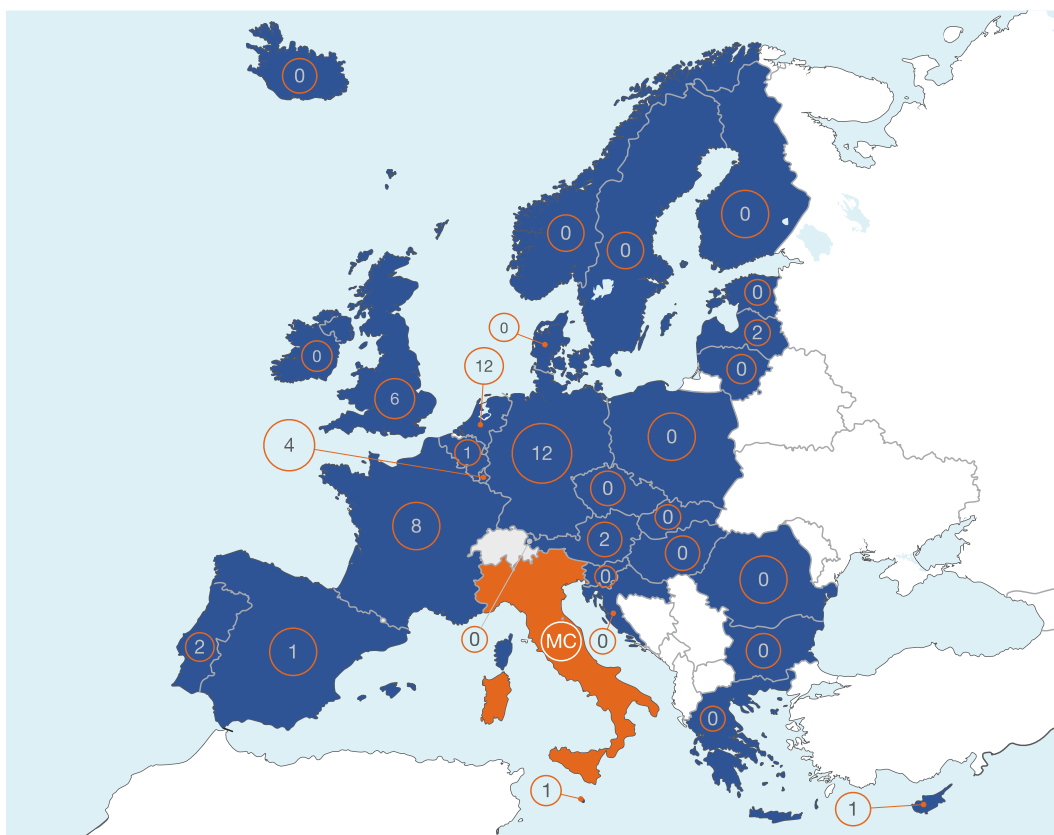
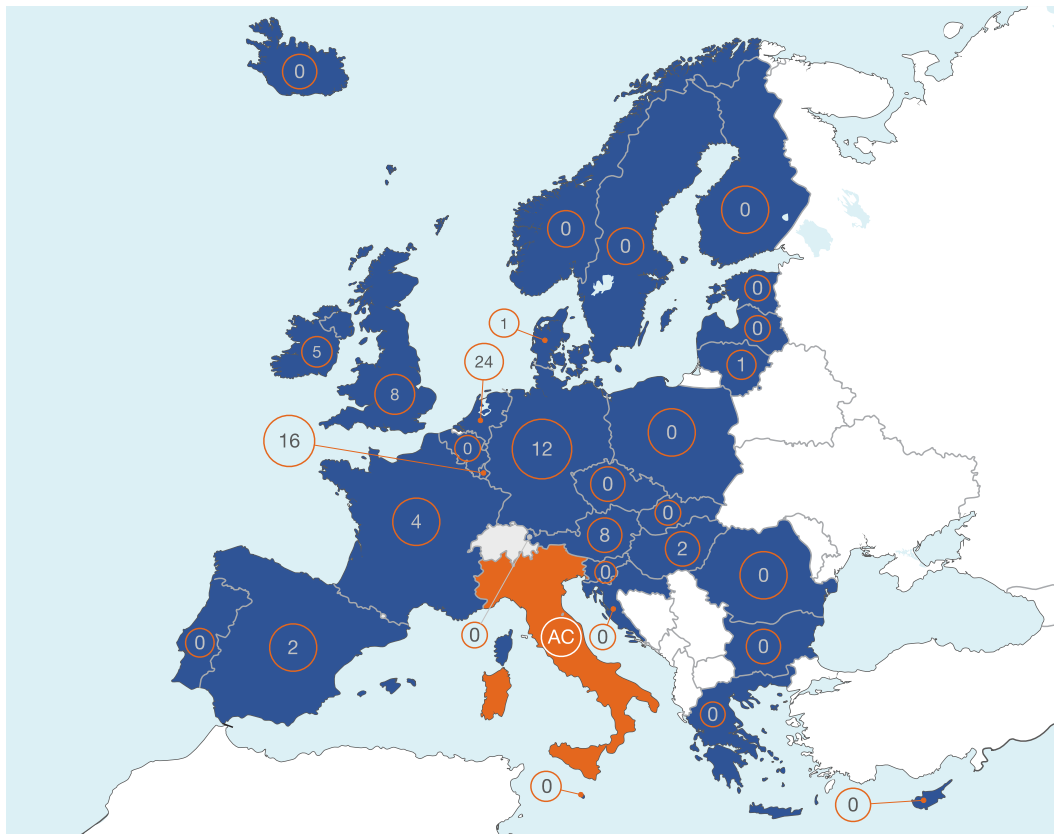
Figure 4.23 Overview of cross-border mergers with a Finnish **merging** company (exit) (N = 7)

4.7.6 Italy

Italian companies have been involved in a total of 136 CBMs. Italy is a country with a positive net balance, meaning that Italian companies were more often involved in a CBM as ACs (84) rather than MCs (52).

More specifically, CBMs that involve an Italian AC can predominantly be found with MCs from the Netherlands (24), Luxembourg (16), Germany (12) as well as MCs from Austria (8) and the UK (8).

Cases where the Italian company acts as the MC can mostly be found with the Netherlands (12), Germany (12), France (8) and the UK (6).



The figures show varying results for Italian companies acting as MCs and ACs. For CBMs with the Dutch, Luxembourg and Austrian companies, there is a positive net balance, i.e., the Italian company more commonly acts as the AC. With the Netherlands and Luxembourg, there is a positive net balance of 12 transactions, and vis-à-vis Austria the net balance is 6. For transactions with Germany, the net balance is neutral (12 AC/12 MC transactions).

4.7.7 United Kingdom

In total, 151 CBMs have been identified which involve British ACs and MCs. In 44 CBMs, the UK company has been the AC. In such cases, half of the MCs had their registered office in Germany (20), while the rest were from the Netherlands (9), France (8), Italy (6) and Austria (1).

For the same period, there have been 107 UK MCs, which is more than twice the number of ACs. Most CBMs took place with German ACs (67), which is more than triple the number of transactions with German MCs (20). The net balance with Germany is therefore -47.

Similarly, in 23 transactions, UK MCs merged with an Austrian AC, compared to only 1 Austrian MC that merged with a UK AC. This results in a negative net balance of 22 transactions.

UK companies also merged with 8 Italian, 6 Dutch and 3 French ACs.

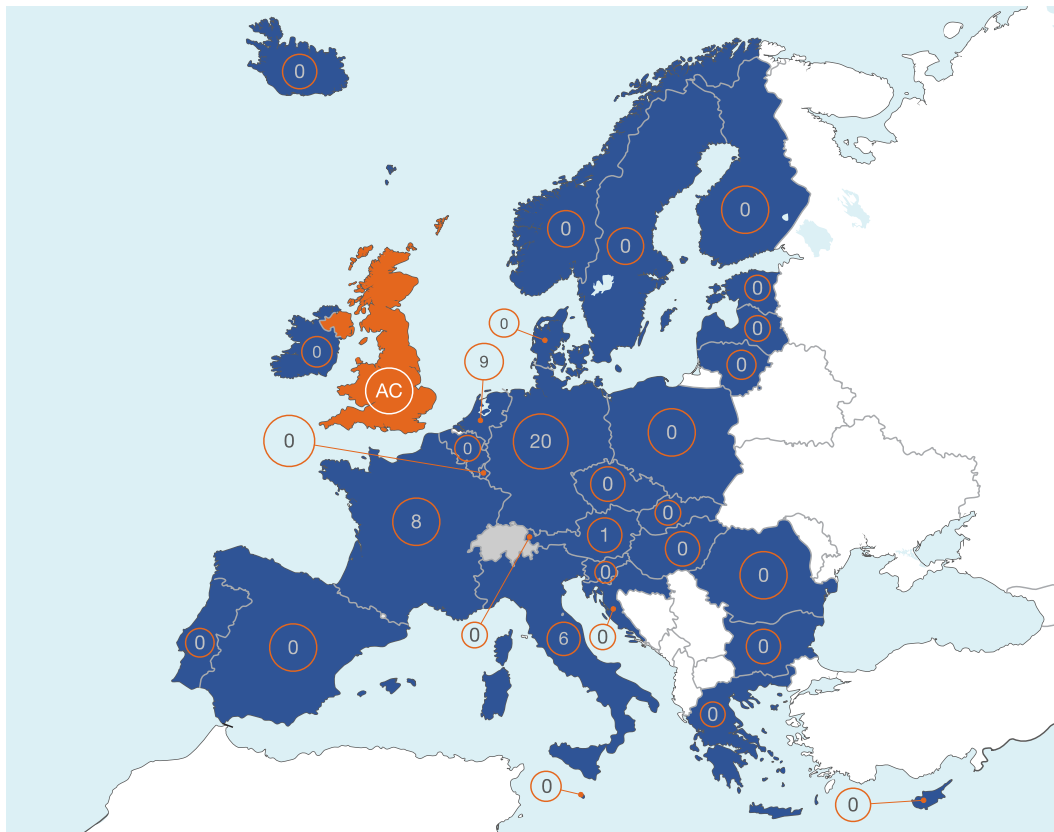


Figure 4.26 Overview of cross-border mergers with a UK **acquiring** company (entry) (N = 44)

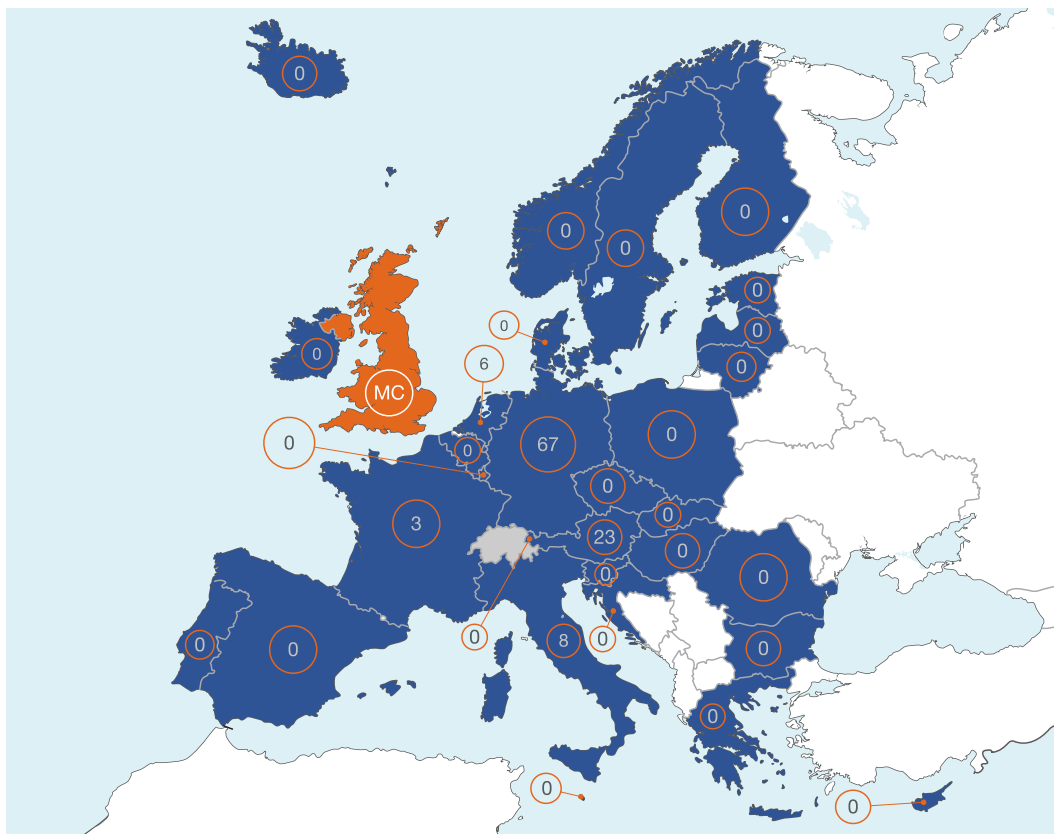


Figure 4.27 Overview of cross-border mergers with a UK **merging** company (exit) (N = 107)

4.8 Seat transfers: general overview

This section examines CBSTs between EU and EEA Member States on the basis of the data that were collected from the official journals of Germany, France, Netherlands, Spain and UK throughout the 2013 – 2017 period.

It should be recalled at this juncture that legislation on CBSTs is not harmonised at the European level and only 12 EU Member States currently allow cross-border transfers of the registered office based on national legislation: Belgium, Cyprus, the Czech Republic, Denmark, France, Greece, Italy, Luxembourg, Malta, Portugal, Slovakia and Spain.¹⁰

At the same time, it should be considered that the CJEU obliged Member States in three landmark cases - *Cartesio*, *Vale* and *Polbud* – to allow cross-border transfers of the registered office of a company under certain circumstances.

¹⁰ See footnote 4.

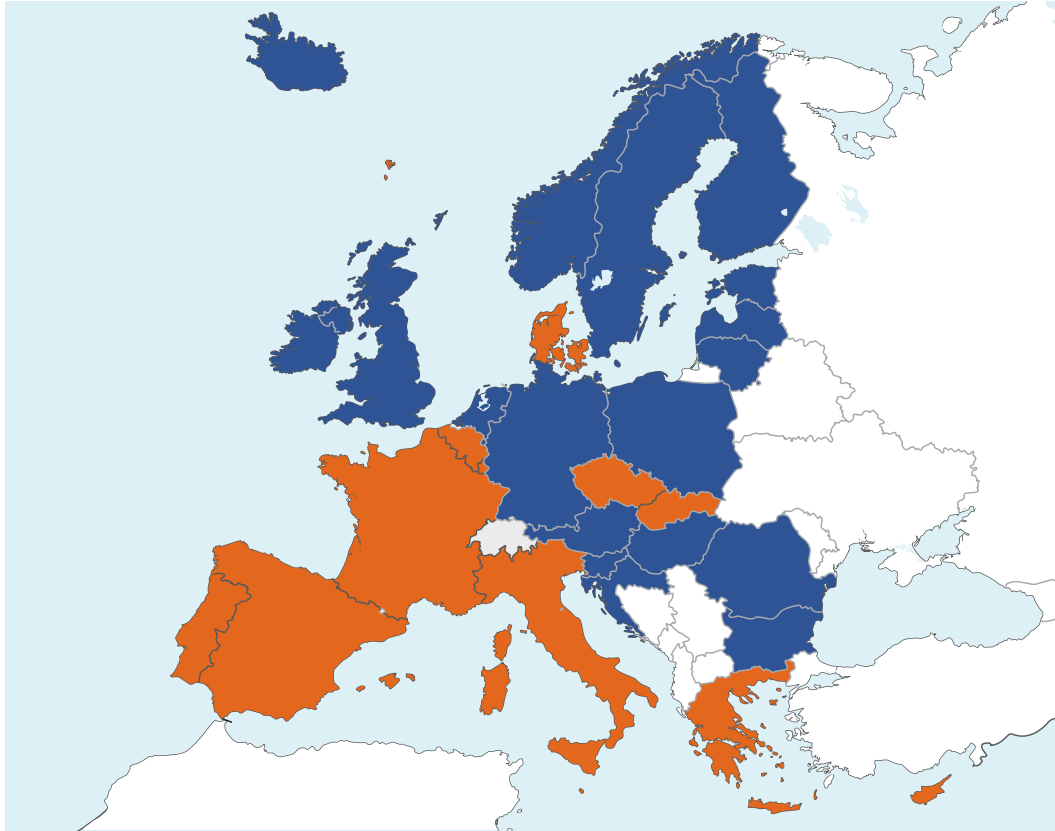


Figure 4.28 Overview of EU Member States with legislation on cross-border seat transfers (orange) and EU Member States without legislation on cross-border seat transfers (blue)

As no data were collected on the topic in a structural manner, the main question is to what extent CBSTs currently take place between EU Member States. And if they do, are registered offices of companies transferred between Member States that have legislation in place or are such transfers based on the above mentioned CJEU judgments, i.e., between Member States that do not have such legislation in place?

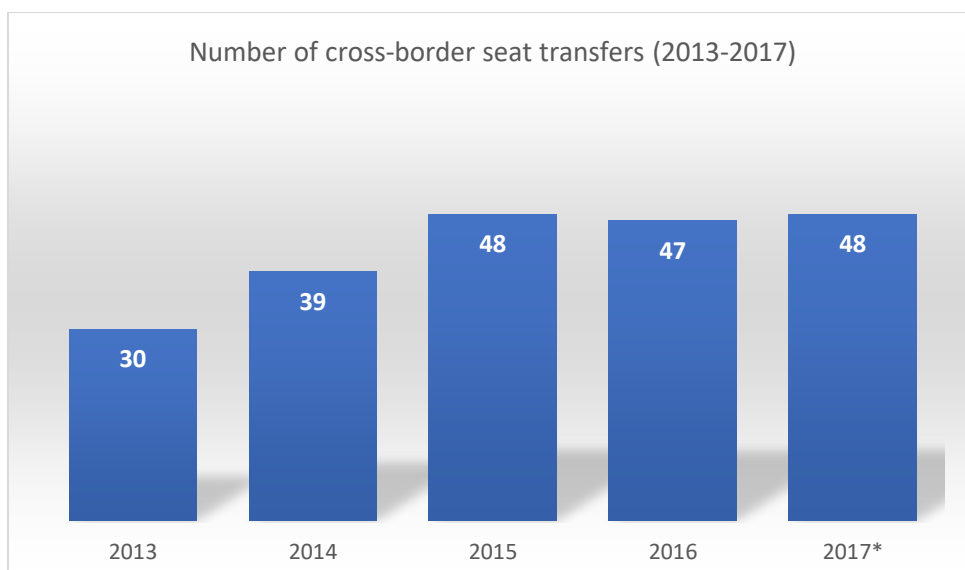


Figure 4.29 Number of cross-border seat transfers per year (N = 212)

4.9 Seat transfers: CBSTs per country (aggregated)

A distinction at this juncture should be made between exit and entry cases, especially when analysing the results.

Map of Europe showing the number of COVID-19 cases per country as of March 11, 2020. The map uses a blue color for land and light blue for water. Numbers are displayed in circles over each country. The highest number of cases is 125 in Germany, followed by 112 in France, 99 in the United Kingdom, and 8 in Ireland. Most other countries show 0 cases.

Country	Number of Cases
Albania	0
Andorra	0
Austria	0
Azerbaijan	0
Belarus	0
Belgium	0
Bosnia and Herzegovina	0
Bulgaria	0
Croatia	0
Cyprus	0
Czechia	0
Denmark	0
Estonia	0
Finland	0
France	112
Germany	125
Greece	0
Hungary	0
Iceland	0
Ireland	8
Italy	9
Latvia	0
Lithuania	0
Malta	0
Netherlands	1
Norway	0
Poland	0
Portugal	1
Romania	0
Slovakia	0
Slovenia	0
Spain	25
Sweden	0
Switzerland	5
Turkey	0
Ukraine	0
United Kingdom	99
Uzbekistan	0
Vatican City	0
Yemen	0

27

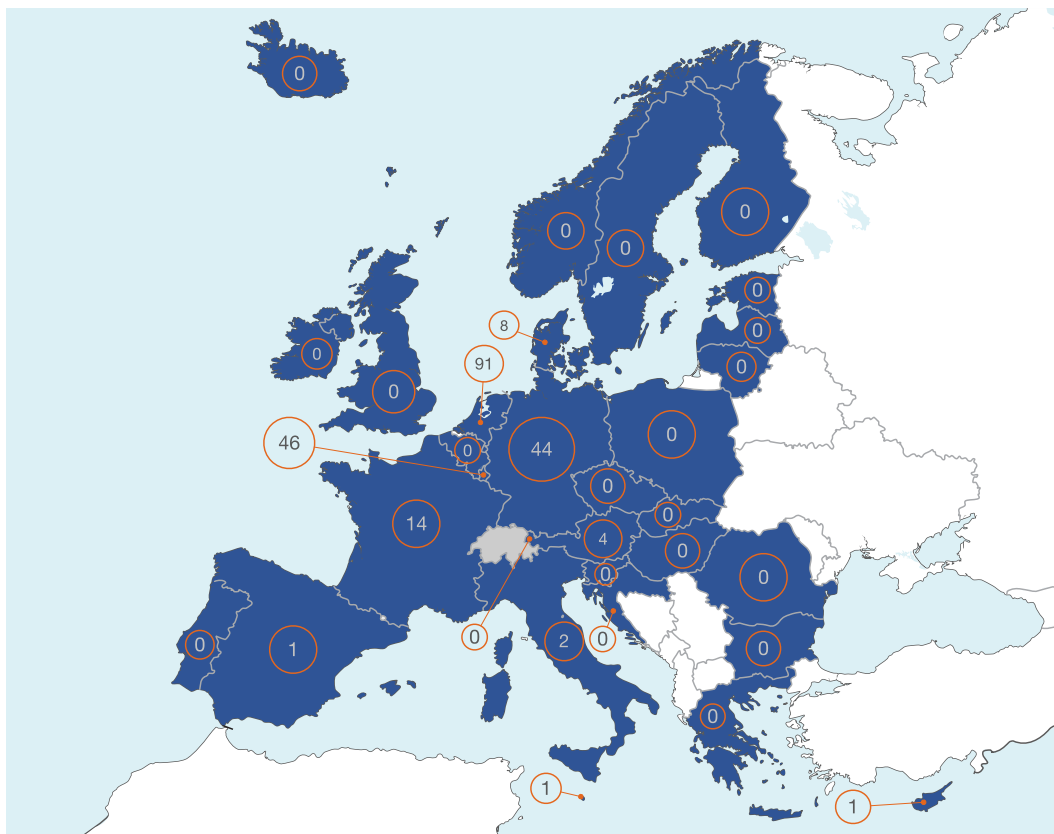


Figure 4.31 Exit CBSTs in the EU between 2013 and 2017 (N = 212)

With reference to exit cases, on the one hand, Germany, Luxembourg and The Netherlands were the countries with most companies migrating to other Member States with, respectively, Germany (44), Luxembourg (46) and the Netherlands (91).

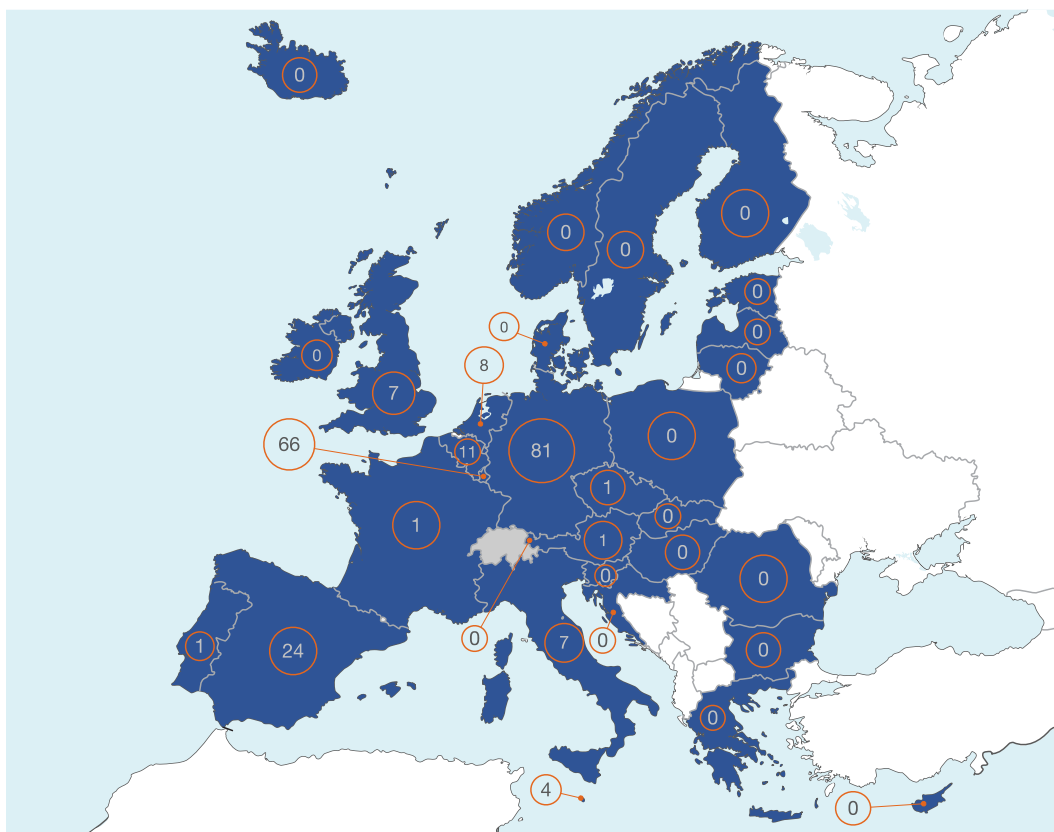


Figure 4.32 Entry CBSTs in the EU between 2013 and 2017 (N = 212)

On the other hand, Germany, Luxembourg and Spain had the most entry CBSTs (with 81 for Germany, 66 for Luxembourg and 24 for Spain). It is interesting to notice that Germany and Luxembourg are the two countries which have the highest number of entry and exit cases, with a relatively smaller net balance in comparison to other countries such as the Netherlands (with 91 exit cases and 8 entry cases) and Spain (1 exit case and 24 entry cases).

In relation to Member States with a lower number of CBTs, Belgium, France and Denmark have a positive net balance. Belgium has no exit CBSTs, while it had 11 entry cases; France, conversely, had 14 exit cases and 1 entry transaction, whereas Denmark had 8 exit cases and no entry cases.

Member States such as Austria, Italy, Malta and the UK have small net differences between exit and entry cases, varying from 0 to 4 exit cases and from 1 to 7 entry CBSTs. There are no exit cases from the UK, there is 1 exit CBST from Malta and 4 exit cases from Austria. On the other hand, there was only 1 entry case to Austria, 4 to Malta and 7 entry cases to Italy and the UK.

The rest of the 14 countries reporting CBSTs (Cyprus, Czech Republic and Portugal) had the lowest number of transactions, fluctuating between 0 and 1 in both entry and exit cases.

4.10 Seat transfers: employee numbers

It can be seen that there are 59 companies, representing 28% of the total number of entities involved in CBSTs, which have between 1 and 5 employees, whereas only one case of a company for each of the categories '301-500', '501-1000' and '1001-2000' employees can be reported.¹¹ The second-highest number of companies participating in CBSTs are those with approximately 6 to 50 employees (around 5% of the total number). Subsequently, no companies with '51-100' and '101-300' employees were reported, the same is the case for companies with more than 2000 employees. Finally, it must be noted that no employee data are available for 66% of the total number of companies involved in CBSTs.¹²

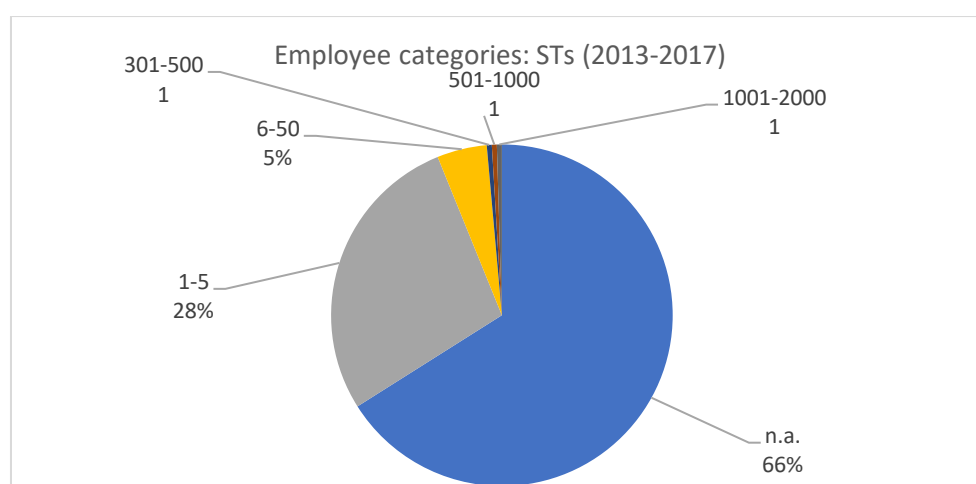


Figure 4.33 Employee figures for companies involved in seat transfers between 2013-2017; in number of cases (N = 212)

¹¹ The company falling in the '1001-2000 employees' category transferred its seat after first having been converted into an SE.

¹² This large fraction of cases where no data are available will be subject to further analysis and will likely change in subsequent reports.

5. References

Literature

T. Biermeyer, *Study on the Cross-Border Merger Directive*, conducted with Lexidale and Bech-Bruun, commissioned by the European Commission, 2013

T. Biermeyer, *Stakeholder Protection in Cross-Border Seat Transfers in the EU* (WLP, Oisterwijk 2015)

D. Van Gerven and P. Storm (eds.), *The European Company: Volume I and Volume II* (Cambridge University Press, Cambridge 2008)

D. Van Gerven (ed.), *Cross-Border Mergers in Europe: Volume I and Volume II* (Cambridge University Press, Cambridge 2010 and 2011)

C. Gerner-Beuerle, F.M. Mucciarelli, E. Schuster and M. Siems, 'Cross-border reincorporations in the European Union: the case for comprehensive harmonisation', *Journal of Corporate Law Studies* (2017)

Legislation

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

Case-Law

Case C-210/06 Cartesio, ECLI:EU:C:2008:723

Case C-378/10 VALE Építési, ECLI:EU:C:2012:440

Case C-106/16 Polbud, ECLI:EU:C:2017:804

6. Abbreviations

AC	Acquiring Company
CBM	Cross-Border Merger
CBST	Cross-Border Seat Transfer
CJEU	Court of Justice of the European Union
LLC	Limited Liability Company
MC	Merging Company
SE	<i>Societas Europaea</i>
SCE	<i>Societas Cooperativa Europaea</i>

7. Definitions

Acquiring company	The company that remains after a cross-border merger
Cross-border seat transfer	Cross-border transfer of the registered office of a company
Entry CBSTs	CBSTs in which a company transfers its registered office to a different country
Exit CBSTs	Exit CBSTs are those in which a company transfers its registered office from one country to another one
Member States	EU and EEA Member States
Merging company	The disappearing company in a cross-border merger
Net sending country	Countries with more companies exiting compared to companies entering as a result of a cross-border transaction
Net receiving country	Countries with more companies entering compared to companies exiting as a result of a cross-border transaction
Project	The Cross-Border Corporate Mobility in the EU project
Report	The present report

Meet the team

8. Senior Advisors

	
 prof. Mieke Olaerts <i>Professor of Comparative and National Company Law and Academic Director ICGI</i>	 dr. Stephan Rammeloo <i>Associate professor of (European) Company Law, Private International Law and Comparative Law at Maastricht University and visiting professor at China European Union Law School (CESL), Beijing, China</i>

9. Country Experts

		
 Gottfried Gassner Austria <i>Partner at BINDER GRÖSSWANG Rechtsanwälte GmbH</i>	 Moritz Salzgeber Austria <i>Foreign Associate at Kirkland & Ellis LLP (New York)</i>	 Dirk Van Gerven Belgium <i>Partner at NautaDutilh, chairman of the supervisory board of the Belgian Financial Services and Markets Authority (FSMA) and Vice-President of CEPANI</i>
		
 prof. Hana Horak Croatia <i>Jean Monnet Chair and Professor of commercial and company law at University of Zagreb (Croatia)</i>	 dr. Thomas Papadopoulos Cyprus / Greece <i>Lecturer in Business Law at the University of Cyprus and Visiting Professor at the International Hellenic University (Thessaloniki, Greece)</i>	 dr. Milan Hulmak Czech Republic <i>Assistant Professor at Palacký University Olomouc (UPOL) and Of Counsel at Havel, Holásek & Partners</i>



 **prof. Jesper Lau Hansen**

Denmark
*Professor of Financial Markets Law at
University of Copenhagen*



 **Karin Madisson**

Estonia
Partner at SORAINEN Law Firm



 **Maria Jauhiainen**

Finland
*Legal Counsel at the Union of
Professional Engineers*



 **prof. Didier Poracchia**

France
*Professor at Paris I University
(Panthéon-Sorbonne) and Consultant at
Jeantet*



 **Catherine Cathiard**

France and Luxembourg
*Avocat aux Barreaux de Paris et de
Luxembourg
Lecturer in European company law and
cross-border reorganizations, University
of Paris 1 Panthéon-Sorbonne, Paris-
Dauphine, Bordeaux, Aix-Marseille and
IEP of Strasbourg
Director at Wildgen*



 **prof. Wolf-Georg Ringe**

Germany
*Professor of Law University of Hamburg
and Visiting Professor Oxford University*



 **prof. Katalin Gombos**

Hungary
*Judge at the Kúria (Supreme Court of
Hungary), Associate professor National
University of Public Service and
University of Szeged*



 **dr. László Szegedi**

Hungary
*Lecturer of EU law National University
of Public Service*



 **prof. Blanaid Clarke**

Ireland
*McCann FitzGerald Chair in Corporate
Law at Trinity College Dublin*



👤 dr. Federico Mucciarelli

Italy
Associate Professor of Business Law at the University of Modena and Reggio Emilia



👤 Zane Paeglite

Latvia
Senior Associate at SORAINEN Law Firm



👤 Gintautas Bartkus

Lithuania
Partner-in-charge at Deloitte Lithuania and Baltics and Lecturer at Vilnius University



👤 dr. Adrian M. Gabarretta

Malta
Partner at GANADO Advocates



👤 dr. Robbert van het Kaar

Netherlands
Senior Researcher AIAS Institute, University of Amsterdam



👤 dr. Inger Marie Hagen

Norway
Researcher at Fafo



👤 prof. Arkadiusz Radwan

Poland
Professor at University of Social Sciences (Łódź), President of the Allerhand Institute and Of Counsel at Kubas Kos Galkowski Law Firm



👤 prof. Mónica Fuentes Naharro

Spain
Full Professor of Commercial Law at the Faculty of Law, Universidad Complutense de Madrid

10. Project Leaders



About Thomas Biermeyer

Thomas Biermeyer researches and publishes on the topic of cross-border corporate mobility. He has written his dissertation on the topic of stakeholder protection in cross-border company seat transfers, has led the European Commission study on the application of the Cross-Border Mergers Directive together with Lexidale and Bech-Bruun and collaborates on corporate law studies for the European Parliament. His research expertise is focused on gathering comparative legal information as well as empirical (quantitative) elements. Furthermore, Thomas Biermeyer works as a senior associate advising listed and unlisted companies in the area of cross-border corporate transactions, including cross-border mergers, seat transfers and the setting up of SEs. He has been a visiting researcher at the Harvard Law School, Oxford University and Paris 1 – Sorbonne.

Email: thomas.biermeyer@maastrichtuniversity.nl
Website: <https://www.maastrichtuniversity.nl/thomas.biermeyer>
SSRN: [Author page](#)

About Marcus Meyer

Marcus Meyer's primary research focus is on employee participation issues in multinational corporations, both under national and EU law. He has written his dissertation on the position of Dutch works councils in multinational corporations, which is forthcoming in April 2018. His research is primarily of an empirical nature and focuses both on quantitative as well as qualitative legal research. Having participated in a number of research projects on cross-border mergers, he also has a strong interest in corporate governance issues.

Email: marcus.meyer@maastrichtuniversity.nl
Website: <https://www.maastrichtuniversity.nl/marcus.meyer>
SSRN: [Author page](#)

11. Research Assistants



 **Osman Abdi**



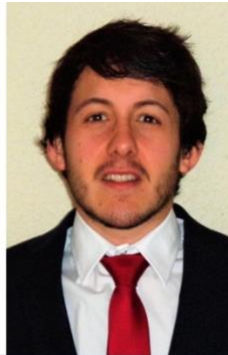
 **Thomas Devine**



 **Lioba Gasser**



 **Henna Jaakola**



 **Diego Gonz  les Manso**



 **Andreyan Nedyalkov**



 **M  ty  s Szab  **



 **Jan Przerwa**



 **Nathalie Zurel**

Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

The ITEM Expertise Centre is the pivot of scientific research, counselling, knowledge exchange, and training activities with regard to cross-border cooperation and mobility. ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Meuse-Rhine Euregion (EMR), and the (Dutch) Province of Limburg.
www.maastrichtuniversity.nl/item

Institute for Corporate Law, Governance and Innovation Policies / ICGI

ICGI is a research institute connected to the Faculty of Law at Maastricht University. ICGI carries out scientific research on its own initiative and on commission by third parties and publishes, consults, and provides PhD research supervision and coaching, education, and training. The object of research is the corporation and its rules and regulations in interaction with its changing environment.
www.maastrichtuniversity.nl/icgi

www.maastrichtuniversity.nl/corporate-mobility-project

