

Chapter 17

Euler Hermes: introducing board-level representation into Belgium through a cross-border merger

Guy Van Gyes and Stan De Spiegelaere

1. Introduction

In the present case study we focus on the cross-border merger of Euler Hermes, which, in a two-phase process in 2011 and 2014, integrated its national subsidiaries in Europe into one company with its statutory seat in Belgium. Like two of the other case studies in this volume (chapter 16 on COFACE and chapter 18 on Codan/TryggHansa) this merger was driven by regulatory changes in the financial services industry, namely the introduction of the Solvency II Directive at the EU level. The passage of this Directive increased the incentives to simplify company structures in the insurance industry. Although it was not originally intended to serve this purpose, the EU's Cross-border Mergers Directive proved to be a convenient mechanism to achieve this simplification.

As in the other two case studies, this cross-border merger was driven by capital requirements, not employment considerations, and was thus considered to be 'employment-neutral'. From the point of view of its impact on jobs, therefore, this cross-border merger was uncontroversial for the trade unions involved. This was particularly the case in the first phase of the merger (in 2011), in which worker participation on the board of the merged entity was not an issue. In the second phase (in 2014), however, worker participation was a major issue, as the German subsidiary that was merged into the parent company had one-third representation on its board. The rules in the cross-border mergers Directive for initiating negotiations over worker representation on the board were thus triggered in this second phase, and the result was that four out of the twelve members of the Board of Directors of Euler Hermes SA were to be worker representatives.

For Belgium, this case is particularly significant because it was the first by means of which the local employee representation and trade union obtained a seat on the board of a native company as a result of the rules and regulations governing cross-border mergers. This case study details the negotiations on worker participation and their outcomes and the first experiences of the Belgian representative on the board. The study also shows that worker representatives can successfully learn from other industrial relations traditions in the context of international worker representation on boards created by cross-border mergers.

2. The Euler Hermes Group

2.1 Formation of the group

The Euler Hermes Group (EH) is a complex international structure headed by the Euler Hermes Group SA (formerly Euler Hermes SA), which is headquartered in Paris and currently listed on the Euronext stock exchange. The group offers a wide range of insurance-related services for the management of business-to-business trade receivables. The product range includes credit insurance, bank guarantees, debt collection services and information products. The Euler Hermes Group is the largest provider of credit insurance in the world. In 2016 the insurance multinational had more than 6,200 employees and offices in more than 50 countries. Euler Hermes's recent corporate history is one of mergers and acquisitions, which have made it, on one hand, the biggest credit insurer in the world, but on the other hand also a subsidiary of the German Allianz Group, the largest insurance holding in the world and one of the first *Societas Europea* (SE).

The roots of the company are German-French; the German Hermes Kreditversicherungs-bank was founded in 1918 and the French Société Française d'Assurance Crédit (SFAC) in 1927. In 1993 SFAC took over the Belgian Compagnie Belge d'Assurance Crédit (COBAC) and in 1996 it expanded further with the acquisition of the American Credit Indemnity and Trade Indemnity Corporation, the oldest credit insurer in the world (founded in 1883). At the same time, Assurances Générales de France (AGF) obtained a majority stake in SFAC and changed its name to Euler. The same year Allianz acquired control of Hermes and two years later of AGF, Euler's major shareholder and the largest French insurance company.

In this acquisition process, Euler and Hermes became integrated into the German-based Allianz group, but consolidated as a separate company – Euler Hermes – which is based in France. Through this major reshuffling within the European financial insurance sector, the Germans created a dominant holding by incorporating the important French AGF, but the French obtained as (minor) compensation the integration of the credit insurance activities under the French holding Euler Hermes. This consolidation was complete by 2003.

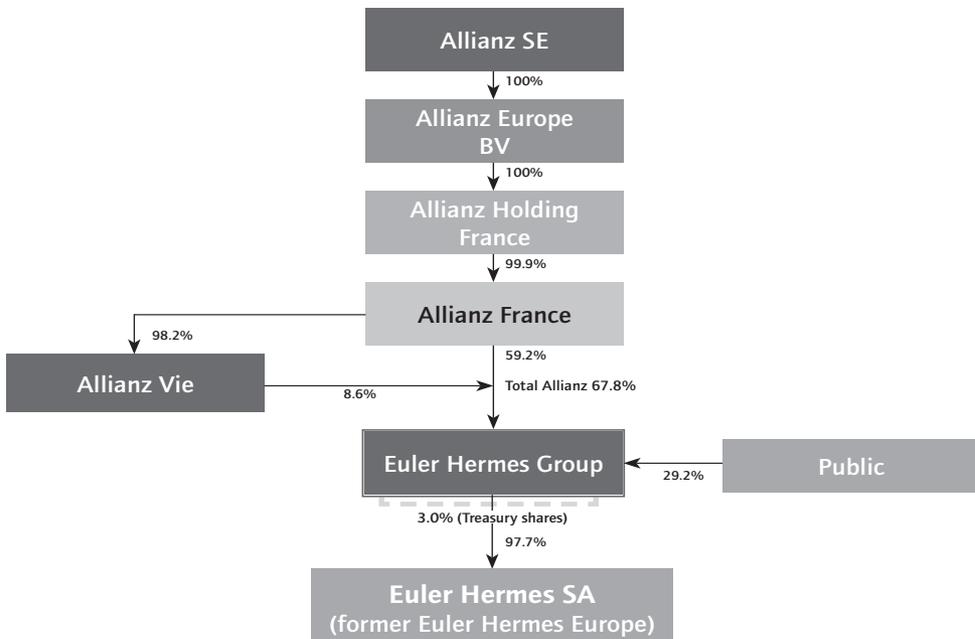
2.2 Rationales for the cross-border merger

Characteristic of the Euler Hermes Group (as is the case for other multinational insurance groups) was the use of many subsidiaries headquartered and active in different national markets. These subsidiaries were subject each to regulation by the respective national regulatory authorities. Almost 10 years after the first big consolidation, the Group initiated a major simplification of its legal structure by organising an 'internal' cross-border merger of its European former subsidiaries into one insurance company. This statutory merging process was preceded by an organisational integration process to increase efficiency, create economies-of-scale and expand services to international clients.

This ‘internal’ merger process – called Blue Europe – was organised in two steps. In the first step, completed on 1 January 2012, the company simplified its legal structure in Europe by merging 13 of its former subsidiaries into a single insurance company, Euler Hermes Europe, located in Brussels. In the legal restructuring project ‘Blue Europe I’, subsidiaries in the Czech Republic, Denmark, Finland, Hungary, Ireland, Italy, Netherlands, Norway, Romania, Slovakia, Sweden and the United Kingdom were merged into branches of the single Belgian-based insurance carrier Euler Hermes Europe SA. This merger process resulted in Euler Hermes Europe, which adopted the legal structure of the former Belgian COBAC.

Two years later, the legal restructuring project ‘Blue Europe II’ completed this process (in November 2014) by merging its German (Euler Hermes Deutschland) and French (Euler Hermes France) subsidiaries into the Belgian company Euler Hermes Europe SA (which in the process was renamed Euler Hermes SA). These French and German subsidiaries were the biggest entities in the group by sales and employment. Meanwhile, the Paris holding company changed its name from Euler Hermes SA to Euler Hermes Group (ELE). The Euler Hermes Group was owned approximately two-thirds by the Allianz Group and the rest by public shareholders (see Figure 1). The merger of Euler Hermes Deutschland AG and Euler Hermes France SA into Euler Hermes SA was formally decided at an extraordinary shareholders’ meeting on 4 November 2014, after approval by the controlling regulators of Belgium (NBB), France (ACPR) and Germany (BaFin).

Figure 1 Shareholder structure of Euler Hermes SA after the cross-border merger



Source: Euler Hermes 2015 Annual Report (2016: 22)

The company implemented its integration and consolidation into one company under Belgian law for a number of different reasons. However, the main reason was an optimisation decision related to Solvency II. Solvency II is an EU legislative programme implemented in all 28 Member States. It introduced a harmonised EU-wide regulatory regime for the insurance sector. Solvency II concerns not only capital requirements; it is also a comprehensive programme of regulatory requirements for insurers, covering authorisation, corporate governance, supervisory reporting, public disclosure and risk assessment and management, as well as solvency and reserving. However, one important aspect of the reserve capital that a company has to maintain is that it is to a certain degree ‘sleeping’ money, in the sense that it must be set aside and cannot be used to generate profits. Whether or not these reserves are maintained in 14 different countries or under a single umbrella makes a big difference in this regard. Belgium was chosen as the headquarters for the acquiring company because it allows four different ways to maintain such reserves. Furthermore, the country has a rather beneficial tax system for large financial multinationals. The notional interest deduction or ‘deduction for risk capital’ is a specific Belgian tax measure that, since the fiscal year 2007, allows companies to deduct a specific percentage of their ‘adjusted’ equity capital from taxable profits.

3. The Euler Hermes cross-border merger: implications for workers

3.1 Employee rights during the merger

The Belgian employee representation was, as required by law, informed about the merger decision beforehand, in the works council. The merger process was guided by the financial consultants Deloitte and KPMG and according to our interview partners, everything was organised in accordance with the law. Extraordinary works council meetings were organised to address the proposed merger. According to the legislation, the management body of a merging company must prepare a written Management Report for the company’s shareholders, providing a legal and economic explanation and justification of the planned merger. The works council also considered this report and its opinion was provided to the shareholders in an annex. The management report mentioned no effect on employment and working conditions.

The national provisions concerning the rights of employees in the case of a change of employer due to a transformation of the company, which is the transposition of the Transfer of Undertakings Directive (2001/23/EC), are stipulated in the Collective Bargaining Agreement (CAO-CCE 32bis). In case of a transfer of undertaking, both individual and collective working conditions must be maintained in the company resulting from the merger. The collective agreements and labour contracts between each employee and their (previous) employer are transferred automatically, without creating a new labour contract or changing any clause. In the new company resulting from the merger, the transferred employees continue to do the same work for the same wages and working conditions as before the merger. Collective agreements for an indefinite period have to be respected in the new merger until the agreement is suspended by replacement or cancellation. These national provisions were respected by the company.

3.2 Introduction of board-level representation

Belgian corporate law and rules on employee representation do not recognise or foresee forms of board-level participation in Belgian companies. However, as a result of the Cross-border Mergers Directive, for companies resulting from a cross-border merger that are established in Belgium, the Belgian rules will be set aside and participation will be possible if such rights existed within other participating companies (Laagland 2013). As provided for in Article 16 2(b) of the Cross-border Mergers Directive, the existence of board-level participation in the German company participating in the merger triggered the procedure on workers' participation.

In the Euler Hermes merger, the German merging company (Euler Hermes AG) had, according to German law, one-third of the seats on the supervisory board reserved for the employee side. In Germany, employees in larger limited liability companies (500 employees or more) have representation on the supervisory board, to which the day to day management of the company reports. As the workforce came to almost 2,000 employees, employee representatives on the board had a share of one-third of the seats. Therefore, in accordance with the Belgian implementation of the Cross-border Mergers Directive, German board-level representation also had to be taken into account in the merger.

The first two possibilities for implementation were relevant in this regard. The German subsidiary was the company with the largest workforce, but also the first possibility of the directive is relevant, because the German merging company counted more than 500 employees. In any case, which 'exception' triggered negotiations about board-level participation in the Euler Hermes case is not so important; management recognised from the start of the second merger process that it had to think about and act on integrating the board-level representation of employees into the corporate governance of the newly-merged Belgian company.

Under the Cross-border Mergers Directive, a special negotiating body (SNB) must be set up to negotiate arrangements on employee participation with the management bodies of the participating companies in the company resulting from the cross-border merger. The concept 'employee codetermination' has been defined in the Belgium transposition of the Cross-border Mergers Directive (CCT94/CAO94) in the same way as in the provisions on the SE Directive (CCT84/CAO84) (Laagland 2013). In the case of Euler Hermes, a large special negotiating body (SNB) was set up. It included 21 delegates from the 14 involved countries. The lead was taken by the German delegation, which thanks to its legal advisors (from the trade union ver.di) had expertise on this matter. These experts participated in the negotiations.

The election of these country representations was not always clear and transparent. In Belgium, as CCT94 prescribes, the representatives were delegated by the main trade unions represented in the works council (BTK-SETCA and CNE). From some other countries, in which no employee representation was recognised, the representation consisted of the assistant of the local CEO. In one case the selection was reportedly done at a personnel meeting where the 26 employees of the local branch were gathered, and

the director picked somebody, asking, 'would it be any trouble to go there?' However, the core union-based group consisted mainly of representatives who had already known each other for a few years due to links to the transnational activities within the Allianz group, namely the German, Belgian, French, Italian, Dutch and Nordic country representatives. Although not everybody in the SNB was convinced about the need for board-level participation, this core group was convinced of this and drove the negotiations.

On the employers' side, there was no questioning of the principle of introducing board-level representation within the new corporate governance structure of the merged company, as the law was clear on this matter. The German practice of board-level participation was to be implemented. However, the existing board structure would not be changed, which meant that, of the foreseen 12 board members, one-third (that is, four) members should come from the employee side. The board should consist of the five executive directors (including the CEO), two independent members, four employees and the president of the Allianz Group. This composition was seen as fixed and not negotiable.

On 4 December 2013 the SNB met in Brussels and reached agreement on this. Translation facilities were provided, and a pre-meeting was organised for the employee group to develop a common position towards management. In the end, the key issue was the actual composition of the employee representation. Based on employment figures, the German workforce could claim at least two mandates out of the four. However, a majority was necessary not only in terms of employment weight, but also in the employee group of the SNB, which included representatives of 14 countries. The German representatives also wanted to avoid any perception of German dominance of worker representation, and thus were willing to give up one of their seats. The Italian (trade union) representative was recruited to take the fourth mandate, mostly to counter the risk that the non-organised UK workforce would potentially be represented by a non-union and employer-friendly representative on the board. France also received a seat because of its large workforce. It was felt that Belgium, even though it did not have a large workforce, should be represented because the company's headquarters were located there.

This allocation of seats was also intended to represent the four subdivisions of the new company: Germany/Austria/Switzerland, France, Southern Europe and the Nordic division. Belgium was the odd country out; the Nordic faction experienced particular difficulties reaching agreement, as they felt underrepresented in the proposal. There were intensive discussions, weighing the possibilities of achieving representation of large and small national workforces as well as maintaining a regional balance (Molitor 2014). In the end, a compromise was reached by combining the allocation of mandates to the board with the setting up of a new transnational consultation body, in which the Nordic countries would account for half of the seats. This forum would meet twice a year and include representatives of all the subsidiaries. The forum would prepare and watch over the interests of the Euler Hermes employees within the established broader SE works council activities of the Allianz Group (which had nearly 150,000 employees).

In Belgium's monistic board structure, employee representatives are members of the board of directors, which is the company's only governance body. It is worth noting that, taking into account the size of the new company (6,000 employees), the German rules, which precipitated the introduction of board-level participation, prescribe higher employee representation (half the members of the supervisory board). However, only the existing situation in the German subsidiary was transferred to the cross-border merger and 'frozen' at a set level.

4. Living with board-level participation

The new arrangement of board-level participation created a really new constellation for the Belgian trade union representatives, as they do not currently have any systems of board-level participation in their national practice. It is also interesting to note that the board mandate was taken up by the most important representative – the head of the union delegation and works council member – of the socialist trade union BBTK-SETCA. In Belgium this trade union has in always been the most politically opposed to the introduction of any form of board-level participation. However, as this union had the majority in the employee representation of Euler Hermes, it chose to take up the board seat. The following account of the actual functioning of board-level participation is based on an interview with this Belgian board member. As the arrangement is still in its infancy, the comments and remarks are of course based only on initial experience.

Although it involved a new responsibility, he wanted to take up this position as he has always been very engaged in his trade union work. He was the most important representative in the local branch and wanted to grasp also this opportunity to develop also this interest representing work at the highest level. As he states: 'The more you are on the inside, the more you can protect and defend interests.'

In May 2014 the first board of directors of the merged company was organised with the new composition. The board meets at least four times a year. Initially, language seemed to create a problem as the Belgian representative is not very proficient in English. The management had hoped to organise the board meetings only in English. However, simultaneous translation is now provided and the board documents are also translated into French (which is also a requirement of Belgian company law and the financial controlling agency of the National Bank of Belgium, NBB).

According to Belgian law, the employee members have the same rights (and duties) as the other board members. The meetings are considered to be a positive experience by the Belgian employee board member. He has the feeling that the employee group can have its say. He refers in this regard to the CEO, who tries to seek advice, gather opinions and reach consensus. Voting has until now not been difficult. Of course, in this first year, the company has been doing very well, as one of Allianz's high-performing subsidiaries. Nevertheless, the board is not the executive committee of the company; the directors have already discussed and decided many issues beforehand, but decisions are sometimes (slightly) changed in the board of directors.

A difficulty is that board meeting documents are not always available at an early stage and only transmitted a couple of days beforehand. Therefore, the board members on the employee side reserve the night before to jointly study the points of the agenda and the accompanying documents in order to be in a position to fully play their role at the meeting. For this reason, even the Belgian representative, although he lives in Brussels, stays together with the others in the Brussels hotel.

At the time of writing two issues were not entirely resolved. It is unclear whether the employee board representation should also be involved in the audit committee and the management remuneration committee. Another key issue is confidentiality, which is a crucial factor in this new position. Information has to be kept inside the walls of the meeting. However, up until now, the representative has experienced no problems with this obligation. He has made clear arrangements with his fellow representatives. They are not allowed to ask him questions about these meetings, and everybody abides by this rule.

It seems that it is the local Belgian management which has the biggest problem with the board-level mandate of one of its employees. They see that now he sometimes has more top-level information than they do and now and then refer to this rather cynically in local discussions (for example in the works council meetings). Despite what he sees as such attempts to undermine him, the representative asserts that appreciation and respect from the rank-and-file, the local workforce, has increased.

The board attendance fees (€2,500 per meeting) are not kept by the Belgian representative, but are transferred in full to the trade union. As he was already an almost full-time representative in the company beforehand, this situation has not changed. He is now more than ever '400 per cent' involved in the union work, as he puts it.

No particular training or education was foreseen by the trade union when he took up this mandate. Luckily, he was already an experienced union representative, and could draw upon his contacts to the other employee representatives on the board, particularly his German and French colleagues. However, this training aspect remains something to be improved. Only some first instructions came from the NBB regulator.

It is in this respect also very interesting to see that the financial regulator of the country plays a role in the monitoring of these initial experiences. As part of the new regulatory supervision of the insurance sector (cf. Solvency II), the corporate governance of Euler Hermes is also closely supervised. The regulator checks the meeting reports and documents. The Belgian union representative acknowledges that this supervision by the National Bank of Belgium resulted in comments and advice that enable the employee board members to play their full role, for example by insisting on interpretation, translation, and training. This is a particular, but interesting side-effect of this case.

5. Conclusion

In conclusion, it can be stated that, although the Belgian rules on implementing board-level participation in relation to a cross-border merger are not always clear (see Laagland 2013), the introduction of worker participation in the Euler Hermes case ran smoothly. The management side – which was situated in the broader Allianz group, which has a tradition of such board-level participation – was familiar with the practice and did not contest the implementation. It was also not a complicated cross-border merger as it was more of an internal ‘concentration’ exercise in an existing company and not a downsizing story. As job losses were not involved, this made it easier for worker representatives to focus on worker representation in the merged company.

The Belgian union representative, who is experiencing a major innovation from a Belgian union perspective, considers the first experience with this new role as positive. His experience shows that one can learn to see issues in a different perspective, acquire more competences which can be used in other contexts, and participate in the board in open discussions. Learning from other traditions and practices of worker representation can be enabled by cross-border mergers and the inclusion of multinational worker representatives.

The major difficulties involved in this innovation concern language and playing a role in board committees. However, in this particular case of the financial sector, the regulator, who also has the authority to monitor corporate governance quality, played a supporting role in strengthening the means available to employee representation at board level. A major shortcoming from the (Belgian) union side is the lack of expertise and training provisions on this kind of board-level participation. In the negotiations, the German representatives played an important role to achieve a deal by, among other things, taking advantage of available legal expertise and experience. However, no elaborated training programme was set up to help instruct the Belgian representative in this new role.

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