

Cross-border mergers of limited-liability companies

Summary

This thesis focuses on legal aspects of cross border mergers within the European Community, especially, the question of involvement of employees in a succession company. It was the clue question which solution was a premise for removing the lack of progress that took for twenty five years. That time The European Commission was looking for a compromise that could help to resolve those different systems of participation in company bodies in Member States of the European Union. It was trying to reach a balance in involvement of workers' representatives in the decision-making process within undertakings for the needs of the European Company. So, the long-lasting block of the progress led the European Commissioners to a decision of setting up a group of experts under the chairmanship of Etienne Davignon that should have come to suggest a solution which met everybody's concerns. The Group of Experts finally came up to expectations and its final report became a basis of Directive 2001/86/ European Council (hereinafter "The Directive") that has been added to the European Company Statute. The Directive has been a substantial part of the Directive 2005/56/ European Council draft (hereinafter "The 10th Directive") because The 10th Directive in 16th article refers to The Directive.

The 10th Directive has been implemented into the Czech system of law by the statute No.125/2008 Sb., Zákon o přeměnách obchodních společností a družstev (hereinafter "The Statute"). As well as The 10th Directive also The Statute are based on the clear priority of negotiation principle because of differences in systems of involvement of employees' representatives within the Member States. Negotiating procedures are balanced so as to allow each party to defend its interests, without any of them being able to stand in the way of the establishing of the success company. If no agreement is reached by the 6 months deadline (either the initial deadline or that resulting from the extension of the negotiating period, maximally 12 months, as jointly agreed between the parties), The Statute has laid down set of reference rules that would apply systematically and immediately.

The 10th Directive, in opposite to The Directive, contains a couple of modifications. Firstly, a special negotiating body is allowed to pass a resolution that finishes the

negotiations. This resolution causes the question of involvement of employees in a succession company would be amend by the system of law where the succession company would have its domicile.

Further, participating companies statutory bodies are allowed to pass a resolution that finishes the negotiations. This resolution causes the question of involvement of employees in the succession company according to the set of reference rules.

A substantial amendment is in The 10th Directive in 16th article, the subsection 7: "When the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect, by applying mutatis mutandis the rules laid down in this Article."

Due to connection between this subsection and the subsection 6 in the same article is ensured reached state of employees participation would be kept for some time.

Keywords

cross-border mergers – přeshraniční fúze

system of involvement of employees – systém zapojení zaměstnanců

succession company – nástupnická korporace