

Foreword

This book is the second in a new European Trade Union Institute (ETUI) series about workers' rights in company law. Using the same approach as that pursued in the 2016 book about the Takeover Bids Directive, this book takes a closer look at the workers' involvement rights laid down in EU law applying to cross-border mergers. With the Commission's proposed Company Law Package under intense debate as this book goes to print, the aim of this work is to not only better equip trade unions and employee representatives to make use of their participation rights in practice, but also to bring some of the lessons learned to bear upon current debates in EU policy-making.

The research was initiated under the umbrella of the European Workers' Participation Competence Centre (EWPC), which was set up in 2008 at the ETUI to support workers' representatives in European companies. Its activities are funded by the remuneration received by employee representatives on the boards of European Companies (SE), which is then transferred to the European Workers' Participation Fund.

From the outset, the EWPC has sought to promote workers' participation in company decision-making, especially across different levels in multinational companies. Participation rights are laid down in as many as 35 different pieces of EU legislation, ranging from employment law to health and safety protection legislation to company law. It soon became apparent that employees and their representatives across Europe needed closely targeted support to make use of those rights, and particularly to navigate the cross-border dimension of workers' participation processes, inputs and outcomes.

That some key participation rights are laid down in company law, rather than the more familiar employment law, poses a particular challenge to industrial relations researchers and trade unions. Company law has foci and motivations that are completely different to those of employment law.

The members of GOODCORP, the ETUI's network of corporate governance and company law experts, have taken on the task of venturing into this previously uncharted territory in order to identify and assess the workers' participation rights embedded in company law.

The 2005 EU Cross-border Mergers Directive was designed to create a basic legal framework to facilitate mergers between companies headquartered in different Member States. The Directive sought to provide an alternative to the hurdles posed by

the sometimes contradictory rules and protections available in national company law regimes. As was the case for other company law directives, such as the SE Directive or the ill-fated SUP and SPE Directives, the risk that European company law could be used to circumvent or weaken established workers' participation, especially with respect to board-level workers' participation, was evident. Accordingly, the Cross-border Mergers Directive does include some solutions already found in the 2001 SE Directive; however, many of these provisions are markedly weaker and less coherent than those in the SE Directive.

Examining the resulting legal frameworks for cross-border mergers in nine Member States, and complementing these with seven specific case studies, this book sheds a critical light on the functioning of the Cross-border Mergers Directive. The authors point to important lessons of relevance to the current discussion of the Company Law Package launched by the EU Commission in April 2018. Drawing directly on the precedent set by the Cross-border Mergers Directive, this Package seeks to establish a European framework for company mobility by laying down rules enabling companies to merge, convert, and divide across borders. The expert findings presented here should not only inform what is essentially a revision of the Cross-border Mergers Directive within the Company Law Package; these findings also have direct relevance for any new EU legislation on company mobility. Past mistakes can be avoided.

The EWPC is built on the conviction that workers' participation is a key vehicle for an effective workers' voice and for trade union presence and activism at the company level; this arguably holds even more at the cross-border level, since it is here that involvement rights can be strategically combined. The analysis and policy prescriptions presented here go beyond mainstream economic approaches. With this work, we hope to contribute to the ability of trade unions and workers' representatives to make good use of their participation rights at all levels of the company, in order to strengthen their capacity to secure genuinely European responses to cross-border challenges. With this unique empirical data, we also hope to contribute constructively to the European debate.

I am very grateful to the editors of this volume and to the members of the ETUI's GOODCORP network for their valuable and insightful contribution to better understanding workers' participation rights and practice.

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