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The Transposition of the 10th Directive on Cross-border Mergers in Hungary

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The transposition process

The Hungarian Parliament passed a separate transposition law (Act CXL of 2007) on 12 November 2007 (see: 2007. évi CXL. Törvény a tőkeegyesítő társaságok határokon átnyúló egyesüléséről: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700140.TV). The law came into force on 15 December 2007.

The relevant bill was not put on the agenda of the National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT), the tripartite forum which as a rule consults on any bill related to the 'world of work'. Therefore the positions of trade unions and employer associations are not known; it is probable that they have not developed a definite position on the bill. The Parliamentary process was similarly low-profile; neither at the committee stage nor at the plenary session was there a substantial debate. (At the plenary session only two MPs from the two coalition parties made short speeches, and the law was passed by a large majority.) Even the media was silent, except for some specialists in legal and financial issues, so the general public did not hear about this item of legislation either. The reason for this general neglect was clearly the coincidence with the high-profile political debates and unexpected wave of industrial action related to the government's plan to reform the health insurance system.¹

¹ See, for instance, the related EIRO articles (<http://www.eurofound.europa.eu/eiro/2008/02/articles/hu0802029i.htm> and <http://www.eurofound.europa.eu/eiro/2008/03/articles/hu0803029i.htm>)

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Company law

The law frequently refers to existing laws as a legal background in order to make the text concise and provide grounds for interpretation. For the issues not regulated by Act CXL of 2007, the provisions of Act IV of 2006 on Business Associations and Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings are applicable. All regulations of Act IV of 2006 on mergers are also applicable to cross-border cases; the current law has stipulations only on deviations. As far as the scope of implementation is concerned, the law lists cross-border mergers of public limited liability companies (*részvénytársaság, Rt*), private limited liability companies (*korlátolt felelősségű társaság, Kft*) and SEs. According to some commentators, given that provisions on private limited liability companies are not yet harmonised throughout the European Union, such companies constitute a major challenge.² The law also allows the participation of cooperatives in mergers, pursuant to the special rules of Act X of 2006 on cooperatives.

The law provides that the Courts of Registration have to check whether the participation procedure has been duly concluded.

Rules for employee representation

The law relies heavily on Act XLV of 2004 on SEs and employee participation in SEs.

In order to transpose Article 16 (1) the law provides that the rules of Act IV of 2006 on employee participation in supervisory boards shall apply. If this option is chosen establishment of a supervisory board is compulsory. The law includes a concise transposition of Article (2), including the rule on the 500-employee threshold as one of the conditions for applying the provisions transposing Article 16 (3).

There is no rule ensuring the extension of participation rights to employees by taking into account lower thresholds applied in other Member States. (Article 16 (5)).

As for the negotiation procedure, the law specifies the contents of information to be provided through verbatim transposition of Article 5 (j). By the way, in the case of employee participation the wording is a little strange: it needs a 'reference' or 'indication' (*utalás*) for application of Article (4a) only or information on an alternative procedure. Furthermore, each participating company may insist

² See: <http://www.iflr.com/?Page=10&PUBID=33&ISS=24656&SID=704616&TYPE=20>

on its explicit endorsement of these rules as a precondition for accepting the merger contract. The report of the management or administrative organ (or that of the auditor and independent expert, if applicable) should be sent to the employee representatives (or in the absence of a representative organ, directly to the employees). The contents of this information are the same as those of the report submitted to the shareholders in line with Article 7 of the directive.

For the SNB procedure and the application of the Standard Rules the law contains a literal transposition of Article 16 (3) and 4 (a–b) of the Directive (with appropriate references to the relevant Articles of the Hungarian SE law). There are no additional stipulations; the possibility of limiting the proportion of employee representatives (Article 16 (4c)) was not used either. As to subsequent structural changes the three-year rule applies, during which period deviations are possible only to the benefit of employees. There is no rule established for the distribution of seats if Article (4a) is applied.

In general, the Hungarian legislation is confined to the minimum regulations necessary to transpose the Directive. (This approach resulted in a relatively short text with numerous references to other laws; its total length is 2,200 words.)