

Industrial relations aspects of mergers and takeovers

There has been a dramatic increase in the number of corporate mergers and acquisitions (M&As), and especially cross-border M&As, in recent years and Europe has been a major focus of activity (though with national variations - eg British, French and German companies are involved in the majority of cross-border M&As). In 1998, a total of 7,600 European Union-based companies were involved in M&As. In Europe the value of cross-border M&A-related sales and purchases increased in 1999 by 83% and 75% respectively, compared with 1998. The EU accounted for almost half of 1999's global cross-border M&A-related sales and 70% of purchases.

The current wave of corporate restructuring and M&As means that these issues are highly topical among European-level institutions and social partner organisations at present. Various items of EU legislation already attempt to provide protection and information and consultation rights for employees in the event of company restructuring, which may include M&As either specifically or generally. The most important provisions are set out in the box on p.iv.

Several more recent and pending proposals are also relevant in this area, especially the draft 13th company law Directive, concerning takeover bids, which includes provisions on employee information rights, among other matters. The Council of Ministers' common position text of the Directive provides that as soon as a takeover bid is made public, the board of the target company must inform employee representatives. The target company's board must also communicate the bidder's offer document to the employee representatives. This offer document must state "the offeror's intentions with regard to the future business and undertakings of the target company, its employees and its management, including any material change in the conditions of employment". The target company's board must draw up and make public a document setting out its opinion on the bid, together with the reasons on which it is based, including its views on the effects of the proposed takeover on all the interests of the company, including employment. Following amendments proposed at second reading by the European Parliament in December 2000, the proposal is likely to go to the Council-Parliament conciliation committee in early 2001 in the hope of producing an agreed text.

Also significant is the proposed Directive on national information and consultation rules, which would require all undertakings with at least 50 employees to inform and consult employee representatives about a range of issues, such as decisions likely to lead to substantial changes in work organisation or in contractual relations, including transfers of undertakings. The Council of Ministers is still attempting to reach agreement on the draft Directive.

EU-level concern about the impact of industrial restructuring prompted the Commission to establish the high-level "Gyllenhammar group" on the economic and social implications of industrial change in 1998, which recommended a range of measures such as: setting up a European observatory on industrial change; promoting social dialogue on industrial change and its effects (including information and consultation of employee representatives); encouraging large companies to produce annual reports on their employment policies; and ensuring that closures and collective redundancies are accompanied by social plans, modernisation programmes and "mobilisation strategies".

The European Parliament has recently called for a strengthening of the rights of workers and their representatives in corporate restructuring, including reviews of the collective redundancies and EWCs Directives. The European Trade Union Confederation (ETUC) is also calling for increased workers' rights in restructuring, notably through revision of the EWCs Directive, and reform of the EU concentration control procedures (see box on p.iv).

With M&As and their economic and social impact such a pressing issue across Europe, this comparative supplement - based on the contributions of the EIRO national centres in the 15 EU Member States, plus Norway - briefly outlines:

- the main points of the regulatory framework as it applies to issues such as workers' representatives' information and consultation rights on M&As and on collective redundancies which may arise;
- the role of public authorities in this area (set out in the box on p.v);
- current proposals for legislative change in this area;
- the impact on jobs and collective bargaining of M&As;

- the issues raised by cross-border M&As; and
- the social partners' views and proposals for change on the regulation of M&As.

The supplement is an edited version of a full comparative study available on the EIROOnline database (see p.11 for access details).

The regulatory framework

The regulatory framework governing the rights of employees and their representatives in M&As and in any subsequent collective redundancies is largely based on national legislation implementing the EU Directives on transfers of undertakings (which applies in many, though not all cases of M&A) and collective redundancies (see box on p.iv), while in a number of countries there are additional specific provisions on M&As in employee participation legislation (as, for example, in Austria, France, Germany, the Netherlands, Spain and Sweden). Specific, separate legislation on workers' rights in M&As is very rare, with a forthcoming German law one of the few examples. The Dutch Merger Code also contains specific provisions in this area.

Information and consultation rights on M&As

In all countries examined, employers are required to inform employee representatives in the event of a merger or acquisition. This requirement often arises from the transposition of the EU Directive on transfers of undertakings, and the legislation of the various countries is, it appears, gradually being harmonised in this area.

Information is provided to different types of workers' representatives depending on the particular country. The information is provided to

- 1) elected employee representatives - generally works council-type bodies - in Austria, Denmark, France, Germany and Portugal;
- 2) trade union representatives in Belgium, Ireland, Italy, Sweden and the UK (where employee representatives are informed if there is no recognised union); and
- 3) both elected employee representatives and union representatives in Finland, Greece, Luxembourg, the Netherlands, Norway and Spain.

Many countries have alternative provisions for cases where companies have no workers' representatives, as provided for in the Directive, mostly requiring the information to be provided directly to the workers themselves. In Sweden, national and sector-level trade unions are also informed.

The transfer of undertakings Directive sets out the issues on which information

Timing and procedure for information and consultation on M&As (excluding basic transfer of undertakings provisions) in the EU and Norway

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| Austria | In the event of major company changes, including mergers, takeovers and changes of ownership, the Works Constitution Act provides that management should inform works councils as early as possible, preferably in the planning phase, and at the latest at a time which makes consultation possible. The information must cover the reasons for the restructuring, and the numbers, qualifications and employment duration of the employees affected. In companies with over 20 employees, compulsory social plans must be established in the event of a basic deterioration of labour standards. The works council may present proposals to prevent or mitigate negative consequences for employees. |
| France | The Labour Code requires employers to inform and consult elected employee representative bodies on mergers, transfers, major changes to manufacturing patterns and acquisitions or transfers of subsidiaries. Where a company is planning an M&A, it must inform the works council of the rationale and, where these changes affect employees, to consult on the proposed employee-related measures. Consultations must occur prior to any definitive decision. The works council may give an opinion but this is not binding. If a company is the object of an unsolicited M&A bid, the employer must inform the works council as soon as it becomes aware of the bid. The target company's works council may ask the bidder to explain its proposal. If the bidder does not accede to this request and the takeover bid succeeds, it may face charges of obstructing the work of the works council. In the event of M&As, companies listed on the stock market are required to consult their works councils, which have an "appropriate period" to draft a reasoned report. Failure to consult may result in obstruction charges. |
| Germany | The Works Constitution Act provides that in firms with over 20 employees, the employer must inform the works council "in full and good time of any proposed alteration which may entail substantial prejudice to the staff (...) and consult the works council on the proposed alterations". This applies to reductions of operations, closures, transfers, amalgamations and important changes in the organisation, purpose or plant of the establishment. Companies with over 100 employees must establish an "economic committee" composed of employees representatives, which has the right to full information in good time from the employer on the financial affairs of the establishment and its implications for personnel planning, including transfers, amalgamations, changes in establishments' organisation or objectives and "any other circumstances and projects that may materially affect the interests of the employees of the company". Forthcoming takeovers legislation will introduce specific new information and consultation rights for works councils (see main text). |
| Italy | The information required by the legislation transposing the EU Directive on transfers of undertakings must be provided in writing and at least 25 days before the implementation of the takeover. Within seven days of receipt of the information, either the plant-level union structures or sectoral unions may demand in writing the start of joint consultations. Both transferor and transferee must conform with this request and begin consultations within seven days. The consultation process is regarded as having been concluded after 10 days, even if no agreement may be reached. Some sectoral collective agreements provide for additional information rights in the event of restructuring, including M&As. |
| Luxembourg | Joint committees (normally established in companies with 150 employees) must be informed and consulted on all economic and financial decisions that could have a decisive impact on the structure of the enterprise or employment levels, focusing on the repercussions on the workforce's volume and structure and employment and working conditions. The process must also cover social measures, particularly those relating to vocational training and retraining. Information must be provided, and consultation take place, prior to the planned decision, except when this might impair the management of the company, or undermine the completion of a planned operation. In such circumstances, the employer must provide the committee with all necessary information and explanations within three days. |
| Netherlands | Under the works councils legislation and Merger Code, companies involved in M&As must inform their works councils and the unions concerned. Management must give the works council sufficient information, justify its decision and show that it has taken into account employees' interests. Unions must be consulted, but there is no obligation to reach an agreement, unless the relevant collective agreement states otherwise. Information and consultation must occur in due time, before the final decision has been taken. Works councils can go to court to seek to prevent an M&A. |
| Norway | The Companies Act stipulates that employee representatives have access to documents concerning M&As, and may express their views, which are to be included in the working papers used during the M&A process. The LO-NHO Basic Agreement stresses the obligation on management to provide instant information, on the basis of which the parties will usually enter into discussions on the consequences of the M&A for the employees. The Basic Agreement imposes a duty on management to provide for a meeting between employee representatives and new owners, to discuss matters such as the transfer and continuation of collective agreements. The Basic Agreement also includes special provisions concerning limited companies, obliging management to inform employee representatives of a change of ownership as soon as possible during the planning process. This also applies to more limited changes of ownership. The management is to be instrumental in getting the new owners to inform the employees as soon as possible about their plans for the company. |
| Spain | The Workers' Statute gives workers' representatives in limited companies the right to be informed of M&As in the same way as shareholders - ie at least one month before the general shareholders' meeting that is to approve the M&A. Furthermore, when M&As affect the volume of employment, workers' representatives are entitled to issue a report prior to the decision being taken. The workers' representatives must have at least 15 days to draw up the report. |
| Sweden | The Act on Co-Determination at the Workplace gives trade union representatives the right to be informed and consulted in the event of "significant changes" within a company, including M&As. The employer must inform union representatives and start negotiations with them. Collective agreements may provide for deviations from the Act's provisions, but may not result in provisions less advantageous to employees than those of the relevant EU Directives. Agreements provide generally that such negotiations are to be carried out quickly, and that a timetable may be negotiated on each occasion between the employer and local trade union. |
| UK | The information and consultation required by the legislation transposing the EU Directive on transfers of undertakings must occur long enough before a relevant transfer to enable the employer of any affected employees to consult all appropriate representatives. |

must be provided, including: the date of the transfer; the reasons; the legal, economic and social implications for employees; and any measures envisaged in relation to the employees. The transferor must give this information to the representatives of its employees "in good time" before the transfer is carried out, while the transferee must give such information to the representatives of its employees "in good time", and before the employees are directly affected as regards their conditions of work and employment. Most member states have integrated these requirements into their domestic legislation, and some have improved on them.

As well as these provisions based explicitly on the transfers of undertakings Directive, works councils or similar bodies have the right to be informed in the event of major changes in the company, including M&As, in countries such as Austria, France, Germany, Luxembourg, the Netherlands, Spain and Sweden. In Germany, forthcoming legislation on takeovers provides specific information rights for employees and their representatives, such as an obligation on the target company to inform employee representatives or employees about the takeover bid, and about the contents of the bidding company's accompanying documentation (which must set out the planned consequences for employees, employee representation, labour relations and working conditions). The new law's provisions are similar to those of the draft EU Directive on takeovers (see above).

The transfer of undertakings Directive provides that where the transferor or transferee envisages measures in relation to its employees, it must consult the representatives of the employees "in good time" on such measures with a view to reaching an agreement. With the exception of Denmark and Portugal, all EU countries have complied with this provision.

Information and consultation rights in M&As generally derive from legislation. However, in a few cases collective bargaining plays a role. In Norway, the Basic Agreement between the NHO employers' confederation and LO trade union confederation regulates many aspects of information and consultation in such circumstances, while in Sweden, collective agreements may, and do, provide for variations from the legal provisions (while respecting minimum provisions). In Italy, some collective agreements - as in banking or insurance - provide additional information and consultation rights for union representatives in the event of restructuring, including M&As.

The table on p.ii sets out the timetable and procedure for information and

consultation on M&As, where this differs from the basic provisions of the transfers of undertakings Directive (see above).

Information and consultation rights on collective redundancies

M&As may in some cases result in collective redundancies (see below). While the transfers of undertakings Directive provides that a transfer shall not in itself constitute grounds for dismissal by the transferor or the transferee, it stipulates that this "shall not stand in the way of" dismissals for economic, technical or organisational reasons entailing changes in the workforce. All the countries covered here have implemented the provisions of the collective redundancies Directive relating to the content and timing of information and consultation of employee representatives (see above), with national variations relating to issues such as the identity of the workers' representatives informed and consulted (see previous section) or the definition of collective redundancies. Furthermore, as outlined in the previous section, in countries such as Austria, Germany, Luxembourg, the Netherlands and Spain, workers' representatives have information and consultation rights related to planned changes in employment levels.

Information and consultation rights on collective redundancies are particularly well developed in Belgium where - under legislation introduced following the closure of the Renault factory at Vilvoorde in 1997 - employers planning collective redundancies are required to follow a four-step information and consultation procedure. This includes a right for employee representatives to raise questions and formulate arguments or make counter-proposals, to which the employer must respond.

The right to expert assistance

In some countries, such as Austria, France, Germany, Luxembourg, the Netherlands, Norway and Sweden, legislation (or the Basic Agreement in the case of Norway) provides explicitly that employee representatives may obtain expert assistance in information, consultation and negotiation procedures relating to M&As. In Finland, there is a dual system specifically permitting expert assistance in the case of M&As involving multinational companies but not those involving only domestic companies. In other countries, no legislation exists on this issue exists, though in Spain, expert assistance may be provided for by collective agreements.

Right of opposition

It is rare in the countries considered here

for employees and their representatives to be able to challenge or oppose a planned M&A in any way. An exception is the Netherlands, where the managements of companies involved in an M&A have to ask their respective works councils for their opinion. When the opinion of the works council is negative, management has to postpone the implementation of its decision for a period of one month. During that period, the works council can go to court to fight the merger decision.

In several countries - such as Ireland, Norway and Germany (in forthcoming legislation) - workers' representatives may give their view on M&As, though without this necessarily having any effect. For example, in Norway, there is a legal obligation on employers to inform workers' representatives about the purchase of shares in companies of a certain size or nature. In such cases, employees are entitled to express their views on the purchase while it is being considered by the Ministry of Trade and Industry. If the Ministry believes that the purchase will have negative effects on the enterprise, with regard to the particular sector or society at large (including effects on employment), the purchase may be subjected to further scrutiny. In these cases employees (as well as other parties) may express their views on the purchase.

Where an M&A involves a transfer of undertakings, as seen above, workers' representatives must be informed and consulted, and they may of course express opposition during this process, though without having any right to prevent or delay the process (except insofar as the information and consultation procedure must be completed). Workers and their representatives may also presumably, under the terms of the transfers of undertakings Directive, challenge legally job losses arising out of transfers, where these are not for "economic, technical or organisational reasons". Similarly, where M&As involve collective redundancies or employment reductions, information, consultation and sometimes negotiations must occur. Workers' representatives may have the right to make counter-proposals (as in Belgium), issue reports (as in Spain) or give opinions (as in France), but these are not binding on the employer and representatives have no power to prevent or delay the job losses (except insofar as the information, consultation and/or negotiation procedure must be completed).

Transfer of employment contracts and collective agreements

Where an M&A involves a transfer of undertakings, under the terms of the EU Directive, the rights and obligations of the transferor organisation arising from a contract of employment or employment

Main EU-level provisions on employees' rights in M&As

- Directive (77/187/EEC) on the safeguarding of employees' rights in transfers of undertakings (revised in 1998 by Directive 98/50/EC), applies to many M&As. It provides that the rights and obligations of the transferor organisation arising from employment contracts are transferred to the transferee, which must also observe the terms of applicable collective agreements. A transfer may not in itself constitute grounds for dismissal by the transferor or the transferee, though this "shall not stand in the way of" dismissals for economic, technical or organisational reasons entailing changes in the workforce. Employee representatives have various information and consultation rights over the transfer "in good time" before employees are directly affected, and must also be informed and consulted in good time over any planned measures in relation to employees, with a view to seeking agreement.

relationship are transferred to the transferee. Furthermore, following the transfer, the transferee must observe the terms and conditions in any applicable collective agreement until the agreement expires or is replaced. All the countries considered here have implemented these provisions in their national regulations.

Proposals for legislative change

Some Member States are in the process of developing their regulatory framework governing M&As, or are planning to do so (sometimes reflecting the content of the proposed EU Directive on takeover bids). In a number of cases, planned or potential legislative change in this area has explicit implications for the role of employee representatives:

- in Germany, following the controversial takeover of Mannesmann by the UK-based Vodafone in early 2000, the government tabled a bill setting up a new statutory framework for takeovers. Among other matters, this provides for new information rights for employees and their representatives (see above). This legislation is due to come into force in early 2001;
- in France, a bill on "new economic regulations" - due to be implemented in 2001 and currently under debate in parliament - strengthens the information rights of works councils in M&As; and
- in the Netherlands, a new Merger Code (see above) is due to come into force soon, extending the Code to the non-profit sector (and probably also the government sector) and making it easier

- Directive 98/59/EC on collective redundancies (codifying two earlier Directives) provides that employers contemplating collective redundancies - which occur in the wake of some M&As (see main text) - must begin consultations with workers' representatives in good time with a view to reaching an agreement on avoiding, reducing or mitigating the redundancies, and provide relevant information on specified issues. Employers must also notify the competent public authorities of projected redundancies.
- Directive 94/45/EC on European Works Councils (EWC) provides (in its subsidiary requirements) for statutory EWCs - those set up where no agreement is reached - to be informed and consulted on transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts

for unions to file a complaint if management neglects its duties to inform and consult. Forthcoming changes in the rules on takeover bids may address the current system whereby the management of the target company and the unions have to be consulted prior to takeover bids - a situation which is unusual in the EU and is contrary to the proposed EU takeovers Directive. Furthermore, a bill on defensive measures against hostile takeovers may slightly weaken the position of unions and works councils in the target company.

Impact on jobs and collective bargaining

Redundancies following M&As

As M&As have become more common in recent years, the use of hostile takeover bids has increased. However, the announcement of large-scale redundancies following M&As is not common in Europe, except in the UK, where this practice is widespread (recent examples including the takeover by the Royal Bank of Scotland of NatWest). While these transactions have a significant impact on jobs - not least because of duplication (ie the existence of identical jobs in each of the formerly separate companies) - this very often takes place over time in the form of collectively agreed early retirement, voluntary redundancies etc. Redundancies, where they occur, do not, as a rule, immediately and directly follow mergers or takeovers.

However, in the financial sector, which has recently gone through periods of

thereof, and collective redundancies, and for information and consultation meetings in exceptional circumstances affecting employees interests to a considerable extent, particularly relocations, the closure of establishments or undertakings or collective redundancies.

- Regulations No. 4064/89, amended by 1310/97, and No. 447/98 provide that the European Commission must approve concentrations (essentially M&As) with a "Community dimension", in the light of competition criteria. Recognised workers' representatives in the companies concerned are entitled to be consulted by the Commission during the latter's assessment of the concentration, if they apply to be so consulted.

restructuring and an intense M&A-led consolidation process - as in Austria, Belgium, France, Germany, Greece and Italy - post-M&A redundancies have occurred even in those countries where this practice is uncommon. Cases in point include Greece, Portugal and Germany.

Negotiations to alleviate jobs impact of M&As

In many EU countries, "social plans" are used as a way of avoiding "straight" redundancies following M&As, as in other situations. There are many cases where negotiation has been used to alleviate the impact of planned job losses following M&As. The tangible outcome of redundancy negotiation tends to be:

- a reduction in the planned number of redundancies, the withdrawal of announced redundancies or the provision of employment guarantees, as in cases reported from Belgium, Germany, Greece, Ireland and Italy;
- the guaranteed safeguarding of wage and working conditions by the new employer, as in cases reported from Belgium and Ireland;
- a commitment to avoid compulsory redundancies, as in cases reported from Germany, Ireland, Spain and the UK; and
- early retirement, voluntary redundancy or redeployment provisions, as in cases reported from France, Ireland, Italy, the Netherlands, Norway, Portugal, Spain and the UK.

The role of public authorities

The main role of public authorities in M&As is as follows (examining only the role of local and national public authorities, and not EU-level public authorities - see box on p.iv).

In almost all countries considered, public authorities may oppose or prevent M&As, generally on competition or public interest grounds, though the details vary greatly from country to country. Luxembourg appears to be the only country with no specific legislation in this area, while Greece does not have a legal framework for the private sector. Although the public authorities in most countries have the right to prevent M&As or demand changes in them, it appears that this right is rarely used in countries such as Austria, the Netherlands and Sweden. The right is limited in Denmark, Spain and the UK, and depends on the size or turnover of the companies involved in countries such as Germany, Denmark, Ireland and Sweden.

A further potential role for the public authorities in M&As might arise in the event of collective redundancies planned as part of the M&A process. The EU collective redundancies Directive requires employers to notify the competent public authorities in writing of any projected collective redundancies, and such redundancies may not take effect earlier than 30 days after this notification. These provisions are reflected in the regulations of all the countries examined here with national variations with regard to issues such as the contents of the information notified. However, in most cases, these provisions on informing the public authorities (generally employment services or labour ministries) apply only to a certain size of company (commonly those employing over 20 workers) and scale of redundancy, reflecting national provisions defining collective redundancies. In addition to recording the information provided by employers, the public authorities' role is most often that of organising mediation or discussion of alternatives (as in Belgium, Denmark, Ireland and Italy), or extending the redundancy notice period (as in Germany, Luxembourg and Norway). Only the Netherlands still requires public authority approval for all redundancies, while such approval is required in Spain in the absence of an agreement between employers and workers' representatives.

Mobilisation and appeals

M&As frequently lead to trade union mobilisation in opposition to the transaction or to its perceived effect on employment or employment conditions, though in a country such as the UK where unions tend to see M&As as inevitable, the focus is more on seeking to minimise the effects on jobs. While the usual response to M&As is bargaining and dialogue, more disruptive types of action, such as demonstrations and strikes, have taken place in countries including Finland, France, Germany, Greece, Italy, Norway, Portugal, Sweden and the UK. Industrial action has, in some cases, helped to completely block M&As, delay them, change their terms or improve their employment aspects. Recent examples are provided in the box on p.viii.

Appeals for support to public opinion - such as demonstrations and press advertisements - from employees and their representatives in opposition to M&As are uncommon, often because they are unnecessary. However, this approach has been used to fight increasingly common hostile takeover bids in France, Germany and the UK. In light of the fact that the takeover bid phenomenon has spread throughout continental Europe, appeals to public opinion may become increasingly common in the future.

Appeals by workers' representatives to political circles for support in opposing M&As are also unusual, either because it is unnecessary, or because mediation involving public authorities such as the Ministry for Labour or Finance is already widespread anyway and generally results in agreements. However, such appeals

do occur in some cases, as with Vodafone's takeover of Mannesmann. Other cases concern M&As within the framework of privatisations, where for example in Greece, Ireland and the Netherlands, appeals may be made to the appropriate minister.

Cross-border M&As and the role of EWCS

The increasing number of cross-border M&As causes specific problems for industrial relations.

First, there may be differences in culture between the companies involved in M&As, in terms of both management approach and relations with trade unions. As far as management is concerned, reference is often made to the difference between "anglo-saxon-style" management, oriented towards short-term profit, and "continental" or "German-style" management, focusing on the long term. Trade unions also have to face similar variations in approach, with more "cooperation-based" relations with management in continental European companies and a more conflict-oriented style in anglo-saxon companies. There is an even more marked contrast in terms of trade union attitudes to economic management issues. In countries such as Germany, trade unions and elected employee representatives are integrated into a system of co-determination which includes involvement in identifying corporate strategic objectives. As a result their behaviour tends to take economic factors into account. In other countries - and not just English-speaking ones - unions often adopt an attitude of indifference, or outright hostility, to

corporate economic management rationale. Ironically, the growing influence of the short-term approach model through M&As appears to result in a degree of convergence in industrial relations. Thus, German trade unions have developed a more critical view of globalisation, while in the UK local management sometimes adopts a more open approach to social dialogue when taken over by a company based in continental Europe.

Cross-border union cooperation

A further impact of cross-border M&As on industrial relations stems from the fact that this type of transaction may enable management to create competition between various production sites. This is nothing new in itself, but it creates problems for trade union cooperation at local, national and international level. Union cooperation within multinational groups newly created by M&As still does not appear to be very common, with reported examples including: French and German unions in the merger of Hoechst and Rhône-Poulenc to create Aventis; French, German and Spanish unions in the merger of Aérospatiale, Dasa and Casa to create the European Aeronautic Defence and Space Company (EADS); and Dutch and UK unions in light of the planned (and since abandoned) merger of BA and KLM. Where it does occur, the trade union European industry federations often assist in bringing trade unionists from the various newly-merged companies together. Establishing inter-union cooperation is more problematic when the companies involved in the M&A do not operate in the same sector and

Commentary

Arguably, the issue of the impact of M&As on industrial relations does not naturally lend itself to comparative analysis. However, there is a clear paradox: while there is a growing trend towards M&As in all EU countries, which raises serious industrial relations problems, the intervention powers of the various parties and the social impact of M&As still vary greatly between countries.

This leads to a second paradox. While M&As often give rise to major public debate, little scientific analysis on their consequences for industrial relations has been done. Nearly all EIRO national centres point to a lack of scientific studies on this issue, beyond the topic of legal policy. More generally, the information provided by the national centres reflects this research deficit, since the lack of comprehensive studies forces researchers to rely on piecemeal information.

There are two possible interpretations of the apparent contradiction between the intensity of public debate on M&As and the lack of information on their industrial relations impact. First, public debate seems to focus on economic factors, such as the impact on competition or loss of national control, particularly in those countries which have traditionally had a system of stable "corporate governance" and which are now suddenly faced with hostile takeover "raids".

A second explanation is that the statutory provisions on collective redundancies seem effective. This is the number one trade union concern, though they have raised other concerns on the growing trend towards M&As. Consequently, M&As take place as if EU and national regulations offered relatively effective protection against possible threats to workers' job security. This should be qualified, as there are major differences in the real power wielded by workers' representatives to counter mass redundancies. Intuitively, it seems that the ways in which workers' representatives react to M&As are closely linked to the strength of their legal powers to protect job security. Where there is a lower intensity of public debate on the industrial relations impact of M&As, this can be linked to the existence of powers or procedures enabling workers' representatives to take decisive action in advance on company decisions in this area.

On this issue, the countries considered here fall into the two distinct categories. First, there are those where workers' representatives have significant intervention powers - as in northern/central Europe (the Scandinavian countries, Germany, the Netherlands and Austria), though also including Spain. However, intervention procedures in this group vary from country to country - with elected employee representatives or trade unions or both having the relevant rights. However, this difference is not relevant here, since it also exists among the second group of countries (ie those apart from those mentioned above) where workers' representatives intervention rights are less powerful and mainly based on information and consultation.

However, it should be pointed out that neither form of intervention has a systematic impact on the number of collective redundancies which occur. Major post-M&A collective redundancies have also happened in countries with significant intervention mechanisms for workers' representatives. Consequently, a lack of intervention by workers' representatives cannot automatically be attributed to weaker information rights. Nevertheless, the case of the UK, which has seen much mass redundancy, suggests that the absence of legal provisions makes union intervention more difficult and often reliant on employers' goodwill.

A lack of statistical data makes a comparative analysis of the effects of M&As difficult. Those few studies cited, in particular from Austria, demonstrate that M&As often do not lead to collective redundancies and that workers' representatives regularly succeed in temporarily reducing their impact on jobs by negotiating measures such as voluntary redundancy, early retirement

when, as a result, various national and European unions are involved.

The greatest success story to date, in terms of trade union cooperation, appears to be between the French FCE-CFDT and the German IG BCE chemical workers' unions at Hoechst and Rhône-Poulenc, which merged in 1999 to form Aventis. The two unions issued a joint statement on the merger and signed a cooperation agreement. Their ongoing cooperation takes place at several levels, involving the national union leaderships, local trade union and elected representatives, and the EWC of the merged company (see below). Joint negotiations with the management of Aventis have resulted in an agreement on access to information and profit-sharing, issues highlighted by the unions in their joint strategic agenda. No across-the-board agreement has yet been reached on the unions' second main priority - avoiding redundancies stemming from the new company's restructuring - but negotiations on this issue continue at several levels.

In several reported cases, a lack of union cooperation around an M&A is due to

the fact that there is only a very minor or non-existent union presence in one of the companies involved. A case in point is the Vodafone takeover of Mannesmann, where the former does not recognise any trade union representing its staff in the UK.

Role of EWCs

The information and consultation of employee representatives in M&As was one of the objectives of the EWCs Directive (as reflected in the Directive's subsidiary requirements - see above). Furthermore, most EWC agreements provide for information and consultation on transfers of production, mergers, closures and cutbacks, while the vast majority provide for some form of extraordinary meeting in exceptional circumstances. Where M&As involve one or more multinational companies (including from the same country), one might thus expect EWCs to become involved. However, there are very few reported cases where EWCs have played an active role in the M&A process. Each individual EWC has tended to play a modest and formal role. There are no

reports of disputes over the EWC information and consultation process, despite the fact that information has sometimes been disclosed quite late in the M&A proceedings. For example, a Belgian study of four multinationals involved in M&As found that in two cases extraordinary EWC meetings were called by workers' representatives following mergers but only after the event, while in one case management informed the EWC secretary about a merger that was to be publicly announced 12 hours later. In one company, the EWC received an assurance that there would be no redundancies during a fixed period as a result of a merger.

It appears that EWCs have not played a major role in cooperation between employee representatives in companies involved in cross-border M&As. It seems difficult to get the representatives of the various subsidiaries of the companies involved in M&As to adopt a joint position (though cases are reported, as in the Belgian study cited above). Such cooperation is less problematic in a domestic M&A situation. This is probably the reason why, in some countries, providing information to national repre-

and not filling vacant posts. Therefore, industrial relations seem to be managing to remain unaffected to a certain degree by the economic restrictions caused by the M&As phenomenon.

However, this state of affairs is increasingly being challenged or eroded by the scale of the economic factors at issue. Furthermore, not all M&As are alike and the amount of leeway enjoyed by the social partners varies according to whether, for example, an M&A involves two profitable companies, which are combining to expand production, or the M&A is simply a move to gain control of the brands of a company in difficulty. These opposing situations also relate to differences in management style - ie one focused on short-term gain or one oriented towards long-term economic strategies. However, as British observers have pointed out, the rising M&A trend means, ultimately, that any large company is a potential takeover target. This trend would indirectly lead to a shift in management styles towards short-term gain.

While M&As do not appear systematically to cut employment levels, increased M&A activity does lead to economic uncertainty and industrial relations instability. While this study suggests that the M&A phenomenon has not yet undermined relatively solid industrial relations systems, such as those in northern/central Europe, they have nevertheless been considerably affected, especially in the case of cross-border M&As.

Cross-border M&As lay national industrial relations systems bare to comparison and as a result, there is a danger of "social dumping". Within the EU, this danger has been offset by major harmonisation of some areas of industrial relations. A common legislative core now exists in relation to some aspects of M&As, mainly based on the EU Directives on transfers of undertakings and collective redundancies. However, while these Directives have undoubtedly helped to harmonise individual workers' rights, differences in the intervention rights of workers' representatives remain. It will not be easy to harmonise the latter in the near future, even assuming that the Member States have the political resolve to do so, but their strengthening seems appropriate.

There are many shortcomings in national systems providing for workers' representatives to intervene in M&A situations. The first is the point at which the intervention may be made. Very often, representatives are able to take only very belated action, after the economic decisions have been made, considerably reducing any possibility of changing these decisions to accommodate workers' interests better. Informing workers' representatives late in the process often stems from employers' fears that releasing information early could block an M&A. However, it is hard to see why an overhaul of information-provision procedures could not successfully integrate confidentiality requirements, backed by penalties. This would also require stiffer penalties for employers which fail to comply with information-provision timetables.

Industrial relations instability resulting from M&As could also be offset by: improving provisions on the obligatory application of existing collective agreements after the change of ownership; imposing a moratorium on redundancies for a significant period after an M&A; and developing the M&A-authorisation criteria of national and EU public authorities to include social considerations based on the public interest, as well as traditional economic considerations. Strengthening the intervention powers of public authorities and workers' representatives would not necessarily be contrary to employers' interests, since it would encourage employers to be more forward-looking and thus lead to more successful M&As. Any instability stemming from M&As is intensified twofold by instability resulting from failed M&As (which currently make up half of all proposed M&As). This failure rate represents considerable financial, industrial relations and human waste. (Simon Macaire and Udo Rehfeldt with the assistance of Maurice Braud and Catherine Sauviat, IRES)

sentation bodies is seen as more important than EWC involvement (as, for example, in the Netherlands).

In a few cases, joint meetings between the members of both EWCs involved in an M&A have been arranged, sometimes with the support of a European industry federation. It is more difficult to set up multilateral cooperation between staff representatives from the various countries in which the two companies operate than bilateral union cooperation. In some cases, multilateral cooperation has proved simply impossible because one of the companies either did not have a EWC or it was disbanded during the M&A process. One case where there has been significant cooperation between the EWCs involved in a form of M&A is the alliance launched in 2000 by the motor manufacturers Fiat and GM. Here, there have been joint meetings and contacts between the two EWCs, organised by the European Metalworkers' Federation. The EWCs have agreed a common strategy in order to cooperate and avoid workforce reductions and the worsening of working conditions, and at the same time safeguard existing collective agreements.

EWCs following M&As

EWCs must often be adapted to the new corporate set-up resulting from M&As, with the adaptation varying according to the nature of the transaction. In takeovers, many EWC agreements lay down the criteria and procedures for extending the scope of the EWC of the acquiring company, though renegotiation may occur following the takeover. A specific problem arises where EWCs existed in both companies involved and where a genuine merger rather than a simple acquisition occurs. In this case, as a rule of thumb, a new EWC is negotiated for the new company - examples include new EWC agreements following the mergers of Hoechst and Rhône-Poulenc (where French and German unions also signed an agreement with management on information rights and co-determination, including board-level employee representation), AXA and UAP (insurance), Carrefour and Promodès (commerce) or Ciba Geigy and Sandoz (chemicals). However, this is not compulsory and the two former EWCs may continue to co-exist, as has been the case after the Ford-Volvo merger.

The EWC-creation process is cumbersome and it can be some time before a new EWC actually comes into being. Indeed, negotiation becomes very delicate where one of the former EWCs enjoyed greater powers than its counterpart (for example, problems emerged following the merger between the Dutch Sphinx and the Finnish Sanitec, as the former's EWC had more rights than the latter's). Problems may also arise where only one of the companies involved had an EWC, giving rise to management "misgivings" over creating a new EWC.

Social partner views on the regulatory framework

Generally speaking, trade unions view domestic legislation relating to M&As (including that on transfers of undertakings) - in particular on information and consultation rights (especially in advance of decisions) and the safeguarding of workers' interests - as insufficient, while employers' associations regularly contend that existing regulations in this area are excessive. In some countries, legislation relating to some aspects of M&As, notably on

Recent examples of worker mobilisations over M&As

- In France in 1999, following the BNP bank's take-over bid for Société Générale and Paribas, Société Générale employees, who were opposed to the plan, mounted strike action led by four of the five unions represented at the company. This industrial action by employees was a factor in the failure of the BNP takeover bid for Société Générale despite the fact that the takeover at Paribas was successful. Indeed, pressure tactics by workers, who control 8.6% of the bank's capital, prevented BNP from gaining control of more than a third of voting rights.

collective redundancies, is the subject of debate among the social partners - as in Spain, where the supposed employee-friendly and costly nature of redundancies rules is criticised by employers.

However, the views of the social partners on M&A regulations are not always opposed. In the Netherlands, the tripartite Social and Economic Council (SER) - consisting of trade union and employers' organisation representatives and independent members - reached unanimous agreement on the new Merger Code (see above), and employers and unions have similar views on the subject of (defences against) hostile takeovers, rejecting a significant increase in the influence of shareholders. Both unions and employers are fairly critical of the recently established Competition Authority.

The social partners are reported to have said very little on the EU regulations relating to M&As, though they have sometimes suggested that they do not really affect the domestic situation. Employers' associations have sometimes spoken out against excessive regulation, while some trade unions support changes to some aspects of existing regulations (see next section).

Proposals for reform

Changes to the legislation relating to M&As at both domestic and EU level are proposed by some social partner organisations. At both levels, the unions are more keen on change than the employers' organisations.

At national level, trade union proposals often reflect the disparity between the degree to which M&As themselves are regulated and the degree to which their social impact is regulated. In some cases, trade unions are seeking changes to the regulatory framework specifically gov-

- In 1999-2000, German unions opposed the takeover of Mannesmann by Vodafone through means including demonstrations and token strikes. In the unions' view, this pressure brought concessions by Vodafone on employment guarantees and the rights of workers, works councils and trade unions. When takeover seemed likely to succeed, attention shifted to obtaining a satisfactory agreement on employees' rights following the takeover.
- In 2000, BMW, the German-based motor manufacturer, put up for sale its UK-based Rover subsidiary. Initially, the most likely buyer appeared to be the

erning M&As. For example, unions in Germany (where employees' representatives already enjoy wide-ranging co-determination rights) want the forthcoming new takeovers law (see above) to be amended so that: employee representatives of the target company would have the opportunity to hold talks with the management (and perhaps also the employee representatives) of the bidding company; and union representatives in the target company would have the right to conclude a collective agreement with the new owner on the employment and industrial relations aspects of the takeover.

The UK Trades Union Congress (TUC) argues for a wider interpretation of the "public interest" than is currently used in the national authorities' consideration of M&As, with the impact on employees, customers, other stakeholders and regional aspects being explicitly considered, in addition to competition. In relation to industrial relations, the TUC would like to see: a legal obligation on firms considering an M&A to engage in an "ongoing process" of consultation; and the creation of an Employee Protection Agency which would attempt to safeguard workers' rights in M&As, paying particular attention to redundancies, job transfers and pensions.

In some other countries, the reforms to national legislation proposed by unions relate to legislation in areas connected to M&As, or issues highlighted by them. In Spain, for example, with M&As creating more groups of companies, unions are demanding the right to representation at corporate group level (as already exists in several other European countries). In Denmark, unions are demanding improved provisions on the transfer of collective agreements to new owners in transfers of undertakings.

Alchemy finance group. UK unions were opposed to Alchemy as a buyer, arguing that the company would seek to "asset strip" Rover. Accordingly, they organised demonstrations outside the Longbridge plant in Birmingham and through the centre of London, seeking to exert political pressure on the government to intervene and support a rival consortium, Phoenix. Eventually, the Longbridge plant was indeed sold to Phoenix though it is not clear how much of an impact the unions' campaign had.

At the EU level, many national unions, in line with ETUC's position (see above), are demanding that the EWCs Directive be amended to strengthen information and consultation rights in the event of M&As. However, not all unions support this demand. Danish unions do not wish to see the rights of EWCs extended, on the grounds that they are not purely union bodies, but also include non-union representatives. Employers' organisations are of the opinion that any revision of the Directive would be premature and that existing EWCs should be allowed to gain more experience first. In addition to changes to the EWCs Directive, German unions see an urgent need for European (and indeed international) regulations on M&As which guarantee basic employees' and trade union rights.

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