

MAJOR REVERSAL IN FRENCH LAW REGARDING THE TRANSFER OF CRIMINAL LIABILITY IN THE EVENT OF A MERGER

Flash Info – 26 November 2020

In a decision^[1] handed down on 25 November, the Criminal Chamber of the French Cour de cassation reversed its case law by allowing the criminal conviction of an absorbing company for offenses committed by the absorbed company prior to the merger.

The Cour de cassation previously interpreted the principle according to which "*No one is criminally liable except for his own conduct*" (Article 121-1 of the French Penal Code) as prohibiting such ruling.

French case law is now in line with the case law of the Court of Justice of the European Union and of the European Court of Human Rights^[2].

The Cour de cassation specifies that this reversal will only apply to mergers closed after 25 November 2020. Nevertheless, the criminal liability of the absorbing company may still be incurred if the purpose of the merger was to exempt the absorbed company from its criminal liability. Therefore, in the event of fraud, the transfer of criminal liability may occur even for mergers closed prior to the date of this decision.

The decision of the Criminal Chamber of the Court of Cassation is available through [this link](#).

Our team remains fully at your disposal for any further question regarding this decision.

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^[1] Court of Cassation, Crim. Ch., 25 November 2020, No 18-86.955.

^[2] CJEU, 5 March 2015, Modelo Continente Hipermercados SA v. Autoridade para as Condições de Trabalho, C-343/13 and ECHR, 24 October 2019, Carrefour France v. France, No. 37858/14, §48.