

# **Chapter 10**

## **Worker involvement and the EU Takeover Bids Directive in the Greek banking crisis**

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### **1. Introduction**

The Takeover Bids Directive (also known as the Takeover Directive or the 13<sup>th</sup> Company Law Directive, 2004/25/EC, adopted 21.04.2004) has been transposed in Greece by means of Law 3461/2006, ‘Transposition into National Law of Directive 2004/25/EC on public takeover bids’. As there were no specific rights for workers during takeovers in Greek law prior to implementation of the Directive, this resulted in some new, albeit relatively weak rights, specifically the right to be notified once the takeover bid has been made and for worker representatives to append their own opinion to the opinion that the board of directors of the target company sends to its shareholders. However, trade unions in Greece have other information and consultation rights in such situations, particularly those resulting from the implementation of the EU Transfers of Undertakings Directive.

In practice there have been few cases in which union representatives have been active in the process of a takeover bid. However, the transfer of Société Générale’s Greek subsidiary Geniki Bank to Piraeus Bank in October 2012 in the context of the consolidation of the Greek banking sector provides an interesting case of worker involvement. Workers’ rights stemming from the Takeover Bids Directive were not triggered because there was no public bid due to special circumstances. However, the relevant trade union was able to utilise other information and consultation rights in support of its strategy to protect workers’ interests during the transfer of ownership to a different bank.

### **2. Key elements of Greek takeover legislation**

The standard procedure for transposing EU law in Greece is the publication of a Presidential Decree. In that sense the transposition of the Takeover Bids Directive by means of a law is an exception. The main

reason for this is that previously existing legislation had to be amended and harmonised. This is frequently observed in the areas of Greek company law and corporate governance legislation (the latter did not exist in Greece prior to 2000).

The transposition of the Directive altered and improved the previous regulatory regime that was defined by decisions of the Hellenic Capital Market Commission. The Capital Market Commission remained the competent authority to supervise compliance with the law that transposed the Directive and the application of the procedure of the bid in general. Prior to the transposition, takeover bids were regulated by a Decision (No. 2/258/05.12.2002) of the Hellenic Capital Market Commission.

The Hellenic Capital Market Commission has a seven-member board of directors that is entrusted with the following tasks: the design of general policy, the introduction of rules and regulations, the granting and revoking of licenses, the imposition of sanctions, the drafting of the annual budget, the management of the Commission's operations and decisions on personnel matters. The Minister of the Economy and Finance appoints the chair and the two vice-chairs, following the consent of the competent committee of the Greek Parliament. The other four board members are selected by the Minister of the Economy and Finance.

The improvements introduced through the transposition of the directive concern the protection of minority rights, the obligation for clarity and transparency, the preconditions of a mandatory bid, the relaxation of requirements for a voluntary bid, the standards of the offer document, the introduction of civil liability for the redaction of the offer document and, indeed, the information rights of worker representatives. Prior to the transposition of the directive there were no direct rights for workers' representatives in any step of the takeover process.

The Hellenic Capital Market Commission is the focal point for disclosure in the process of takeover bids. Each public announcement concerning the bid shall be communicated without delay to the Capital Market Commission. It is also supposed to be made public on the website of the Athens Stock Exchange, on the Daily Official List Announcements section of the Athens Stock Exchange and on the website of the person or company making the announcement, where such a website exists.

Disclosure of the bid and notification to the Capital Market Commission are subject to strict procedural and content requirements. Before being made public, any decision to launch a bid must be transmitted in writing to the Capital Market Commission and the board of the offeree company. At the same time the offeror shall submit to the Capital Market Commission and to the board of the offeree company a draft of the offer document. The announcement shall contain, at a minimum, the information required by the Directive.

When a voluntary bid is launched for the acquisition of a company's securities, the offeror is obliged to acquire all securities offered, unless the offeror has previously defined a maximum number of securities that they have undertaken to accept. The offeror can also define a minimum number of securities which shall be offered to them as a condition for completing the takeover.

A bid must be launched (mandatory bid) when the offeror acquires and holds more than the threshold of one-third of the total voting rights of the offeree company. The offeror is obliged to launch a bid, within a 20-day time period from the acquisition, for all securities of the offeree company, which involves an equitable and fair consideration. The same obligation arises when a party holding between one-third and one-half of total voting rights of the offeree company acquires securities of the offeree company representing more than 3 per cent of the total voting rights of the offeree company.

Breakthrough provisions apply to restrictions on the transfer of securities arising from the articles of association of the offeree company. The holders of rights removed due to the breakthrough provisions shall receive equitable compensation for any loss suffered by them. Breakthrough provisions do not apply where the Greek state holds securities in the offeree company, which confer special rights to it.

### **3. Worker representatives' rights**

Transposition in Greece does not grant workers' representatives any rights above and beyond what is required by the Directive. In the text of Law 3461/2006 the reference to the rights of worker reps is fairly minimalistic. However, on many other aspects and provisions of the Takeover Bids Directive provisions, the transposition law is very detailed

and specific. This is not the case with regard to the workers' representatives' rights. Here the Law only incorporates the wording of the Directive. The same applies with regard to the content of the offer document.

In the transposition Law 3461/2006 there is no reference and specification as to which workers' representatives are informed (trade union, European Works Council and so on). Therefore this can be inferred only by reference to the labour law provisions for workers' representatives in other items of labour legislation.<sup>1</sup>

In a nutshell the company's 'primary level' (enterprise-based) unions have been the most important form of employee representation in Greece. They have clear legal rights covering information, consultation and negotiation. The law also provides for a works council structure. But in reality, works councils have been found only in a few companies, and where they exist, they work closely with the local company union.

It does not appear that workers' representatives, if they disagree with the opinion of their management, use their right to publish a different opinion on the offeree document.<sup>2</sup> The author has examined a small sample of opinions of offeree companies and found that all of them included the standard information that 'Company employees have not expressed an adverse opinion on the offer'. Although in the case of disagreement on the part of the employees, expressed by their workers' representatives, their opinion should be incorporated into the offeree company document, there is no evidence that this (either to have a disagreement expressed and published as part of the offeree company report, or in a separate action) has happened in the small sample of takeover bids looked at by the author.

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1. The de jure and de facto priorities and hierarchies that apply in the Greek labour law are described in <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Greece/Workplace-Representation>
  2. Article 15 of the Transposition Law 'on the opinion of the offeree company' para 4 is, again, word for word the text of the directive that states that 'The board of the offeree company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document'.

## **4. Case study of the takeover of Geniki Bank by Piraeus Bank in 2012**

Geniki Bank was founded in 1937 and was a state-run bank until 2004, when it was privatised. It was acquired by the French bank Société Générale as part of an expansion drive into southeast Europe. In 2012 Geniki Bank, as part of the European Société Générale network, was one of 22 banks in Greece and had a network of 104 branches (out of a total of 3,629 branches in the Greek banking sector) and had 1,391 employees (of the total 57,006 employees in the banking sector of Greece). The privatisation was justified by the government within the framework of attracting foreign investment and the assumption that the new private management would modernise the bank.

In mid-October 2012 Piraeus Bank, one of Greece's leading banks, announced the acquisition of Geniki Bank from Société Générale. This case study examines worker involvement in the process of Piraeus Bank's acquisition of Geniki Bank by focusing on whether and how the provisions of the EU Takeover Bids Directive have been implemented.

It appears that worker involvement rights have been, to a certain extent, put on hold because of the specific conditions prevailing in Greece. Greece was trying to accelerate the consolidation of its banking sector and draw most of the total 50 billion euros of international funding earmarked for recapitalising the country's four biggest lenders.<sup>3</sup> In this context, banking sector consolidation evolved under the specific conditions set by the IMF, ECB and EC (the 'troika') Memorandum because of the country-specific conditions for which a special legal regime was introduced by means of Law 4021/2011 on 'Enhanced surveillance and consolidation of credit institutions – Regulation of financial issues – Ratification of the Framework Convention of the European Financial Stability Fund and its amendments and other provisions'.

In this process, under way since 2012 to recapitalise four core banks and restructure smaller banks and cooperatives through mergers and resolutions, came the deal for Piraeus Bank to acquire Geniki Bank. This was a

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3. Piraeus Bank, the country's fourth-largest bank, kicked off the process of acquisitions and mergers in summer 2012 by agreeing to acquire the healthy assets of ATE Bank, a lossmaking state bank.

deal already approved by Greece's international creditors (the troika, who were regulating all aspects of the Economic Adjustment Programme for Greece, including banking sector consolidation). Société Générale agreed to sell its Greek subsidiary Geniki Bank for 1 million euros to Piraeus Bank and provide the loss-making lender Geniki Bank with 444 million euros in fresh capital. Société Générale agreed to inject 281 million euros into Geniki Bank and to subscribe to 163 million euros of bonds that would be convertible into Piraeus shares or tier one capital. For Société Générale the sale was to result in a net loss of 100 million euros, which was to be incorporated into Société Générale's third-quarter 2012 results.

Because of the special legal regime introduced by Law 4021/2011 on 'Enhanced surveillance and consolidation of credit institutions – Regulation of financial issues – Ratification of the Framework Convention of the European Financial Stability Fund and its amendments and other provisions', the formal procedures provided by the EU Takeover Bids Directive were bypassed, at least with regard to the sale of the Société Générale share in Geniki Bank and the acquisition of this share by Piraeus Bank. However, the provisions of the Directive, as transposed by Law 3461/2006, were to be applied with regard to the acquisition of shares from minority shareholders of Geniki Bank (that is, not owned by Société Générale) in March 2013.

In this case it is important to examine how Geniki Bank employee representatives secured their information and consultation rights despite the lack of a public bid. The conditions under which the takeover took place required special actions by the trade union. We examine these actions in their chronological order, drawing on union archives and public press reports.

On 29 August 2012 the CEO of Geniki Bank announced discussions between Société Générale and Piraeus Bank on a possible takeover of his bank by Piraeus Bank. On 30 August 2012 the Geniki Bank company trade union wrote to the CEO that management had an obligation to inform the employee representatives on developments and especially on employment prospects in the bank according to the provisions of PD 240/2006 (transposition of the Directive 2002/14/EC). They requested that the banking sector trade union federation OTOE be allowed to attend the meeting.

On 3 September 2012, in the context of the ongoing negotiations between Société Générale and Piraeus Bank, and after the immediate reaction of the Geniki Bank company trade union and the banking sector federation OTOE, a meeting between management and trade unions took place. The CEO gave assurances that labour rights at Geniki Bank were not to be challenged. The union had set as its first priority the security of the jobs of the employees.

On the question of whether the takeover by the Bank of Piraeus might be accompanied by layoffs, the CEO replied that Geniki Bank had no such intention, but that they could not control the conduct of the bank that was to acquire Geniki Bank and would have managerial power in future. This was an issue to be discussed with and decided by the Paris headquarters of Société Générale.

The French management of Geniki Bank expressed the view that, even after the takeover, the bank would continue its autonomous operations. Furthermore, the search process for potential buyers would take several months and, in any case, both the current and the new management would continue to respect labour rights as part of normal operations.

The trade union decided on a consultation with the management to have full and complete information on relevant developments. The management of the bank forwarded the union views to Société Générale headquarters in Paris, where discussions were conducted with each prospective buyer. The union side also stressed their intention to exploit all the possibilities offered by EU law to guarantee labour rights.

In the period between the announcement of the possible takeover and the meeting with the bank management, between 30 August and 2 September 2012, internal divisions in the union arose. A minority of trade union executive members argued that they needed to gather before the meeting with management and decide a different plan of action, for example, to go on strike against the transfer of the bank ownership. However, the majority challenged this position by arguing (see union executive statement of 31 August 2012) ‘what decisions can we discuss with colleagues before the positions and responses of the management for the potential sale of Geniki to Piraeus? To decide on strikes? What to decide if we are sold or not sold by the owner bank? What do they propose? To act against the discussed transfer of ownership? The basic and essential issue for us ... is to ensure all of our labour rights’.

In the period 4–9 September 2012, following the information meeting with the CEO and after being officially informed about the talks in Paris, the trade union undertook a public campaign aimed at the parliament and the political parties. This campaign stressed the need for the fulfilment of the following conditions for allowing the sale of the bank to happen:

1. ensuring employment for all employees in Geniki Bank;
2. ensuring contributions to the bank pension fund; and
3. ensuring the maintenance of all labour and insurance rights.

The union sent a letter to Société Générale (Paris) in support of these demands (see Annex I). The attempts to secure information and consultation rights for employee representatives also led to a letter from the Geniki Bank trade union board to the EWC of Société Générale (see Annex II).

Furthermore, on 4 October 2012 the company union sent a letter to the CEO calling for management to follow the provisions of the information and consultation directives as transposed in Greece. In the letter, the union underlined that

under the intense pressure of these developments, there is the imperative requirement and there are statutory rights of all the 1500 employees of the bank to be informed in a timely and valid way about both the future of the bank and the implications for their jobs. Therefore we invite you to a meeting ... This is a legitimate exercise of the corresponding rights and your obligations arising directly from the Presidential Decree 178/02, which provides for 'measures for the protection of employees' rights in the case of transfers of undertakings, businesses or parts of undertakings' in Article 8.1 which provides:

1. The transferor and the transferee shall be required to inform the representatives of their employees affected by a transfer to the following points:
  - a) the date or proposed date of the transfer,
  - b) the reasons for the transfer,
  - c) the legal, economic and social consequences for workers of the transfer,
  - d) provision regarding employees.

The transferor must disclose such information to employees' representatives in good time before the transfer takes place. The transferee must disclose such information to employees' representatives in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of employment and work.

Furthermore, there is a corresponding obligation arising from the provisions of Presidential 240/2006 'establishing a general framework for informing and consulting employees,' according to Directive 2002/14 /EC. With reference to the abovementioned provisions of the law your obligation to provide information about the event, the terms and conditions of the transfer and the corresponding constitutional and statutory obligation of our Association for protection and guarantee the interests of workers and members we ask you to inform us about the developments taking place in the bank and directly affecting the working status and future of hundreds of workers. For this reason we invite you to set a meeting with us and instantly fulfil your legal obligations where this would involve legal representatives of OTOE.

This invitation was followed by meetings with the CEO, the deputy CEO and the legal advisors of both sides. In these meetings, according to union records, the CEO was invited to clarify the Geniki Bank intentions with regard to safeguarding jobs in the event of a transfer of the bank from Société Générale to Piraeus Bank. The reference by the CEO to the European law on business transfers was considered to be a positive commitment.

Some days later, on 19 October 2012, Société Générale and Piraeus Bank announced their agreement on the transfer of Geniki Bank. The same day the Geniki Bank union addressed a letter to the OTOE banking employees' federation, inviting their support and mobilisation with regard to the new owner of the bank and reiterating its three basic and essential demands.

On 22 October 2012 the Geniki Bank trade union formally addressed the CEO of Piraeus Bank, calling for an emergency meeting with regard to these three essential demands. Successive meetings took place and the new owners of the Geniki Bank assured the labour side that there would be no redundancies and that Geniki Bank was to continue its autonomous activities, that is, there would be no merger with Piraeus Bank in the

months to come. As the transfer was to be concluded by December 2012, the trade union became very supportive of the deal.<sup>4</sup>

Not surprisingly given this background, when on 1 March 2013 Piraeus Bank had to follow the provisions of Law 3461/2006 by means of public takeover bid in order to acquire the shares of minority shareholders in Geniki Bank, the union fully supported the bid. The trade union had exercised their rights, as provided by the national Transposition in National Law of the Directive 2004/25/EC on public takeover bids.

## 5. Conclusions

The implementation of the EU Takeover Bids Directive into Greek law represented a small step forward for workers insofar as no specific formal rights for workers in takeover situations existed beforehand. However, whereas on many aspects and provisions of the Takeover Bids Directive transposition the text of Law 3461/2006 is detailed and specific, the reference to the rights of workers' representatives is minimal, as the Law only incorporates the Directive word for word. In practice there have not been many cases where union representatives were active in takeover bids.

The transfer of Société Générale's Greek subsidiary Geniki Bank to Piraeus Bank in October 2012 in the context of the consolidation of the Greek banking sector is a case where, because of specific conditions, the formal procedures provided by the EU Takeover Bids Directive, as far as workers' representatives' rights are concerned, were bypassed. The company trade union had to mobilise and utilise EU labour law on information and consultation rights in the context of company ownership transfers. This case study explains how Geniki Bank employee representatives secured their information and consultation rights despite the lack of a public takeover bid. The use of these rights were an important part of the trade union's strategy for protecting important workers' interests during the transfer of ownership to a new owner.

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4. The President of the trade union participated in the General Assembly of shareholders on 14 January 2013 and addressed the shareholders by underlining that 'I wish at this point to say that the acquisition of General Bank by the Group of Piraeus bank was for me and my union and for the employees a salvation'. Later, in February 2014, the trade union supported fully and publicly the initiative of the Piraeus Bank to launch a 1.75 billion euros share capital increase.

## Annex I Letter from the Geniki Bank trade union board, 11 September 2012

Athens, 11 September 2012

To the CEO of GenikiBank

Mr. F. Tyrcot

Mr CEO, in this letter we request the transfer to the management of Société Générale, our views and opinions for the case of the possible sale of the Geniki Bank on three key issues, analysed in the letter attached.

Athens, 11 September 2012

To the Administrative Board of SOCIÉTÉ GÉNÉRALE

We have been informed by the announcement of the Geniki Bank CEO of negotiations with the Bank of Piraeus on the possible sale of the Geniki Bank.

There has been a first meeting of our union and of our Federation OTOE, with Mr Tirko, where we raised substantive issues relating to employees and he in turn gave us some answers which were clarifying and informative, but on substantive issues referred us to decisions of the Société Générale management.

For this reason, with this letter we want to raise our concerns directly on the effects that may arise for employees because of the possible sale of the Geniki Bank to Piraeus Bank.

In any negotiations we invite you to support the following three essential issues:

- 1 Ensuring employment for all employees in General.
- 2 Ensuring contributions to the bank pension fund.
- 3 Ensuring all labour and insurance rights.

At the same time we ask that you give us the opportunity to meet you at your offices in Paris, our side accompanied by the President and General Secretary of OTOE, to discuss and analyse them and to pass on your answers on these matters.

The Geniki Bank trade union board

## Annex II Letter from the Geniki Bank trade union board, 27 September 2012

Athens, 27.09.2012

To: European Works Council Société Générale

Colleagues,

During the recent period, especially after the recent circular-update by the CEO of Geniki Bank Mr François Turcot, intense speculation has developed regarding a possible sale of Geniki Bank, member of Group Société Générale, to Piraeus Bank. As you can see, the debate has already boosted the uncontrolled circulation of information, rumors and scenarios regarding the possible consequences of such a sale for the business prospects of the Bank, but particularly on employment and insurance relations, even the employment level itself.

Under these circumstances, our Association, having the responsibility to provide reliable and secure information to the employees of the Bank, and charged with a constant concern for the protection of labour and social security rights and employment, is not intended to be limited to the role of commentator on the relevant literature, but intends to seize every opportunity that provides a national and Community legal framework for the right to information and consultation (Directive 2009/38/EC, as incorporated into Greek law by Law. d 4025/2012. 49 et seq).

In this context, because the effects of major organisational change, mergers and any form of modifications in the structure of the group companies always acquire transnational dimensions and are therefore prime objects of the right to information and consultation of European Works Councils, the right should be exercised at the right time so that workers' representatives can express their opinions when necessary. We therefore need to examine the issue in the context of the European Works Council operations.

For this reason we shall call as soon as possible to make the necessary arrangements for the European Works Council to look into this issue. In this context, and in order to exercise effectively the right to information and consultation, we ask that our Association be represented at the European Works Council in accordance with the relevant provisions of its founding agreement and Directive 2009/38/EC.

The Geniki Bank trade union board