

Chapter 9

Greece

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1. Introduction

Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (hereafter the Cross-border Mergers Directive) was transposed in Greece by means of Law 3777/2009 on 'cross-border mergers of limited liability companies and other provisions'. The transposition went slightly further than was required by the Directive, specifically by including cooperatives and companies in liquidation within the scope of companies covered. However, Greece did not implement any stakeholder protection provisions above and beyond protection for creditors and minority shareholders (Bech-Bruun and Lexidale 2013).

Implementation of the Directive attracted hardly any attention outside a small community of concerned company lawyers. Since the transposition of the Directive, however, there have been several high-profile cases of cross-border merger registered in Greece (described in Chapter 15 of this book). Some of these cases attracted a lot of attention, mainly because of the employment rights concerns on the labour side. Particularly since 2012, in the second stage of the Greek crisis, there has been increasing use of the EU company law directives (namely, on cross-border mergers, takeovers and transfers of undertakings) as a means for initiating an exit from Greece and indeed as part of wider company restructuring procedures in the context of the financial crisis. Two case studies – of FAGE and of the Coca-Cola Hellenic Bottling Company – have highlighted this new aspect of the Greek crisis and have indicated that there has been little room for exploring worker involvement rights in the context of long-established adversarial industrial relations.

In this chapter, we examine the key elements of the Greek legislation and the worker involvement relevant for or related to the Cross-border Mergers Directive. The Directive has not strengthened the relatively weak information and consultation rights in Greek law, and to date there has been no known extension of worker participation rights in a Greek company due to a cross-border merger.

2. Key aspects of the Greek cross-border merger legislation

The standard vehicle for EU law transpositions in Greece is the Presidential Decree. The transposition of the Cross-border Mergers Directive by means of law is in that respect an exception. The main reason is that previously existing legislation had to be amended and harmonised. This is also the case in the area of the Greek company law and Greek corporate governance legislation; the latter was non-existent prior to the year 2000.

Prior to transposition, activities similar to cross border mergers were allowed under national legislation only in the context of transfer of seats. This, however, required an especially large majority in the shareholders' general assembly. The Cross-border Mergers Directive transposition offered a new regime with modernised standards, but some of the bureaucratic restrictions of the previous national regulatory framework were preserved. For instance, after the common draft terms of a cross-border merger are approved by the general meeting of each of the merging companies, Greek law requires an additional step. According to Article 11 of Law 3777/2009, after the general meetings have approved the merger and before proceeding to registration, the merging companies have to enter into a merger contract before a notary, in which they declare that they are merging.

The transposition and national implementation of the Cross-border Mergers Directive was anything but controversial. It evolved as a low-profile issue among a small number of company law scholars. Normally, stakeholders are invited to express their views in the parliamentary process for transposition. In the relevant parliamentary committee, from the list of those normally invited to testify on such matters, only four representatives participated: the chair of the Central Association of Chambers of Greece, a director of the banking sector regulator from the Central Bank (Bank of Greece), the chairman of the National Confederation of Hellenic Commerce and a member of the board of the Economic Chamber of Greece.

There is no evidence yet of any noticeable effect of Cross-border Mergers Directive implementation on the regional division of labour in mergers and acquisitions, specifically on whether the transposition has altered the patterns of the past two decades with regard to the attractiveness of the Greek mergers and acquisitions market. Here, in the European division of labour (Georgopoulos 2003), northern EU countries (for example, Germany and the Netherlands) were mostly net purchasers, while firms in the southern economies, such as Greece, were targets more often than bidders. Only since 1997 and in the first years of the euro zone does this trend seem to have been reversed due to the considerable level of acquisitions made by Greek firms in the Balkan region.

However, there is some evidence that in recent years, because of the economic and financial crisis the possibilities arising from the cross-border merger framework have been explored by companies trying to avoid the severe implications of the local financial crunch. From this evidence we have traced a number of cases worth studying in terms of worker involvement rights (see Chapter 15 in this volume).

Overall, during the transposition period in 2009 and since then the national trade unions do not appear to have taken a position on the issue, beyond generally supporting worker representatives' rights. In part, this is due to the dominance of the Greek trade union movement by the public sector. Sectoral/industry level unions may have had more interest in tackling these issues.

3. Worker representatives' rights after transposition

In the rather restricted literature on the Cross-border Mergers Directive transposition in Greece, one scholar succinctly summarised the dominant attitude towards worker representative rights, as follows:

'A final feature of the cross-border merger, unknown in a Greek merger unless the latter is made for the formation of an SE, is the participation of employees in the management organs. This constitutes a complicated mechanism, which is introduced by Law 3777/2009 mainly by reference to Presidential Decree 91/2006 governing participation in SEs. The basic principle is the maintenance of pre-existing participation schemes (the so-called 'before-and-after principle'), so that the cross-border merger does not become a device for avoiding the national participation requirements. Otherwise, Greek law does not provide for compulsory participation.' (Perrakis 2010: 843)

In the Greek transposition, the minimum rights for workers as defined by the Cross-border Mergers Directive are respected. The Directive requires that existing employment rights be transferred to the new company (note the overlap with the Transfer of Undertakings Directive here). Note also that no minimum period is defined (Article 14). In the Greek transposition law the rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the merger takes effect are transferred to the company resulting from the merger on the date on which the merger is registered with the General Commercial Register (Art. 12 par. 4 Law 3777/2009).

Furthermore, as required by the Cross-border Mergers Directive, the common draft terms of the merger are to be made available to employees at least one month before the shareholders' general assembly. These are supposed to include 'the likely repercussions of the cross-border merger on employment' and any arrangements for worker participation made under Article 16 (Article 5). In the transposition law the common draft terms of merger should include 'the likely repercussions of the cross-border merger on employment' (Art. 5 par. d Law 3777/2009) and any arrangements for worker participation made under Article 14 of the Law (Art. 5 par. i, Law 3777/2009). Together with the common draft terms this information is submitted for review by the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development. Following the review, the common draft terms are filed with the General Commercial Register, at the General Secretariat of Commerce, at least one month before the shareholder meeting is convened. An extract of the common draft terms must be published in the Greek Government Gazette (Art. 4

Law 3777/2009). Nothing whatsoever is said about whether these should be made available directly to employees or worker representatives.

In the Greek transposition, such an obligation is straightforward with regard to the management report. The Cross-border Mergers Directive provides that the report of the management or administrative organ has to be made available to employees at least one month before the general assembly. Employees can attach a diverging opinion to this report (Article 7). In the transposition law the management report should be made available to worker representatives or, in the absence of such representatives, directly to the employees at least one month before the general assembly (Art. 5 par. 2, Law 3777/2009). Where the management or the administrative organ of the Greek merging company receives, in a timely fashion, an opinion from employee representatives, as provided for under Presidential Decree 240/2006 (transposing ICD 2002/14/EC), that opinion shall be appended to the report (Art. 5 par. 3, Law 3777/2009). In any case the management report is filed with the General Commercial Register at the General Secretariat of Commerce at least one month before the date of the shareholders' meeting.

The direct reference to Presidential Decree 240/2006 (transposing ICD 2002/14/EC) implies compliance with national rules on worker information, consultation and participation (Article 4(2)) the standards of which have been to a certain extent consolidated with the transposition of ICD 2002/14/EC.

In practice, before the transposition of the Cross-border Mergers Directive and ahead of any proposed merger employees have had rights linked to their company unions and to works councils at the company level. The local 'primary level' unions have been the most important form of employee representation in Greece. They have clear legal rights covering information, consultation and negotiation. The law has also provided for works councils. But in reality, works councils are found in only a few companies, and where they exist, they work closely with the local or company union. Primary level union organisations have extensive rights to information and consultation under the 1982 Trade Union Democracy Act, and in 1990 these rights were extended to negotiations.

Works councils can exist alongside the primary level unions, under legislation passed in 1988, but their position is clearly less powerful than that of the union and they have not been widely set up, other than in larger companies. In reality, only a few companies have works councils, and if there is no union, there will almost never be a works council. As well as the basic trade union tasks, such as collecting trade union subscriptions, union workplace representatives in Greece have information, consultation and negotiation rights, although these are defined fairly generally. The information and consultation rights begin with the monthly meeting with the employer, at which the two sides are supposed to attempt to resolve any problems relating to workers or their union organisation. Trade union representatives can also be present at inspections carried out by the Ministry of Labour. In addition, as part of the negotiating process, the trade union representatives have a right to ask for information on the company's economic position and plans, as well as its personnel policies.

Issues on which the union representatives are supposed to be consulted in advance include large-scale redundancies, changes in the legal form of the business and changes in working conditions, where the two sides should try to reach an agreement through negotiation. The law sets out the information and consultation rights of the works council more exactly. The works council should be kept informed of the overall economic position of the business, including its annual report and accounts. It has rights to advance information on: changes in the legal form of the business; any transfer or major change of production capacity; the introduction of new technology; changes in the structure of the workforce, including increases or decreases; the planning of any overtime; and yearly health and safety investment plans. Provisions on the trade union side bringing in external expertise at the expense of the management side exist only in the provisions related to the SE.

In this context, in the event of a forthcoming merger employees may mobilise all the above-mentioned rights arising from the transposition of the Cross-border Mergers Directive or the labour law rights on information, consultation and collective bargaining. However, there are no specific requirements in the national implementation provisions on the impacts on employees and employment, specifically in the case of common draft terms and reports by management/administrative organs. On those matters the transposition follows the Cross-border Mergers Directive word for word. Nor are there any penalties for false statements regarding employment impact, or any minimum period concerning the validity of statements regarding employment impact. And in the national regulatory framework for cross-border mergers there are no additional provisions for further worker rights at hearings of the national merger control authority; that is, at the preliminary stage when the common draft terms are submitted for review by the Department of Public Limited Liability Companies and Credit within the General Secretariat of Commerce of the Ministry of Development, or at a later stage when the same Department issues a certificate attesting to the proper completion of the pre-merger acts and formalities. Part of this certificate (Art. 10 par. 1 Law 3777/2009) refers – where appropriate – to cases in which the arrangements for employee participation have been determined in accordance with Article 14 of Law 3777/2009 (in line with Article 16 of the Cross-border Mergers Directive).

The worker participation provisions of the cross-border merger implementation follow the requirements of the Directive. The rules for the special negotiating body (SNB) and the ‘standard’ fall-back rules for worker participation are borrowed from the SE implementation legislation. Up to now, there has been no known case of a Greek company involved in worker participation negotiations due to a cross-border merger.

4. Conclusion

Although the transposition of the Cross-border Mergers Directive was initially considered a routine issue of no major importance, in the context of the global financial crisis and the Greek sovereign debt crisis, it has emerged as an important issue, as there have been several prominent cross-border mergers involving Greek companies, and the tendency seems to be increasing.

Some of these cases (see Chapter 15) attracted a lot of attention, mainly because of the labour side's employment rights concerns. These cross-border mergers have taken place during a later stage of the Greek crisis, during which an increasing number of major Greek companies have sought to use the EU company law directives (on cross-border mergers, takeovers and transfers of undertaking) as means for initiating a Greek exit and as part of wider company restructuring procedures in the context of the financial crisis.

In this context, the national regulatory framework appears to give preference to the prerogatives of company management rather than to protect the interests of labour. The Cross-border Mergers Directive has not served to change this balance of power in a substantial way. For trade unions and worker representatives, the cross-border restructuring of the past few years has proven to be unknown territory that requires exploration.

References

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