



EUROPEAN COMMISSION - PRESS RELEASE

Labour law: Commission refers Netherlands to Court for limiting employee participation in cross-border mergers

Brussels, 24 November 2011 - The European Commission has decided to refer the Netherlands to the EU's Court of Justice because it has not correctly transposed EU rules on cross-border mergers. In particular, Dutch legislation does not allow workers in the establishments in other Member States of a company resulting from a cross-border merger registered in the Netherlands, to take part in the appointment process of members to the company's supervisory board.

EU rules on cross-border mergers ([Directive 2005/56/EC](#)) ensure that employee participation rights follow the law of the Member State in which the merged company is registered. However, Article 16 of the directive provides several exceptions, which aim, among other things, to ensure that all employees of a company, irrespective of the Member State where they work, must have the same participation rights.

The Commission considers that the Dutch authorities have not correctly transposed one of these exceptions. For instance, if a company governed by Spanish law merges with a company governed by Dutch law and the new company is registered in the Netherlands and fulfils the conditions for employee participation (capital of at least €16 million and at least 100 workers), the workers in Spain of the newly formed company would not enjoy participation rights in the supervisory board, but their colleagues working in the Netherlands would.

The case was prompted by a complaint from a Dutch trade union in 2008. The Commission sent a letter of formal notice to the Netherlands in 2009. This was followed by a reasoned opinion in 2010. As the Netherlands has not changed its legislation, the Commission is taking it to the Court of Justice of the EU.

Further information:

Cross border mergers:

http://ec.europa.eu/internal_market/company/mergers/index_en.htm

Involvement of employees in the European Company (SE):

<http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=212>

For more information on the infringement procedures, see [MEMO/11/824](#)

http://ec.europa.eu/eu_law/infringements/infringements_en.htm

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