

Chapter 18

Implications of EU company law directives for worker involvement – a ‘best case’ study from Denmark

Laura Horn

1. Introduction

This chapter provides an account of a specific cross-border merger that can in some ways be seen as a ‘best case’ of the interaction between worker rights in national and EU law.¹ Specifically, it looks at a merger between two insurance companies of roughly the same size – the Danish company Codan and the Swedish firm Trygg-Hansa – in 2015. It provides an outline of the merger, focusing specifically on the involvement of employee representatives in the process.²

Similar to the other two case studies of cross-border mergers in the insurance sector in this book (Chapters 16 and 17), these two companies were motivated to merge in part by the Solvency II Directive. Also similar to the other cases, both companies were members of the same group. This means that the cross-border merger can be seen as an ‘in-house’ reorganisation rather than a merger of independent companies. Finally, the fact that large-scale workforce reductions were not part of the reorganisation package removed a potentially divisive issue from the table.

What is particularly interesting about this case is, first, how well management brought worker representatives into the merger process at an early stage. This is not required by the Cross-border Mergers Directive, but rather is typical of the industrial relations traditions in both Sweden and Denmark, reinforced in part by the fact that both of the merging companies had worker representatives on their boards. Second, despite what might have been a divisive factor, given that the merger was between companies of roughly equal size, the trade unions involved cooperated well with each other in finding compromises. Although the Cross-border Mergers Directive would clearly define worker participation as an issue in the case of such a merger, and does provide a framework for negotiations, it does not specify important modalities such as numbers of representatives and their mode of selection. Another characteristic was that the parent company of the merging companies, the RSA Insurance Group, was headquartered in a country without a tradition of worker participation (the United Kingdom), something

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1. The transposition of the Cross-border Mergers Directive (2005/56/EC) into Danish law came into force on 1 July 2007. For more detail on the transposition, see Knudsen (2008).
 2. Information from the merger plan and company reports has been complemented with an in-depth interview with employee representatives and company managers, conducted shortly after completion of the merger in spring 2015.

that could have played a negative role in the merger. It can thus be seen as a 'best case', illustrating when the worker representatives involved use the tools provided for them in both national and EU legislation and management respects a tradition of social partnership.

2. The Codan/Trygg-Hansa merger

2.1 Background information on the companies

In 2015, a cross-border merger was completed between Codan and Trygg-Hansa, two insurance companies based in Denmark and Sweden, respectively. Both companies offer commercial and personal insurance, and hold significant shares of the insurance sector in their main markets. Both Codan and Trygg-Hansa were controlled by RSA Insurance Group, a multinational insurance group headquartered in the United Kingdom.

The Swedish company Trygg-Hansa was created in 1971 out of a merger of two companies, Trygg and Hansa, founded in 1899 and 1905, respectively. In 1997 Trygg-Hansa was acquired by the Swedish bank SEB, but the non-life insurance operations were sold off in 1999 and continued to operate as a subsidiary of the Danish company Codan, which was founded in 1916. This company had been partially taken over by a predecessor of the RSA Insurance Group in 1984, which subsequently built up its ownership stake to 100%. Thus at the time of the merger Trygg-Hansa was owned by Codan, which in turn was owned by RSA.

The merged (surviving) company is Codan Forsikring A/S, registered in Copenhagen, Denmark. At the time of the merger, Codan had around 2000 employees in its branches in Denmark, and an additional 266 employees in a branch in Norway and 115 in a branch in Estonia, while Trygg-Hansa had around 2000 employees in Sweden and a handful of employees in Norway. The size of the merger and the concomitant number of employees involved were unprecedented in Denmark.

The Codan/Trygg-Hansa merger can be understood as an intragroup restructuring, motivated by 'corporate housekeeping' objectives such as consolidation of Scandinavian operations and simplification of governance structures. Also in the background is a broader process of consolidation in the European insurance market, linked to the Solvency II Directive, which is intended to codify and harmonise EU insurance regulations. With Solvency II coming into force on 1 January 2016, the insurance sector has seen a significant increase in overall merger and acquisition activities.³

3. See, for example, <http://www.euractiv.com/sections/euro-finance/insurance-sector-faces-consolidation-new-eu-rules-year-away-310831> (last accessed 20 October 2015).

2.2 Legal aspects of the merger

Within the overall framework of studies of cross-border mergers in the EU, the Codan/Trygg-Hansa merger constitutes an interesting case due to the high degree of institutionalisation of employee involvement both at the shop floor level, as well as in terms of board-level employee representation in Denmark and Sweden. In this context, we would expect to see employee information, consultation and participation rights to be safeguarded and prominent in the merger.

The merger process was completed in March 2015. The mutual involvement between the two companies began in 1996, when Codan bought Trygg-Hansa for 3.6 billion DKK, with both entities remaining separate corporate structures in the overall RSA group. Initial ideas for a merger began to be sounded out during 2012, but no concrete plans were discussed until 2013. Initially, discussions were open as to which company should be the acquiring actor, but eventually it was decided that Trygg-Hansa should be integrated into Codan.

A member of Codan management was tasked with overseeing the initiation of the merger process in summer 2013, after a first proposal had been presented to the board in April 2013. The change programme director mentioned that there was a great deal of uncertainty about procedures, and that they had worked closely with the business regulatory authority to make sure compliance with all rules regarding employee involvement could be safeguarded.

At this initial stage, before the merger plan had been fully developed and filed but when the outlines of the merger programme had become clearer, several informal consultative meetings took place between management and employees. This happened on the Swedish side in particular, with the Swedish CEO of Trygg-Hansa and trade union representatives attending. The idea was to provide the unions and employee representatives with information after each board meeting at which an update on the merger plan had been given. While this followed Swedish requirements, there were no similar requirements on the Danish side. However, unions and employee representatives from both countries were invited to these meetings, where they took on an active role in discussing issues and challenges arising from the merger.

The common draft terms, which contain the elements of the merger plan, were submitted to the Danish and Swedish business regulatory authorities in April 2014. In compliance with the Cross-border Mergers Directive provisions, the merger plan (section 5) specifies the likely consequences for employment in the merging companies. It states that, as part of the merger, the employees of the non-surviving company (namely, Trygg-Hansa) would become employees of the merged company's existing Swedish branches, with the few employees in Norway becoming part of the Norwegian branch. The plan states that 'the merger is not expected to have any other material consequences for employment in the merging companies'. Moreover, as stipulated, the merger plan outlines the procedures for employee involvement 'in determining their rights of participating in decision-making in the surviving company', in particular with regard to board-level employee representation. The plan confirms reference to the

Danish system of employee representation, equivalent to one-third of board members, and indicates the establishment of the special negotiating body (SNB).

3. Workers' involvement

Following the filing of the merger plan, as required by the transposition of the Cross-border Mergers Directive, management sent a communication to the employees on the company intranet, outlining the details of the merger, in particular with regard to consequences for employment. Although they had a right to do so under the Directive, the employee representatives decided not to submit an opinion on this communication of the common draft terms. As the employee representatives put it, they saw the management communication as sufficient and did not see a need to 'rock the boat' at that stage.

Detailed discussions of the merger process were more active among the Swedish employees. The fact that the Danish company was to be the acquiring actor gave rise to more worries about employment on the Swedish side. According to the Danish representative, there were hardly any questions from the Danish employees regarding the merger. The employee representatives on both sides were in consultation with their respective local union branches (FTF, the Swedish Union of Insurance Employees, and DFL, the Danish Union of Insurance Employees/Danish FTF) to make sure that they 'didn't miss anything'.

The special negotiating body (SNB) was set up in late spring 2014, composed of 12 trade union representatives – six from Sweden, five from Denmark and one from Norway, with FTF and two other unions being involved. The first meeting was organised in Stockholm, as a gesture to the Swedish representatives. The merged company offered legal and human resource support for the SNB and covered costs for external lawyers to draft the agreement.

An agreement was reached after only three meetings, so that a planned fourth meeting was not needed. According to employee representatives who had participated in the SNB, the atmosphere during these half-day meetings was friendly, constructive and provided room for discussion. One of the main points for debate in the SNB was the difference in board-level employee representation in Denmark and Sweden. Whereas in Denmark representatives are elected through employee (committees), in Sweden the trade unions appoint board-level employee representatives. The representation model that was agreed incorporates elements from the Swedish system. Since the Swedish company was somewhat larger, in the final agreement it was decided that two of the board-level employee representatives should be from the Swedish side and one from Denmark. During the process of discussing employee involvement, the European Works Council was also consulted at a meeting in Copenhagen, without any resulting reservations about the merger. Interestingly, as Codan is fully owned by a company registered in the United Kingdom – that is, without any employee board-level representation – the process involving employees had to be explained and justified to the board members in the United Kingdom, who were not familiar with employee involvement.

The agreement reached in the SNB formed part of the overall procedure for finalising the merger process. After the merger won approval on the Swedish side in November 2014, it was then completed by 31 March 2015. There were no employment consequences of the merger other than the integration of the employees of the merged company into the respective branches of the Danish company. Despite the fact that there were redundancies on the Danish side of Codan in spring 2015, these were not a factor as they were not directly linked to the merger. This also pertains to the significant reshuffling of top-tier management after the merger, which should be seen in the overall context of consolidation of operations and governance.

4. Conclusions

There are several interesting issues in the overall process of the Codan/Trygg-Hansa cross-border merger to be discussed in the context of the overall study of the Cross-border Mergers Directive in this book. In particular, the strong culture of and commitment to employee representation is visible in terms of procedural steps, as well as more informal practices. Moreover, the provision of information and transparency in the process is rather important, both at the legislative and the company level.

Overall, the Codan/Trygg-Hansa merger can be seen as a positive example with regard to employee involvement in a cross-border merger situation. Given the institutional, legal and cultural context, it is of course unlikely that experiences from this case could indeed be used as 'best practice' recommendations for cross-border mergers in other countries. However, it is certainly worth pointing out that in this case employee involvement was not considered an obstacle to the merger process. Instead, employee involvement was included not only to comply with legislative requirements, but appears to have formed an integral part of the overall process.

The consensual nature of the discussions and negotiations in the SNB well illustrates the shared understanding of the relevance and role of board-level employee representatives between the two employee groups. The overall 'culture' of board-level employee representation in Denmark and Sweden provided a background against which the requirements for employee involvement were not only not challenged or resented by management, but rather actively supported and accommodated. The employee representatives' decision not to issue their own statement regarding the communication on the merger plan should be seen in light of this overall constructive relationship between management and employees.

As a critical side-note, and realising that whether providing a commentary of their own would have made a difference to the overall process is a moot question, it might be pointed out that that consensual relations between management and employee representatives should in general not preclude a willingness to 'rock the boat', if there are even minor employee concerns related to a merger process. At the same time, the wide consultations with trade unions and even the EWC illustrates that the employee representatives involved in the process took their role very seriously. As a 'best practice' scenario, the case of the Codan/Trygg-Hansa merger serves as a reminder that employee

involvement is indeed an integral part of cross-border mergers where there are relevant legislative and institutional frameworks.

References

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