Spin-off

When an activity is moved into a new, autonomous company

Transnational Restructuring Navigator

What you should know about it:

- We speak about a “spin-off” when a company chooses to separate itself from one of its core activities to form a new, autonomous entity.
- An argument often used for a spin-off by management is that they believe that the sum of the parts is worth more than the current market capitalisation, anticipating a fairer valuation by the market. Other reasons can be a folding back on the core business of the company or simply separating activities which are not considered as relevant anymore.
- Very often, it is activist shareholders who push to “separate the wheat from the chaff” - for example to separate a highly profitable 'good' division from another lagging division. The "good" business will be immediately upgraded on a separate basis. However, each situation needs to be examined on a case-by-case basis, as there are hundreds of reasons to spin-off.
- Spin-offs may happen at the expense of workers as it will affect workers in the new entity, but also can have an impact on the remaining activities of the company. Additionally, a spin-off may lead to longer supply chains and complex arrangements. If workers are transferred to another employer (an autonomous entity), jobs and working conditions may be safeguarded for a certain period of time only (**click here to know more about transfer of labour contracts**).
- In case of a spin-off, EWCs and local worker representation bodies should be aware of certain minimum protection rights. In case of a transfer of undertakings, certain rights of workers are protected by **Directive 2001/23/EC** on safeguarding of workers’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The Directive provides that:
    - all rights and obligations are transferred to the acquiring company. Member States may provide that transferor and transferee shall be jointly responsible for obligations which arose before the date of transfer of the contract.
    - Member States may adopt appropriate measures to ensure that the transferor informs the transferee about all rights and obligations to be transferred.
    - the transferee shall respect the collective agreements concluded with the transferor until the date of expiry or the entry into force of another collective agreement (Member States may limit the period for respecting such terms but must respect at least a period of one year).
- As regards worker representation, the Directive provides that in those cases where the transferred business maintains its autonomy, the status and function of worker representatives shall be preserved on the same terms and conditions.

Your mission is to...

- Anticipate spin-off in your company by monitoring sectoral developments. Use trade union resources and information on the issue at European and national level.
- Gather all information that helps to understand the economic case but also possible “hidden” motivations of the management.
- Make sure the rights and working conditions of the workers who will be transferred are fully respected within the future new autonomous entity.
- Consider the establishment of a new EWC for the activities that will be spun off.

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Timeline matrix

Management obligations

European Works Councils SE Works Councils

- If the rumours are true and a project is under way which may be of importance for the European workforce in terms of its potential effect, Central Management has the obligation to inform the EWC or SE WC as soon as possible (see intended decision).

Local worker representations

- If the rumours are well funded and a project is under way which may have an impact on the workforce in terms of its potential effect, Local Management has the obligation to inform the local representatives as soon as possible (see intended decision). In case more than one country is impacted, such information should be coordinated and provided to the worker representatives in all countries concerned and to the EWC/SE WC within the same timeframe. Local information then concerns in particular the impact of the spin-off project on those local sites that will be affected.

Worker representatives on the Board

- Management should inform the board members about the corporate strategy and any plans that are likely to affect the workforce at a very early phase and well in advance of any final decision.

Workers' rights and action

European Works Councils SE Works Councils

- As soon as rumours may appear to have some substance, EWC/SE WC members should confront management with the information already obtained and ask for further details, including – when appropriate - the formal information and consultation of the EWC/SE WC. This can be done at a regular meeting or via their Select Committee, Secretary, Chair or other spokesperson in between meetings.
- Get in touch with your trade union coordinator and your European trade union federation to secure the full information of all concerned trade unions and start preparing a joint trade union response

Local worker representations

- As soon as rumours may appear to have some substance, local worker representatives should confront management with the information already obtained and ask for further details, including - when appropriate – the formal information and consultation. This can be done at regular meetings of the

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local representative bodies or via their Secretary, Chair or other spokesperson in between meetings. This can also be done by individual shop stewards or the EWC/SE WC members representing the country concerned.

- Any information obtained at local level should systematically be shared with the EWC/SE WC members of the other countries. This will make it possible to get a picture very quickly of the transnational nature and actual size of the possible spin-off.

Worker representatives on the Board

- Worker representatives on the board have access to the same information as shareholder representatives. If any rumours about a possible spin-off are going around and such plan has not been communicated to the board yet, then the issue can be raised at the next meeting, asking for full disclosure of the business case. If however such plan was already shared with the board, signals can be sent to the EWC, local worker representatives and/or trade union officers that indeed such restructuring is being prepared.
- Caution: specific rules on confidentiality may apply.

Trade union action

European Works Councils SE Works Councils

- Contact the respective European Trade Union Federation: Check and follow any existing European Trade Union Federation code of conduct/policy applicable in case of a spin-off and/or any pre-existing transnational framework agreement or similar company-specific document.
- EWC coordinators should closely cooperate with the ETUF and EWC members in the concerned countries.

Local worker representations

- Rumours may be well-founded or not. Therefore, the first mission is to gather as much information as possible to substantiate your presumptions. Possible actions include exchanges with workers concerned and checking publicly available sources (press, corporate website, ...).

Worker representatives on the Board

- In some cases, trade union officers may have a mandate on the company board. If that is not the case, then a close contact to the worker representatives who are on the board will be essential. This will allow rumours to be quickly verified and, if confirmed, to prepare further steps (see the following sections in the timeline).

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Role of public authorities

European Works Councils SE Works Councils

- No role of public authorities at this stage.

Local worker representations

- In some countries, when larger parts of the workforce are concerned, public authorities may be asked to get involved. To prepare for such intervention at a later stage, check your national legislation to find out what rules will apply and which procedures you must follow.
- Laws and regulations on **transfer of activities to a different undertaking** may be of particular interest.

Worker representatives on the Board

- In case of a potentially significant impact on the workforce, worker representatives on the board may already warn management that public authorities may have to be informed.

Further reading and resources

SPIN-OFF ACQUISITION/TAKE OVER

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

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