Legal regime of credit institutions' merger in Greece

Vassilis A. Douvlis
Associate Professor in Panteion University – Athens
Attorney at law in Athens Bar Association and
in Legal Department of National Bank of Greece

Summary

I. Legal framework – Scope of application

A. To give the non-Greek reader a brief account of the evolution of the Greek statutory framework governing the credit institutions' merger over the years, we should note that years ago bank mergers were enforced by L. 2292/53[1], amended by Legislative Decree 3504/56, which provided the

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[1] *D. Krimpas*, Merger of the commercial companies, Athens, 1961, pp. 94 et seq. *A. Kiantou-Pambouki*, Commercial companies' merger, Salonica, 1963, pp. 11 et seq., 166. *G. Tragakis*, Greek Banking Legislation and Practice, Athens, vol. I, 1980, pp. 248 et seq., 253 et seq., 267 et seq. *Tragakis in* DikAE (Dikeo AE – Public Limited Liability Companies Law), Athens, vol. II, 1991, I, nos 120 et seq. *V. Douvlis*, Commercial companies' merger and enterprise theory, Athens, 1986, p. 16, note 51, p. 89, note 8. *Douvlis*, European Banking Law, Athens, 2003, p. 230, note 556. *L. Kotsiris*, Greek Company Law, 1993 (2nd ed.), p. 157. *J. Velentzas*, Credit institutions law, Salonica, 1998 (2nd ed.), pp. 457 et seq. *S. Mouzoulas*, The credit institutions' merger by the L. 2515/97, EEmpD (Epitheorissi Emporikou Dikeou - Commercial Law Review), 1998, pp. 451 et seq. *Mouzoulas in* DikAE, vol. 8, 2001 (2nd ed.),

basis for the merger between Bank of Athens and National Bank. Later on, following abolition of the said provisions by article 16 par. 19 L. 2515/97[2], only article 2 L. 2292/53 remained in force, which was subsequently substituted by article 26 par. 7 L. 2076/92[3]. Nowadays, credit institutions' merger in Greece is regulated primarily on the basis of the provisions of special article 16 L. 2515/97. Although put in place to facilitate the absorption of National Mortgage Bank by National Bank of Greece[4], the said article was broadly designed to provide for the development of a favourable environment in support of the companies' consolidation process in the Greek financial sector, by ensuring smooth implementation of the rules of free competition[5]. This is reflected in the contents of all the provisions of article 16 L. 2515/97, especially those of par. 2[6], whose implementation is supplemented by the provisions of

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Annex 80, nos 1 et seq., 7, 13, 24, 49. *Ch. Chrissanthis in* DikAE, vol. 8, op.cit., Intr. 66-89, nos 105, 108.

2 As par. 19 (initial par. 18) has been renumerated by the art. 12 L. 2744/99, that added new par. 18 to the art. 16 L. 2515/97.

3 *Velentzas*, op.cit., p. 460. *Mouzoulas*, EEmpD, op.cit., p. 452. *Mouzoulas in* DikAE, op.cit., no 106. *N. Chatzigianni*, Permanent codification of regulations concerning banks and banking activities, vol. A', 2001, F. 00.30.

4 Relevant is the grammatical formulation of the initial par. 19 and actual par. 20 (note 2 above) of art. 16 L. 2515/97.

5 Characteristicly, *Mouzoulas*, EEmpD, pp. 451 et seq., 469 et seq. *Mouzoulas in* DikAE, no 2, but also no 10.

6 *Kotsiris*, op.cit., pp. 135 et seq. *Velentzas*, pp. 452 et seq., 457 et seq. *Mouzoulas*, EEmpD, pp. 451 et seq., 453 et seq. *Mouzoulas in* DikAE, nos 1 et seq., 6 et seq., 11 et seq., 23 et seq., 49 et seq. *Chatzigianni*, op.cit. *Chrissanthis*, op.cit., nos 107 et seq. *Douvlis*, 2003, op.cit., note 557. *V. Antonopoulos*, Contributions to the Deposits' Guarantee Fund in case of merger through absorption between banking companies (cons.), DEE (Deltio Epichirisseon kai Eterion – Bulletin of Enterprises and Companies), 2003, pp. 603, 605. Nevertheless, according to the par. 3 of art. 16 L. 2515/97 the Bank of Greece, the Postalsavings Bank, the Greek Bank of Industrial Development, the Treasury of Collateral and Loans Fund with the pure cooperative banks are, among others, exempted from the application of this special regime, see *Velentzas*, p. 460. *Mouzoulas*, EEmpD, pp. 454 et seq. *Mouzoulas in* DikAE, nos 12,

articles 68 et seq. L. 2190/20 (Public Limited Liability Companies' Act) as amended following harmonization of the Greek legislation with the third directive 78/855/EEC on public limited liability companies' (p.l.l.cs) mergers[7].

In the light of the above, no obstacle appears to be posed for the implementation of the European *Acquis Communautaire*, nor any problem appears to arise regarding future mergers of banking p.l.l.cs for the foundation of a banking *Societas Europaea* (SE)[8]. It is further added that banks' mergers are governed by a favourable tax regime (as per the

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15. *Chatzigianni*, op.cit. In spite of them, see contrary to the par. 3 the arrangement of new par. 18 of art. 16 L. 2515/97 (note 2 above) concerning these legal entities, *Mouzoulas in* DikAE, no 14.

7 The Greek law of public limited liability companies' (p.l.l.cs) merger (art. 68 et seq. L. 2190/20) has been harmonized with the third directive on the basis of art. 9-13, 20 and 22 presidential decree (pr.d.) 498/87, see *C. Pamboukis*, Public limited liability company law, part A', Salonica, 1987, pp. 139 et seq. and Suppl. 1988. *L. Georgakopoulos*, Manual of Commercial law, vol. I-part 2, Companies and groups of companies. Athens, 1996 (2nd ed.), pp. 638 et seq. *N. Rokas*, Trading companies, Athens, 1996 (4th ed.), pp. 306 et seq. *J. Papagiannis*, Public limited liability companies law. Salonica, 1997, pp. 710 et seq. *A. Karagounidis*, Irregular merger and division of public limited liability companies, Salonica, 1997. pp. 45 et seq. *V. Antonopoulos*, Commercial companies law - Corporate companies, vol. B', Salonica, 1998 (2nd ed.), pp. 39 et seq. *L. Skalidis*, Commercial companies law, Salonica, 2000 (5th ed.), pp. 379 et seq. *E. Alexandridou*, Commercial companies law - Corporate companies, vol. B', Salonica, 2000 (2nd ed.), pp. 205 et seq. *Mouzoulas in* DikAE, 68 et seq.

8 Concentrically, *Douvlis*, op.cit., pp. 110 et seq. *Douvlis*, Legal problems of transfrontier banks' mergers in E.U – One more common field between company, banking and Economic law, ETrAxChrD (Epitheorissi Trapezikou-Axiografikou-Chrimatistiriakou Dikeou. Bulletin of Banking-Negotiable Instruments-Stock Exchange Law), 2003, pp. 35 et seq. *E. Perakis*, The regulation 2157/2001 for the European Society (Societas Europaea) – A dubious solution of an old problem, DEE, 2003, pp. 495 et seq. Further on the merger of already banking SEs, *Douvlis*, ETrAxChrD, op.cit., p. 39. note 33.

provisions of par. 9-12 of article 16 L. 2515/97)[9], according to which the relevant contracts are exempt from dues and tax, notary public fees are calculated on a favourable basis, the new entity resulting from the merger is exempt from certain categories of taxation, including capital concentration tax, and special reserves are exempt from tax at the time of the merger; a detailed reference to such matters, however, would be beyond the scope of this presentation.

B. Within the above framework, pursuant to article 16 par. 1 L. 2515/97 the merger of credit institutions, in the sense of article 2 par. 1 L. 2076/92[10], is permitted in the form of absorption or the establishment of a new company, but also via the acquisition, as an act identical with that of the merger as per article 79 L. 2190/20[11]. The said provision is in harmony with more general provisions of Greek company law regulating p.l.l.cs' mergers (articles 68 et seq. L. 2190/20)[12]. Article 78 of the said Law notably provides for mergers between a parent company and its fully owned subsidiaries via a simpler procedure requiring no General Meeting approval, which obviously applies to banking groups as well[13]. Besides, pursuant to the provisions of article 16 par. 16-18 L. 2515/97, banks operating in Greece are also permitted to divide[14], or transfer a branch or

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9 *Velentzas*, pp. 463 et seq. *Mouzoulas*, EEmpD, pp. 467 et seq. *Mouzoulas in* DikAE, nos 17 et seq., 53 et seq. *Chatzigianni*, op.cit.

10 More analytically, see *Douvlis*, 2003, pp. 116 et seq., 127 et seq. For the exceptions from this application field according to the par. 3 of art. 16 L. 2515/97, note 6 above.

11 For the relative problem concerning the adaptation of this provision with the third directive, see indicatively, *A. Samara/V. Douvlis*, The harmonization of greek company law with community law, Athens, 1983, p. 67. *Kotsiris*, op.cit., p. 141. *Mouzoulas in* DikAE, 79, nos 1 et seq.

12 Notes 6-7 above.

13 *Kotsiris*, op.cit., pp. 140 et seq. *Douvlis*, ETrAxChrD, pp. 47 et seq.

14 P.I.l.cs' division is realized according to the art. 81 et seq. L. 2190/20, as they are formed by the pr.d. 498/87 harmonizing the Greek company law with the sixth directive 82/891/EEC, see *Kotsiris*, op.cit., pp. 142 et seq. *Douvlis in* DikAE, vol. 1, 2002 (2nd ed.), Intr. Part, IV, nos 30 et seq. *Mouzoulas in* DikAE, 81, nos 1 et seq., 9 et seq.

part of their activities to another credit institution[15]. This issue cannot, however, be dealt with in detail in the context of this study.

II. Procedure – Review

A. Pursuant to the Greek legislation, the credit institutions' merger process is principally based on the provisions of articles 69 et seq. L. 2190/20[16], according to which the Boards of Directors of the entities participating in the merger are required to draw up a draft merger agreement, including at least the information below: The specific form, the name, the registered office and register number in the companies' records of the said legal entities, their share exchange ratio and possibly the cash amount (offered by the absorbing to the absorbed bank) provided for under article 68 L. 2190/20; also the procedural formalities regarding the delivery of the new shares issued by the absorbing company, the date as of which the new shares' entitlement to participate in the absorbing company's profits is activated and any special terms relating thereto, the date as of which the absorbing company is subrogated to the rights of the absorbed and the fate of interim results until completion of the merger process; the safeguarding of the special rights or the measures proposed for the holders of shares or other corporate securities of the absorbed entity; lastly, special privileges, where applicable, granted to the members of the Boards of Directors and the Regular Auditors of the mergering legal entities. A description of the assets owned by the mergering legal entities is not necessary to be included in the draft merger agreement or the Articles of Association of the new entity resulting from the merger (as per article 16 par. 7 L. 2515/97).

Moreover, should a mergering legal entity be listed, the merger prospectus is also subject to approval by the Athens Stock Exchange

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[15] Summarily, see *Douvlis*, The transfer of a banking credit throught current account, Athens, 1994, pp. 264 et seq. *Mouzoulas in* DikAE, op.cit., nos 4 et seq.

[16] For more detailed bibliography, *Douvlis*, ETrAxChrD, p. 45, note 56. *Antonopoulos* (cons.), op.cit., pp. 603 et seq. Also, *Kotsiris*, op.cit., pp. 136 et seq.

(ASE), that should be granted before the merger is approved by the participating entities, as per a more appropriate interpretation[17]. As regards the special terms of merger approvals by the ASE, in general[18], pursuant to the currently applicable provisions of the ASE's Board of Directors' resolution 19/11.15.1999, in the event of absorption of a non-listed company by a listed one, the supplementary listing on the ASE of the latter's shares resulting from its share capital increase due to the merger and the ASE's prior approval of the corresponding prospectus are subject to certain requirements, which cannot be dealt with in detail within the framework of this study[19]. Furthermore, under such circumstances, a tax audit of the absorbed company is required and, in the event of a company not registered in Greece, the audit should be carried out by an auditing and accounting firm of international reputation, and a special report prepared by it regarding the company's tax obligations[20]. The merger between listed companies, the acquisition to which a listed company proceeds with a view to gaining control over another company, listed or unlisted, etc. are also subject to similar requirements. To complete the picture as regards the merger of banking p.l.l.c listed on the ASE, reference should be made to the more general provisions of Presidential Decree 348/85 regulating the preparation, review and publication of a prospectus for the listing of securities on the ASE[21]; also

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[17] *Mouzoulas*, EEmpD, p. 465. *Mouzoulas in* DikAE, 75, no 14.

[18] *Mouzoulas*, EEmpD, op.cit. and pp. 458 et seq., also refering to the Board of Directors (B.D) of Athens Stock Exchange (ASE) decision of 5.14.92. *Mouzoulas in* DikAE, op.cit., nos 13 et seq. *P. Drakopoulos*, Informing bulletin for introduction to the ASE of stocks resulting from merger (cons.), DEE, 1997, pp. 929 et seq., 936.

[19] See dec. B.D ASE no 19/1.15.99 (Issue of the Official Gazzette - 1OG/B/40/1.27.99 and ETrAxChrD, 1999, pp. 278 et seq.), as it has been modified successively by the dec. B.D ASE no 28/9.20.99 (ETrAxChrD, 2000, p. 281) and no 42/1.27.00 (ETrAxChrD, 2000, p. 578). On the same subject, *Mouzoulas in* DikAE, no 14b.

[20] See dec. B.D ASE no 19/1.15.99 (note 19 above), chap. A3.

[21] *Drakopoulos*, op.cit., pp. 931 et seq. *Mouzoulas*, EEmpD, p. 458. *Mouzoulas in* DikAE, no 14. *Mouzoulas in* DikAE, Annex 80, no 25.

to the provisions of ASE Board of Directors' resolution 57/9.22.2000, regarding the procedure that should be followed for the listing of new shares resulting from a merger through absorption[22].

B. As regards the method employed for the valuation of the merging entities' assets, under L. 2515/97 article 16 par. 4 banking p.l.l.cs are afforded the option to use the procedure available to companies in general under article 71 L. 2190/20. This consists in the preparation, by a committee of specialists jointly appointed by the mergering banks, of a report to the General Meeting of Shareholders (GMS) or the implementation, for greater convenience (in an instance of notable originality in Greek law) of the provisions of L. 2515/97 article 16 par. 5, whereby the merger is possible via a simplified, "accounting" procedure, subject to certain audit requirements. The said procedure is based on the consolidation of the mergering banks' assets and liabilities, as at the last year closing, as same appear in their purpose-prepared balance sheets, even as at the same date, which are subsequently transferred for inclusion in the balance sheet of either the absorbing/acquiring bank or the new entity generated from the merger[23]. In that case, each participating bank's assets are audited by at least one chartered accountant, who draws up a relevant report, focusing on the share exchange ratio and the asset valuation method. Besides, under such circumstances, according to the preceding provision of L. 2515/97, the absorbing bank's share capital is formed on the basis of the sum of the share capitals of the mergering banks. It is further provided that any transactions effected by the mergering banks after the balance sheets date, as above, are deemed to be made by the absorbing bank and transferred to the latter's books in the aggregate, through a single entry. Moreover, within the framework of the said simplified "accounting" procedure provided for the credit

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[22] ΦΕΚ/Β/88/1.31.01 and *Mouzoulas in* DikAE, 75, no 14a.

[23] More analytically, *Velentzas*, pp. 461 et seq. *Mouzoulas*, EEmpD, pp. 457, 459 et seq., 462 et seq. *Mouzoulas in* DikAE, Annex 80, nos 26 et seq. *Chatzigianni*, op.cit. *S. Psychomanis*, Banking activities of disputable legality, Salonica, 2002, pp. 48 et seq. *Douvlis*, ETrAxChrD, pp. 46 et seq. *Antonopoulos* (cons.), p. 605.

institutions' merger, the mergering entities' loss balances from liabilities of either the current or a previous year may notably be presented in the balance sheet of the new entity resulting from the merger (article 16 par. 6 L. 2515/97)[24].

Owing to an apparently hasty formulation of article 16 L. 2515/97, the phrasing of par. 5 (unlike the phrasing of the preceding par. 4) might give the reader the impression that should the simplified "accounting" procedure be adopted, no GMS merger approval is required of each participating bank. The incorrectness of such an interpretation is established on the basis of the contents of the article, specifically par. 9, where reference is made to GMS merger approval and par. 2, where reference is made to the provisions of articles 69 through 80 L. 2190/20, including the requirement for GMS approval (article 72 L. 2190/20) and, what is more, by the holders of each single category of shares.

C. Pursuant to the Greek legislation, the banks' merger procedure is completed by the preparation of a report on the terms of the draft merger agreement by each participating bank, as per article 69 par. 4 L. 2190/20. The said report, drawn up by the Board of Directors of each participating bank, is filed in the Register of Public Limited Liability Companies and submitted to the merging bank's GMS. Furthermore, each one of the participating banks is required to publish the report along with the draft merger agreement at least two months before the date the GMS is convened to approve the merger (as explained in detail hereinbelow), as well as a summary of the Plan of the Merger (as per article 70 par. 1 L. 2190/20) within ten days from completion of the above procedural formalities (provided for under article 69 par 3 of the same Law) for the information and the exercise of the rights of the mergering banks' creditors, as per L. 2190/20 article 70 par. 2-3.

The merger is approved by virtue of the participating banks' GMS resolutions (as per article 72 L. 2190/20), adopted on an increased quorum and majority basis (as respectively per articles 29 par. 3-4 and 31

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[24] *Velentzas*, p. 463.

par. 2-3 L. 2190/20). Where there are more than one categories of shares, a separate resolution is required by each of the corresponding categories of shareholders; furthermore, a separate resolution is also required by the bondholders, where applicable (article 70 par. 4 L. 2190/20), however on a regular quorum and majority basis. We would also note that the participating banks are required to ensure that the holders of securities issued by it other than shares are granted rights equivalent thereto to the new entity resulting from the merger (L. 2190/20 article 70 par. 5). Lastly, as per article 74 of the same Law, each participating bank must publish the GMS resolution whereby the merger is approved along with the relevant agreement (drafted by a Notary Public), following its review by the Ministry of Trade (currently the Ministry of Development and Trade) in accordance with the provisions of article 7b L. 2190/20[25]; the same are provided for pursuant to article 18, a' L. 2515/97 also.

D. As regards the review of the said merger procedure, besides the final review for compliance with corporate procedures, publicity requirements etc. falling within the jurisdiction of the Minister of Development and Trade, a prior review is also required by the competent Greek monetary authorities, i.e. the Bank of Greece (BoG). The said review is expressly provided for under article 18 L. 2515/97, regulating the terms of publicity and approval, within two months from submission of all the documentation required, of credit institutions' mergers in Greece.

However, apart from the said review, banks' mergers are also subject to preliminary review as regards their impact on free competition. In Greece, the preliminary review is carried out by the Competition Committee (articles 4 et seq. L. 703/77, regulating the control regime applicable to the consolidation of enterprises in general). This does not, however, preclude the possibility of implementation of the EC rules

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[25] Concretly, insertion to the relevant Register of Public Limited Liability Companies (RPLLC) and publication of relative insertion summary in the IOG.

regarding enterprises' consolidation, subject to the provisions of regulation 4064/89[26].

III. Effects

A. Pursuant to article 75 L. 2190/20, the usual effects of quasi subrogation (identical with universal succession) of the absorbing bank to the rights and obligations of the absorbed are activated *ipso jure* against any party, without any further formality[27], as from the date the merger is recorded in the relevant Register of Public Limited Liability Companies[28]. Where mergering banks participate in each other's share capital[29], the exchange of shares due to the merger is prohibited under article 75 par. 4 L. 2190/20. Besides, mergers on the basis of the simplified "accounting" procedure of article 16 L. 2515/97[30] are also subject to the aforementioned provisions as regards the formation of the absorbing bank's share capital, the steps taken by the mergering banks after the date of the merger balance sheets and the possibility of presentation of their loss balances from liabilities of the current or a previous year in the balance sheet of the entity resulting from the merger.

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[26] Representatively, see *Competition Law Society*, The concentration control of enterprises in the antitrust law, Athens, 1998. *L. Kotsiris*, Competition Law, Salonica, 2000 (3d ed.), pp. 549 et seq., 580 et seq. *N. Cosmidis*, International concentrations of enterprises, Athens, 2002, pp. 56 et seq.

[27] Except, naturally, the required for the transfer of real or other special rights (art. 75 par. 4 L. 2190/20). With the same spirit is formulated and the corresponding provision of art. 16 par. 8 L. 2515/97 refering to the transcription of real estates and other real rights in case of banking merger. See, in general, *Antonopoulos* (cons.), p. 604.

[28] Note 25 above. More specially, *Douvlis*, The organization and function of Register of Public Limited Liability Companies, EllDni (Elliniki Dikeossini – Hellenic Justice), 1990, pp. 707 et seq.

[29] Characteristicly, see *Douvlis*, The reciprocal participation in the commercial companies' capital, EEmpD, 1986, pp. 209 et seq.

[30] Note 23 above.

In all other respects, in terms of effect, banks' mergers as per article 16 L. 2515/97 also adhere to the general rule of universal succession of the genuine forms of corporate mergers pursuant to the Greek legislation[31]. Accordingly, as per par. 13 of the said article, all the statutory provisions previously governing the mergering credit institutions will also apply to the new entity resulting from the merger and, as per par. 14 and 18a', section f' of the article, the same holds for any right or license previously granted to the mergering banks by the BoG.

B. Under article 76 L. 2190/20, the members of the Board of Directors of the absorbed company are liable to the company's shareholders for any error during the preparation and the implementation of the merger, and so are the auditors of the merger. On the other hand, a merger may be declared void through legal proceedings on very limited and strict grounds only, specified under article 77 of the said Law.

Lastly, the legal regime providing for the protection of the mergering entities' staff is particularly favourable, especially since its recent alignment with EU legislation[32] (Presidential Decree 178/02[33]).

IV. Problems of transfrontier (cross-border) mergers

A. In the context of the European Economic Area (EEA), particularly at the level of EC company law[34], attempts have been made to provide for transfrontier (cross-border) mergers of p.l.l.cs via the promotion of a proposal for a tenth directive. The proposal, first drafted in 1973 and subsequently presented in a revised form by the European Commission in

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31 *Douvlis*, Commercial companies' merger and enterprise theory, op.cit., pp. 28 et seq., 172 et seq. *Douvlis*, 1994, op.cit., pp. 228 et seq., 248 et seq., 260 et seq. *Kotsiris*, op.cit., p. 139. *Antonopoulos* (cons.), pp. 604 et seq.

32 Representatively, see *Douvlis*, The legal control of the multinational enterprises – The problem under the new globalized reality, Athens, 2001, pp. 42 et seq., with extensive bibliography.

33 Relatively, *Douvlis*, ETrAxChrD, p. 52.

34 About the general evolution of whom, see concentrically, *Douvlis in* DikAE, op.cit., nos 1 et seq., 7 et seq.

1985[35], was unfortunately not adopted, and the issue has remained in abeyance since[36]. In the meantime, the so-called third directive 78/855/EEC was released on p.l.l.cs' mergers; the said directive, however, exclusively concerns harmonization of the EC member states' national legislations and includes no regulatory provisions for cross-border mergers[37]. These developments have also had an impact on credit institutions' mergers based on the provisions of common company law, in the absence of a more specialized statutory framework at the EU level[38].

Accordingly, the company law aspect of transfrontier mergers has been virtually overlooked by the European Community for a number of years, and solutions to the various problems arising were subjected to the regulatory effect of the traditional rules of private international law[39]. This was not, however, the case with the taxation aspect of cross-border mergers; the tax regime governing mergers, divisions, transfers of assets and exchanges of shares between companies across the eurozone was regulated by directive 90/434/EEC[40]. This reflects the underlying

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35 OJ 1.25.85, C. 23/11.

36 *Douvlis in* DikAE, nos 20, 69-71. *Douvlis*, 2001, op.cit., pp. 91 et seq., 190 et seq. See also, *Th. Hatzigayos*, Les fusions transfrontalières de sociétés anonymes, 1987. *Karagounidis*, op.cit., pp. 15 et seq. *Ch. Pamboukis*, Legal persons and corporations in conflict of laws, 2002, Athens, p. 171.

37 Note 7 above.

38 Notes 6, 12 above.

39 *Douvlis*, 1986, pp. 91 et seq., 190 et seq. See also, *G. Beitzke*, Les conflits de lois en matière de fusion de sociétés, Rev.crit.dr.intern.pr., 1967, pp. 1 et seq. *W. Reuss and al.*, Handbuch der Aktiengesellschaft, 1967-1972, I-643. *A. Kraft and al.*, Kölner Kommentar zum Aktiengesetz, τ. III, 1972, pp. 406 et seq. *Chatzigayos*, Credit institutions' merger, ETrAxChrD, 2001, p. 825, note 9, with sufficient foreign bibliography.

40 *Mouzoulas*, The directive for the tax regime of mergers, divisions, transfers of assets and exchanges of companies shares, DFN (Deltio Forologikis Nomothessias – Bulletin of Tax Legislation), 1991, pp. 1219 et seq. *Mouzoulas*, The contribution of tax directives to the formation of a european law of groups of companies, DFN, 1991, pp. 1713 et seq., 1804 et seq. *Douvlis in* DikAE, nos 20, 70, with respective

intention of the EC lawmaker to provide for an integrated solution to the problem of transfrontier mergers, given also that an approach seeking to address the company law and taxation aspects of such undertakings of consequence separately[41] would be deemed totally inexpedient at the present juncture.

B. The issue of transfrontier mergers was recently reviewed on the occasion of the adoption of regulation 2157/10.8.2001 on the Statute for a European Company (SE) during the workings of the EU Summit in Nice, France in 2000[42]. According to a preliminary observation to the effect that a combination of Preamble no 26 and article 62 par. 1 allows the regulation to be implemented in credit institutions[43], it is briefly noted that as per article 2 par. 1, and in more detail, as per articles 17 et seq. of the regulation, a European company may be set up via the merger of at least two p.l.l.cs of the EEA[44], each governed by the legislation of a different member state[45].

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greek bibliography. To be noted that Greek law has been harmonized with this directive by the art. 1-7 L. 2578/98.

[41] Mostly for practical reasons, but certainly not by theoretical – scientific view too.

[42] Concentrically, with historical retrospection on the march of the institution of SE until its official acceptance by the members states and wide bibliographical indication, see *Douvlis in* DikAE, nos 79 et seq. *Douvlis*, 2003, pp. 110 et seq. *Perakis*, op.cit., pp. 493 et seq.

[43] Relatively, *Douvlis*, 2003, p. 111, note 252. *Perakis*, p. 495. Anyhow, as it results from the formulation of Preamble - no 26 of the SE regulation, but also from its art. 9 par. 3, in this case the special Community and National financial rules precede typically in reference to the SE clauses. Nevertheless, if last provisions are not covered in effect, it must be logically accepted that both are obligatory applied in a cumulative way, so that the total of these two institutory sources be substantially satisfied, with further principal standard, in the rare case of legal conflict, the more severe law, see *Douvlis*, op.cit., note 253.

[44] That is, having formed under the law of a member state and maintain their registered and head offices within the Community (art. 2 par. 1 and 7 SE reg.). Anyway, according to the provision of art. 2 par. 5 of the regulation, members states also preserve the right to allow in the formation of a SE the participation of companies not having their head office within the Community, provided that last ones are

This shows an express acceptance of the possibility of cross-border mergers on the part of the EC/EU lawmaker, at least in the case under review; this cannot be deemed irrelevant to the positive approach that currently prevails in legal texts regarding the possibility of transfrontier mergers in the international arena, i.e. beyond the limits of the EEA, despite the fact that multiple problems are highlighted, particularly where the issue is considered in extra-Community terms[46].

C. In the light of the above, the issue of credit institutions' cross-border mergers was deemed to form part of the broader framework of international corporate mergers, i.e. mergers of legal entities of a different nationality or citizenship each, with all the implications obviously involved in such an approach. Along these lines, it is remarkable that no severe objections to such mergers appear to be raised in legal texts[47]. Legal theory points out the difficulties entailed in similar undertakings at the practical level but does not appear to object, at least for the most part, to international mergers. This position is supported by arguments based on the possibility of a company's registered office to be transferred overseas, even though on certain conditions, and of a change in corporate nationality[48]; furthermore, it is reinforced by the effect of the rules of

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formed under the law of a member state, where they maintain their registered office and with whom are connected by real and continuous economic link. Relatively, *Douvlis in* DikAE, no 85. *A. Metallinos in* DikAE, vol. 1, op.cit., 6, nos 24 et seq.

45 Note 8 above.

46 Note 39 above. With this spirit, *Chatzigayos*, ETrAxChrD, op.cit., pp. 825 et seq. *Chrissanthis*, no 32. *Metallinos*, op.cit., nos 35 et seq., 39 et seq. *V. Kiantos*, Private law of international trade, Salonica, 2002 (3d ed.), pp. 228 et seq. *Ch. Pamboukis*, op.cit., pp. 170 et seq., 174 et seq.

47 Note 46 above.

48 In the particular sense of registered office transfer – nationality change of one of mergering companies, so that a merger of legal entities ruled by the same legislation be able to take place next. On this subject from the point of view of Greek company law, see art. 29 par. 3 L. 2190/20. Indicatively, *Douvlis*, 2003, op.cit. *Chrissanthis*, op.cit. *Metallinos*, nos 31 et seq., 42. *Ch. Pamboukis*, p. 174. For the community law

private international law governing the status of legal entities[49]. Besides, EC/EU company law has also decisively contributed towards the same direction basically; the draft of the fourteenth directive, presented in 1999, concerns intra-Community transfers of companies' registered offices, an issue that has remained in abeyance since[50]. Beyond that, even though formally unrelated to companies of the EEA, the recent SE provisions relating to registered office transfers and the founding merger[51] follow the same broad orientation. Furthermore, a similar conclusion may be drawn from the taxation approach to cross-border transfers reflected in directive 90/434/EEC.

Therefore, more specifically, on the basis of a number of converging views it is accepted that a lawful transfrontier merger should meet the requirements of the legislation governing each one of the mergering entities; unless of course the merger involves the establishment of a new company, registered in a third country, in which case the said third country's law also needs to be taken into consideration, or a transfer of assets (such as real property transfer) located on a third country's territory, in which case a special approach is required[52]. Along these lines,

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on this matter, *Douvlis*, op.cit. *Douvlis*, 2001, p. 35. *Douvlis in* DikAE, no 85, in fine. *Chrissanthis*, op.cit. *Metallinos*, nos 20 et seq., 34.

[49] Note 47 above.

[50] *Douvlis in* DikAE, nos 75 et seq.

[51] Given that further mergers between SAs, not specially arranged, it has to be accepted on the basis principally of combination between art. 9 par. 1, 3 and 10 SA regulation, that they will follow finally the same general rules concerning the transfrontier mergers, where the totally applied law is composed proportionately to the governing the mergered companies national legislations, with common substantial support base the third directive 78/855/EEC (see characteristicly, art. 18 SA reg.). Besides, in this case because of the SAs particularity are prorata applied art. 17 et seq. SA regulation about the founding merger of common type companies in order to formate a SA.

[52] Note 47 above. Naturally, self-evident presupposition for every transfrontier merger constitutes the mutual recognition of legal substance of mergering companies, see *Ch. Pamboukis*, pp. 172 et seq., 174 et seq. More generally, *Douvlis*, 2001, op.cit. *Douvlis in* DikAE, nos 87 et seq.

it can be inferred that the extent of application of the legislations governing the mergering companies depends on the form of the merger, but also on the degree of uniformity of the legislations involved, since they are applied partly on a shared and partly on a cumulative basis, with the more stringent provisions each time prevailing[53].

D. In view of the above, the possibility of transfrontier mergers should be deemed to be accepted by the Greek company law, especially following its alignment with the third directive 78/855/EEC and the integration of the taxation directive 90/434/EEC, particularly where intra-Community mergers, i.e. mergers of companies governed by national legislations of EU member states, are concerned. Accordingly, despite the objections that appeared to be raised in the past, the Greek banking legislation should also be deemed to adopt the same position[54]. What is more, on the assumption that cross-border intra-Community mergers also concern Greek credit institutions, no issue appears to be raised as regards the implementation of the European *Acquis Communautaire* or banks' future mergers for the foundation of a banking SE[55].

Accordingly, as regards the application of the Greek legislation, the issue in question shall be addressed in the light of the provisions of article 16 L. 2515/97, as set out hereinabove, in combination with the provisions of common company law. Besides, the recent addition to article 16 of par. 21 from article 9 par. 8 L. 2992/02, pursuant to which the said article 16 as well as article 3 L. 2166/93 may be applied to any case of transformation of foreign banks' branches set up in this country to domestic banks or of such branches' contribution towards an EU credit institution[56], indirectly yet clearly operates in favour of the acceptance of credit institutions' transfrontier mergers, at least within the EEA.

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[53] Note 52 above.

[54] Representatively, *Chatzigayos*, ETrAxChrD, p. 825.

[55] Notes 42-45 above. Further on the merger of already banking SAs, see prorata to the above treated, note 51.

[56] Relatively, *Mouzoulas in* DikAE, Annex 80, no 16. *Chatzigianni*, op.cit.

Furthermore, the merger may also be deemed accepted between a Greek and a non-EU bank without, however, the former being entitled to have recourse to the special, favourable provisions of article 16 L. 2515/97, due to the formulation of par. 3 thereof[57].

[57] Note 6 above. This is a moreover case of indirect, but explicit recognition from the part of Greek legislator concerning the general facility of transfrontier enterprises' mergers, especially between financial institutions. Nevertheless, with doubts, *Mouzoulas in* DikAE, op.cit.