



Facilitate the merger of companies – Protect the Concept of Partnership in Companies

Merger Directive has to be in line with the European Company statute

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The aim of the directive is to close an important gap in company law by facilitating the merger of companies with share capital from different Member States. Under current Community law, not all Member States permit such mergers. The differences between the legal systems of the various Member States to which the merging companies are subject are sometimes so great that the companies currently have to resort to complex and costly ad hoc legal solutions. This often makes such mergers a risky undertaking, and they do not always take place with the required transparency and legal certainty. Cross-border mergers are possible only under the statute for a European company (SE).

The provisions on the participation of workers in a company resulting from a cross-border merger, which led to the failure of the first proposal for a 10th Company Law Directive in 1984, are now to be regulated by means of this proposal for a directive. The main objection to the merger of companies from differing Member States has been the fear that companies from Member States where a right to worker participation exists might misuse this procedure in order to evade this rule.

Therefore, EUCDW advocates a merger directive that is oriented on the procedures that also safeguard the codetermination and the participation of workers in the European company: negotiations between employers and employees plus safety-net provisions in case of non-agreement.

This would involve cross-border information and consultation as well as codetermination (where such a system exists in the founder companies).

In this respect, EUCDW stresses the following key points:

- EUCDW welcomes all demands that are aimed at safeguarding the existing forms of codetermination and participation. The fundamental principle and stated aim of this directive in question must be to secure employees' acquired rights as regards involvement in company decisions.

- The merger plans must contain information about the future rights of the employers and details of how these rights are to be implemented. Most importantly, the employee representatives of the merging companies are also to be informed about the merger's implications on employment.
- All information (expert's report to the employee representatives, presentation of details etc.) must be communicated timely (at least one month prior to the general meeting of stockholders at which the merger is agreed on)
- Those companies that are already subject to codetermination systems must adhere to them in the future. The concept of partnership in the economy – as an instrument against class struggle – is one of the key factors of entrepreneurial success. Consenting regulations that would allow the majority of companies to do away with the principle of workers' participation would be in opposition to the tradition of Christian Democratic politics.
- The quality of the workers' participation, which is also proportionally represented in the administrative board, must not be diluted by, e.g., arbitrary regulations taken by the member states (as laid down in article 14.3 of the directive). Against the background of protecting management-labour relations by the EU Constitution, the regulatory competence of the member states needs to be strictly defined. It must not result in the governments' coercing the codetermination rights of workers without justification.

Today, to many a social Europe is not a key element of the European idea. However, if the EU is not guided by this concept and curtails existing rights, it will sooner or later lose the support of the European citizens.

We need to counter this tendency also in view of protecting the concept of partnership between employers and employees also in the so-called merger directive

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