

Exercising voice across borders:
workers' rights under the EU
Cross-border Mergers Directive

ETUI series – Workers' rights in company law

Edited by
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Since the passage of the 2005 EU Directive on cross-border mergers of limited liability companies, mergers between firms based in different countries have become an increasingly important form of corporate reorganization in Europe. Cross-border mergers have great significance for workers' rights to information, consultation and participation, since firstly, they should be comprehensively informed and consulted about the merger, and secondly, since the company law regime applicable to workers after the merger may have weaker regulations than they enjoyed pre-merger.

This book contains the results of a study of workers' rights to information, consultation and participation in EU and national law covering cross-border mergers, which was undertaken by the ETUI's GOODCORP network of academic and trade union experts on company law and corporate governance. Based on an analysis of available statistics, nine national legal regimes and seven case studies, this book argues that the provisions for workers' rights under the Directive are inadequate, both during the merger procedure and in the new post-merger entity. It remains to be seen whether the deficits identified in this study can be successfully addressed by the implementation of the EU Company Law Package, a new legislative initiative regulating different types of cross-border reorganizations.

Key findings

- **There is a long-term upward trend in the number of Cross-border Mergers.** Although there are some short-term fluctuations, Cross-border Mergers are becoming more important in Europe as a form of corporate reorganization.
- **The Cross-border Mergers Directive has been used mainly in ways other than originally foreseen by its legislators.** Whereas a central intention of the Directive was to encourage mergers between independent companies, the vast majority of cases have been 'in-house'/'within-group' corporate reorganizations.



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Book

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- **Information and consultation rights defined by the Cross-border Mergers Directive in the merger process are too weak.** In particular, since the Directive does not provide rights to early information and consultation (i.e. before management makes a final decision), there is an uneven playing field, as key worker rights are mainly defined in national law.
- **There are deficits in worker information, consultation and participation rights in the resulting ('merged') company.** Unlike the SE legislation, the Cross-border Mergers Directive does not provide for an international information and consultation body. Furthermore, protections for existing worker participation arrangements are weaker than in the SE legislation.
- **'Other' worker rights in the Cross-border Mergers Directive are weak.** References to important workers' rights in the EU acquis are missing or restricted to the Recitals.
- **Enforcement of workers' rights under the Directive is uneven and penalties for violation of these rights are for the most part negligible.** The contrast with the seriousness of enforcement and the magnitude of penalties for the violation of securities markets/insider trading laws is quite striking.
- **There is some improvement through the new Company Law Package but there is still a long way to go to fully implement workers' rights under the EU acquis.** The Company Law package published by the European Commission in April 2018 and amended by the European Parliament and EU Council, which affects cross-border mergers, divisions and conversions, only goes part of the way towards remedying these weaknesses

Key recommendations

Worker s' rights in the cross-border merger process need to be strengthened. In particular, early rights to information and consultation – before management makes a final decision on the merger -- are crucial. Existing rights in the EU acquis need to be better incorporated in European company law.

Workers' rights in the newly-created entity (the 'merged' company) also need to be substantially improved. Analogue to the SE legislation, provision should be made for an international information and consultation body. Secondly, a dynamic element should be built in, so that workers' rights can be renegotiated once specific employment thresholds are reached. Finally, workers' rights in the merged entity should be protected in any further reorganization for a longer period of time.

Enforcement of the violation of workers' rights must be increased and penalties have to become more dissuasive. Workers' rights are frequently not respected in practice due to lack of enforcement or the weakness of penalties.

A European framework Directive on information, consultation and participation rights would be a particularly effective way to implement these rights. As called for by the ETUC, this Directive would apply to all European company legal forms as well as companies using EU company law Directives. This framework Directive should include rights to early information and consultation, to the creation of international information and consultation bodies and a dynamic approach to renegotiating participation rights once specific employment thresholds are met.

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