(Cross-border) merger

When two companies join to form one new legal entity

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What you should know about it:

- There are **different scenarios of a cross-border merger** for example when an existing company absorbs one or more other merging companies; the absorption of a wholly owned subsidiary or the formation of a new company where two or more companies merge to form a new one.
- Please note that in this guide, the scenario of a cross-border merger is based on the merger of two European companies, i.e. both covered by European corporate the labour/social law. As in practice cross-border mergers will also involve companies outside Europe, you should be aware of different legal framework conditions. Therefore, we have included comments and advice also on such scenarios where this is important to consider.
- Please note that cross-border mergers should be distinguished from Joint Ventures, which is when a new business is controlled by two or more companies.
- If two companies from different countries merge, workers of all involved companies have the **right to be informed and consulted about the proposed merger** via their information and consultation bodies at national and/or international level.
- If at least one of the companies taking part in a cross-border merger has **worker representation at board level**, a negotiation procedure, as provided for under the European Company Statute, would apply. This procedure must lead to an agreement on a regime on worker representation at board level. If negotiations fail, the worker representation/participation regime of the Member State with the most stringent rules shall apply.
- In case of cross-border mergers an **independent experts' report** assessing the proposed merger can be commissioned by the workers' representation.
- There are two Directives that define certain worker rights and should be used by worker interest representation bodies and EWCs to improve information and consultation rights well as to protect worker representation at board level.
- Directive 2005/56/EC on cross-border mergers facilitates transnational mergers of companies with share capital. Directive 2004/25/EC on takeover bids provides worker interest representations with **extended information as well as consultation rights** in the context of takeovers. The Directive stipulates that workers have to receive extensive information on the takeover bid and gives them the right to issue their opinion/recommendation.
- Workers' representation bodies have the right to be heard during the investigation procedures in the context of mergers according to the Merger Regulation. However, this right to consultation (which is

triggered by a written request of the workers!) is limited to the economic impacts and consequences of mergers. It does not include social impacts, as these are not part of the Commission's assessment, which is rather focused on the question whether or not a merger may impede competition, thereby creating a situation where a company is gaining a position that is incompatible with the common market.

- As regards **cross-border conversions (e.g. into an SE), mergers and divisions**, please be also aware of the so-called **Company Law Package** that was agreed in 2019 (to be implemented within three years) as it is particularly relevant for companies involved such transformation and which have board-level worker representation. For more details see the further reading section.

Your mission is to...

- Make yourself familiar with the EU company law regulation on cross-border mergers, divisions and conversions, for example into an SE.
- Liaise with your national trade union federation. If you are a national trade union representative, contact your European Trade Union Federation for advice.
- Gather information on the companies involved in the cross-border merger and get in touch with the workers representation in the other company/companies involved in the merger – for doing so liaise with your local and European sectoral trade unions organisation to facilitate this process.
- Share all information you can collect at local level with all EWC/SE WC members.
- Get in touch with your EWC coordinator and experts at your national and European trade union federation in particular in situations where your rights are under threat by cross-border legal changes.

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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 within the same timeframe. Local information then concerns in particular the impact of the merger project.

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 preparations for 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 preparations for consultation. This can be done at regular

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meetings of the 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 of 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 of the possible merger project.

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 merger 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 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 ETUF: Check and follow any existing ETUF code of conduct/policy applicable in case of mergers and/or any pre-existing transnational framework agreement or similar company-specific document.
- Gather information on the other company(ies) involved in the merger project and try to establish contacts with the respective trade union structures.
- 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, checking publicly available sources (press, corporate website, ...) and contacts with representatives of the potential other company(ies) involved in the merger project.

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. However, you may inform yourself about the role of national or local public authorities in particular in large cases of restructuring in your country.
- As the possible merger may fall into the scope of competition law, get acquainted with the EU **Merger Regulation** and the EU merger control procedure.

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 **collective redundancies** and the **transfer of activities to a different undertaking** may be of particular interest.
- As the possible merger may fall into the scope of competition law, get acquainted with the EU **Merger Regulation** and the EU merger control procedure.

Worker representatives on the Board

- In case of significant impacts on the local workforce, worker representatives on the board may become prepared to ask management to inform public authorities.

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Further reading and resources

(CROSS-BORDER) MERGER | JOINT VENTURE | ACQUISITION/TAKE OVER

Competition: Merger control procedures

Type: PDF

Category: Facts and data

Language: English

Access: Public

(CROSS-BORDER) MERGER | JOINT VENTURE | ACQUISITION/TAKE OVER

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)

Type: Website

Category: Legal

Access: Public

BEFORE RESTRUCTURING | COLLECTIVE REDUNDANCIES | (CROSS-BORDER) MERGER

How to prepare to company change?

Manual for European Workers' Representatives.

Organisation(s): ETUI

Type: Website

Category: Union guides

Language: English

Access: Public

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Year: 2018

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