

Luxembourg

Marcus Peter and Kate Yu Rao, [GSK Stockmann](#)

Market overview

Having dropped considerably in 2020 due to Brexit and the COVID crisis, domestic and cross-border M&A involving Luxembourg picked up speed in 2021 due to the decreased impact of the pandemic. There has been a rebound of shareholder activism in the market, which has encouraged deals in various sectors, such as cargo transportation and logistics; automotive and engineering; and technology, media, and telecommunications (TMT).

However, since the beginning of 2022, dealmakers, especially in the real estate sector, have faced a challenging environment for M&A. Several geopolitical tensions, the energy crisis, soaring inflation, rising interest rates, and a looming recession have increased the cost of capital and led to more cautious capital deployment, which has decelerated M&A transactions and private equity deals.

Due to the legal and political stability of Luxembourg's regulatory, financial, and legislative framework, and the growing fund industry and financial sector, the Luxembourg market continues to generate M&A transactions aimed at European-based targets, despite the current economic situation.

The deal volume for Luxembourg itself is rather small; however, the number of M&A deals steered through Luxembourg vehicles into other markets remains fairly high. M&A targets in the private and public sectors are often not located in Luxembourg but in other jurisdictions.

Deals in which targets are located in Luxembourg are mostly private M&A transactions. However, public deals are seen from time to time.

Significant deals

One of the most important public deals in 2023 was Teleperformance – a French-based provider of customer care, technical support, customer acquisition, and other specialised services – launching a voluntary public offer in April 2023 to acquire all the issued and outstanding shares in Majorel Group Luxembourg, a Luxembourg-based provider of business process outsourcing services, followed by exercising in November 2023 its right to squeeze out the holders of the remaining shares pursuant to the Luxembourg Takeover Law (see below), after obtaining approximately 99.91% of the capital carrying voting rights in Majorel at the completion of the offer, and delisting the shares of Majorel from the market.

As for private M&A deals, the key sectors are mostly financial institutions, transportation and logistics, TMT, and business services. Sometimes there are also deals concerning the consumer and retail sector, and the industrials sector.



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Financial sector deals

In March 2023, Foyer, Luxembourg's leading privately owned financial group, agreed to acquire 100% of the shares of Globality, owned by ERGO Reiseversicherung, which is part of ERGO Group. The acquisition was completed in July 2023, following regulatory approval from Commissariat aux Assurances, the Luxembourg insurance regulator. Through the acquisition, Foyer strengthens its position in the international health insurance market, while Globality brings its expertise and territorial reach, accelerating the expansion of its business.

In April 2023, Banque Havilland agreed to sell its business of fund depositary and custody services and related services to Banco Inversis, a subsidiary of the Spanish financial institution Banca March, which will take over the business and its clients. The transaction is subject to regulatory approvals by means of a newly established Luxembourg branch of Banco Inversis.

Non-financial sector deals

Meanwhile, there were many deals in non-financial sectors in 2023. In January 2023, Exceet Group, a Luxembourg-based partnership limited by shares listed on the regulated market of the Frankfurt Stock Exchange, acquired the APEX group, a German-based group specialised in the planning and operating of hydrogen plants; selling hydrogen, electricity, and heat generated in connection with hydrogen plants; and the development of corresponding software and hydrogen storage systems.

In February 2023, FNZ, a global wealth management platform, agreed to acquire International Fund Services & Asset Management, a Luxembourg-based B2B fund platform, to strengthen its client proposition by enhancing its end-to-end wealth management platform, providing access to specialist talent, expertise, and a presence in Luxembourg. The acquisition was completed following regulatory approval received in January 2024.

In July 2023, Luxembourg's majority state-owned energy company Encevo acquired the Nexxtmove business, which is a software business line that operates charging stations for electric



Marcus Peter
Partner
GSK Stockmann
E: marcus.peter@gsk-lux.com

About the author

Marcus is a partner at GSK Stockmann. He previously worked at a leading independent Luxembourg law firm for 12 years (four years as partner), before opening the Luxembourg office of GSK Stockmann in 2016.

Marcus specialises in investment funds, private equity and venture capital, as well as corporate and M&A law. He regularly speaks at investment fund events and is also a member of the Cross-Border Business Lawyers Network.

Marcus studied at Rostov-na-Donu State University and Saarland University, and is qualified in Germany and Luxembourg.



Kate Yu Rao
Senior associate
GSK Stockmann
E: kate.rao@gsk-lux.com

About the author

Kate is a senior associate at GSK Stockmann in Luxembourg. Prior to joining the firm, she worked for a leading independent Luxembourg law firm.

Kate specialises in matters associated with investment funds, private equity activity, corporate and finance. She holds a qualification as a fund manager accredited by the Securities Association of China.

Kate studied at the East China University of Political Science and Law, at the Erasmus University Rotterdam and at Bologna University. She also speaks Chinese and is qualified to practise in China.

cars, from bankrupt Belgian energy company Powerdale. Encevo thus takes over the management, operation, and exploitation of a platform that manages around 50,000 charging stations daily and a similar number of electric charging cards, as well as electromobility-related applications in Belgium, Luxembourg, and the Netherlands.

Economic recovery

Due diligence procedures have become more onerous, to deeply assess the financial situation of target companies, due to the invisible impact of several factors, such as the pandemic, the Ukraine crisis, the energy crisis, and the situation in the Middle East.

Soaring inflation, rising interest rates, and a looming recession have also affected how sellers and purchasers structure deals.

Purchasers might prefer to reduce the amount of cash paid as consideration and instead tie a portion of the purchase price to the performance of the target company after closing (earn-out provisions). Alternatively, sellers might be asked to finance the deal by way of granting a vendor loan to purchasers that would be repaid in two or three years with certain conditions. In addition, purchasers might offer sellers the opportunity to roll over and participate in a new structure that purchasers have established with the transferred target company, as a minority shareholder, to have a portion of the purchase price paid in kind.

All these measures could be appropriate ways to allocate risk and give purchasers a degree of security. Furthermore, they could address liquidity issues faced by purchasers.

The investment funds industry continues to play a major role in the Luxembourg financial and legal market. As of December 31 2023, the total net assets of undertakings for collective investment – comprising undertakings for collective investment, specialised investment funds, and investment companies in risk capital – amounted to €5,285.010 billion, compared to €5,028.456 billion as of December 31 2022. The volume of net assets increased by 5.10% in 2023, which is significant compared with the decrease of 14.18% for 2022. The equity market continued its recovery against a background of optimism over rate cuts in 2024, amid declining inflation figures and despite geopolitical conflicts.

Following an initial increase in SPAC transactions in Luxembourg during 2021, the use of SPACs as vehicles for mergers or listings significantly declined in late 2022. The trend continued in 2023, reflecting the global slowdown in SPAC activity.

Legislation and policy changes

The main legislation is the law of August 10 1915 on commercial companies (the Corporate Law). The Corporate Law provides for all kinds of corporate entities and corporate instruments to create tailor-made structures for M&A transactions.

Another key piece of legislation is the law of May 19 2006 implementing **Directive 2004/25/EU on takeover bids** (the Takeover Law), which covers squeeze-out and sell-out rights, and contributes to M&A transactions of Luxembourg-based target companies. A natural or legal person acquiring, alone or with others, control over a company by holding 33.3% of the voting rights is

required to make a mandatory takeover bid to all the holders of shares in the Luxembourg company.

The Takeover Law states that if the target company's securities are not admitted to trading in the EU member state where it resides, the competent authority to supervise the bid will be from the member state responsible for the regulated market on which the company's securities are admitted to trading.

The law of July 21 2012 governing the mandatory squeeze-out and sell-out of securities of companies admitted, or previously admitted, to trading on a regulated market, or having been offered to the public (the Squeeze-Out and Sell-Out Law), also plays a role. The Squeeze-Out and Sell-Out Law applies to the following scenarios:

- If all or part of a company's securities are admitted to trading on a regulated market in one or more EU member states;
- If all or part of a company's securities are no longer traded but were admitted to trading on a regulated market and the delisting became effective less than five years ago; or
- If all or part of a company's securities were the subject of a public offer that triggered the obligation to publish a prospectus in accordance with **Directive 2003/71/EC of the European Parliament and of the Council of November 4 2003 on the prospectus to be published when securities are offered to the public or admitted to trading**, or, if there is no obligation, where the offer started in the previous five years.

The Squeeze-Out and Sell-Out Law does not apply during, and for a certain grace period after, a public takeover that is, or has been, carried out pursuant to the Takeover Law.

Competition

On November 24 2022, the Luxembourg parliament passed the law of November 30 2022 on competition (the New Competition Law), which entered into force on January 1 2023. It aims to overhaul the competition legislation and transpose into Luxembourg law **Directive (EU) 2019/1 to empower the competition authorities of EU member states to be more effective enforcers**. The New Competition Law transformed the independent administrative competition authority formerly known as the Competition Council into a public institution, the National Competition Authority (NCA), which allows the Luxembourg competition authority to act more independently.

The new legislative framework also introduced additional procedural guarantees and clarifications, aiming to enhance legal certainty in the NCA's operations. This especially concerns its investigative powers, and the options to close proceedings.

The New Competition Law is not supposed to affect or pre-empt the ongoing legislative efforts to introduce merger control in Luxembourg. However, it can be viewed as a big step for future competition law developments.

Foreign direct investment

The Luxembourg law on foreign direct investment screenings (the FDI Law), implementing **Regulation (EU) 2019/452 on foreign direct investment screening**, entered into force on September 1 2023. The law applies to all relevant transactions that were not completed

before September 1 2023. The introduction of this regulatory framework may have significant implications for M&A transactions in relation to the choice of target companies by foreign investors.

Indeed, the new FDI Law introduced a national screening procedure with a mandatory notification and pre-approval requirement for direct investments made by investors from a third country outside the EU/EEA seeking to gain control of Luxembourg entities operating in activities considered critical for national security or public order. Critical activities include:

- The development, operation, and trade of dual-use goods;
- Activities in the sectors of energy, transportation, water, healthcare, communications, data processing, and storage;
- Aerospace;
- Defence;
- Finance; and
- Media.

Linked activities that involve research, production, access to sensitive information, or premises where the aforementioned activities are conducted also fall in the scope.

Insolvency

On July 19 2023, the Luxembourg parliament adopted the law of August 7 2023 on business preservation and modernisation of bankruptcy law, known as the New Insolvency Law, which entered into force on November 1 2023. It modernised the old insolvency law, introducing new preventative reorganisation procedures, measures for early financial difficulty identification, abolishing certain measures, and reclassifying fraudulent bankruptcy as an offence instead of a crime.

Tax

On May 3 2023, the Luxembourg parliament adopted a law transposing the seventh amendment to **Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7)** into national legislation. The new DAC7 provisions contain several sections that complement and extend the existing domestic rules on tax transparency and exchange of information.

In addition, on October 17 2023, the Council of the EU adopted **a new directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8)**. The amendment creates new reporting obligations for all service providers or operators involved in providing cryptoasset services for EU resident customers.

DAC8 also expands the scope of exchange of information on tax rulings to cover advance cross-border rulings and advance pricing arrangements for high-net-worth individuals and a minimum financial penalty for non-compliance with certain reporting obligations. DAC8 entered into force on November 13 2023 and member states have until December 31 2025 to transpose the rules of the new directive into their national law.

ESG

The implementation of effective ESG policies and strategies and the disclosure of sustainability corporate aspects are driving factors

in the current M&A market, which is reflected in the evolution of the regulatory framework at the European level. Examples include:

- **Regulation (EU) 2019/2088 on sustainability-related disclosure in the financial services sector;** and
- **Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment.**

On the same topic, the **Corporate Sustainability Reporting Directive (CSRD)** entered into force on January 5 2023. The CSRD requires a wide range of large companies, as well as listed SMEs, to disclose information on the impact of their activities on people and the environment.

The first category of the impacted companies will have to apply the new rules starting from the financial year of 2024, and publish their reports in 2025. Non-EU companies with substantial activities in the EU will also be subject to the CSRD disclosure requirements.

Finally, on December 14 2023, the Council of the EU and the European Parliament **agreed on a compromise text for the Corporate Sustainability Due Diligence Directive (CSDDD)**. The CSDDD aims to introduce a sustainability due diligence requirement for large EU companies and non-EU companies with significant EU activities to address adverse human rights and environmental impacts of their operations, and of their subsidiaries and value chains. The CSDDD is expected to enter into force in the near future, following its formal adoption and publication in the Official Journal of the EU.

As the European legal framework continues to evolve, more and more ESG-related standards will have to be respected by target companies. This will inevitably result in higher acquisition costs in several ways.

First, an enhanced ESG due diligence procedure will need to be carried out to assess how the ESG disclosure standards are implemented by target companies, and a post-acquisition assessment regarding the compatibility of the business strategy with ESG principles.

It is now common that an ESG adviser is involved in the early stage of an M&A transaction to provide consultations on ESG-related topics for both parties. Moreover, the management of the target companies must be provided with specific ESG competences to integrate sustainability matters into their decisions in the short, medium, and long term. As a result, there is a growing trend of ESG factors playing an important role in acquisition decision making.

Merger control

On July 27 2022, a bill (No. 8053) was submitted to the Luxembourg parliament to implement **Directive (EU) 2019/2121** as regards cross-border conversions, mergers, and divisions. At a national level, it introduces two new forms of merger by absorption:

- An upstream merger, where a company transfers by way of dissolution without liquidating the entirety of its assets and liabilities to its parent company; and
- A side-stream merger, where a company transfers the entirety of its assets and liabilities to an existing company without the issuance of new shares, under the condition that one person is the direct or indirect shareholder of all the shares in the merging companies.

Parliamentary discussions regarding the bill are ongoing and possible changes to the draft may still occur.

Furthermore, on August 23 2023, the Ministry of the Economy introduced before the Luxembourg parliament a bill (No. 8296) regarding a mandatory national notification and screening procedure for mergers concerning certain entities operating in Luxembourg. The bill provides that any merger, acquisition, or creation of a joint venture that does not fall under the EU merger control regime set out in **Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings** shall be notified in advance to the NCA if two cumulative thresholds are met:

- The aggregate turnover realised in Luxembourg by all enterprises involved in the concentration exceeds €60 million; and
- At least two of the enterprises participating in the concentration generate an individual turnover in Luxembourg of at least €15 million.

The bill on a merger control regime would give the NCA the power and the tools to carry out ex ante control of certain M&A or other alignments between undertakings that may have a restrictive effect on competition in Luxembourg, and allow early detection of such threats to competition, potentially limiting damage to consumers and undertakings.

At the time of writing, the bill is at the last stages of its adoption procedure and expected to be transposed into law in the near future.

Practice insight/market norms

Common questions in Luxembourg relate to the best choice of private equity fund vehicle for M&A activity. Tax is always an important element when setting up a structure. The structure needs to:

- Be tax, DAC6, and ESG compliant;
- Serve the interests of the investing group and target entity; and
- Consider the upcoming legislative initiatives of the EU.

Technology makes negotiations and deal closings easier for parties that do not reside in the same country. Some law firms use AI software to conduct legal due diligence. AI software enables rapid identification and extractions of key provisions by reviewing thousands of contracts and other documents quickly. However, advanced technology is not a substitute for human beings; rather, a tool that allows deals to get done more quickly and efficiently, and often at a lower cost.

Public M&A

Key factors for public M&A involve complying with the provisions of the Takeover Law. This includes, in particular, complying with the requirement to notify supervising authorities and with reporting requirements under the law. Moreover, parties to an M&A transaction need to assess how the managing bodies of the takeover target are to be approached and which governmental authorities need to be notified.

For voluntary offers, a condition on reaching a specified percentage of share capital and voting rights of the target company to be acquired might apply.

During a bidding process, all shareholders of the same class of shares (if categorised) shall be treated equally. In addition, a bidder that has acquired control of the target company must make a

mandatory offer to all shareholders who hold the same class of shares at an equitable price.

Private M&A

A locked-box mechanism might span a minimum period of six months to two years. Completion accounts need to be presented and they may be audited. Earn-out provisions to give purchasers more security are commonly seen due to the pandemic and/or the economic crises of recent months, for the purpose of risk allocation, as well as diminishing the adverse impact from the market.

In private takeovers, deal conditions apply to certain transactions. The conditions must comply with the applicable law and should be identified duly in advance of starting the deal. The Corporate Law provisions apply, as do the constitutive documents of the privately owned target entity.

A shareholders' agreement will most likely also be put in place after completion of a deal if a seller remains in the target company as a minority shareholder, which is commonly seen in private equity transactions. The shareholders' agreement will contain provisions pertaining to drag-along, tag-along, and pre-emptive rights of shareholders, which would be discussed and agreed in advance as conditions of the acquisition.

Parties to M&A transactions are inclined to have the share purchase agreement governed by, and construed in accordance with, the law of the country where the target entity is located. Share purchase agreements involving Luxembourg-based target entities are typically drafted under, and made subject to, Luxembourg law.

Exit strategies remain the standard ones. IPOs are often prepared as an exit strategy; however, a sale is often preferred to an IPO. Sales to strategic sponsors are rare; however, sales to, or among, private equity firms are increasingly common.

Looking ahead

Given the geopolitical uncertainty, high inflation, high interest rates, and recession fears, there might be a continuing slowdown of M&A activities in and through Luxembourg.

A heightened level of caution and diligence has been observed in investment approaches, particularly evidenced by the strengthening of the due diligence process. As uncertainty impacts the business of buyers and sellers, it becomes harder to make decisions about deals. Instead, they tend to focus on costs and operational efficiency.

On the other hand, COVID should not be a major obstacle to M&A activities any more.

The climate and ESG, although posing transactional risks, will become an opportunity for M&A deals. Companies and investors that are facing potential ESG risks will have to seek alignment with counterparties to solve ESG integration issues by acquiring or merging with ESG-adjacent assets and activities.

Investment in fintech, early-stage technology such as space companies in Luxembourg, and AI is also likely to increase and outperform.

Finally, M&A transactions launched from Luxembourg vehicles into other EU jurisdictions will remain more important and voluminous than M&A transactions within the Luxembourg market itself.