

## **THE ECONOMIC EUROPEAN INTEGRATION-DECISIVE FACTOR IN CROSS BORDER MERGER**

**Mariana CRINTA<sup>1</sup>**

<sup>1</sup> Library International University of Moldova, Chişinău

**Abstract:** *In the process of merger, post-merger, the European economic integration plays a decisive role in the successful merger of the company absorbed and absorbed, and that it is both cause and effect in setting and achieving strategic and financial objectives. In recent years, global economic integration has been accelerated on several levels, speed characterizing these times. Merging may be the source of competitive advantage, therefore, to implement specific strategies needed to conduct post-merger, it is important to assess the consequences in terms of organizational culture at multicultural characteristics.*

*In light of these considerations, the continuous improvement of management strategies should allow existing management tools to adapt to new requirements of organizational culture of the acquiring companies / absorbed, requirements imposed by changes in the stages of post-merger, that are to be carefully monitored, respectively the growing requirements changes are in European companies.*

*In conclusion, simultaneously and interdependent with the creation of the paradigm and value system, organizational culture, which supports a high degree of performance must be consistent and aligned with the newly created organization's overall strategy and ensure the balance between external adjustment according to company requirements absorbed and cultural integration of the company's internal system absorbed under the promotion of a successful partnership while reaching financial sustainability to support post-merger.*

**Keywords:** *post-merger integration, merger organizational culture, competitive advantage, European companies, benchmarking.*

### **1. ECONOMIC EUROPEAN INTEGRATION**

At the beginning of the millennium the world is going through a period of profound restorations of social crisis, economic, financial and political regimes changes as well as global economic structure changes. International financial flows have experienced a large expansion, both within each country's economies as well as globally, integrating this move continents and regions that are geographically far away from each other.

In recent years, global economic integration has been accelerated on several levels, speed characterizing these times. If trade was liberalized long ago, continues today in the sphere of finance such change was so great that were not encountered in the history of financial systems. This rapid change requires that financial globalization is accompanied by rapid development of global exchange of goods and services.

Experience of economic integration can cover a multitude of issues, from a position within a company subsidiary to the national economy in a regional area.

Larousse Dictionnaire (2003) defines economic integration as a set of procedures whereby two or more states create a common economic space and can take different forms, from free trade zones, customs unions, economic markets or complete economic integration; meeting as an action of several parts into a whole, as a process of increasing economic interdependence between different countries of the world.

Economic integration requires the removal of economic barriers between two or more countries, these barriers are considered obstacles that prevent or distort mobility of economic factors.

The European experience shows that efforts to eliminate economic territorial barriers do not automatically eliminate all distortions that occur in the single market, which is caused by differences in quality of infrastructure, the level of industrial development - barriers that remain after the elimination of economic barriers.

If it were an ideal world where there is no nation-states or governments, economic integration could be a simple integration of markets, without suffering any political influence. But something like this can not be real because economic integration is influenced by political factors - factors which are very important. Economic integration was not seen as an end in itself, as economic relations are becoming more closer to political integration it is the idea that the two forms of integration merge with each other.

The process of economic integration includes two mutually reinforcing processes, namely: market integration, process integration and economic policies. In the process of economic integration are found two types of integration concepts - negative integration which refers to the elimination

of discrimination in economic and political communities, under the supervision of positive integration which refers to the transfer to common institutions of power and competence.

### **2. CROSS-BORDER MERGER**

With the European Unions enlargement and increased need for a European legal framework in which to facilitate cross-border merger. The first proposal in the European Union to achieve directive on cross-border merger took place in 1984, but it was not adopted because the European legislature was faced with a social problem, from employee involvement in decision-making problems, which had to be resolved before the cross-border merger could be accomplished by ensuring worker's rights in cross-border merger procedure.

This problem was subsequently resolved by the appearance of Directive 2001/86/EC supplementing the European Company Statute on employee involvement in decision making, and it was created and the legal concept of cross-border merger. The legal framework at European Union level on cross-border merger was created by Directive 2005/56/EC. Shortly thereafter, the European Court of Justice confirmed cross-border merger regime at a case in which the institution empowered to register companies in Germany refused to register the merger of two companies on the ground that one of them was registered to another person in another state of the European Union, namely Luxembourg. The motivation was that German law allows only those mergers between companies in the same Member State, in this case only in Germany.

European Court of Justice held that cross-border mergers are a way of expressing the freedom to determine that an operator can carry out an economic activity in both continuity and stability in his country and EU member states. Refusal to register a cross-border merger between two companies of different states was considered by the European Court of Justice as a discriminatory treatment. Such an act of discrimination was justified by the fact that credit protection is desired, employees or minority shareholders, the refusal to register the merger has been classified as an act in breach of European Union. Under the Company Law introduces a new chapter (chapter III) on cross-border merger allows joint stock companies and limited liability of the European companies to merge with companies having their registered office, central administration or principal place in another member of the European Union or European Economic Area. Companies that are Member States of the European Union and enter into merger should be organized according to Directive

Consiliului nr. 68/151/EEC/09.03.1968 corresponding types of legal entity in Romania.

Cross-border merger has become an important factor for the organization and functioning of the European

Union. To improve social and economic environment in its trade, barriers must be reduced, if not completely eliminated.

The means of production should be adapted to the community dimension to the entire trade in that market in order to grow and prosper. The European Union considers that it is essential that any company can develop its business abroad and is not limited to purely local markets. Because such companies are able to pursue this program, in Europe we needed a new legislative framework. Thus in 2001 the Council Regulation 2157/2001 was past regarding on the establishment of European society.

Romania joined the European Union on January 1, 2007. Since then we are part of the so-called European construction which had begun half a century before, at the initiative of France and Germany to put together their coal and steel production. Although joining the European Unions project has recived great support among the population for most of our citizens this project is unknown. They claimed membership, on the premise that the standard of living in EU countries is much higher than in Romania, therefore, it is hoped that from the integration of Romania in the European Union, living in Romania will be improved significantly.

Although long past after Romania's EU accession is subject to debate because community building is still entirely unknown. Not knowing how the EU really works is not specific only Romania, it lies in all countries and even from how it was built in the middle of last century. When European nations have gone through two world wars that exarcerbaseră national feeling, it was quite difficult to impose a solid construction, such as the U.S. but adopted a policy of small steps and a compromise between the national and community-making the decision. Thus, each of the main institutions established in communities was allowed to have a say, more or less important. The European Commission is the most important and independent marker of national interests, the Council of Ministers was the most direct and representative Parliament, as representative of the citizens of Member States directly.

Thus it was decised for the adoption of Community legislation, which was passed through a complicated process in which all institutions were involved. Or, for the common man, which even national level of functioning of the state it is not clear, the EU had become a nebula. In 2000 was intended, at least in words, the union should be brought closer to its citizens. Thus they have taken several initiatives, namely the European Constitution which wanted a simplification of the primary Community law and Community level increased importance in the everyday life of citizens and a more democratic way of functioning of the union structure, through a higher power for granted that the European Parliament directly elected by citizens.

Relevant to the way Europeans look at the European construction is that almost every time in the last 20 years, when asked the opinion of referendum on the change to the Union, they opposed at least in the first phase. Thus, the danes rejected the early 90s the Maastricht Treaty, the Irish over a decade one of Nice, the French and Dutch European Constitution and the Irish have relapsed in the Treaty of Lisbon

### **3. CROSS-BORDER MERGER IN ROMANIA**

**Community provisions for facilitating the cross-border mergers between various types of companies in EU Member States have transposed into our legislation with the adoption by Government Emergency Ordinance no. 52 of 21 April 2008 (Official Gazette no. 333 of April 30, 2008).**

Ordinance shall apply to joint stock companies, companies limited by shares, limited liability companies that are Romanian legal entities, as well as European companies with registered office in Romania.

They can merge with companies having their registered office or, where appropriate, central administration or principal place of business in other Member States of the

European Union or European Economic Area countries, referred to as Member States, and operating in one of the legal

forms provided of art. 1 of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards, companies are required by Member States within the meaning of art. 58, second paragraph of the Treaty establishing the European Community to protect the interests of members and others, published in the Official Journal of the European Communities no. L065 of 14 March 1968, as amended or European companies with head offices in other Member States.

Joint stock companies, companies limited by shares, limited liability companies - Romanian legal entities - and European companies with registered office in Romania may merge with companies having their registered office or, where appropriate, central administration or principal place of business in other Member States and without fit the types of entities referred to in para. (1) legal personality, its own heritage as the only source to guarantee social obligations and are subject to advertising formalities similar to those of Council Directive 68/151/EEC, if the law of that Member State permits such mergers. They are exempted from the provisions of this Chapter collective investment in transferable securities and closed investment funds regulated by Law no. 297/2004 on the capital, as amended and supplemented, and any other entity with the object of collective investment of resources drawn from the public and which operate on the principle of risk spreading and whose securities can be redeemed directly or indirectly at the request of holders of entity assets

If the acquiring company is a company limited by shares, incorporated and operating according to Romanian law will always be absorbed shareholders sleeping shareholders of the company limited by shares absorbent, unless otherwise stated in the decision approving the proposed merger.

To verify the legality of the merger, in terms of procedure which companies are participating in the merger - legal person, Romanian or European companies with registered office in Romania - and, if appropriate, newly created company - Romanian legal person or company based European office in Romania - judge belongs to the Trade Registry Office where registered companies or European companies, Romanian legal entities with registered office in Romania participating in the merger, including the acquiring company or, where appropriate, the newly established company. Administrators and Board members of companies involved in the merger will prepare a joint project of merger must include at least:

- a) type, name and address of all companies participating in the merger;
- b) the form, name and address of company start-ups, if any;
- c) the allocation of shares / shares in the acquiring company or the newly established company;
- d) the rate of shares / social parts and the amount of any cash payment;
- e) the date on which shares / shares referred to in point
- c) give the holder the right to participate in profits and any special conditions affecting that entitlement;
- f) the rights conferred by the acquiring company or the newly-established that shareholders special rights and those who hold other securities in addition to the actions or measures proposed concerning them;
- g) any special advantage granted to the experts who evaluate the merger and members of the administrative or control of companies involved in the merger;
- h) information on the assessment of property transferred to the acquiring company or the company start-ups;
- i) the date on which transactions are considered the acquired company for accounting purposes as belonging to that company or start-ups;

j) merger effects on employment of employees of companies participating in the merger;

k) the date the financial statements of the participating companies that have been used to determine the conditions of the merger; l) If applicable, information on the mechanisms to involve employees in defining their rights to participate in the acquiring company or start-ups. The common draft terms of merger signed by representatives of participating companies, shall be submitted to the Trade Registry Office where registered companies in Romanian legal entities and / or European companies based in Romania, participating in joint fusion. Projected merger, the judge focused delegated published in the Official Gazette of Romania, Part IV, the expense of the parties, in whole or extracted, according to the judge-delegate or request the parties, at least 30 days before the meetings of the General Assembly will decide on the merger.

European companies based in Romania are applicable provisions of Council Regulation (EC) no. 2157/2001 of 8 October 2001 on the European Company Statute, those of this chapter, as well as with the latter, if compatible with the provisions of the Community regulation. Employee Agreement European companies with registered office in Romania have legal personality from the date of registration in the commercial register. A European company may be registered in the register of trade only after an agreement on employee involvement in company activities, as provided by Government Decision no. 187/2007. Within 30 days of registration, the National Trade Register Office will communicate the EU's Official Journal a notice of registration of society. The notice will include information provided by art. 14 of Council Regulation (EC) no. 2157 / 2001.

#### Transfer of the registered

Any European company registered in Romania can transfer its registered office in another Member State. Transfer project, endorsed by the delegated judge shall be published in the Official Gazette of Romania, Part IV, at the expense of society, at least 30 days before the general assembly meeting is to decide on transfers. General Assembly decision on the transfer of the company's European headquarters in another Member State under Article .115 par. (2).

If shareholders representing the majority of social capital are present or represented, the decision may be adopted by simple majority. Companies - Romanian legal person - belonging to one of the categories mentioned in art. Paragraph 2512. (1) of Law no. 31/1990, republished, with subsequent amendments, and European companies with registered office in Romania, which hold the status of ownership of land on its territory, can participate in a cross-border merger where the acquiring company or newly created company is a legal person having the nationality of another Member State only after the end of a period of five years after Romania's EU accession. If the companies referred to in paragraph heritage. (1) includes agricultural land, they can

participate in a cross-border merger where the acquiring company or the company is newly established legal person having the nationality of another Member State or European company established in another Member State only after the end of a period of seven years Upon accession to the European Union. Cross-border merger for the purposes of this Act, is the operation whereby: a) one or more companies, of which two are governed by the laws of two different Member States, are dissolved without going into liquidation, transfers all its assets to another company in exchange for the shareholders / associates company or companies being acquired by shares / shares in the acquiring company and possibly a cash payment of up to 10% of the nominal value of shares / shares so distributed, or b) more companies, of which two are governed by the laws of two different Member States, are dissolved without going into liquidation and transfer all their assets to a company that is represented, in exchange for the shareholders / associates share their / shares in the newly created company and possibly a cash payment of up to 10% of the nominal value of shares / shares so distributed; c) a company is dissolved without going into liquidation transfers all its assets to another company which holds all its shares / shares or other securities conferring voting rights at general meetings.

Therefore, acquisitions and mergers are important transactions through which a firm buys another firm (where the two companies involved in the transaction are the same size operation is called a merger, or acquisition occurs).

Considerations underlying the merger would be: to reduce the risk of the buyer company, NNP resultant increase in net present value, elimination of competitors, a situation leading to the consolidation of market power (bottom possible monopoly or oligopoly positions even though the consequences for ), economy of scale, access to certain resources inefficiently managed (including intangible assets), risk reduction and dispersal by intenediul diversification (given that two different activities presents a relatively low probability in terms of perfect positive correlation, however diversification may increase the risk of conflicts between investor and manager - risk reduction is not identical for the two, given the different degree of exposure and earnings also difente from such transactions).

The potential of the merged entity or acquisition, integration and resistance organization employees to change the default key is determination of success. The degree of proximity of the activities of entities, companies involved in the transaction and management style practiced influence risk exposure and achieve operational synergy (production, marketing, research & development) and financial (due to diversification and exposure to risk transfer). But synergy can be achieved both by the similarity of operations (**Economies of sameness**) and by combining complementary operations (**of fitness Economies**)

**Figure 1.1. Quantification share mergers and acquisitions in the period 2005-2008, the European world of total and local level in Europe <sup>a</sup> total - Graphic processing carried out by the author after the statistical data provided by Thomson ONE, -Number of cases-**

	WORLDWIDE MERGERS	AT EUROPEAN MERGERS	MERGERS IN ROMANIA
2005	-24,129 -	-8844 -	-58 -
2006	-27,250 -	-9977 -	-83 -
2007	-31,303 -	-11,093 -	-78 -
2008	-28,861 -	-10,226 -	-74 -

Although the current trend of mergers and removals converge to promote mega-mergers, The European Commission intervenes, as the impact of mega-mergers analyst with the right to reject the merger if it turns out, a monopoly interest from companies absorbent / absorbed.

Economic practice, also brings to the fore the need to achieve a comprehensive multidimensional optimization in the context of merger and absorption of the two companies, and access post-merger success.

#### **Conclusions**

**In conclusion we can say that:** The process of economic integration includes two mutually reinforcing processes, namely: market integration, process integration and economic policies. In the process of economic integration found two types of integration concepts - negative integration which refers to the elimination of discrimination in economic and political communities, under the supervision of positive integration which refers to the transfer to common institutions of power and competence.

We can say that it is envisaged that the foundation of company strategies, it is necessary to consider some aspects of economic, technical, managerial, social, human, legal, etc., in proportions reflecting their share in operating mechanism of each organization.

To exercise management relations and processes we refer to systems, methods and management techniques that meet the requirements best place in different poses hierarchical managers - especially senior managers - and that provides substantial enhancement of managerial viability of the organization.

We align the opinion of specialists, who believe that a result of a company merger, and that performance would resort to complex managerial tools, such as management systems, which find their place in the context of methods and various management techniques, appropriate issues to be solved, whose ongoing managerial functions involved

His complexity and accuracy are able to resolve the many and varied problems and ensure adequate flexibility of the organization and management components.

#### **REFERENCES:**

- [1] Hrebiniak Lawrence G., Strategia în afaceri: implementarea și executarea eficientă, Editura ALL, București, 2009;
- [2] Nicolescu o. – Management comparat Editura economică 1997;
- [3] Istocescu A. – Strategia și managementul strategic al firmei Editura ASE 2003;
- [4] Ordinul și Normele metodologice de implementare a fuziunii și Legea nr. 31/1990 actualizată;
- [5] Legea nr. 571/2003 cu modificările și completările ulterioare;
- [6] Popescu Nela, Tranzacții comerciale, Editura Economica, București, 2008.