Acquisition/take over

When a company is being integrated within another existing legal entity

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What you should know about it:

- An acquisition occurs when a company purchase a portion or all of another company's shares or assets, typically in order to take control of it.
- Acquisitions have **significant impact on work and employment.** Acquisitions naturally result in the duplication of positions and functions within the new company which typically leads to restructuring, which involves measures such as replacement of leadership, changed working conditions, increased work intensity and/or mass redundancies.
- In case of acquisition, EWCs and local worker representation bodies should be aware of certain minimum protection rights: If a company is taken over by another certain rights of workers are protected by the Directive 2001/23/EC which should safeguard workers' rights in the event of **transfers of ownership.**
- Workers have the right to be informed about the transfer of ownership and the ways in which the transition will be managed. This means that **worker representations in both companies** can work together to seek the best solution with the help and support of trade unions.
- The major difference between acquisition and takeover is that **a takeover is a special form of acquisition that occurs when a company takes control of another company without the acquired firm's agreement**. Takeovers that occur without permission are commonly called hostile takeovers.
- Workers have the **right to be informed about the takeover bid and the conditions** of the proposed takeover and the workers' opinion can be formally filed with the **public authorities**.
- This is laid down in Directive 2004/25/EC on takeover bids provides worker interest representations with extended information as well as consultation rights in the context of takeovers: while aiming at reducing restrictions of the free movement of capital by banning all kinds of defences against hostile takeovers, the Directive leaves national actors significant room to manoeuvre. Regarding workers' rights, the Directive stipulates that **workers have to receive extensive information on the takeover bid and gives them the right to issue their opinion/recommendation**!
- Acquisitions falls under **anti-trust law** and have to be notified to the relevant public authority. If the acquisitions fall under the European competition authority and the EU Merger regulation, workers representatives have the right to be heard by the European Commission. See the example of the **massive divestment of ArcelorMittal in 2018 and** how industriAll Europe coordinated trade unions and workers responses and concern in a meeting with the EU Commission.

Your mission is to...

- Gather information on the ownership structure of the entities concerned before the acquisitions takes place.
- Get in touch with the workers representation in the other company involved in the acquisition (if possible) – for doing so get in touch with your local or – in transnational cases – European sectoral trade unions organisation to facilitate this process. A meeting with the other management can also be envisaged. Be aware that the process of meeting the other company workers representation can be difficult in the case of an acquisition by a financial player such as a private equity or an investment fund.
- In close cooperation and communication with the other company, make sure that basic terms and conditions of employment are protected and try to arrange better terms with the new employer.
- If the acquisition has a transnational character negotiation to adapt your agreement to the new situation may be required. If at least two EWCs are involved, it may even be considered to organise a formal Special Negotiating Body for the negotiation of a new agreement for the enlarged group.
- Check which competition authority is in charge of the case.

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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).
- In case of a hostile takeover, the management of the target company often discover the acquisition project once it is launched. They may take defensive measures but will have a few decision-making power on the acquisition process.

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 acquisition project.
- In case of a hostile takeover, the management of the target company often discover the acquisition project once it is launched. They may take defensive measures, but will have few decision-making power on the acquisition process.

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.
- In case of a hostile takeover, the management of the target company often discover the acquisition project once it is launched and will be able to inform members of the board only then.

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 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 acquisition.

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 acquisition 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.
- In case of a hostile takeover, the management of the target company often discover the acquisition project once it is launched and will be able to inform member of the board only then.

Trade union action

European Works Councils SE Works Councils

- Contact the respective ETUF: Check and follow any existing ETUF code of conduct/policy and/or any pre-existing transnational framework agreement or similar company-specific document applicable in case of acquisitions.
- Gather information on the other company involved in the acquisition 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 other company involved in the possible acquisition (if possible).

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).

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 acquisition 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 acquisition may fall into the scope of national competition law, get acquainted with national legislations concerning acquisitions and concentrations.

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

ACQUISITION/TAKE OVER

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

(Text with EEA relevance)

Category: Legal

Language: English

Access: Public

(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

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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

Type: Website

Category: Legal

Language: English

Access: Public

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