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Mergers of companies or selling a business

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Modul	Sachverhalt
Leistungsschlüssel	99154057000000
Leistungsbezeichnung I	Mergers of companies or selling a business
Leistungsbezeichnung II	Mergers of companies or selling a business
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	unbestimmter Freigabestatus
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Unternehmensfusionen oder Verkauf eines Unternehmens
Lagen Portalverbund	Betriebsübernahme (2160200)
Einheitlicher	

Modul	Sachverhalt
Ansprechpartner	Nein
Fachlich freigegeben am	12.12.2022
Fachlich freigegeben durch	Federal Ministry for Economic Affairs and Climate Action
Handlungsgrundlage	<ul style="list-style-type: none"> • [Transformation Act (Umwandlungsgesetz; UmwG)](https://www.gesetze-im-internet.de/englisch_umwg/) • [Competition Act (Gesetz gegen Wettbewerbsbeschränkungen; GWB)](https://www.gesetze-im-internet.de/englisch_gwb/) • [Commercial Code (Handelsgesetzbuch; HGB)](https://www.gesetze-im-internet.de/englisch_hgb/) • [Council Regulation (EC) No 139/2004](https://eur-lex.europa.eu/legal-content/EN/XT/?uri=CELEX%3A32004R0139&qid=1676491692754) of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation; Text with EEA relevance)
Teaser	If you want to set up a business in Germany, you must comply with certain rules and requirements. This section contains information on your rights and obligations, in particular on merging or selling a business.
Volltext	<p>**Mergers**</p> <p>The term merger, also known as **amalgamations and consolidations**, is taken to mean the complete integration of institutions that were previously financially and legally independent. [Sections 2 to 122I of the Transformation Act](https://www.gesetze-im-internet.de/englisch_umwg/index.html) (UmwG) govern how mergers are handled. The Act draws a distinction between two types of merger:</p> <ul style="list-style-type: none"> • **merger by absorption**, which refers to the transfer of all the assets to an existing legal entity • **merger by new formation**, which refers to the

Modul

Sachverhalt

transfer of the assets of two or more entities to a new legal entity

In principle, a distinction is made between:

- **horizontal mergers**, i.e. the companies are in competition with each other
- **vertical mergers**, where the companies involved are in a supplier or customer relationship with one another
- **conglomerate mergers**, where the companies involved are neither in competition nor in a supplier or customer relationship with one another

A distinction can also be made between national and international mergers.

Merger control

- Under certain conditions, mergers between companies are subject to merger control by the national cartel authority, the **Bundeskartellamt** (Federal Cartel Office); see [Section 39 of the Competition Act](https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0425) (GWB). There is a **control obligation** if the companies involved have a combined aggregate worldwide turnover in excess of EUR 500 million and at least two of the companies involved have significant turnovers in Germany \- one company with more than EUR 25 million and another with more than EUR 5 million. The Bundeskartellamt is required to prohibit transformation if a dominant position could be created or strengthened [(Section 36(1) GWB](https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0395)).
- Mergers are subject to a **prohibition on implementation** throughout the examination procedure by the Bundeskartellamt, i.e. they cannot be implemented until the merger has been approved.

Modul

Sachverhalt

****Notification of mergers****

You can notify the Bundeskartellamt of a merger by post, fax or electronically.

****Notification by post:****

- Bundeskartellamt, Kaiser-Friedrich-Str. 16, 53113 Bonn

****Notification by fax:****

- Fax number +49 (0)2289499-400

****Electronic notification - three possible ways:****

- by email with a qualified electronic signature to fusionskontrolle@bundeskartellamt.bund.de
- by de-mail to fusionskontrolle@bundeskartellamt.de-mail.de
- via the special electronic mailbox for German public authorities (beBPO)

However, simple email notifications do not meet the legal requirements and do not trigger the start of the associated deadline.

The Bundeskartellamt acknowledges receipt of complete applications on its website a few days later. Following this, the ****examination procedure**** begins. In what is known as the ****initial phase****, the authority has an initial ****period of 1 month**** to assess whether the proposed merger needs closer examination or whether it can be cleared. If there is any indication of competition issues that cannot be dispelled during the initial-phase procedure, a formal

Modul

Sachverhalt

****in-depth examination procedure**** is initiated. This in-depth examination procedure is referred to as the ****second phase****, and may take ****up to 4 months**** from the date of notification******.

****Cooperation with other competition authorities****

- The Bundeskartellamt works closely with the European Commission and is particularly closely involved in the examination of potentially problematic cases. In cases where a proposed merger is subject to merger control by competition authorities in several countries, this is handled in close cooperation within international networks, such as the ****European Competition Authorities (ECA) network**** and the [International Competition Network (ICN)](<https://internationalcompetitionnetwork.org/about/>).

****Sector-specific rules for mergers and acquisitions****

In Germany, the antitrust approach is followed; this means that ****similar competition issues are address according to similar rules, regardless of the sector**** in which they occur or are suspected to occur. This occurs simultaneously in compliance with the constitutional requirements of non-discrimination and proportionality of state intervention. The inventory drawn up in accordance with the GWB, as amended, pursuant to which the GWB, with its ****general provisions applicable across all sectors****, has worked well in practice, continues to apply. The general rule in Section 19(4), subparagraph 4 GWB has prevented the further sectorisation of antitrust law.

****Merger rules depending on the type of company****

The merger procedure takes into account a number of ****specific characteristics, depending on the legal form of the companies involved****.

- In the case of ****partnerships**** (Personengesellschaften), [Section 43(1)]

Modul

Sachverhalt

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0190) requires the consent of all the shareholders. If the articles of association provide for a majority decision, the first and second sentences of Section 43(2) UmwG require the decision to be made by a [qualified majority](<https://eur-lex.europa.eu/EN/legal-content/glossary/qualified-majority.html>) of at least three quarters of the votes cast. If a commercial partnership (Personenhandelsgesellschaft) is merged into a company limited by shares, its liability as a former shareholder normally ends at the latest 5 years after the merger, pursuant to [Section 45 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0195).

- In the case of a **limited liability company** (Gesellschaft mit beschränkter Haftung, GmbH) such as a GmbH, the merger resolution pursuant to [Section 50(1)

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0227) must be adopted by a majority of at least three quarters of the votes cast. In special cases listed in [Section 51(1)

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0230), the consent of all shareholders is required. If the GmbH is involved as the acquiring legal entity, [Section 46

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0215) requires that the nominal value of the respective (new) shares of all the shareholders be determined in the merger agreement. Other specific procedural provisions apply if the merger cannot be implemented without an [increase in the

capital](<https://boerse-frankfurt.de/en/know-how/glossary/capital-increase>) of the acquiring GmbH. These provisions are contained in [Sections 53 et seqq.

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0235).

- Similar provisions apply where a **stock corporation** (Aktiengesellschaft) is involved.

Accordingly, pursuant to [the first sentence of Section 65(1)

UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0287), at least a

Modul

Sachverhalt

three-quarters majority of the [nominal capital](<https://boerse-frankfurt.de/en/know-how/glossary/nominal-capital>) represented at the time at which the resolution is adopted is required. Sections 66, 68 and 69 UmwG contain provisions relating to mergers with an increase in capital.

Pursuant to [Sections 122a et seqq. UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0475) there is also the possibility of a cross-border merger for companies limited by shares.

Special arrangements also apply to credit institutions, such as [joint stock banks](<https://gabler-banklexikon.de/definition/aktienbank-55490>) (Aktienbanken): The [Federal Financial Supervisory Authority (BaFin)](<https://gabler-banklexikon.de/definition/bundesanstalt-fuer-finanzdienstleistungsaufsicht-bafin-56489>) and the [Deutsche Bundesbank](<https://gabler-banklexikon.de/definition/deutsche-bundesbank-56968>) must be notified immediately of a planned merger [pursuant to Section 24(2) of the Banking Act](https://www.gesetze-im-internet.de/kredwg/_24.html) (Kreditwesengesetz \- KWG).

****Documentation required for a merger****

Before a merger can take place, a number of documents must be drawn up, including the following:

- The merger requires the conclusion of a ****merger agreement****, which must be recorded by a notary ([Section 4(1)](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0051) and [Section 6 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0067)). [Section 5 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0054) sets out the information that the merger agreement must contain.

Modul

Sachverhalt

Pursuant to [Section 9 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0075), the merger agreement must be audited by one or more expert auditors. This audit must be performed by independent auditors within the meaning of [Sections 319 et seqq.](https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html#p1607) of the Commercial Code (HGB).

- The merger agreement does not take effect until the shareholders have given their **consent**. This must be done at a shareholders meeting and must also be recorded by a notary [(Section 13(1) and Section 13(3), first sentence of the UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0095)).

- In accordance with [Section 8 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0071), the representative bodies of each of the legal entities involved must also submit a **merger report**.

- In the event of a merger with a cooperative society (Genossenschaft), [Section 81 UmwG](https://www.gesetze-im-internet.de/englisch_umwg/englisch_umwg.html#p0341) additionally requires an **expert opinion** to be obtained. Since a merger involves several legal entities and their respective shareholders meetings, it is usually appropriate to prepare **powers of attorney**. This way, the involvement of the management bodies of all the companies in the authentication process can be avoided. The powers of attorney must be certified by a notary.

- In addition, the **closing balance sheet** of the transferring entity is required for the registration of the merger. This balance sheet must be no more than 8 months old at the time of the registration.

The transferring entity is **recorded** as such in the **commercial register** once all the documents are present. However, it only becomes effective upon registration with the acquiring entity. The transferring

Modul

Sachverhalt

entity then ceases to exist.

****The competent competition authority****

In Germany, the Bundeskartellamt, which has its registered office in Bonn, is the sole authority responsible for examining mergers [(Sections 35 et seqq. GWB)(https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0378)]. However, the GWB does not apply if the European Commission has exclusive competence pursuant to the ****[EC Merger Regulation](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0139).****

Erforderliche Unterlagen

Voraussetzungen

Kosten

Verfahrensablauf

Bearbeitungsdauer

Frist

weiterführende Informationen

****[Bundeskartellamt](https://bundeskartellamt.de/EN/Home/home_node.html):****

- [Merger control](https://bundeskartellamt.de/EN/Mergercontrol/mergercontrol_node.html;jsessionid=68910CBF15E59064E6D59A90F867FC6B.2_cid371)
- [The Bundeskartellamt](https://bundeskartellamt.de/EN/AboutUs/Bundeskartellamt/bundeskartellamt_node.html)
 - [Case database of all published case summaries and decisions relating to the ban on cartels, control of abusive practices, merger control and public procurement law](https://bundeskartellamt.de/SiteGlobals/Forms/Suche/EN/Entscheidungssuche_Formular.html;jsessionid=9F1BB279F0AEF43D51C97DA556E6F896.1_cid371?nn=3589936&cl2Categories_Format=Entscheidungen&cl2Categories_Arbeitsbereich=Fusionskontrolle&docId=359

Modul	Sachverhalt
	0310)
Hinweise	
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	Mergers of companies or selling a business, Unternehmensfusionen oder Verkauf eines Unternehmens